

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

by

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ABSTRACT

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The purpose of this study is to test the utility of Stickels' Victim Satisfaction Model of the criminal justice system by quantitatively assessing elected district and county attorneys' perceptions of victims' involvement in the charging and plea bargaining stages of the criminal process. In addition, this study will compare Republican and Democratic prosecutors' perceptions of victim involvement in criminal prosecutions. A cross-sectional research design will be used in this study. Self-administered questionnaires will be mailed to every elected district and county attorney in Texas. The results of this study will further our understanding of prosecutorial decision making and have important implications for the American criminal justice system.

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CHAPTER 1

INTRODUCTION

The American prosecutor exercises a remarkable degree of discretion. Sphon, Beichner, Erika, and Frenzel (2002) stated that all of the decision makers in the American criminal justice system utilize a large amount of unchecked discretionary power, but the one who stands apart from the rest is the prosecutor. The prosecutor decides who will be charged, the type charge that will be filed, who will be offered a plea bargain, and the type of plea bargain that will be offered (Sphon et al. 2002). Further, Albonetti (1987) noted that 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.

As the literature review will show, most of the research regarding prosecutorial decision making has focused on factors that may 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. Interestingly, little research has examined the affects of the victim-prosecutor relationship during the charging and plea bargaining process. More specifically, no researcher has studied prosecutors perceptions of victims involvement in charging and plea bargaining.

During early English and American history, the victim was the center of the criminal justice system. However, as society became more organized and complex, state governments relied more heavily on public prosecutors (Friedman, 1985). This shift caused the victim's role in the criminal justice to diminish. In the 1960's a victim movement began to form. Members of this movement claimed that they felt alienated (Goldstein, 1984) and that criminals were treated better by the criminal system (Gittler, 1984). The Victims' movement, over the last forty years has helped change criminal justice policy and procedure to address victims' interests (Stickels, 2003). Currently, victim input is a significant part of all aspects of the criminal justice system (Stickles, 2003). For instance, most states have enacted victim rights legislation that provides victims an opportunity to participate in a criminal case by attending hearings and discussing the case with prosecutors (Stickels, 2003).

In a study that explored crime victims' role in the criminal justice system, Stickels (2003) argued that the criminal justice system has evolved from a system that focuses on the defendant to a system that focuses on the victim. Using results from his qualitative study, Stickels proposed the "Victim Satisfaction Model" of the criminal justice system. Stickels' Victim Satisfaction Model contains three Characteristics. The first stage is that victims have become *de facto* parties to prosecutions and take active roles active roles in the criminal case. Second, prosecutors assume the role of representing the victim. The third characteristic is that the attempt to satisfy victims' interest becomes the primary determinate of the criminal justice system. Stickels

concluded that the attempt to achieve victim satisfaction is an indication that the criminal and civil judicial systems are merging.

In 2004, approximately twenty four million Americans, twelve or older, were victimized by some type of crime (Bureau of Justice Statistic). If Stickels' Victim Satisfaction model is an accurate representation of how the criminal justice system is operating, then this large population of crime victims will most likely have a substantial impact in current and future criminal justice policy. The purpose of this study is to measure the perceived utility of Stickels' Victim Satisfaction Model by quantitatively assessing prosecutors' perceptions of victim involvement in criminal prosecutions. This will be accomplished by mailing self-administered surveys to the census of elected District and County Attorneys in Texas. The survey was primarily designed to identify and measure prosecutors' perceptions of victim involvement in two critical stages of criminal prosecutions, charging decisions and plea bargains. It is hypothesized that the results of this study will indicate that prosecutors have favorable views of victim involvement in charging decisions and plea bargains, and thus, provide evidence that supports the Victim Satisfaction Model.

This study is important for several different reasons. It will contribute to the existing body of knowledge because few studies have examined prosecutors' perceptions. This study will also provide helpful insight on the relationship between prosecutors and crime victims. Finally, the data that will be collected will further our understanding of Stickels' Victim Satisfaction Model. This increased understanding could lead to important policy recommendations in the future.

In chapter 2, the author will present a review of the current literature regarding prosecutors' perception of victim involvement in the criminal justice system. Chapter 3 will outline the methodology used in obtaining the data for the study, as well as the analysis procedures utilized. Chapter 4 will present the findings that were derived from the methodology. Chapter 5 is a critical analysis of the findings followed by a discussion concerning future implications for the criminal justice system.

CHAPTER 2

LITERATURE REVIEW

In this Chapter, the author will present a review of the current literature relevant to prosecutors' perceptions of victim involvement in criminal prosecutions. This review will begin with the history of the victim in the criminal justice system. In the second section, studies that examined the factors that affect prosecutors' decision making in charging decisions and plea bargains will be presented. Finally, the author will discuss models that relate to victim involvement in the criminal justice system.

History of victim involvement in the Criminal Justice System

The shift in focus from the individual crime victim to the society as a whole is a major trend in the history of criminal law (Henderson, 1985). In England, after the collapse of the Roman Empire, the victim was the center of the criminal process (Henderson, 1985). Since no formal government structure existed at this time, crime victims, or their surveying family members, exacted justice from the perpetrator by demanding restitution or physical punishment (Cardenas, 1986; Henderson, 1985; Johnson, 1988).

Feudal Lords were able to establish control over those who lived on the land around them as the English society became more organized, (Henderson, 1985). In addition, the law of the blood feud became subordinated to "public interest" (Henderson, 1985). Pollock and Maitland (1885) noted that during this time period, it

became illegal for victims to initiate a blood feud against their perpetrator unless an effort was made to seek restitution. While the blood feud was declining as the primary criminal law enforcement method, monetary compensation in the form of restitution, known as “bot” and “wer,” and fines payable to the king, called “wite,” became the preferred method of forcing the perpetrator to pay for his or crime (Pollock and Maitland, 1885). This developed into a complicated system of tariffs and payment that placed value every sort of injury imaginable (Pollock and Maitland, 1885). Pollock and Maitland (1885) submitted that the system of bot and wer appeared to benefit the victim, however, this was not the case because the perpetrators payment typically went to the victim’s lord, who used these payments to become more powerful.

As English kings gained more control, the system of bot and wer evolved into the concept of the king’s peace (Johnson, 1988). Criminal acts were observed as offenses against the crown, rather than against the individual crime victim (Johnson, 1988; Pollock and Maitland, 1885). The king’s peace was a special protection that was provided to those who lived in the area in which the king’s protection had been extended (Johnson, 1988). It required criminals to pay a fine as a form of punishment for a wide variety of crimes (Johnson, 1988). According to Johnson (1988), a major function of the king’s peace was to further control the blood feud by mandating victims of crime to seek redress from the king’s court before turning to revenge. This effort was successful and by the eleventh century the blood feud became the victim’s last option (Johnson, 1988).

The successors of William the conqueror inserted the practice of appeal and indictment into the legal system after the Norman invasion of 1066 (Cardenas, 1986; Westbrook, 1998). Through the process of appeal and indictment, crime victims could initiate the criminal process (Cardenas, 1986). According to Greenburg (1984), “appeal” did not have the same meaning in early English law as it has in the current justice system. Cardenas (1986) defined the early English version of “appeal” as an oral accusation made to one of the king’s representatives against an alleged criminal. In contrast, Cardenas defined “indictment” as a written accusation, by a private party, that a certain individual had committed a crime. The “appeal” and “indictment” were followed by a trial in which the accused were required to appear before an impartial judge, who was appointed by the king (Cardenas, 1986). The main characteristic of an “appeal” was that it put the entire responsibility of bringing a suspect to justice and proving the accusation on the victim (Greenburg, 1984). Therefore, Greenburg (1984) contends that the Anglo-Norman law placed the responsibility of doing justice on the victim.

According to Stickels (2004), private prosecution was one of the most remarkable aspects of the English common law during the seventeenth century. There were no public prosecutors in the English legal system during this time period. Instead, crime victims managed their entire prosecution the same way as one would handle a civil case (Cardenas, 1986). If crime victims choose to prosecute, they bore the cost of the prosecution, however, they were entitled to receive restitution in the event of a favorable ruling (Cardenas, 1986). The Government assisted the victim by enforcing

the monetary judgment through forced sales of assets, involuntary indenture, or debtor's prison (Johnson, 1998).

