

The Victim Satisfaction Model of the Criminal Justice System

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Abstract

This article describes the various models historically used to explain the principal purpose of the criminal justice system and discusses their ineffectiveness in satisfactorily reflecting current practices. These models include; Packer's crime control and due process models and Roach's punitive and restorative models as well as Beloof's victim participation model. The author's new victim satisfaction model, which purports that the primary value that influences the course of a criminal prosecution is victim satisfaction, is used to explain the actual functioning of the criminal justice system, particularly in the prosecutorial phase in Texas. This model is based on findings derived from the author's victim participation study, in which qualitative research methods were used to investigate the interaction between victims and the criminal justice system. In conclusion, the implications of the utilization of the victim satisfaction model on criminal justice policy are discussed.

Introduction

For more than forty years, legal scholars have relied on models to simplify and explain the actual functional operations and values of the criminal justice system. These models not only take into account the current legal standards, but also the discretionary powers and human elements involved in the prosecution of criminal cases. An analysis of the dominant models and the historical context in which they were formulated illustrates the evolving nature of the criminal justice system and the need for periodic re-evaluation and introduction of new models that more accurately reflect the currently prevalent trends and themes. The purpose of this article is to discuss the existing models and their inadequacy when applied to the criminal justice system in Texas at the beginning of the 21st century as well as to introduce a new paradigm—the victim satisfaction model—that better serves as a guide to understanding the shift in values within the existing system.

Historically, the normally accepted purpose of the criminal process has been to ascertain whether the accused was factually guilty of committing a crime against society as established by the authority of legislatures, either state or federal. However, in 1961, the Supreme Court, under the leadership of Chief Justice Earl Warren, began rendering decisions designed to protect the constitutional rights of the accused, particularly their fourth, fifth, and eighth amendment rights which were often infringed upon by the police while investigating facts of guilt. In the case of *Mapp v. Ohio*, (1961), the Supreme Court ruled that evidence obtained through unconstitutional means could not be admitted during a criminal trial; this exclusionary rule was issued to deter the police from violating an individual's constitutional rights during the investigation phase of the criminal process. Two years later, in *Gideon v. Wainwright*, (1963), the Supreme Court ruled that states were required to provide defense counsel for defendants charged with felonies if they could not afford to hire their own attorney. That same year, the Supreme Court heard the case of *Brady v. Maryland*, (1963), in which the court ruled that prosecutors were required to disclose exculpatory evidence to the accused. This series of Supreme Court decisions, which strengthened the constitutional rights of the accused, led to a perceived dichotomy of purposes within the criminal justice system. As debate arose over what the actual purpose of the criminal justice system was in light of these 1961-63 Supreme Court rulings, American legal scholar Herbert Packer became the first to create models which could explain the changing nature of the criminal justice system.

MODELS OF THE CRIMINAL JUSTICE SYSTEM

An examination of the purposes of the criminal justice system begins with Herbert Packer's 1964 article "Two Models of the Criminal Justice System," in which he introduced his crime control and due process models. According to the crime control model, the purpose of the criminal justice system is to suppress crime, which is controlled through the imposition of the criminal sanction against the convicted defendant. Conversely, according to the due process model, the purpose of the criminal justice system is to deal with criminal defendants in a just manner and according to constitutional standards (Packer, 1964).

In addition to these opposing purposes, Packer further differentiated between the two models according to their basis of authority, the manner in which they function, and their outcome goals. Under Packer's crime control model, the authority of the criminal justice system is derived from the laws passed by legislatures whereas under his due process model, authority is derived from the Supreme Court. When describing the manner in which the system functions under the two models, Packer likened the crime control process to an "assembly-line conveyor belt" along which criminal prosecution moves in a perfunctory fashion, from the initial police investigation to prosecution and sentencing with victim involvement limited to the initial fact-finding phase and possibly used as a witness during the trial. Packer described the manner in which the system worked under his due process model as an "obstacle course" with barriers erected by defense attorneys who argue that a guilty verdict cannot be rendered by the judge if the constitutional rights of the defendant are violated. As the purposes of the two models differ, so do the outcomes of the crime control model which seeks efficiency, thus equating to the quickest and most cost-effective disposition of the case, and the highest possible number of guilty verdicts whereas the due process model seeks to achieve outcomes that ensure that the individual defendant is treated with fairness and equality in a system in which quality of justice is paramount.

Although Packer's crime control and due process models appear in opposition to one another in many ways, both do, however, focused on the defendant, while the victim is not factored into the criminal process in any substantiate manner. Regardless of this omission, Packer's two divergent models have served as the foundation for understanding the competing purposes of the criminal justice system which is to control crime while protecting the defendant's constitutional rights (Packer, 1964).

Packer's two models were widely accepted, especially in light of additional decisions made about cases heard by the Supreme Court between 1965 and 1970. The rulings on these cases protected a defendant's fifth amendment right against self-incrimination by establishing that the silence of the accused during trial could not be used as evidence of their guilt (*Griffin v. California*, 1965); protected the right of suspects to be informed of their rights against self-incrimination and to their right to an attorney, including one appointed by the state if they could not afford one (*Miranda v. Arizona*, 1966); the right to protection against unreasonable search through the use of electronic surveillance (*Katz v. United States*, 1967) and stop-and-frisk searches (*Terry v. Ohio*, 1968). They also involved the imposition of obligations on states to ensure speedy trials (*Klopfer v. North Carolina*, 1967); the right to protection against self-incrimination, the right to be represented by counsel, and the right to confront and cross-examine the accuser (*In Re Gault*, 1967), as well as decisions that regulated the ability of the police to conduct searches incident to arrest (*Chimel v. California*, 1969), to obtain search warrants (*Spinelli v. United States*, 395 U.S. 410 (1969)), and guaranteed the right to have guilt proven beyond a reasonable doubt (*In Re Winship*, 1970).

As a consequence of the continued emphasis on the rights of defendants by the Supreme Court, a fundamental transformation occurred in both the criminal justice system and in American society. Under increased pressure and scrutiny by the courts, the police appeared ineffective as crime rates escalated during the late 1960s to 1980s. In response, by the mid-1980s, a new community-involvement strategy was implemented which was designed for crime prevention and problem solving, as opposed to handling crimes after they had occurred, which increased interaction between citizens and the police. Concurrently, the public perception of the criminal justice system that operated for the benefit of the criminal while disregarding the interests of the crime victim prompted victims and victims' rights

organizations to become more vocal. Then in 1982, President Reagan's Task Force on Victims' Rights issued its report, which resulted in the U.S. Congress enacting the Federal Victim and Witness Protection Act of 1982. This act granted victims greater participation in the criminal justice process by allowing them to inform the court through victim impact statements of their experiences and costs due to the defendant's commitment of a crime. In addition, the act guaranteed their right to restitution. Congress attempted to address the needs of victims further when it passed the Victims of Crime Act of 1984, which established a matching grant program with states for the purpose of creating programs to assist victims as well as to fund victim compensation. From the late 1980s through the 1990s, victims' rights legislation was passed at the federal level as well as by all fifty states. Although numerous challenges were mounted against the use of victim impact statements as well as other victims' rights legislation, by the late 1990s, their rights were recognized, although only to the extent that they did not infringe upon the rights of defendants. Due to the more active participation of victims, new models were needed to explain the transformed nature of the criminal justice system.

