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THE CRIMINAL JUSTICE RESPONSE TO VICTIM HARM

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Abstract

The primary purpose of this study was to gain a clearer understanding of how the harm sustained by the victim influences practitioners' case processing decisions and how those decisions, in turn, affect the victims' perceptions of the court system. Underlying this purpose is the understanding that victims are due certain rights and considerations in the prosecution and adjudication process even though under the United States system of jurisprudence the state, not the victim, is the prosecuting party.

The findings from interviews with judges, prosecutors, and police officers confirm a number of previous findings: victim harm may affect the police officer's decision to investigate the case, but it has little effect on the decision to arrest; evidence is the most important factor in the decision to accept the case for prosecution; and type of conviction and defendant's prior record are the primary expressed considerations for sentencing. More important than these case related factors, however, the factor with the greatest impact on prosecution and sentencing decisions appears to be the individual practitioner's view of justice and his or her opinions about the particular case.

The methods by which practitioners learn about victim harm, together with standard court procedures and practices, tend to insulate the practitioner from the victim increasingly as the case progresses through the stages of adjudication. Victims have the most contact with police and the least contact with judges and probation officers.

Findings from a survey of victims reveal that victims expressed more satisfaction and had a more favorable attitude toward the system if they had knowledge of case outcome and perceived themselves to have influenced the outcome. Victims in sites with active, full-service, prosecutor-based victim-witness programs reported higher levels of satisfaction than those in sites without such programs.

Policy makers who choose to make victim harm a more important factor in the decision-making process should know that many judges believe they currently receive adequate information about the victim, yet the manner in which judges learn about victim harm is both narrow and indirect.

When asked what the system could do to make them more satisfied, victims indicated they wanted to be better informed about the case, they wanted the offender punished more harshly, and they wanted improved social services to meet their needs as victims of crime.

ACKNOWLEDGEMENTS

Many people assisted in this study and in the preparation of this report. It was possible only with the generous cooperation of the public-spirited leaders of each jurisdiction who opened their doors to us. We sincerely thank the chief of police, the district attorney, and the chief judge in each jurisdiction for allowing us to interview their staffs and to survey victims in their communities.

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Our project supervisors at the National Institute of Justice initiated the basic project concept and gave their support, suggestions, and encouragement throughout the course of the project. We thank Fred Heinzelmann, Director, Community Crime Prevention Division, and Bernie Auchter and Lois Mock, project monitors.

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The authors, of course, accept full responsibility for any errors in the report.

TABLE OF CONTENTS

	Page
Abstract	i
Acknowledgements	ii
I. Introduction	1
II. Study Design: Methodology and Population Surveyed	7
A. Site Selection	7
B. Interview Techniques	8
C. Populations Interviewed	9
1. Practitioner Respondents	9
2. Victim Respondents	9
III. How Criminal Justice Officials Learn About Victim Harm: Communication Between Victims and Practitioners	15
A. Sources of Information	15
B. Victim-Practitioner Interaction	20
IV. Effect of Victim Harm on Decisions: How Information About Victim Harm is Used	26
A. Effects of Case Characteristics	26
1. The Decision to Arrest a Suspect	26
2. The Decision to Accept a Case for Prosecution	26
3. The Sentencing Decision	33
B. The Effect of the Decision Maker	39
C. Summary	41
V. Determinants of Victim Satisfaction	44
A. Determinants of Satisfaction	44
B. Practitioner Views of Increased Victim Involvement	53

VI.	Policy Implications and Overall Assessments	58
	A. Interaction Between Victims and Practitioners	58
	B. Impact of Victim Harm on Case Processing Decisions	59
	C. Impact of Having Influence and Being Informed	60
	D. Suggestions for Improved Relations Between Victims and the Court	61
	E. Topics for Further Research	63
	Bibliography	65

Copies of the Appendices may be obtained by contacting the National Institute of Justice/National Criminal Justice Reference Service at Box 6000, Rockville, MD 20850 or by calling NCJRS at 301-251-5500.

Appendix A: Questionnaires

1. Victim Survey
2. Police Questionnaire
3. Prosecutor Questionnaire
4. Judge Questionnaire

Appendix B: Mail Survey Technique

Appendix C: Technical Analysis

Appendix D: Site Descriptions: Case Flow and Site Culture

I. INTRODUCTION

Interest in victims of crime has increased tremendously in recent years. A body of "victimology" literature has grown considerably,¹ and numerous grass roots victims' rights organizations have emerged,² reflecting the public's continuing frustration about crime and the criminal justice system's treatment of victims. A common perception among the public is that the criminal justice system cares only about the defendant and his rights and that the victim--who the general citizenry view as the truly injured party--is neglected in the process.

Under the United States system of jurisprudence, it is easy to understand how the victim can be neglected or disregarded as a case progresses through the various stages of criminal prosecution. Even though the victim might be viewed logically as the criminal offender's adversary, the government, not the victim, is responsible for taking formal criminal action against the offender. The state brings the case, the victim serves as the witness, not the victim.

To balance the overwhelming power of the state with the individual's rights and liberties, constitutional safeguards focus on the offender. Procedural due process guarantees have developed to protect innocent persons from being wrongly or unfairly prosecuted by the state. There are few procedural guarantees for victims.

The system also tends to neglect victims because the treatment of victims is generally not a criterion for formally evaluating practitioners' performance. Prosecutors, for example, are rarely judged by the care they express toward the victim when they take a deposition, nor by how clearly they explain case

¹ See the bibliography for a partial listing.