As English law became more complicated, the need for a coherent system of laws changed criminal law from a mixture of public and private prosecutions to a system of laws called "common law crimes" (Henderson, 1985). Common law crimes were centered on unwritten rules that evolved from community customs and judicial traditions of England and, overtime, became incorporated into court decisions (Friedman, 1993). These judicial rulings became the English common law and were enforced by private prosecutions (Friedman, 1993).

Crime Victims in Colonial America

The American Colonists' legal system was largely influenced by English common law and procedure (Cardenas, 1986; Friedman, 1993; Gittler, 1994; Cassell, 1994). The colonist also brought the practice of private prosecution with them (Gittler, 1994). Before the American Revolution, the crime victim was the key decision maker in the criminal process (Cardenas, 1986). McDonald (1976) stated that crime victims served as the policeman and prosecutor. In addition, crime victims who chose to apprehend an offender and initiate a prosecution did so at their own expense (McDonald, 1976).

During the colonial times, separate rights for victims were unnecessary because victims, through private prosecution, were able to protect their own interest (Cassell, 1994). Private prosecution continued in the colonies until the American Revolution and existed when the United States' Constitution was drafted (Cassell). According to

Cassell (1994), “It 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.” Cellini (1997) 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.

Over time public prosecutors replaced the system of private prosecution (Friedman, 1993). The reasons for this transformation are unclear (Gittler, 1984). Cardenas (1986) noted that this change resulted in crime victims being unable to manage and control the prosecution of crimes that had affected them. Further, victims’ role in criminal prosecutions was reduced to a piece of evidence that would be used by the government to obtain a conviction (Cardenas, 1986). Ultimately, victims were gradually excluded from participation in the criminal justice process (Cassell, 1994).

The Victims’ Movement

It was not until the 1960s that reform took place and restored some rights to victims (Friedman, 1985). According to Westbrook (1998), several factors probably stimulated the increased support of the victims’ right movement in the United States. One such factor was a series of Supreme Court decisions, in the 1960s, that dramatically increased the rights of the criminally accused. Cases such as *Mapp v. Ohio*, *Gideon v. Wainwright*, and *Miranda v. Arizona* attracted 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, than administering justice (Westbrook,

1998). Unlike accused defendants, crime victims had no constitutionally protected rights, therefore, victims' rights were unable to develop like the rights of the criminally accused at the constitutional level (Cassell, 1994).

Another factor that has increased support for the victims' movement is the alienation of the victim from the criminal justice system (Friedman, 1985; Goldstien, 1984; Goldstien, 1984). According to Goldstein (1985), the members of the victim movement allege that crime victims have become alienated from the criminal justice system, and the result has been a notable reduction in crime reports to the police, in victims' cooperation with prosecutors, and in public confidence in the administration of justice. The shift from private prosecution to public prosecution, which gave public prosecutors a monopoly over criminal prosecutions, was one source that was involved in creating crime victims' sense of alienation from the criminal justice system (Cardenas, 1986). This shift caused the victim to play a distinctly secondary role in the prosecution of his or her perpetrator (Goldstien, 1982; Cardenas, 1986). Essentially, crime victims report crimes to public law enforcement officials and they decide if the victims' perpetrator will be prosecuted and punished.

American prosecutors exercise a remarkable degree of discretion (Goldstien, 1984). Prosecutors are required to use their discretion to make decisions that benefits society (Gitler, 1984). Therefore, if a conflict arises between the victim's interest and the interest of the state, the prosecutor must give priority to the state (Gitler, 1984)

The sense of alienation felt by crime victims (Friedman 1985; Goldstien 1984; Goldstien 1985) combined with the lack of court protection and a significant rise in

violent crime in the late 1960's, 1970's, and 1980's further increased the public's perception that criminals were treated better than victims by the criminal justice system (Barajas & Nelson, 1997). 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 (Karmen, 1993). One such group focused on the way the male dominated criminal justice system handled violence against women (Karmen, 1993). Another group challenged the way that white authorities treated minority victims of klan terrorism, segregationist mobs, and brutal police officers (Karmen, 1993). A third group brought victims of drunk drivers to the public's attention (Henderson, 1985). Stickels (2001) noted that these factors combined to create a political climate that pressured congress and state legislatures to address crime victims' rights.

One of the first attempts to investigate the possibility of modifying the status of victims' rights occurred in 1982 with President Regan's task force of victims rights (Barajas & Nelson, 1997). This task force paved the way for congress to pass the Federal Victim and Witness Protection Act of 1982 (Barajas & Nelson, 1997). The purpose of this act was to modify the status of the a crime victim from a person who solely reports crime and later acts as a witness in court to the role of an active participant in the criminal justice process (Barajas & Nelson, 1997). The Federal Witness Protection Act of 1982 requires that a victim impact statement be included in the presentence report prepared by the probation officer, for prosecutors to consult with the victim during critical stages of the criminal process, and guaranteed the victim the

right to claim restitution (Friedman, 1984). After two years, congress enacted the Victims of Crime Act of 1984 that created a matching grant program to encourage states to develop victim compensation programs and to create programs to assist crime victims (Barajas & Nelson, 1997).

*Factors Affecting Prosecutors' Charging
and Plea decisions*

Prosecutors decide who will be charged, the type of charge that will be filed, and how a case will be resolved (Spohn et al. 2002). Therefore, in assessing the prosecutors' perception of victims in the charging and plea bargaining stages of the criminal process, it is important to review the literature concerning the factors that affect prosecutorial decision making. The research in this area typically deals with legal and non-legal factors that may influence prosecutors' charging and plea bargaining decisions.

*Legal Factors Affecting the Prosecutors'
Charging Decision*

Studies that examined legal factors found that prosecutors are more likely to file charges when a serious offense was committed (Albonetti 1986; Albonetti 1987; Cole 1970; Mather 1979; Miller 1969; Myers & Hagan 1979; Myers 1982; Spohn, Gruhl, & Welch 1987). In addition, there is an increased probability that a prosecutor will decide to charge a suspect with a crime when strong evidence exist in a case (Albonetti 1986; Albonetti 1987; Miller 1969; Myers & Hagan 1979; Myers 1982; Neubauer 1974). Prosecutors are also more likely to pursue a case when the suspect is a repeat offender (Adams & Cutshell 1987; Albonetti 1986; Albonetti 1987; Neubauer 1974) and the

culpability of the defendant is evident (Albonetti 1987; Mather 1979; Miller 1969; Neubauer 1974; Schmidt & Steury 1989).

Non-Legal Factors Affecting Prosecutors' Charging Decision

Studies concerning non-legal factors that affect prosecutors' charging decisions have focused on suspect characteristics, victim characteristics, and the victim-suspect relationship. With regards to suspect characteristics, prosecutors are more likely to file charges against nonwhite suspects (Spohn et al 1987). Additionally, studies have shown that prosecutors are more likely to pursue a case when a black suspect commits an offense against a white victim (Keil & Vito 1989; Lafree 1980; Paternoster 1984; Radelet & Pierce 1985; Spohn & Spears 1996). Another suspect characteristic that may have an influence on prosecutors' charging decisions is gender. Studies have shown that prosecutors are more likely to charge a male suspect than a female suspect (Albonetti 1986; Myers 1982; Spohn et al. 1987). Research has also indicated that a suspect's employment status could influence prosecutors' decision to charge. Schmidt and Steury (1989) found that prosecutors are more likely to charge suspects who are unemployed.

Victim characteristics could affect prosecutors charging decision. According to Stanko (1981), prosecutors use victim characteristics, not legal factors, to determine if conviction is likely to occur in a particular case. Furthermore, prosecutors usually devote limited resources to cases that have victims who will be perceived by the judge and jury to be "stand-up" witnesses (Stanko, 1981). In assessing a victim's credibility, prosecutors rely on society's perception of who is credible and not deserving of

victimization (Stanko, 1981). For instance, Myers and Hagan (1979) found that prosecutors more often file criminal charges when the victim is older, white, male, and employed. Female victims who deviate from traditional society norms of female behavior (Lafree, 1989), or engage in “precipatory” behavior (Amir, 1971), are deemed less credible.

Another important factor that has shown to influence prosecutors’ charging decisions is the relationship between the victim and the suspect. Several studies have shown that prosecutors are less likely to file charges when the victim and the offender knew each other (Albonetti 1987; Miller 1969; Simon 1996; Stanko 1981). Myers and Hagan (1979) suggested that a victim’s prior relationship with the offender may raise some questions about the truthfulness of the victim’s story and may lead the victim to refuse to cooperate as the case moves through the criminal process.