In early 1999, Kent Roach introduced the punitive and non-punitive models in his article "Four Models of Criminal Justice," which were designed to address the inclusion of victims in the criminal process. According to Roach's punitive model, the purpose of the justice system is to assess the criminal sanction and punish a guilty defendant for retributive purposes. Conversely, Roach's non-punitive model illustrates skepticism about the ability of the justice system to control crime and views its purpose as administering restorative justice. Under this model, the system tries to "minimize the pain" of victimization by "branching out into areas of social development and integration" (Roach, 1999). Roach's models, however, were both very limited in their focus on the victim.

Later that same year, Douglas E. Beloof proposed a victim-oriented theory of the criminal justice system when he authored "The Third Model of the Criminal Justice System: The Victim Participation Model" (Beloof, 1999). Beloof expanded on Packer's assembly line analogy and included a participatory role for victims in the judicial system whereby victims would follow their own case through the criminal justice process, consult informally with the police and prosecutor, and address the court in formal proceedings. Thus, the victim's role in the judicial system, according to Beloof, extended beyond that of a mere witness to a more active participant however, Beloof also noted that, while in many jurisdictions the victim is allowed to hire counsel to represent them with the approval of, and in cooperation with, the prosecutor, the victim still lacks party status during criminal trials and that the "value of the primacy of the victim has made a very limited inroad into the trial process, which is reflected in the ability—in many jurisdictions—of the victims to attend the trial" (Beloof, 1999:324).

DEBATE OVER ROLE OF VICTIM IN CRIMINAL PROSECUTION PROCESS

Since the late 1990s, individuals and groups involved in the debate over the role of victims in the criminal prosecution process have urged that accommodations such as fairness, respect, and dignity for victims should be considered (Beloof, 1999; Roach, 1999; Whitehead, 1992). Most agree that victims should participate in the justice process; there is a general understanding that the victim is the person directly injured by a crime and realization that the justice system should be responsive to the victim's needs. However, opinions diverge over the issue as to the extent of the actual victim involvement. At one extreme, a traditional view of criminal law and procedure sees the victim's participation as being limited to that of a mere witness. At the other extreme, some victims' advocates argue that the victim should have complete and total control over the prosecution. However, logic dictates that the victim's participation in the justice system should fall somewhere between the two extremes—in other words, the victim should participate more than as a mere witness but not have complete and total control over the prosecution. Determining how the crime victim should participate in the prosecution has become one of the emerging dilemmas in criminal justice policy and procedure.

State legislatures, including Texas, have passed victims' rights acts that provide various rights and opportunities to participate in a criminal prosecution. The Texas Victims' Rights Act includes surviving spouses and parents of a deceased, guardians of victims, and "the person who is the victim of a sexual assault, kidnapping, or aggravated robbery or who has suffered bodily injury or death as a result of

the criminal conduct” (Tex. Code Crim. Proc. Art. 56.01, 1989). Some of the rights afforded victims in this statute include the right to protection from harm, the right to be notified of court proceedings, the right to be notified about bail, the right to be informed of parole hearings, and the right to the prompt return of property (Tex. Code Crim. Proc. Art. 56.02, 1989).

In recent years, victim participation has increased in the criminal justice system, particularly when it comes to deciding punishment. For example, victim impact evidence has become extremely important in the sentencing phase and the Supreme Court has recognized the significance of victim impact evidence in capital murder trials (Stickels, 2001). In addition, several states and the U.S. Congress have afforded crime victims an opportunity to be heard before a final sentence is rendered. For instance, Texas gives crime victims “the right to provide pertinent information to a probation officer conducting a pre-sentence investigation concerning the impact of the offense on the victim...” (Tex. Code Crim. Proc. Art. 56.02§5, 1989).

VICTIM PARTICIPATION STUDY

In order to determine the extent of the role of victims in the criminal justice system in Texas, the author conducted a victim participation study to examine whether the focus of the system has evolved from one that focuses on the defendant to one that focuses on the victim.

Qualitative research methods were used to collect and examine the data for this study (Erlandson, *et. al*, 1993). The data consists of observations, interviews, and documents relating to victim participation in the criminal justice system from Travis, Hays, and Williamson counties in Central Texas from January 2000 to February 2003. The data was documented with field notes and interview transcripts. These and other items, such as court records, other official records, and media material constitute the accumulated data (Denzin, 1970).

The principal method of analyzing the observational data was through identification and analysis of critical incidents. Incidents were determined to be critical if, in the author’s expert opinion as confirmed to be so by participants in the criminal process such as judges, prosecutors, and defense attorneys who made a decision affecting an outcome based on specific victim input or victim participation (Denzin, 1974). This event was considered critical because the course of the prosecution was adjusted because of the victim’s input (Tripp, 1993).

The identified critical incidents were analyzed through categorical analysis. Categorical analysis is the process of analyzing data by sorting it on a line-by-line basis while coding it into categories that emerge during the sorting process (Merriman, 1988, Guba & Lincoln, 1981). The sorting process is done without pre-assigned categories to allow the researcher’s background and experience to interact with the data, thereby allowing categories to emerge from the data (Lincoln & Guba, 1985).

Purposive sampling was used to accumulate the data. This sampling method resulted in data composed of approximately 90 cases resulting in a wide range of offenses ranging from simple misdemeanors to aggravated felonies. Approximately 30 percent of the data includes victim-impacted offenses such as misdemeanor theft and misdemeanor assault, approximately 60 percent of the data includes felony offenses such as assault, sexual assault, homicide, and capital murder, while approximately 10 percent of the data includes non-victim crimes such as controlled substance violations and driving while intoxicated offenses for comparison purposes. Of the victim-involved cases, the victim was satisfied with the outcome approximately 75 percent of the time.

The method used to select interview participants resulted in interviews with all of the participants in the criminal justice system being included in the interview data. Of the 30 interviews, approximately 10 percent were judges, 5 percent were pre-trial and probation officers, 50 percent were prosecutors, 15 percent were defense attorneys, and 20 percent were victims.

An analysis of the data indicates that the criminal justice system in Texas is no longer solely focused on the personal culpability and the appropriate punishment for a specific defendant but that the system instead seeks to satisfy the victim through the course of the criminal prosecution process, relegating the interests of the defendant to a secondary status. These findings reveal the need for a new model to explain the current practices as they have recently evolved. A new paradigm, based on the current practices within the system, is proposed—the victim satisfaction model.