The victim’s willingness to cooperate is another extra legal factor that has shown to affect the prosecutors charging decision. Myers and Hagan (1979) found that uncooperative victims reduced the likelihood that prosecutors would pursue a case. Silberman (1978, p. 360) noted that cases involving a victim, “no single factor has so large of an impact on what happens to felons after they have been arrested.”

Prosecutorial Decision Making in Sexual assault cases

Prosecutorial decision making in sexual assault cases, like other cases, is influenced by legally relevant factors such as seriousness of crime, suspect’s prior record, and the presence of evidence (Spohn et al. 2002). However, Estrich (1987) argued that there are factors that affect prosecutors’ decision-making in sexual assault

cases that differ somewhat from the factors that affect prosecutors' decision-making in other types of cases. More specifically, Estrich suggested that prosecutors use stereotypes about rape and rape victims to determine what sexual assault cases to take seriously.

Prosecutors differentiate between aggravated rapes and simple rapes (Estrich, 1987). Simple rape is an unarmed rape, committed by acquaintances, and there are no victim injuries (Kalvan & Zeisel 1966; Estrich 1987). On the other hand, an aggravated rape involves either an attack by a stranger, multiple assailants, the use of a weapon, or injury to the victim (Estrich 1987; Kalvan & Zeisel 1966). Prosecutors tend to take aggravated rapes more seriously than simple rapes (Estrich 1987). Additionally, it is common for prosecutors not to trust victims of simple rape (Estrich, 1987).

Furthermore, since most rapes are perpetrated by non-strangers and few involve injury to the victim, attention is focused upon the victim, her moral character, and her behavior preceding the assault (Bryden & Lengnick, 1997).

Studies indicated that prosecutors are less likely to file criminal charges when a rape victim has a nontraditional work history, such as exotic dancer, masseuse, or prostitute (McCahill et al. 1979; Spears & Spohn 1996; Spohn 2001). Similarly, research has shown that prosecutors are less likely to pursue sexual assault case when victims have a history of risk taking behavior, such as hitchhiking, drinking, or drug use (Kalven & Zeisel 1966; McCahill et al. 1979; Lafree 1981; Spears and Spohn 1997). Studies also have revealed that prosecutors are less likely to pursue a sexual assault case

when the victim has a questionable reputation or moral character (Kalven & Zeisel 1966; McCahill et al. 1979; Reskin & Visher 1986; Spears & Spohn 1997).

Factors Affecting Prosecutors' decision- making in plea bargains

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. Ferdico (1992) defines plea bargaining as prosecutorial or judicial concessions, or both, in exchange for a guilty plea. Accordingly, common concessions include a lesser charge, the dismissal of other pending charges, a recommendation by the prosecutor for a reduced sentence or some combination (Ferdico, 1992). Neubauer (1999) identified three types of plea agreements: charge bargaining, count bargaining, and sentence bargaining. The most prominent, sentence bargaining, includes a plea of guilt from a defendant who is informed of his or her sentence, which is usually less than the maximum. During charge bargaining, a defendant pleads guilty to a less serious charge than the one originally filed as means for prosecution to secure some type of conviction. Count bargaining allows the defendant to plead guilty to some counts contained in the charging document. Like prosecutors' charging decision, prosecutors' plea bargaining decisions are affected by legal and non-legal factors.

Several legal factors affect prosecutor plea bargaining decisions. Perhaps the greatest legal influence on the decision to negotiate a plea is the strength of case (Rhodes 1976; Pritchard 1986; Champion 1987). Other legal variables include prior record of the defendant (Champion 1987; Lieberman 1981; McDonald 1979),

seriousness of offense (Champion 1987; Heumann 1978; McDonald 1979; Meyer & Grey 1997; Wooldredge 1986), and defendant's detainment status (Bernstein 1977).

There are also several non-legal factors that affect whether a prosecutor will negotiate a plea. Several studies have shown that prosecutors' plea bargaining decision making is affected by defendant characteristics, such as defendant's socioeconomic status (Champion 1987; Griffith 1980) and defendant's race (Meyer & Grey 1997; Prichard 1986). Other Studies have shown that factors associated with the attorney involved in a plea negotiation affect the prosecutors' decision making in plea bargaining, such as caseload pressures (Berstein 1977; McDonald 1979; Rhodes 1976), experience of attorney (Champion 1987; Wooldredge 1986), relationship between the prosecutor and defense attorney (Heumann 1978; Lieberman 1981; Pritchard 1986), reputation of opposing attorney (Heumann 1978; Lieberman 1981; McDonald 1979), how the courtroom views plea bargaining (Champion 1987; Wooldredge 1986), skills and preparation of attorney (Wooldredge, 1986), and political ideology (Wooldredge, 1986). Victim reluctance has also shown to affect the prosecutor decision to enter into a plea agreement (Champion 1987). Finally, the length of newspaper articles pertaining to the case has shown to affect prosecutorial decision making in plea bargains (Pritchard, 1986).

Explanations of prosecutorial Decision- making

Studies have shown that prosecutors reject a significant percentage of cases during the initial screening process (Mather 1979; Stanko 1981; Frazier & Haney 1996; Spears & Spohn 1997). Albonetti (1987) maintained that prosecutors initially reject

cases that contain factors that are thought to cause uncertainty. Further, Albonetti noted that uncertainty lowers the probability that a case will result in a conviction. According to the Albonetti, legal factors and non-legal factors have been shown to be sources of uncertainty, and thus, cause case rejection. Albonetti suggested that one of the reasons why prosecutors tend to reject case that contain factors of uncertainty is that prosecutors performance is measured by their ratio of convictions to acquittals. Reducing uncertainty about successful prosecution, according to Albonetti, stacks the deck in the prosecutor favor. Albonetti argued that this enhances prosecutors' conviction to acquittal ratio and, thus, increases their chances of upward mobility within their office.

Similarly, Frohman (1991), in a study focused on sexual assault cases rejections, asserted that prosecutors' concern for convictability creates a downstream orientation in which their decision making is based on how judges and juries will draw assumptions based on victim characteristics. 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 (Frohman, 1991). Like Albonetti (1987), Frohman contends that prosecutors attempt to maintain a high conviction to acquittal ratio in order to receive a promotion is a major reason why prosecutors reject a large percentage of cases during the initial screening process. Frohman also provided 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." Second, a pattern of not guilty verdicts is seen as an indicator of prosecutorial incompetence. Third, prosecutors are

given credit for the number of cases that they reject as recognition for their commitment to the organizational goal of reducing the case load of an overcrowded court system. Finally, pursuing case that should have been rejected might lead a judge to question the prosecutor's competence as a member of the court.

Cole (1970) proposed another explanation for prosecutorial decision making. According to Cole, the prosecutor's office acts a focal organization within an exchange system. Prosecutors' decision to charge, according to Cole, is influenced by other organizations or institutions within this system. For instance, prosecutors rely on the police to provide them cases. In his study, Cole found that prosecutors exercise control over the police by rejecting cases that are not sufficient for prosecution. Cole argued that large number of case rejections could have possible ramifications for the police department, therefore, police attempt to provide cases that the prosecutor can pursue. Cole also found that the Courts also influence prosecutors' charging decisions. If prosecutors know that the courts are over crowded they might be more selective, or offer certain types of plea bargains in order to move the cases through the system quickly. Finally, Cole's study provided evidence that the community can influence a prosecutor to pursue cases that have caught the public's attention.

Models of the Criminal Justice System

Due Process and Crime Control Models

The Crime Control and Due Process Models of the criminal justice system demonstrate the competing purpose of the criminal justice system, controlling crime while protecting the defendant's rights (Packer, 1964). The purpose of Packer's Crime

Control Model is to efficiently control crime. In contrast, the purpose of Packer's Due Process model is to deal with criminal defendants in a just manner according to constitutional standards.

Under Packer's 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 (Packer, 1964). Using the Due Process Model, Packer compared the criminal justice system to an obstacle course. Each successive stage of the criminal process, according to Packer, is designed to present formidable impediments to carrying the accused any further along in the process. The criminal justice system, under Packer's Due Process Model, is to insure a reliable determination of guilt.

The primary utility of the justice system, according to Packer's Crime Control Model, is the efficient suppression of crime. Whereas Packer used the Due process Model to describe the criminal justice system as an obstacle course, Packer used the crime control model to describe the criminal justice system as a assemble line conveyor belt. The Finished product of the criminal justice system, according to Packer's crime control model, is the conviction of a guilty defendant with crime being controlled in the process.

Victim-Oriented Models

Beloof (1999) noted that Packer did not address victim participation in the Due Process Model or the Crime Control Model because Packer was unable to anticipate laws of formal victim participation. Therefore, Beloof proposed a third model, the victim participation model, as a compliment to Packer's two models. Beloof's Victim

model expanded on Packer's assembly line analogy and it included a participatory role for victims in the judicial system. Under this model, victims would track their own case down the assembly line, communicate informally with the police and prosecutors, and address the court in formal proceedings. Thus victims' role in the criminal process, according to Beloof, was extended beyond that of a witness to more of an active participant.

Roach (1999) proposed two victim-oriented models of the criminal justice system based on punitive and non-punitive purpose of the criminal justice system. Under Roach's punitive model, the purpose of the criminal justice system is to assess criminal sanctions and punish guilty defendants for retributive purposes. In contrast, Roach's non-punitive model displays skepticism about the ability of the criminal justice system to control crime and views its purpose as administering restorative justice.

Roach's (1999) punitive model asserts that the rights of victims are worthy of respect and then pits the rights of victims against the due process rights of the defendant. Like Packer's crime control model, the purpose of the justice system, according to Roach's punitive model is to assess the criminal sanction to reduce crime. However, Roach modified Packer's crime control model by making the victim equal to the defendant and by using victims' rights to defeat defendants' due process rights.

Roach's (1999) non-punitive model approaches the criminal sanction from a different angle. Roach asserts that this model is skeptical about the ability of the criminal sanction to control crime. In addition, Roach posits that the non-punitive model acknowledges that victims' rights cannot 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.

Victim Satisfaction Model

In a dissertation exploring victim's role in the criminal justice system, Stickels (2003) proposed the "Victim Satisfaction Model" of the criminal justice system. The criminal justice system, under Stickels' Victim Satisfaction Model, seeks to satisfy the victim through the course of the prosecution and relegates the defendant to a secondary status. Stickels noted that the Victim Satisfaction Model is different from the other models because it focuses on the victim and not the defendant. Stickels' Victim Satisfaction Model has three primary characteristics. First, crime victims have become *de facto* parties to the prosecution and they take an active role in criminal cases. Second, prosecutors assume the role of representing the victim and make decisions in an attempt to satisfy the victim. The third characteristic is that the attempt to satisfy victims' interest has become the primary determinant of the criminal justice system.

Victims are de facto parties to the prosecution

The law only recognizes the government and defendants as parties to criminal cases (Tex. Code Crim. Proc. Art. 2.02, 1981). Prosecutors represent the government and they have the duty to "insure that justice is done" (Tex. Code Crim. Proc. Art 2.02). Stickels (2003) noted that defense attorneys represent defendants and they are required to vigorously represent their client within the bounds of the law. Therefore, victims are not legal parties to criminal cases and they do not have standing to require a particular resolution (Stickels, 2003).

Contrary to the law, Stickels (2003), through observations and interviews with prosecutors, defense attorneys, and judges, found that victims consistently act as parties to prosecutions and affect the outcome of cases similar to the way parties to a civil case affects the outcome. Based on these observations, Stickels concluded that victims have become *de facto* parties to the prosecutions and that they take an active role in criminal cases. The significance of this finding, according to Stickels, is that victims as parties to criminal cases have rights and remedies that victims as non-parties do not have. In addition, Stickels indicated that another reason why this conclusion is important is that victims' party status serves as the foundation for the Victim Satisfaction Model of the criminal justice system. Victims' party status, according to Stickels, is the vehicle that enables prosecutors to make decisions that try to satisfy victims' interests and, as a result, it allows the attempt to satisfy victims' interest to become the primary goal of the criminal justice system.

Stickels (2003) found that victims' party status was evident in bail decisions and during plea negotiations. According to Stickels, victims' influence on bail decisions is not obvious, but subtly exists when the judge considers the extent and type of victim injuries, the potential for future injury to the victim, and the danger to the public in setting the amount of bail. Stickels found that, judges commonly combine victim injuries with fear of future harm as the grounds for not granting a reduction in the amount of bail, denying a personal or cash deposit bond, or causing the judge to require bond conditions. Stickels also found that bail is often used as an effective collection method when a defendant owes restitution. Finally, Stickels found that when victims

request that the defendant be released from jail, the defendant is typically released with few problems.

Similarly, Stickels (2003) found evidence that the victim was treated as a party to the prosecution in plea negotiations. Stickels field data indicated that prosecutors routinely allow the victim to appear to be in control of plea bargains. One way Stickels' data revealed victims' control over plea bargaining was that victim consent was clearly needed before the prosecutor would enter into a plea agreement. The need for victim consent, according to Stickels, appears to enable the victims to be in control of the plea decision and, as a result, strengthens the victims' *de facto* party status. Stickels noted that victims' dissatisfaction with the plea agreement is typically cited as the reason for a case being tried instead of being disposed through a plea.

Prosecutors Assume the Role of Representing the Victim

The second major characteristic of Stickels' "Victim Satisfaction Model" is that prosecutors assume the role of representing victims and they make decisions to satisfy victims' interests. Stickels (2003) found that many prosecutors indicated that they represent the crime victims in a criminal prosecution. Since many prosecutors take this position, Stickels concluded that prosecutors often approach the prosecutorial process with the goal of obtaining a result that satisfies the victim. Stickels also concludes that this situation creates an "unofficial" attorney-client relationship between the prosecutor and the victim that resembles the traditional attorney client relationship with victims deciding the direction of cases based on guidance and advice from prosecutors. This unofficial relationship, according to Stickels, is a natural extension of the victim's party

status and is an essential step in the Victim Satisfaction Model of the criminal justice system. Stickels found that prosecutors assuming the role of representing victims is evident in charging decisions, bond decisions, and plea bargaining.

One situation in which prosecutors represent victims' interest is in the charging decision (Stickels, 2003). Stickels' field data shows that the charging decision, in a large amount of cases, is based on the victim's goals and desires. Further, in multiple interviews with prosecutors, Stickels found that most prosecutors stated that they strongly consider the victims wishes when deciding which criminal offense to charge and they attempt to satisfy victims with the charging decision.

It is also apparent that prosecutors represent victims' interests in the bonding decision (Stickels, 2003). Stickels' field data confirmed that prosecutors' objective in bond hearings is typically to prevent the judge from reducing the bond by arguing that the victim is in danger or fears danger if the defendant is released. In interviews with prosecutors, Stickels found that most prosecutors try to prevent the defendants release because the victim does not want the defendant released.

Plea bargaining is the final situation that Stickels (2003) uses to demonstrate that prosecutors assume the role representing victims and attempts to satisfy their wishes. Stickels' interviews with prosecutors revealed that most prosecutors stated that they were reluctant to enter into plea negotiations without victims' cooperation. The results of these interviews are significant, according to Stickels, because they demonstrate that prosecutors represent victims during the plea negotiation and, similar to the way a defense attorney interacts with their clients, prosecutors allow victims to control the

plea bargaining process despite the lack of any legal right to do so. Stickels explained that prosecutors have essentially relinquished the decision-making authority to victims. Legally, victims do not have legal standing to force the prosecutor to do anything, however, Stickels contends that when prosecutors grant these rights to victims, prosecutors become the attorneys for the victims and victims become clients with the power to control the prosecution.

Satisfying the Victims is a Primary Determinant of the Criminal Justice System

The final characteristic of the “Victim Satisfaction Model” is that the goal of satisfying the victim is a primary determinant of the criminal justice system. Stickels posits that this characteristic is a logical extension of the findings that the victim is a *de facto* party to the prosecution and that prosecutors assume the role of represent the victim. Stickels found that prosecutors file and resolve cases in an attempt to achieve victim satisfaction.

Stickels’ field data supports the notion that prosecutors file cases in order to achieve victim satisfaction (Stickels, 2003). In interviews with prosecutors, Stickels found that almost all prosecutors received victim input before cases were indicted. Stickels noted that the results of these interviews are important because they demonstrated that prosecutors typically act as attorneys for the victim, and this representation results in case being filed in an attempt to achieve victim satisfaction.