THE VICTIM SATISFACTION MODEL OF THE CRIMINAL JUSTICE SYSTEM

The proposed victim satisfaction model has the three following 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.
3. The attempt to satisfy the victim's interests is a primary value of the criminal justice system.

CHARACTERISTIC ONE: THE VICTIM IS A PARTY TO THE PROSECUTION

Victims have become *de facto* parties to the prosecution since the primary participants in the criminal justice system treat victims the way parties to civil actions are treated. This *de facto* party status is fundamental because it serves as the basis for victims to participate meaningfully in the criminal process. It also blurs the distinction between the civil and criminal justice systems to the point where crime victims enjoy the same rights, privileges, and benefits as parties to civil cases. This *de facto* party status has overcome the legal impediments to the victim's right to direct the prosecution and has moved the criminal justice system toward being victim oriented instead of one that focuses on the defendant.

The primary participants in the criminal justice system treat the victim as a party to the prosecution when they consider and often defer to the victim's wishes during the course of the prosecution. This victim influence is not open and overt but subtly exists when the participants consider the extent and type of victim injuries, the potential for future injury to the victim, and the danger to the public in making decisions that directly affect the prosecution. In many instances, the participants combine victim injuries with fear of future harm as the grounds for not granting a decrease in the amount of bail, refusing to accept a plea agreement, or assessing sentence.

Bail Reduction

Evidence of judges treating victims similar to the manner in which parties to a civil case are treated was consistently confirmed in the interview data of the victim participation study. In interviews with judges who set bail on a daily basis, most of them stated that the victim's injuries and the victim's future safety were the most important factors in setting bail. When asked why these factors were so important, responses included, "I owe it to the victim to consider the injuries," "I want the defendant to know he cannot get out [of jail] so easy after he hurts someone," "I do not want him [the defendant] to get out and hurt someone again," and "The public expects higher bonds on violent crimes."

These comments provide some of the first insight into the victim's *de facto* party status. A large majority of decisions concerning bail are based on the affidavit for arrest, which includes information about the victim's injuries and future safety issues along with the criminal history of the defendant. When judges make decisions about bail based upon this knowledge, they weigh it against the defendant's right to a bond guaranteed by the Eighth Amendment in the U. S. Constitution before setting bail (U. S. Const. Amend. VIII). In effect, the judge treats the victim's issues with at least as equal of important as the defendant's right to bond, considers the respective equities, and sets bail.

The finding that judges consider bonds for cases with crimes involving victims different from victimless cases also supports the determination that crime victims have become *de facto* parties to the prosecution. This difference is illustrated by comparing two incidents in the data involving the bail decision. The first incident involved an out-of-state defendant in jail for a misdemeanor family violence assault. The second incident involved a convicted felon on parole who was in jail on a drug possession charge.

The incident involving family violence assault occurred at the Travis County Central Booking facility on a Saturday morning. The attorney hired to assist the defendant bond out of jail asked the judge why the bail was so high and the judge replied, "Because the defendant is from Florida." Since the defendant was from out of state, he would not be granted a personal bond. The lawyer informed the judge that the wife was the aggressor and requested a cash deposit bond. The judge replied that she would consider the attorney's request but wanted to talk to the victim before she decided. The lawyer said he would see if he could get her there. The judge then noted that "the PC [probable cause] affidavit doesn't look so bad but I've got to talk to her first. *I've got to do my job* (emphasis added)." The law supports talking to the victim when considering bail because one of the statutory factors of setting bail is "the future safety of the victim" (Tex. Cod Crim. Proc Art. 17.15§5, 1993). However, in this incident, the judge went beyond considering the future safety of the victim by stating that it is *her job* to discuss the case with the victim before making a decision. In effect, the judge made the victim a party when she agreed that the facts were not egregious but considered the victim's position and deferred to the victim in deciding whether to grant a cash bond.

By way of comparison, the following incident involved a defendant on parole for a felony conviction who was in jail on a drug possession charge. This incident occurred at the Travis County Central Booking facility on a Sunday morning. The judge had previously set the bond at \$15,000. The pre-trial officer had recommended against a personal bond. The lawyer took the paperwork from the pre-trial officer, presented it to the judge, and asked "How about a \$150 cash bond?" The judge reviewed the paperwork and responded "O.K."

This particular crime did not involve a victim but included factors that were not conducive to the judge's reduction of the defendant's bond. The fact that the defendant was on parole suggested that he might not appear for court, especially since the violation of parole meant that the parolee would have to serve the rest of the sentence under supervision (Tex. Gov't. Code 508.001§6, 1999). In addition, since the defendant was charged with a drug offense, it was more likely that he would not appear for court since drug offenses of this magnitude carry significant sentences. However, because this crime did not involve a victim, the victim considerations were removed from the fact situation, and therefore the judge readily granted a cash bond.

Plea Bargaining

Prosecutors also treat the victim as a party to the prosecution, allowing them to appear in control during the plea negotiation process by frequently having them exercise veto power over both the terms of a plea agreement and whether the defendant enters a guilty plea. The victim participation study data clearly shows that victim consent is needed before the prosecutor will enter into a plea agreement with the defendant, thereby strengthening the victim's *de facto* party status. The victim's party status is accepted to the point that dissatisfaction with the plea agreement is often cited as the reason for a case going to trial instead of being resolved with a plea bargain.

The finding that prosecutors often defer to the victim before entering into a plea agreement is supported by the following discussion that took place at a hearing in County Court involving a misdemeanor case where the defendant was charged with assault with bodily injury. The defense attorney and the prosecutor told the judge that they had worked out an agreement but asked for a continuance. As justification for the continuance, the prosecutor told the judge "I have to speak to the victim to see if she is comfortable." In this instance the judge delayed the case.

This incident represents a typical example of the prosecutor, defense attorney, and judge treating the victim similar to a party in a civil lawsuit. A civil attorney cannot ethically make decisions that dispose of a lawsuit without the consent of the client. Likewise, a defense attorney cannot dispose of a criminal prosecution with a guilty plea without the client's consent and agreement. When the prosecutor and the defense attorney agree to dispose of a criminal case and then defer to the victim, the victim is treated similar to a party in a civil case. This incident also illustrates how judges treat victims in the same manner. A judge cannot enter an agreed order disposing of a case unless all parties in a civil case agree to the disposition. By delaying the case to allow the prosecutor to see if the victim was comfortable with the terms of the plea bargain, the judge was also treating the victim like a party in a civil case. These actions reinforce the victim's *de facto* party status.

In another example, a defendant charged with aggravated assault appeared in court for a guilty plea. When the judge called the case the prosecutor and the defense attorney approached the bench and told the judge, "The state is withdrawing the plea because the victim changed his mind." The judge asked what happened and the prosecutor stated, "The victim initially agreed to the deal, but now he is very opposed to it. So we are requesting a jury trial." The judge then set the case for jury trial.

Since the state does not often withdraw a guilty plea at this stage of the proceedings, this action reveals the importance placed on the role of the victim. Most of the time, the prosecutor or someone in the prosecutor's office reviews the case and the plea offer with the victim before it is offered to the defendant. If the victim does not agree, the prosecutor usually does not make the offer. In this case, the judge accepted the prosecutor's reason for withdrawing the plea and reset the case. This suggests the prosecutor, the defense attorney, and the judge recognized that victim cooperation was necessary, although statutory law does not require it, before a plea could be entered, thereby reinforcing the conclusion that the victim is a party to the prosecution.

The study also revealed that judges routinely treat crime victims as parties to the prosecution and appear to defer to the victim's desires in the plea bargaining process. Sometimes the judge rejects a plea agreement because the victim is not satisfied with it and sometimes the judge approves the plea agreement because it is what the victim wants. The following is an example of the judge approving a plea agreement against his own judgment because the victim and the victim's family wanted it. In this case, the defendant was charged with sexual assault for engaging in consensual sex with a 14-year-old female, had plead guilty, and was in court for sentencing. The plea agreement was for deferred adjudication; a plea agreement was necessary since the judge cannot grant probation for this type of sexual assault but can grant deferred adjudication. The judge did not want to go along with the plea agreement and had specifically instructed the probation department to interview the victim and the victim's family between the guilty plea and sentencing. After reviewing the pre-sentencing investigation, the judge accepted the agreement and sentenced the defendant to deferred adjudication. However, the judge noted during sentencing that he did not like the agreement and the only reason he agreed to it was because the victim's family wanted it. During a break, the judge was interviewed and asked why he approved the plea agreement if he did not like it. In response, the judge stated: "I am not going to say the system is victim-oriented, but it is pretty close."

This observation exemplifies how judges often defer to victims in the context of plea agreement, and as a result, grant victims *de facto* party status. As a general rule, judges have their own concept of an appropriate punishment for a particular crime and a particular defendant. In this case, the judge went against his own opinion and approved the agreement because the victim wanted this particular disposition, which indicates that judges believe victims have party status because they have a stake in the prosecution. It also demonstrates one of the ways that judges can grant party status to victims by treating the agreed resolution of a criminal case similar to that of a civil case, in which the judge is responsible for verifying that the agreement is actually what the parties agreed to and approved. The judge accomplishes this by having each party sign the judgment and testify that they accept the settlement. In the foregoing case, the judge approved the plea agreement based on the wishes of the victim's family. When the judge made this admission, he was granting party status to victims. This

incident signifies that judges are concerned about the victim's interests to the point that victims are treated as parties to the prosecution.

Trial Phase

This conclusion was further reinforced by an event that occurred during the course of a felony trial observed during the victim participation study. In this case, the judge considered whether he should close the courtroom during a sexual assault trial in which the defendant was charged in a multi-count indictment for sexual assault of a 14-year-old male child. The court was conducting a hearing outside the presence of the jury at the request of the prosecutor to determine whether the victim could testify in a closed courtroom. During the hearing, the victim stated that he would not testify to the facts of the assault if there were spectators in the courtroom. After the hearing, the judge ordered that the courtroom be cleared, "except for the participants." The defendant objected, and the judge overruled the objection.

The judge considered the victim's desires in agreeing to close the courtroom during his testimony even though he has very limited authority to do so. A judge can order the courtroom closed for very limited circumstances (*Globe Newspapers Co. v. Superior Court for the County of Norfolk*, 1982). A judge can order a witness to testify, and if the witness does not comply, the individual faces a contempt finding. In this case however, the judge treated the victim differently than an ordinary witness and closed the courtroom during his testimony thereby recognizing that the victim was not a mere witness. Instead, the judge elevated the victim to the status of a party in the case.

After the ruling, the judge was asked why he decided to close the courtroom. In response the judge stated,

"I decided to close the courtroom while the child testifies because he will not testify with people in the courtroom. The child is afraid that if people are in the courtroom that his name will appear in the paper. I have decided to go along with the victim's wishes and order the courtroom closed. This is the first time I have ever done that. I balanced the victim's right to protection with the right to a public trial. The victim's interests overcame the right to a public trial."

The judge's explanation demonstrates the importance he placed on the victim's interests during the course of the trial. When a judge uses words such as 'the victim's right to protection' and 'victim's interests' in this context, he is assuming that the victim possesses tangible rights that can be safeguarded. Since parties have enforceable rights during a trial, whereas mere witnesses or spectators do not, the judge determined that the victim possessed equitable rights that granted him status similar to that of a party.

Based on an the analysis of the data collected during the victim participation study, the victim is a *de facto* party to the prosecution. Prosecutors and judges take into consideration the extent and nature of the victim's injuries as well as potential future harm when making crucial decisions concerning the reduction of bail. In the pre-trial plea bargaining phase, prosecutors and judges respect the wishes of victims, often deferring to them against their own judgment. During the trial phase, judges extend rights to victims beyond those of a mere witness for the prosecution. In all these stages of the criminal process, victims are granted legal rights, benefits, and privileges of parties to civil cases even though these statutory guarantees do not exist for victims in the criminal justice system. The prosecutors and judges use their discretionary powers with the goal of achieving victim satisfaction with the outcome and resolution of the case.

CHARACTERISTIC TWO: THE PROSECUTOR ASSUMES THE ROLE OF REPRESENTING THE VICTIM AND MAKES DECISIONS TO SATISFY THE VICTIM'S INTERESTS

Many prosecutors take the position that they represent the crime victim, not just societal interests, in a criminal prosecution. Because of this position, prosecutors often manage criminal prosecutions with the goal of obtaining a result that satisfies the victim. This creates an 'unofficial' attorney/client

relationship between the prosecutor and the victim 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. This 'unofficial' relationship is a natural extension of the victim's party status and is a key aspect of the victim satisfaction model of the criminal justice system.

Charging Process

The prosecutor represents the victim during the charging decision, often with the goal of achieving victim satisfaction. In a large number of cases, the decision concerning which charge is filed against the defendant is based on the victim's goals and desires. In interviews with prosecutors conducted during the victim participation study, most stated that they strongly consider the victim's wishes when deciding which criminal offense to charge and try to find a way to satisfy the victim with the charging decision. For example, prosecutors made the following statements: "I use input from the victim," "I feel that it is my job to represent the victim," and "I try to do what the victim wants."

These comments indicate the beginning of the 'unofficial' attorney/client relationship between the prosecutor and the victim. Ethically, a civil attorney has the responsibility to "zealously pursue the client's interests under the rules of the adversary system" (Tex. Gov't. Code T.2, Subt. G App. A Art. 10 §9 – 2, 1999). In this 'unofficial' attorney/client relationship, the prosecutor accepts the role as the attorney for the victim and appears to make decisions that attempt to satisfy the victim since the prosecutor considers reasons other than the facts of the case and statutory law in making the charging decision. This supports the conclusion that the criminal justice system is evolving to become more like the civil system since its primary value has become victim satisfaction.