Stickels’ field data showed that prosecutors usually resolve criminal cases with the objective of achieving victim satisfaction (Stickels, 2003). According to Stickels, this makes achieving victim satisfaction the primary determinant of the criminal justice

system. Stickels acknowledged that victims are not always satisfied with how cases are resolved. However, whether victims are satisfied with the outcome of a prosecution, according to Stickels, is not the primary issue in the Victim Satisfaction Model. The pertinent issue, Stickels argued, is that prosecutors attempt to achieve victim satisfaction.

Several researchers have conducted studies that examine the affects of legal and non-legal factors on prosecutors charging and plea bargaining decisions. However, limited studies have actually assessed prosecutors' perceptions during these stages of the criminal process. The purpose of this study is test the utility of Stickels' Victim Satisfaction Model by quantitatively assessing elected Texas district and county attorney's perceptions of crime victims' involvement in charging and plea bargaining decisions. In chapter 3, the author will describe the methodology and the data analysis procedures that were employed in this study.

CHAPTER 3

METHODOLOGY

The purpose of this chapter is to describe the methods by which the data utilized in this study were obtained and analyzed. A cross-sectional, one shot case study was utilized to ascertain elected Texas District and County Attorney's perceptions of victim involvement in charging decisions and plea bargaining. As a measuring instrument, a 22-question self-administered survey was drafted by the author and was approved for execution by the Institutional Review Board for the protection of Human Subjects (IRB) working in conjunction with the Office of Research and Compliance (ORC) at the University of Texas at Arlington (UTA).

The survey was distributed by mail to every elected District and County Attorney in Texas (n = 275) in an attempt to identify and measure prosecutors' perceptions of crime victims in prosecutions. In order to identify of elected District and County Attorney in Texas, the author utilized a list obtained from the Texas District and County Attorney Association. A cover letter and a postage paid return envelope were included with the survey. The cover letter provided respondents with the purpose of the study and the assurance that their participation was voluntary and confidential.

A total of 102 completed surveys were returned, yielding a return rate of 37%. Based on recommendations made by Jacob Cohen, Keppel, Saufley, and Tokunuaga (1992) stated that power should be set at .80 for most research in the social sciences. In

order achieve power at the .80 level, a minimum of 46 respondents are required (Keppel et al. 1992). Since there are 102 respondents in this study, the researcher has fulfilled this minimum requirement.

Subjects

The subjects in this study are every elected district and county attorney in Texas (n = 275). A list purchased from the Texas District and County Attorney Association was used to identify every elected District and County Attorney in Texas. Since this study is concerned with the entire population of district and county attorneys, no sampling procedures were used.

Survey instrument

The survey instrument in this study was a 22-question self-administered questionnaire. The goal of this survey was to identify and measure each respondent's perception of victim involvement in charging decisions and plea bargains. Additionally, a section of survey was designed to obtain respondent's demographical information.

The questionnaire was designed using ordinal and nominal level statements/questions. Every question/statement was doubled-spaced evenly throughout the survey and multiple responses were provided. Thirteen ordinal level statements/questions were used to identify respondent's perception of victim involvement in charging decisions and plea bargains. The ordinal level items were derived from the absence of information from the academic literature focusing more on what is truly lacking from prior research. In order to prepare the data obtained from

these statements/questions for processing in the Statistical Package for Social Science (SPSS), the ordinal level statements/questions were closed ended using 7-point and 5-point Likert scale format (Babbie, 2001). Nine nominal level questions were used to obtain the respondents' demographical information. These questions were a combination of open and closed ended questions.

It should be noted that three questions were discarded and not used in the data analysis procedures. The questions that dealt with Victim Assistance Coordinators, questions 1 and 2, were discarded because of a lack of relevance. A copy of the survey instrument is located in the appendix.

Analysis Procedure

As previously noted, the survey was designed in order to provide accessible entry into SPSS (Statistical Package for the Social Sciences). According to Babbie (2001), all the data collected by the survey must be first coded before analysis. Two types of statistical analysis were used in the current study. The first type of statistical evaluation centered on the utilization of percentages and frequencies. This method was used to analyze the four variables set to determine prosecutors' perceptions of victim influence in charging decisions and plea bargains. Independent t-tests were the second type of statistical analysis utilized in the current study. According to Sweet and Martin (2003), "A t-test is a special case of analysis of variance that compares the means of only two groups." (p. 121). The purpose of an independent t-test is to determine whether or not there are any statistically significant differences among the means of compared variables (Keppel et al. 1992). Independent t-tests were used in the current

study to test the difference between Republican and Democratic prosecutors' perceptions of victim involvement in criminal prosecutions. Such comparisons were made and found to be notable if they yielded a confidence interval of 0.05 or lower.

The Current literature focuses factors that affect prosecutors in charging decisions and plea bargains. There are very few studies that address prosecutors' perceptions, and there are no studies known to the author that assess prosecutors' perceptions of victim involvement in criminal prosecutions. The author will attempt to fill the void in the current literature by quantitatively assessing prosecutor's perceptions of victim involvement in charging decisions and plea bargains. Furthermore, these results will be used to test the utility of Stickels' victim satisfaction model of the criminal justice system.

In Chapter 4, the findings of the study will be introduced. The author will present the percentages and frequencies associated with the analysis of prosecutors' perceptions of victim influence in charging decisions and plea bargains. In addition, the author will display the t-test results from the comparison of Republican and Democratic prosecutors' responses to variables concerning policy and perception, and determine if any statistical significance exists at the 0.05 level.

CHAPTER 4

FINDINGS

The purpose of this study was to test the utility of Stickels' victim satisfaction model by quantitatively assessing prosecutors' perceptions of victim involvement in charging decisions and plea bargains. In this chapter, the author will present the results of the analysis of prosecutors' perceptions of victim involvement in charging decisions and plea bargains. In addition, the findings from the comparison of Republican and Democratic prosecutors' perceptions of victim involvement in criminal cases will be displayed.

The survey instrument was used to identify and measure each respondent's perception toward crime victim involvement in charging decisions and plea bargains. As mentioned in Chapter 3 in order to allow for easy entry into the Statistical Package for the Social Sciences (SPSS) format, the questions/statements utilized within the survey were closed-ended using a combination of 5-point and 7-point Likert Scales (Babbie, 2001). The 5-point Likert scale questions/statements took two different forms. The first form was used to analyze respondents' perceptions of crime victims' influence in charging decisions and plea bargains. In these questions/statements, prosecutors were given a scale that consisted of none, too little, about right, too much, or complete. The second type of 5-point Likert scale questions/statements were used in the comparison of Republican and Democratic respondents' perceptions of victim

involvement in charging decisions and plea bargains. In these questions/statements, each respondent was given a scale of 1-5, “1” representing the highest level of agreement (Strongly Agree), and “5” representing the highest level of disagreement (Strongly Disagree), while the corresponding numbers between “1” and “5” represented agree, neutral, and disagree respectively. The 7-point Likert scale questions were used to determine how much weight prosecutors perceived victims have in charging decision and plea bargains.

The findings herein are divided into three main sections. The first part is concerned with demographical information (six items) and is presented in percentages and n values. The second section addresses prosecutors’ perceptions of the weight given to crime victims in charging decisions and plea bargains and how much influence victims have in these stages of criminal process. This section is also presented in n values and percentages. The final section is concerned with the results of one sample t-tests that were used to describe the differences, if any, of variables regarding republican and democratic elected district and county attorneys.

Demographical Information

The findings of the study were derived from elected district and county attorneys in Texas. The last section of the survey instrument was designed to collect the respondents’ personal and professional demographical information. The survey instrument was mailed to every elected and district attorney in Texas (n = 275). A total of 102 completed surveys were returned, yielding a return rate of 37 %.

The personal demographical information consisted of gender and political affiliation. Of the 102 elected district and county attorneys that responded, 76% were male and 19% were female, with four respondents choosing to omit revealing their gender. In regards to political affiliation, 47% of the respondents reported that they were republican, 37% of the respondents indicated that they were democrats, and 16 respondents did not answer this question.

The professional demographical questions gauged how much prosecutorial experiences the respondents had, what type of crimes they prosecuted, and whether or not they considered themselves professional prosecutors. The reported prosecutorial experience of the respondents ranged from 1 to 34 years of which 39% indicated that they had less than 10 years of experience, 40% reported having 10 to 20 years of experience, 13% respondents indicated they had 21 to 29 years of experience, 4% reported to have more than 30 years of prosecutorial experience, and 5 respondents failed to answer this question. In regards to the types of crime the respondents prosecuted, 28% prosecutors indicated that they handle only felony level crimes, 36% 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 prosecutors indicated that they are professional prosecutors, 22 respondents reported that they were not, and 5 respondents did not answer the question.

Weight and Influence

The variables of interest in this section are the weight given to victims in charging decisions and plea bargains and victims' influence in such stages of the criminal process. As previously noted, prosecutors' perception of the weight given to crime victims in charging decision and plea bargains were designed using a 7- point Likert scale. Each respondent selected the percentage of weight they believed victims have in charging decisions and plea bargains. The 7 percentages included in this scale were 0%, 10%, 25%, 50%, 75%, 90%, and 100%. The two questions that measured respondents' perception of the influence that victims have in charging and plea bargains were constructed using a 5-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. A list of n values and percentages are displayed in table 4.1 below:

Table 4.1 Frequency Distribution of the Victim's Weight and Influence in Charging Decisions and Plea Bargains

Variable	Selection	Frequency	Percentage
How much weight is given to the victim's preference in the charging decision?	0%	13	13
	10%	15	15
	25%	28	28
	50%	20	20
	75%	16	16
	90%	8	8
In your opinion, the influence victims have in the charging decision is:	None	10	10
	Too Little	0	0
	About Right	86	86
	Too Much	4	4
	Complete	0	0

Table 4.1 Continued

How much weight is given to the victim's preference during plea negotiations?	0%	3	3
	10%	15	15
	25%	22	22
	50%	21	21
	75%	26	26
	90%	11	11
In my opinion, the influence victims have in plea negotiations is:	None	4	4
	Too Little	3	3
	About Right	88	86
	Too Much	4	4
	Complete	0	0

The first Question concerning charging decisions asked respondents how much weight is given to the victim's preference in the charging decision. In response to this question, 13% of the respondents indicated that victims have no influence in charging decisions, 15% of the respondents reported 10%, 28% of the respondents selected 25%, 20% of the respondents indicated 50%, 16% of the respondents reported 75%, 8% of the respondents selected 90%, and 2 respondents chose not to answer this question. The Second question concerning charging decision asked respondents how much influence victims have in the charging decision. The results to this question indicated that 10% of the respondents believed none, 84% of the respondents reported about right, 4% of the respondents selected too much, and 2% of the respondents did not answer this question

The first question concerning plea bargains asked respondents how much is given to the victim's preferences during plea negotiations. In response to this question, 3% of the respondents reported that victims have no influence in plea bargains, 15% of the respondents answered 10%, 22% of the respondents answered 25%, 21% of the

respondents indicated 50%, 26 of the respondents reported 75%, and 11 % of the respondents selected 90%. The second question asked the respondents how much influence victims have in plea bargains. The results to this questions indicated that 4% of the respondents answered none, 3% of the respondents reported too little, 86% respondents indicated about right, 4% of the respondents reported just right, and 3% of the respondents did not answer this question.

Policy

The variable of interest in this section will be policy and all differences in responses, if any, between democratic and republican elected Texas district and county attorneys. Two variables were used in order to determine the respondent’s perception and opinion in regards to policy dealing with victims’ involvement in charging decisions and plea bargains. A complete list of the means of both Republican and Democratic respondents, accompanied by the t-test comparisons are displayed in figure 4.2 below:

Table 4.2 T-Test Comparisons for Political Affiliation – Policy Variables

Variables	Republican Means	Democratic Means	P-Value
It is the policy of my office to talk to victims before the case is indicted or a complaint and information is filed.	2.89	2.92	.874
It is the policy of my office to talk to victims before a plea offer is made.	2.3	2.24	.759

* Indicates significance at the .05 level

** Indicates significance at the .01 level

Neither of the two variables used to measure the respondents' perceptions of policy dealing with victim involvement in charging decisions and plea bargains proved to be significant. The first variable "It is the policy of my office to talk to victims before the case is indicted or a complaint and information is filed," displayed a Republican mean of 2.89 and a Democratic mean of 2.92. The t-test comparison for this variable computed a p-value of .874. The subsequent variable, "It is the policy of my office to talk to victims before a plea offer is made," displayed a Republican mean of 2.3 and a Democratic mean of 2.24. The p-value for this variable computed to .759.

Perception

Five variables in the current study set forth to measure significant differences, if any, with regard to perception of victim involvement in charging decisions and plea bargains between two groups, Republican and Democratic elected Texas district and county attorneys. These variables include, "The prosecutor should represent the interest of the victim during the course of the prosecution," "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," "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," "Given the conservative nature of Texas Courts, in my opinion victims have more input into what happens during a criminal prosecution in Texas than other states," and "In my opinion victims should have more influence over the outcome of the criminal prosecution than they currently have." A complete list of

means of both Republican and Democratic respondents, accompanied by the t-test comparisons are displayed in figure 4.1 below:

Table 4.3 T-Test Comparisons for Political Affiliation – Perception Variables

Variables	Republican Means	Democratic Means	P-Value
The prosecutor <u>should</u> represent the interests of the victim during the course of the prosecution.	2.42	2.37	.792
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.	3.48	3.37	.536
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.	3.02	2.82	.275
Given the conservative nature of Texas Courts, in my opinion victims have more input into what happens during a criminal prosecution in Texas than other states.	3.24	2.81	.003**
In my opinion victims <u>should</u> have more influence over the outcome of the criminal prosecution than they currently have.	3.55	3.79	.111

* Indicates Significance at the .05 level

** Indicates Significance at the .01 level

Of these 5 statements, one was shown to have had statistically significant differences between the two groups measured, Republican and Democratic elected district and county attorneys. That variable was “Given the conservative nature of Texas Courts, in my opinion victims have more input into what happens during a

criminal prosecution in Texas than other states.” This variable displayed a Republican mean of 3.24 and a Democratic mean of 2.81. The p-value for this variable was .003, which is significant at the .01 level.

Of the 4 remaining variables, none showed to have significant differences in responses between Republican and Democratic respondents. The first variable “The prosecutor should represent the interests of the victim during the course of the prosecution,” showed a p-value of .792, with a Republican mean of 2.42 and a Democratic mean of 2.37. This demonstrates that that Republican and Democratic respondents are in general agreement with this statement.

The subsequent variable, “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” produced a p-value of .536. It also found a Republican mean of 3.48 and Democratic mean of 3.37, showing that Republican and Democratic respondents both migrate toward neutrality.

Next, the variable “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” was met with a Republican mean of 3.02 and Democratic Mean of 2.82. This produced a t-test comparison of .275, and showed that Democrats indicated a level of agreement with this statement, while Republicans tended to migrate toward neutrality.

The final variable “In my opinion victims should have more influence over the outcome of the criminal prosecution than they currently have” yielded an insignificant p

value of .111. Here, the mean values of Republicans (3.55) and Democrats (3.79) were both decisively neutral.

In chapter 5, the author will discuss the significance of the findings presented in this chapter. The Discussion will address how the findings in the current study relate to Stickels' victim satisfaction model, prosecutors' perceptions of the degree of victim involvement in prosecutions, and the comparison of Republican and Democratic prosecutors' perceptions of victims involvement in criminal cases. In addition, criminal justice implications and the author's recommendation for future research will also be discussed.

CHAPTER 5

DISCUSSION

The findings of this research are the basis for a quantitative analysis concerning prosecutors' perceptions of victim involvement in criminal prosecutions. The specific focus of this study was the examination of elected Texas district and county attorneys' responses to statements based on (1) the weight and influence that victims have in charging decisions and plea bargains, (2) policies concerning victim participation in criminal cases, and (3) perception of victim involvement in prosecutions. In hopes of attaining this goal, these concepts were measured through implementation of a survey instrument administered to every elected district and county attorney in Texas. The findings of this study support Stickels' victim satisfaction model of the criminal justice system. In addition the findings suggest that prosecutors are satisfied with the current state of victim involvement and that there are no significant differences between the perceptions of Republican and Democratic prosecutors' perceptions toward victim participation in criminal cases.

The Victim Satisfaction Model of the Criminal Justice System

The Victim is a De Facto Party To the Prosecution

The first stage of the victim satisfaction model is that the victim has become a de facto party to the prosecution. As previously noted, Stickels (2003) posited that 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.

Stickels notion that victims are de facto parties in criminal prosecution is supported by respondents' responses to several variables in the current study.