The finding that the prosecutor represents the victim during the charging decision and makes decisions with the goal of achieving victim satisfaction is frequently confirmed by the data collected during the victim participation study. One example from the study that supports this conclusion involved a criminal negligent homicide case, which occurred in October 1997. It was not until about a year later that the District Attorney requested the Department of Public Safety to conduct a skid mark analysis on the crime scene data, which determined that the defendant was driving 40 miles over the speed limit. The defendant was finally indicted in August 1999, twenty-two months after the accident occurred and a period during which the victim's father had "worked closely" with the prosecutor.

This example is important because of the nature of the offense – not every vehicular accident resulting in a death is prosecuted as a crime. An accident is a crime only if the necessary criminal mental state accompanies the actions resulting in the accident whereas, for civil purposes, the mental state necessary to predicate civil liability is ordinary negligence. For criminal purposes, the mental states are intentionally, knowingly, recklessly, or with criminal negligence (Tex. Penal Code §6.03, 1974). The mental state required for criminally negligent homicide is acting with criminal negligence (Tex. Penal Code §19.05 (1974)).

In addition, usually vehicular homicides are investigated and charged relatively quickly but in this case twenty-two months had passed before charges were filed. Generally, vehicular homicides are not charged criminally after that much time has elapsed unless there are extra-judicial factors that cause an accident to be prosecuted as a crime instead of being treated as a civil case. The extra-judicial factor in this case was the magnitude of the involvement by the victim's father, which was the key factor that resulted in charges being filed with the apparent goal of satisfying a member of the deceased victim's family.

Interviews conducted after the finalization of this case confirmed that the prosecutor represents the victim during the charging process, making decisions with the goal of achieving victim satisfaction. When the prosecutor was asked whether the defendant was charged because the victim's father demanded the prosecution he stated that the "victim's dad has had lots of input. But, the case would have been prosecuted even without the dad's input." This statement, combined with the usually long period of time that had elapsed between the time of the accident and when it was indicted, corroborates

that the victim's role in the charging decision was more than that of a mere witness and indicates that the victim's father was deeply involved in the decision to bring criminal charges against this defendant, without which the case would not have been charged.

When the defense attorney was asked whether the victim's father made any difference in the case, he said, "Sure, after harassing the prosecutor to do something, I think he harassed the prosecutor into hiring a reconstruction expert and that led to the indictment." The defense attorney described the interaction between the prosecutor and the victim similar to the way a 'private' attorney interacts with the client in that the prosecutor responded to the victim by hiring an expert and then charges the defendant with a felony like a 'private' attorney responds to the client's goals and tries to achieve those goals by vigorously representing the client within the bounds of the law (Tex. Gov't. Code T.2, Subt. G App.A Art. 10 §9 – 2, 1999).

The victim's father was also asked whether he thought he was instrumental in the case being indicted and prosecuted. In response, he stated, "I don't think this case would have been prosecuted if I had not been involved. I told the District Attorney, 'I want him prosecuted to the fullest amount.' It took me going to the see (the Assistant District Attorney) to get something done." In his response, the victim's father described his relationship with the prosecutor as being similar to that with his personal attorney. Even though a crime victim has no control over how a case is brought by the state, when the prosecutor treats the victim as a party and defers to the victim's wishes, the prosecutor acts as the victim's attorney and advocates his or her position.

Plea Bargaining

The conclusion that prosecutors assume the role of representing the victim and make decisions to satisfy the victim's interests in the plea bargaining process was also confirmed by the victim participation study. The field observations consistently demonstrate that prosecutors allow victims to control plea negotiations, thereby ultimately controlling the plea decision. Often, a lack of victim consent is cited as the reason for a case being tried instead of being finalized by a plea agreement.

The need for victim consent before the prosecutor will enter into plea negotiations is comparable to the way an attorney represents a client. In civil cases, an attorney has the responsibility to keep a client reasonably informed and to explain matters to the extent reasonably necessary to permit the client to make an informed decision regarding the representation (Tex. Gov't. Code T.2, Subt. G App.A. Rule 1.03, 1999). The attorney is also required to abide by the client's decision about whether to accept an offer of settlement (Tex. Gov't. Code T.2, Subt. G App. A. Rule 1.02, 1999). In a criminal case, the attorney is required to abide by the client's decision about whether to waive a jury trial, the plea to be entered, whether to accept a plea offer, and whether to testify (Tex. Gov't. Code T.2, Subt. G App. A. Rule 1.02, 1999). Ultimately, the decision of how to defend a criminal case is made by the client with the advice and consent of the attorney (Tex. Gov't. Code T.2, Subt. G App. A. Rule 1.02, 1999).

The requirement for victim consent prior to an approved resolution through a guilty plea makes the plea bargaining process very similar to an agreed disposition of a civil case in which all parties must concur before a case can be resolved through an agreement. If the parties to a civil dispute reach a mutually acceptable resolution, the parties and the lawyers sign the agreement and enter a judgment based on the agreement. If there is no agreement, the civil case proceeds to trial. 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.

A typical example of the need for victim consent before a plea agreement could be reached is represented by the following exchange that took place at a docket call in District Court involving a felony case where the defendant was charged with attempted murder. When the judge called the case, the defendant and defense attorney joined the prosecutor before the judge who asked where the case was at that time. The defense attorney said, "We want a jury trial." The judge grimaced and asked, "Isn't there

any way to work this out? Is there an offer?" The prosecutor responded, "No the family of the victim is still really upset."

By asking for the status of the case, the judge was trying to determine whether the defendant was contemplating a guilty plea. The most expeditious method of resolving criminal cases is through a guilty plea because a criminal jury trial consumes an enormous amount of public resources and a guilty plea disposes of the case with relatively little time and expense. Obviously, not every criminal case can be resolved through a plea agreement. However, it is necessary for the prosecutor to make a plea offer before the defendant can determine whether or not to accept it. The defense attorney's response "We want a jury trial" informed the judge that plea negotiations were nonexistent. The judge's grimace indicated his displeasure with the defense attorney's announcement and his question concerning the possibility of an offer was an attempt to have the prosecutor begin plea negotiations with the defendant. The prosecutor's response to the judge's question illustrates how victims influence the prosecutor's decision to enter plea negotiations. The lack of victim cooperation was the articulated reason for why the prosecutor had not made a plea offer. This reason gives the impression that victim consent was required before the prosecutor would enter into plea negotiations even though such statutory rights do not exist for victims. Thus, the prosecutor assumes the role of representing the victim when the victim is treated the same as a private attorney treats a client.