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. Although the law does not recognize victims as parties to criminal cases, Republican and Democratic respondents both demonstrated a level of agreement with both of these variables. Talking to a victim during the charging decision or before a plea offer is made is an indication that the prosecutor treats the victim like a party to the criminal case. It opens a line of communication that gives the prosecutor the opportunity to acquire the victim's point of view regarding these critical stages of the criminal process.

These finding also suggest that many Texas district and county attorneys' offices have implemented policies that require all of their prosecutors to talk to victims during the charging decision and plea bargains. This finding is significant because it helps explain why the practice of talking to the victims during critical stages of the criminal process is prevalent amongst prosecutors in Texas. These policies could also explain why prosecutors, despite the law, 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 Stickels' conclusion that victims have become de

facto parties to prosecutions. In response to this variable, 87% of the prosecutors perceived that the victim's weight is given some sort of weight in the charging decision, 44% of the prosecutors indicated that victims' preference in charging decision is weighted 50% or more in charging decisions, and 24% of the respondents reported that the victim's preference is weighted 75 % or more in charging decisions.

The analysis of prosecutors' perceptions of the weight that is given to victims in plea bargains yielded similar results. Despite the fact the crime victims have no legal standing prosecutions, 95% of the respondents perceived that the victim's preference is given some sort of weight in plea bargains, 58% respondents indicated that victim's preference is given 50% weight or more in plea bargains, and 37% of the prosecutors reported that the victim's preference is weighted 75% or more in plea bargains.

These findings give more insight into the conversation that occurs between prosecutor and the victim prior to the charging decision and plea bargain. The results suggest that the purpose of the interaction between the prosecutor and victim is not just to inform the victim of the status of the case. Instead, the findings suggest that prosecutors interact with victims before these critical stages of the criminal process in order to get the victim's input. Furthermore, the findings indicate that prosecutors, at the very least, try to incorporate the victim's point of view into the charging decision and plea bargain. Clearly, this behavior indicates that prosecutors treat victims as if they were parties to the criminal case, and thus, give victims de facto party status in prosecutions.

The Prosecutor Assumes the Role of Representing the Victim

The second stage of the victim satisfaction model, the prosecutor assumes the role of representing the victim, is also supported by the findings in the current study. Many prosecutors, according to Stickels (2003), feel that they should represent the interest of the victim. Stickels further argued that this creates relationship between the prosecutor and the victim that is similar to the traditional attorney client relationship with the victim making the major decisions about the direction of a prosecution based on guidance and advice of the prosecutor.

Republican and Democratic respondents both indicated a level agreement to the variable, “The prosecutor should represent the interest of the victim during the course of the prosecution.” The finding is consistent with Stickels (2003) conclusion that many prosecutors feel that they should represent the interest of the victim in a criminal case. In addition, this finding also supports Stickels argument that this creates a relationship between the prosecutor and the victim that is similar to the traditional attorney/client relationship.

The analysis of prosecutors perception of victims’ weight in charging decisions and plea bargains, discussed earlier in this chapter, also supports Stickels’ assertion the prosecutors assume the role of representing the victim. Most notably the percentage of prosecutors who indicated that victim preference receives at least 50% or 75% weight in charging decisions and plea bargains. The findings indicate that 44% of the respondents perceive that the victim’s preference is given at least 50% weight in charging decisions. Additionally, 24% of respondents reported that victim’s preference is given 75% or

more weight in the charging decision. In regard to plea bargains, 58% of the respondents indicated that victim's preference is weighted at least 50% and 37% of the respondents reported that victims preference is given 75% or more weight in plea bargains.

These findings support the second stage of victim satisfaction model by demonstrating that prosecutors take the victims point of view into account during the charging decision. The findings also suggest that victims, in some cases, are the primary decision maker in charging decisions and plea bargains. These findings are consistent with Stickels' conclusion that prosecutors represent the interest of victims and this relationship is similar to the traditional attorney/client relationship.

*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. As previously noted, Stickels (2003) argued that one of the prosecutors objectives in pursuing a criminal case is victim satisfaction. There are two variables from the current study that support Stickels' third stage of the criminal justice system. Both Republican and Democratic respondents were neutral toward the first variable, "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 variable, "If the offense is a sexual assault of a female victim and if the victim insists on a jury trial, despite you 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," Republican prosecutors

again migrated toward neutrality, while Democratic prosecutors indicated a level of agreement.

Although the prosecutors' responses to these variables were mostly neutral, the findings are still significant. The respondents were presented with a conflict between their desire to enter into a plea bargain and the victim's demand to go to trial. Given the fact that the victim has no legal standing in criminal cases and the prosecutor's legal education and experience, one could reasonably expect the prosecutor to disagree with the victim's wish to go to trial. However, the results suggest that prosecutors, at least minimally, consider the victim's position when they are involved in a plea bargain. One could reasonably conclude that the prosecutor's consideration of the victim's position is an attempt to satisfy the victim. As previously noted in the literature review, Stickels (2003) asserted that the primary utility of the victim satisfaction model is that the prosecutor attempts to achieve victim satisfaction, not whether the victim is satisfied with the outcome of the case. Therefore, the findings in this section are consistent with Stickels' (2003) conclusion that criminal cases are resolved in an attempt to achieve victim satisfaction.

Another reason why these variables are noteworthy is that they are in stark contrast with the literature (Albonetti 1987; Frohman 1991), in that prosecutors attempt to avoid uncertainty during the course of a criminal prosecution. The results of this study suggest that prosecutors consider the victim's desire to go to trial despite uncertainty and their inclination to enter into a plea bargain. The contrast between previous literature and the findings in this study could 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 victim

Prosecutors' Perception of the Degree of Victim Involvement

Prosecutors consistently provided responses to variables that indicated a level of satisfaction with the degree of victim involvement in the criminal justice system. In response to the variable, "In your opinion, the influence victims have in the charging decision is," 86% of respondents indicated that victims influence was "about right." Similarly, 88% of the respondents perceived victim influence in plea bargains was "about right". Finally, in regards to the variable, "In my own opinion victims should have more influence over the outcome of the criminal prosecution," Republican and Democratic respondents indicated a level of agreement.

These findings suggest that prosecutors are satisfied with the degree of victim involvement in charging decision and plea bargains. Put another way, prosecutors do not perceive victims to have too little or too much involvement in a criminal case. Therefore, it can be concluded that prosecutors do not perceive the current state of victim participation in criminal prosecutions as a problem. One possible reason that prosecutors are satisfied with the current state of victim involvement in the criminal justice system is that it benefits them. Involving victims in key stages of the criminal process promotes victim cooperation, which allows prosecutors to process more criminal cases. It is possible that prosecutors do not support an increase in victim participation because they fear that this could lead to private prosecutions. A shift to

private prosecutions would reduce the demand for prosecutors and affect their job security.

Political Affiliation

In order to better understand the results in this section, it is important to know where Texas Republicans and Democrats stand on certain criminal justice issues. Republicans and Democrats in Texas both believe that citizens should live free from crime and that those who commit crime should be justly punished. In addition it should be noted that both political groups support the sensitive treatment of crime victims and that criminals should be required to pay restitution to the victims of their crimes.

Despite these similarities Texas Republican and Democrats have contrasting opinions regarding issues such as corrections and capitol punishment. Texas Democrats believe that prison reform should deal with overcrowded prisons by reducing the amount of nonviolent criminals sent to prison. Texas Republicans, on the other hand, believe that drug offenders, a nonviolent criminal, should not be released from prison until after he has completed a drug treatment program. In regards to capitol punishment, Texas Democrats support the establishment of a Texas Capitol Punishment Commission to study the Texas death penalty system and a moratorium on executions to the study is completed. In contrast, Texas Republicans believe that capitol punishment is legitimate, an effective deterrent, and when applied to the crime of murder, raises the value of human life.

*Republican and Democratic Perceptions
Of Policy concerning victims*

The two variables set to measure prosecutors' perceptions of policies regarding victim involvement in charging decisions and plea bargains while controlling for political affiliation showed no significant differences. Although no significant differences were found, Republican and Democratic respondents were in agreement to the two policy variables. The findings suggest that both Republican and Democratic elected district and county attorneys have implemented similar policies for their office to follow when dealing with victims in charging decisions and plea bargains.

Perceptions

*Republican and Democratic Perceptions of
Victim Involvement in Prosecutions*

The only significant variable found when examining Republican and Democratic prosecutors' perceptions of victim involvement in criminal prosecutions was "Given the conservative nature of Texas courts, in my opinion victims have more input into what happens during a criminal prosecution in Texas than other states." In response to this variable, Democratic respondents indicated a level of agreement while republicans were neutral. This finding may suggest that Democrats perceive the conservative nature of Texas Courts as a contributing factor to victims having more input into what happens in Texas criminal cases.