Interviews with prosecuting attorneys conducted during the victim participation study delved into the question of whether victims control the plea decision. In their responses, prosecutors consistently agreed that they were reluctant to enter into plea negotiations without victim cooperation. For example, a prosecutor who handles only cases involving violence against women and children stated, "the victim should have a say in whether a plea agreement is made." Another prosecutor stated "if it is a serious case where the victim has a stake in the case, assault, murder, etc. then I get their input on whether a plea should be offered." During another interview, the prosecutor stated, "You have to advocate for the victim because they are the person who suffers the effects of the crime," which demonstrates that not only do victims exercise control over the plea bargaining process but also that prosecutors regard affirmatively the advocating of the victim's interest, thereby granting the victim party status, as a necessary function of their job.

In another interview, a felony prosecutor was asked whether he had ever tried a criminal case when he thought it was more appropriate to have a plea. In response, the prosecutor stated:

Sometimes there is value to the victim to have a trial, testify, and get a conviction. There is some feeling of vindication for the victim. In those situations, I will go to trial because the victim wants a trial even if I think I will get less punishment, or even a not guilty, at trial because of the benefit to the victim.

In this response, the prosecutor described the conventional attorney/client relationship where the attorney zealously represents the interests of a client within the bounds of the law, a relationship similar to that between a criminal defense attorney and a defendant. The attorney investigates the facts, researches the law, and then explains the options and possible consequences to the defendant. However, the defendant has the ultimate power to go to trial or enter a plea. When dealing with the victim along these same lines, the prosecutor represents the victim's position and becomes the victim's unofficial attorney.

Discussions with defense attorneys support the perception that prosecutors represent victims thereby granting victims authority similar to a party. For example, one defense attorney stated, "prosecutors would rather lose a case at trial than do a plea and make the victims mad." Another defense attorney noted, "The criminal system is being used to dispose of civil disputes via the criminal process – not designed for this." This is important because the statutory mandate of the prosecutor is "to do justice" and not to satisfy the victim. However, as one defense attorney noted, "Prosecutors would rather lose a case at trial than do a plea and make the victims mad." This comment reinforces the perception that

prosecutors act as the attorney for the victim, since the victim appears to make the major decisions about the prosecution.

The conferred right to significantly control the outcome of a case in the context of plea negotiations and agreements gives victims significant sway over the outcome of the case. If the victim opposes a plea agreement and demands a trial, the prosecutor often defers to the victim and the case is tried. This is a significant development in the criminal process since victims do not have any formal right to require a trial unless prosecutors, through the use of their discretionary power, defer to the victim's decision and grants this right to the victim. However, by granting these rights to the victim, the prosecutor assumes the role of the victim's attorney and the victim becomes the client with the power to control the prosecution.

CHARACTERISTIC THREE: THE GOAL OF SATISFYING THE VICTIM IS A PRIMARY DETERMINANT OF THE CRIMINAL JUSTICE SYSTEM

The final component of the victim satisfaction model of the criminal justice system is that the goal of satisfying the victim is a primary determinant or value of the criminal justice system. This component is a logical extension of the findings that the victim is a *de facto* party to the prosecution and that the prosecutor represents the victim. Thus, this model proposes that one of the prosecutor's goals in administering a criminal case is achieving victim satisfaction.

The goal of achieving victim satisfaction often appears to be the primary reason prosecutors file cases criminally. This goal also often appears to be the reason that prosecutors file some cases as felonies and others as misdemeanors. The difference between whether the prosecutor files a case criminally as well as whether it is filed as a felony or a misdemeanor is significant because criminal cases carry the potential for the criminal sanction and felonies are punished much more severely than misdemeanors.

Charging Decision

The finding that a prosecutor files some cases criminally to achieve victim satisfaction is supported by the victim participation study. In one incident, the defendant was charged with securities fraud arising out of a failed business involving many investors. During an interview, the prosecutor was asked why the case was accepted as a criminal case when most of these types of cases are not. In response, the prosecutor said, "We don't usually handle these cases, but we had a ton of complaints from investors." When asked why this mattered, the prosecutor responded, "We had no choice but to file it."

Generally, criminal securities fraud cases are uncommon given that they are difficult and expensive to investigate and require special expertise to prosecute. As a result, there are usually extra-judicial factors involved when securities fraud cases are selected for prosecution. In this case, the prosecutor acknowledged the extra-judicial factors with the statement that there were "a ton of complaints" from the victims. The prosecutor then acknowledged the effect of these complaints with the admission that there was "no choice but to file it." As a result, the attempt to satisfy the victims was the primary determinant in the prosecutor's decision to file this case criminally.

In another case, a defendant charged with aggravated assault with a deadly weapon for trying to suffocate the victim with a plastic bag was in court for a pre-trial hearing. The victim received minimal injuries but the factor that was used to make this offense a felony was the defendant's use of a deadly weapon – the plastic bag (Tex. Penal Code §22.02, 1993). The prosecutor and the defense attorney were in the conference room discussing the case. The defense attorney told the prosecutor "this case should not be felony. He will plead to a misdemeanor assault." The prosecutor responded, "The victim wants a felony." The case was ultimately resolved with a jury trial.

Under the Texas Penal Code, a plastic bag used to smother is sufficient to support the deadly weapon requirement for a felony because it "is capable of causing serious bodily injury or death" (Tex.

Penal Code §1.07 §17-B, 1993). While it is legally valid to prosecute this case as a felony, in the ordinary course of criminal practice cases such as this are normally resolved as misdemeanors and not felonies. The lack of any significant injuries and the slight evidence of a deadly weapon suggest that there were 'extra-judicial' factors that caused the prosecutor to file this case as a felony. In this case, the 'extra-judicial' factors were the victim's involvement and the prosecutor acting as the victim's attorney. These factors resulted in the prosecutor managing this case with the goal of achieving victim satisfaction during the prosecution.

Although the facts met the minimum requirements for a felony aggravated assault, it appears that the prosecutor filed the case as a felony aggravated assault and proceeded to jury trial because the victim wanted the case prosecuted as a felony. In this case, the prosecutor's attempt to satisfy the victim was the primary determinant of the case being filed and prosecuted as a felony. After the defense attorney left the conference room, the attorney was asked about the case. In response, the attorney stated, "They are divorced and in the middle of child support/visitation dispute. She wanted this case as a felony so she could use it in that case."

During interviews, prosecutors were questioned whether victims influenced the charging decision. In response, almost all of the prosecutors agreed that they received victim input before cases were indicted. For example, one prosecutor stated, "I evaluate the case based on the victim's attitude." Another prosecutor stated, "I don't talk to the victim before indictment, but the victim services office does and her recommendation is in the file." Finally, another prosecutor stated, "Victims should feel like they are part of the process." These comments demonstrate that prosecutors often act as the attorney for the victim, and this representation results in cases being filed in an attempt to achieve victim satisfaction.

Prosecutors often attempt to resolve criminal cases with the goal of achieving victim satisfaction. This makes achieving victim satisfaction the primary value of the criminal justice system. Admittedly, victims are not satisfied with the result of every plea bargain or every jury trial. However, whether victims are satisfied with the outcome of the prosecution is not the primary issue in the victim satisfaction model. The utility of the victim satisfaction model is that the attempt to satisfy the victim is a significant determinant of the criminal justice system.

A typical example of victim satisfaction being the primary determinant of the criminal justice system is illustrated by the following case included in the victim participation study. In this example, the defendant was charged with the felony offense of assault on a public servant but had pled guilty to the lesser offense of assault with bodily injury, a misdemeanor, and was in court for sentencing. The plea agreement was one year in the county jail probated for two years with nine days in jail as a condition of probation.

After the case was concluded, the defense attorney was asked why the case was reduced from a felony to a misdemeanor. In response, the attorney stated, "The offer was reduced only after the prosecutor talked to the cop and the cop agreed. If the cop had not agreed, they would not have reduced it."

The attempt to achieve victim satisfaction was the primary determinant of how this case was resolved. Both the prosecutor and the defense attorney recognized that the facts of the case suggested that it should be resolved as a misdemeanor instead of a felony. Despite this recognition, the prosecutor would not agree to resolve the case as a felony unless the victim consented. The defense attorney admitted that the prosecutor would not have reduced the case from a felony to a misdemeanor without the victim's consent. Thus, the defense attorney recognized that the prosecutor was acting as the attorney for the victim and advocating the victim's position with the goal of achieving victim satisfaction.

In another incident examined during the victim participation study, the defendant was charged with homicide, and both the state and the defendant hotly disputed the facts. During a hearing, the prosecutor and defense attorney agreed to resolve the case with a plea to a lesser charge. The prosecutor left the room to discuss the case with the victim. After he returned, he told the defense

attorney that the victim's spouse would not agree and wanted a trial. The case was resolved with a jury trial.

In this case, the prosecutor acted as the victim's attorney and attempted to satisfy the victim by resolving the case with a trial. The primary importance is not whether the victim's spouse was satisfied with the outcome of the prosecution but instead that the victim wanted a jury trial in which case the prosecutor satisfied this desire.

Interviews with prosecutors confirmed that they act as attorneys for the victim and often resolve cases in an attempt to achieve victim satisfaction. For example, when asked whether cases are resolved with the goal of victim satisfaction, prosecutors stated, "I get their [the victims'] input on what the plea should be" and "Once the case is indicted, if the victim is not happy with the plea, we try the case." Another prosecutor stated, "If the best I can do is a plea, I talk to the victims and try to convince them to go along with it. But, if they are not happy, I try the case." Thus, prosecutors resolve cases with the goal of satisfying the victim.

Despite the prosecutor's best efforts, victims are not always satisfied. For example, in a well-known capital murder case, the defendant was charged with capital murder when he shot and killed a law enforcement officer who was acting in the line of duty. The victim's widow was adamant about the defendant receiving the death penalty and the prosecutor did everything possible to achieve that goal. However, during the course of the prosecution it became obvious that the death penalty was not a viable option. Upon reaching this decision, the prosecutor entered a plea agreement to a life sentence despite the widow's vigorous objection.

This case demonstrates that even though the victim was not satisfied, the prosecutor did everything possible to achieve victim satisfaction. The important factor is that the prosecution was managed with the goal of satisfying the victim. This is the victim satisfaction model in its most basic form.

Defense attorneys also realize that cases are resolved in an attempt to achieve victim satisfaction. For example, the following incident occurred in District Court where the defendant was charged with felony stalking. The court was conducting a pre-trial hearing when the judge asked what the offer was. The defense attorney said, "two years on a third degree felony stalking and we want two years in the state jail for attempted stalking" (the defendant would do more time on a state jail felony in the state jail than two years the Texas Department of Corrections). Prosecutor said no. After this conversation at the bench, the defense attorney and the prosecutor walked over to the table where the prosecutor had her files. The defense attorney said: "why can't you do that, he would do more time?" The prosecutor responded, "Because the victim would be mad with an attempted stalking." The defense attorney said, "You can sell this because he will do more time" to which the prosecutor responded, "I'll talk to her."

These discussions between the prosecutor and the defense attorney are very similar to how two civil attorneys discuss resolving a civil dispute. In a typical civil case, the attorneys discuss resolving the case in a way that both parties, while maybe not happy, are at least satisfied with the resolution. In civil cases, there is little talk about concepts like justice or what is good for society. Instead, the discussion is more along the lines of what the defendant is willing to do and what the plaintiff is willing to accept.

In this example, both attorneys conducted negotiations as if the case was a civil and not a criminal case. During negotiations, the defense attorney stated what his client was willing to do. The prosecutor responded that the victim would not go along with it, and the defense attorney asked the prosecutor to try to persuade her. There were no discussions about concepts like justice, what is better for society, or whether the defendant learned from his mistake. Instead, the discussions concentrated on satisfying the victim.

This incident supports the finding that prosecutors often act as attorneys for the victims and resolve cases with the goal of achieving victim satisfaction. This concept is so ingrained in the criminal justice system that defense attorneys recognize it and often urge prosecutors to persuade victims to go

along with plea agreements the attorneys think would be a correct resolution of a case. This is very similar to the civil system where attorneys actively pursue their clients' goals and supports the conclusion that the civil and criminal justice systems are merging.

Interviews with defense attorneys confirmed that cases are resolved in an attempt to achieve victim satisfaction. For example, one defense attorney stated, "Cases are not disposed of according to legal standards but victim's desires." Another attorney stated, "The goal of the prosecutor appears to be not to make the victims mad." These comments support the finding that prosecutors act as the attorney for the victim and resolve cases with the goal of satisfying the victim. This makes the goal of satisfying the victim the primary determinant of criminal cases.

CONCLUSIONS AND IMPLICATIONS FOR CRIMINAL JUSTICE POLICY

As demonstrated by data from the victim participation study, the primary difference between the victim satisfaction model and the traditional models of the criminal justice system is that the victim satisfaction model focuses on the victim while the traditional models focus on the defendant. For instance, Packer's models focus on the defendant's actions or the appropriate punishment for a specific defendant based on the defendant's criminal actions. The more modern victim-oriented models discussed by Roach and Beloof continue to focus on the defendant but temper this focus by input from the victim. In reality, the attempt to satisfy the victim is the common factor that is the primary determinant of prosecutions of crimes involving victims.

VICTIM SATISFACTION IN PRACTICE

The victim satisfaction model of the criminal justice system explains the process of prosecutions of criminal cases involving victims while the other models do not. In all criminal cases involving victims, the defendant commits a criminal act that harms someone, is prosecuted, is convicted, and is punished. However, the primary value of the victim satisfaction model is that even though the victim may not be completely happy with the result of the prosecution, the attempt to satisfy the victim appears to be the primary determinant of the direction of the prosecution. Thus, the victim satisfaction model of the criminal justice system is superior to Packer's traditional models and the more modern victim-oriented models, since those models fail to explain the reality of the criminal justice system for crimes involving victims.