The Democratic respondents' agreement to this variable seems to suggest that they perceive victim involvement in criminal prosecutions as conservative in nature, which is inconsistent with their responses to other variables. Democratic respondents,

typically more liberal than Republican respondents, were also in agreement with the variables “The prosecutor should represent the interests of the victim during the course of the prosecution,” “It is policy of my office to talk to victims before the case is indicated or a complaint and information is filed,” and “It is policy of my office to talk to victims before a plea offer is made.” This inconsistency could be due to Democratic respondents agreeing that Texas courts are conservative in nature rather than the conservative nature of the courts promotes greater victim involvement in criminal prosecutions.

Although the other variables designed to measure Republican and Democratic prosecutors’ perceptions of victim involvement in prosecutions did not produce significant differences, these findings are still noteworthy. Republican and Democratic respondents both were in agreement with the variable, “The Prosecutor should represent the interest of the victim during the course of the prosecution,” and neutral the variable, “In my opinion victims should have more influence over the outcome of the criminal prosecution than they currently have.” These findings suggest that Republican and Democratic prosecutors’ perceptions of their relationship with crime victims are analogous.

Implications and Conclusions

The results of this study provide support for all three stages of the victim satisfaction model of the criminal justice system. As Stickels (2003) noted, the victim satisfaction model has several implications for the criminal justice system. These implications include: crime is no longer considered a violation of society’s laws, the

criminal justice system has become pseudo-civil, and the creation of a new theory of crime.

One implication of the victim satisfaction model that Stickels (2003) noted is that crime is no longer considered a violation of society's laws. Under the victim satisfaction, crime is an offense against the individual victim and society. Stickels concluded that since the victim was violated by a crime, he or she is allowed to participate in the prosecution and obtaining victim satisfaction for the victim becomes the main objective of the criminal justice system.

Stickels (2003) posited that another implication of the victim satisfaction model is that the criminal justice system is pseudo-civil. Stickels' field observations and the results of this study have found that prosecutors treat victims the same way private attorneys treat their clients in civil cases. The pseudo-civil characteristic of the criminal justice system, according to Stickels, is based on the close relationship that has surfaced between the prosecutor and the victim.

Stickels (2003) argued that the pseudo-civil nature of the criminal justice system benefits the victim. More specifically, Stickels asserted that the attorney/client relationship between the victim and the prosecutor allows the victim to utilize the unlimited resources of the government in their case against the defendant. Defendants, Stickels noted, do not receive the same resources and financial help that victims receive from the government, which means they are limited to their own personal assets. Stickels contended that this creates a disadvantage for criminal defendants because it increases the likelihood that they will be convicted and be burdened by the stigma that

is associated with a criminal sanction. This is important, according to Stickels, because society commonly shuns criminal defendants and shuts them out of rights and benefits of ordinary society.

The final major implication of the victim satisfaction model is that it creates a new theory of crime. Stickels argued that under the victim satisfaction model, crime is defined as any harm a victim convinces a prosecutor should be prosecuted as a crime instead of being pursued civilly. This approach, according to Stickels, is a new way to define crime since it focuses on the harm to the victim combined with the victims' ability to sway prosecutors. Stickles noted that this new theory of crime creates two major problems for criminal justice policy. First, only those victims who can communicate effectively will be able convince prosecutors that the harm they experienced is a crime. Second, defining crime this way may also create disparity in punishment based on the victims "worth."

There are two findings in the current study that add to Stickels (2003) study. First, it was found that prosecutors are generally satisfied with victims' current degree of involvement in criminal prosecutions. Second, there is no significant difference between Republican and Democratic prosecutors' perceptions of victim participation in a criminal case. These findings imply that the current relationship between prosecutors and victims is not likely to change in the near future.

The findings in this study provide support for all three stages of Stickels' victim satisfaction model of the criminal justice system. The results also indicated that prosecutors are satisfied with the current state of victim involvement in prosecutions.

Finally, the findings demonstrated that there is no significant difference between Republican and Democratic prosecutors' views toward victim policies and victim participation in criminal cases. As Stickels (2003) noted, future studies examining the victim satisfaction model should focus on jurisdictions in which there are no elected district or county attorneys. This assessment would demonstrate if the victim satisfaction model can be applied to all jurisdictions or if it can only be applied 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.

APPENDIX A

SUPPLEMENTALS

Dear NAME
TITLE
ADDRESS
CITY, Texas ZIP

RE: VICTIM INFLUENCE SURVEY

Dear Name:

We hope you will be interested in helping us measure the victim's influence in the Texas Criminal Justice System. We are sampling all elected prosecutors in Texas. Your participation is important to the study and to being a part of helping to define and describe the extent of victim influence during the course of the prosecution.

Your answers are obviously voluntary and all responses will be completely confidential. Statistical results will be presented in aggregate form and no one individual prosecutor will be identified. Please take a few minutes to help us complete this study by answering the items in the enclosed questionnaire and returning it to us in the addressed envelope provided. We realize that many of the items are very sensitive in nature and request that you complete all that you can.

If you have any questions whatsoever about the study, I welcome you to contact me at bjmichelsen@hotmail.com (817-272-3750) or Dr. Alex del Carmen at adelcarmen@uta.edu (817-272-3318). We believe this study to be important to Texas Criminal Justice Policy and hope you are able to find the time to return the questionnaire

Thank you very much for your help in this study.

PROSECUTOR QUESTIONNAIRE

1. How many Victim Assistance Coordinator(s) does your office employ?

0 1 – 5 6 – 10 over 10

2. Please rank from 1 to 8 what you consider to be the most important responsibilities of the Victim Assistance Coordinator(s):

Assist in communications between prosecutor and victim _____	Assist victim in completing victim impact statement _____
Assist in preparing victim in the testifying for trial _____	Assist victim in obtaining payment from Crime Victim Compensation Fund _____
Emotional support during court _____	Referring victim to counseling Services _____
Notifying victim of court settings _____	Assist victim in obtaining protective orders _____

3. It is the policy of my office to talk to victims before the case is indicted or a complaint and information is filed.

Agree strongly					Disagree
strongly					
1	2	3	4	5	

4. The prosecutor should represent the interests of the victim during the course of the prosecution.

Agree strongly					Disagree
strongly					
1	2	3	4	5	

5 How much weight is given to the victim’s preference in the charging decision?

0% 10% 25% 50% 75% 90% 100%

6. In your opinion, the influence victims have in the charging decision is:

none too little about right too much complete

7. It is the policy of my office to talk to victims before a plea offer is made.

Agree strongly strongly
1 2 3 4 5
Disagree

8. How much weight is given to the victim's preference during plea negotiations?

0% 10% 25% 50% 75% 90% 100%

9. In my opinion, the influence victims have in plea negotiations is:

none too little about right too much complete

10. 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.

Agree strongly strongly
1 2 3 4 5
Disagree

11. 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.

Agree strongly strongly
1 2 3 4 5
Disagree

12. Given the conservative nature of Texas Courts, in my opinion victims have more input into what happens during a criminal prosecution in Texas than other states.

Agree strongly strongly
1 2 3 4 5
Disagree

13. In my opinion victims should have more influence over the outcome of the criminal prosecution than they currently have.

Agree strongly strongly
1 2 3 4 5
Disagree

14. Which county do you serve? _____

15. Are you an elected prosecutor? Yes No
16. The cases you primarily prosecute are: Felony Misdemeanor Both
17. When did you graduate from law school? _____
18. How long have you been a prosecutor? _____
19. Do you consider yourself a 'Professional' prosecutor? Yes No
20. What is your gender? Female Male
21. How many investigators does your office employ?
- 0 1 – 5 6 – 10 over 10
22. What is your political affiliation? Republican Democrat

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BIOGRAPHICAL INFORMATION

Upon completion of his bachelor degree in Psychology from Austin College, Bradley was hired as a Child Support Officer with Attorney General of Texas. Currently, he serves as a Program Supervisor for the Attorney General of Texas' Child Support Division. In the Fall of 2005, Bradley entered the University of Texas at Arlington's Criminology and Criminal Justice graduate program. In May 2007, he earned his Master of Arts degree in Criminology and Criminal Justice. Bradley plans to attend law school where he will pursue his interests in criminal law.