CRIMINAL PROCEDURE HAS CHANGED FROM FOCUSING SOLELY ON THE DEFENDANT TO FOCUSING MORE ON THE VICTIM

The field data and the related discussions demonstrate that the victim has become the focus of the criminal justice system making victim satisfaction the primary determinant of the criminal justice system. This conclusion is supported by the data that demonstrates that most cases are investigated, prosecuted, and resolved with the goal of satisfying the victim. The data also demonstrates that victims have become *de facto* parties to the prosecution, the prosecutor assumes the role as the victim's attorney, and that victim satisfaction is the primary determinant of criminal justice system. In sum, the attempt to achieve victim satisfaction makes a criminal case comparable to a civil case with the prosecutor acting as the victim's attorney.

Societal "Justice" is no longer the objective of the Criminal Justice System

The participants in the criminal justice system no longer consider crime to be only a violation of society's norms. Instead, crime is seen as an offense against the individual victim as well as society. This results in the victim being given the opportunity to fully participate in the prosecution, since the victim has been personally violated. Thus, obtaining justice for the victim, instead of society, becomes the objective of the criminal justice system.

This conclusion is important because of the disparate nature of criminal prosecutions. This disparity occurs because the prosecution is conducted by and with the full power and authority of the government against an individual defendant. This allows the prosecutor to access the full resources of the government, if needed, in order to convict a defendant. Conversely, the defendant usually has very limited resources available to use as a defense. Thus, when compared to the victim, the defendant is at a great disadvantage when being prosecuted for a crime.

The prosecution is unfair to the defendant because the criminal justice system is a tool for the benefit of the victim. This takes place through the steps explained in the 'Victim Satisfaction Model': the victim becomes party to the prosecution; the prosecutor assumes the role as the victim's attorney; and the power of the state is used to achieve victim satisfaction. The unfairness occurs because the full power of the government is used to the benefit of the individual victim and the detriment of the defendant. Thus, justice for society is no longer the goal of the criminal justice system. Instead, justice for the individual victim becomes the goal of the system.

The criminal justice system is pseudo-civil with the authority of the state on the side of the defendant

The criminal justice system appears to be pseudo-civil with the authority of the state on the side of the defendant. Data from the victim participation study repeatedly demonstrate that the majority of criminal cases appear to be investigated, filed, prosecuted, and resolved in a manner similar to civil cases. This conclusion is significant because of the adversarial nature of criminal prosecutions, the financial disparity between the prosecution and the defense, and the stigma associated with being prosecuted by the criminal justice system.

The pseudo-civil nature of the criminal justice system is grounded in the close relationship that has emerged between the prosecutor and the victim. This relationship appears to be almost identical to the relationship between a private attorney and a client. Consequently, the prosecutor appears to treat the victim like an attorney treats a client and the victim acts the same as a client.

The informal attorney/client relationship between the prosecutor and the victim significantly impacts the criminal justice system since it moves the criminal justice system toward becoming pseudo-civil with the authority of the state on the side of the victim. The victim participation study demonstrates that a typical criminal case is handled very similarly to a civil case. Once a defendant is indicted, the prosecutor investigates the facts and makes a decision about liability as well as about the value of the case. The prosecutor then advises the victim about the possible benefits and disadvantages of settling the dispute or proceeding to trial. Based upon this advice, the victim then decides whether to settle or proceed to trial. As demonstrated, the prosecutor usually abides by the victim's decision.

The prosecutor has the backing of the full power and authority of the government when prosecuting a criminal case. This means that a prosecutor in a small county in West Texas can have any evidence tested by the Department of Public Safety, has almost unlimited funding to hire experts, and can have specialized attorneys from the Attorney General's Office assist with the prosecution. In addition, the prosecutor can access this assistance without obtaining permission from anyone.

On the other hand, the defense is limited to the defendant's personal assets or the extent of the assistance the judge decides to allow for investigation costs or expert assistance. In a typical case, the defense attorney is forced to ask the judge for funding to hire investigators, test evidence, hire expert assistance, or obtain the assistance of another attorney. This places the defendant at a severe disadvantage since the defense does not have significant financial resources and must convince the judge that assistance is needed before the judge is obligated to provide it (*Ake v. Oklahoma*, 1985).

The pseudo-civil nature of the criminal justice system is also essential because of the stigma associated with being criminally prosecuted and labeled as a criminal. Most members of society do not care if a person is sued in civil court because there is little or no public condemnation associated with a

civil lawsuit. On the other hand, society condemns individuals who are charged and prosecuted with a crime as criminals and labels them as troublemakers, deviants, and criminals (Gove, 1975). In addition, society routinely shuns criminal defendants and shuts them out of the rights and benefits of ordinary society.

The pseudo-civil nature of the criminal justice system benefits the victim. The benefits are based on the 'unofficial' attorney/client relationship between the prosecutor and the victim, the disparity of funding between the prosecution and the defense, and the stigma associated with criminal prosecutions. The prosecutor assumes the role of the attorney for the victim, utilizes the advantages associated with the office of the prosecutor, and manages the criminal justice system to satisfy the victim. This is similar to how a private attorney uses the civil system to satisfy a client.

The pseudo-civil nature of the criminal justice system moves the system from one that treats the defendant fairly and impartially to one that benefits the victim and is disadvantageous to the defendant. The unfairness and impartiality arise because the victim and the defendant are treated similarly to the way parties to a civil lawsuit are treated. The primary difference, however, is that the victim receives the advantage of being represented by the prosecutor, an agent of the government, while the defendant does not receive any similar benefits but is instead harmed by them.

Focusing the criminal justice system on the victim instead of the defendant could create disparity between similar crimes and similar defendants

Focusing the criminal justice system on the victim and not the defendant significantly influences criminal justice policy since it could create disparity between similar crimes and similar defendants. For example, in one case the victim may be unable to effectively communicate with the prosecutor and, as a result, the prosecutor may not take the prosecution as seriously as a case where the victim is able to spend the time and energy and can effectively communicate with the prosecutor. Also, because of prevalent and long-standing attitudes and stereotypes based on race, class, gender, and ethnicity, individuals in certain groups may fare far better in victims' rights incidents. Whites may receive better treatment than blacks, rich people better treatment than poor, and so forth. This could create a disparity in punishment based on who was the victim instead of the facts of the crime.

The victim satisfaction model of the criminal justice system is superior to Packer's due process and crime control models, to Beloof's victim participation model, and to Roach's victim oriented models because the victim satisfaction model reflects the reality of the modern criminal justice system. The victim participation model highlights that fact that protection for victims has become institutionalized within the criminal justice system in Texas. Victims and victims' advocates have won great victories and with these victories, have won enormous opportunities for victims. Victim's rights have come of age and are here to stay.

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