² A few of the more nationally visible organizations are Mothers Against Drunk Drivers, Parents of Murdered Children, National Organization of Victim Assistance, and Women Against Violence to Women. Numerous national associations, such as the American Bar Association, the American Psychological Association and the National Organization of Women, also have committees and/or task forces that study and report on victims of crime.

processing--except by the victims themselves, who have traditionally had little or no organized political influence.³

Courthouses are typically chaotic places where harried attorneys try to deal with overcrowded dockets. The atmosphere is foreign and forbidding to the outsider. As a result, victims frequently complain that they must deal with people who are insensitive, that they often make unnecessary trips to the courthouse, and that they often do not receive any information about what happens in their case.⁴ The victim thus appears to have been largely disenfranchised and left to rely on the goodwill of generally overburdened criminal justice agents.

There is also a strong defendant-oriented approach to punishment in this country. Deterrence and rehabilitation are still the primary purposes of sentencing for a large proportion of judges.⁵ But another approach is becoming more acceptable: namely, a victim-oriented approach, one that focuses on restoring losses of money or property, and providing compensation for loss of life, physical injury, and the pain and suffering resulting from criminal assaults.

³ Similarly, law enforcement personnel and judicial officers are for the most part evaluated by victims on how well they protect the public against crime, not on their "bedside manner". In one survey conducted in 1977, only 10 per cent of the victim respondents suggested that police should be more courteous and concerned. Most of their recommendations were related to the need to protect the community against further crime rather than to express concern toward the victim's feelings.

⁴ Frank J. Cannavale and William D. Falcon (ed.), Witness Cooperation, Institute for Law and Social Research (Lexington, MA: Lexington Books, 1976); President's Task Force on Victims of Crime, Final Report (December 1982); Gilbert Geis, "Victims of Crimes of Violence and the Criminal Justice System," in Duncan Chappel and John Monahan, (eds.), Violence and Criminal Justice (Lexington, MA: Lexington Books, 1975); Donald Hall, "The Role of the Victim in the Prosecution and Disposition of a Criminal Case," Vanderbilt Law Review 28, no. 5 (October 1975): 932-985; William McDonald (ed.), Criminal Justice and the Victim (Beverly Hills, CA: Sage Publications, 1976); Kristen Williams, The Role of the Victim in the Prosecution of Violent Crime (Washington, DC: Institute for Law and Social Research, 1977).

⁵ Brian Forst and Charles Wellford, "Punishment and Sentencing: Developing Sentencing Guidelines Empirically From Principles of Punishment," Rutgers Law Review 33, no. 3 (Spring 1981): 799-837.

In the 1960's, the women's movement initiated a campaign to change rape statutes and attitudes about rape victims. Some laws have changed and some jurisdictions have special training programs for attorneys and police officers who handle rape cases, but there are still abundant stories about sexist statutes, callous treatment, and unfair sentencing practices.⁶ The victims' movement is expanding from concern about rape victims to a concern about the victims of all crimes. It has stimulated a heightened interest in the victim's role in prosecution. And it has effectively publicized the plight of victims in the media and has increased public awareness of what can be done to alleviate the harm.

This does not mean that attention to the defendant and his rights should be curtailed or replaced with victims' rights. It does mean that practitioners are becoming increasingly sensitive to the needs of victims. A detective in New Orleans told interviewers that when the judge asked him what he had said to a rape victim, he pulled his Miranda card out of his pocket and said: "I was given this card to tell every person I arrest what his rights are. I have never received a card in my years of police work telling me what to tell a victim."

At the federal level, the Reagan Administration has taken a particular interest in the victim issue. In 1982, the President created the Task Force on Victims of Crime,⁷ endorsed the first National Victims Rights Week, and signed into law the Victims and Witness Protection Act (P.L. 97-291), which among other things, created guidelines for victim and witness assistance in federal matters.⁸ These guidelines direct officials "to ensure that the federal government does all that is possible within limits of available resources to assist victims and witnesses of crime

⁶ See, for example, Susan Brownmiller, Against Our Will: Men Women and Rape (New York: Simon and Schuster, 1975); Jeanne C. Marsh, Alison Geist, Nathan Caplan, Rape and the Limits of Law Reform (Boston: Auburn House, 1982); and Diana E. H. Russell, The Politics of Rape: The Victim's Perspective (New York: Stein and Day, 1975).

⁷ President's Task Force on Victims of Crime, Final Report, (Washington, DC: December 1982).

⁸ The U.S. Department of Justice, the National Institute of Justice conducted a "Symposium on Victimization and Victimology" in March 1981, published Victims of Crime: A Review of Research Issues and Methods (October 1981). The Bureau of Justice Statistics also published Victims of Crime, NCJ-79615 (November 1981), and surveyed state legislation and special victim-witness programs in its bulletin, Victim and Witness Assistance NCJ-87934 (May 1983).

without infringing on the constitutional rights of defendants."⁹ Under the guidelines, victims of serious federal crimes should be referred for medical and social service assistance, advised of all court events and outcomes, be given the opportunity to address the court at the time of sentencing, and be apprised that the probation officer is required to prepare a presentence report that contains a victim impact statement, which should fully reflect the effects of the crime upon victims as well as the appropriateness and amount of restitution.

At the local level, several states have passed victim-related legislation;¹⁰ for example, several jurisdictions now require victim impact statements as part of the presentence report, California voters passed a very broad Victims' Rights Bill, and Arkansas passed a law requiring victims to be notified of parole hearings.

One important area of the victim's issue that has been examined in only a limited way is how the degree of harm inflicted on the victim affects criminal justice decisions. We know that the victim's desires, behavior, and relationship to the offender are often taken into account by the police, prosecutor, and judge.¹¹ But very little is known about how practitioners obtain information about harm to the victim and how such information affects their official decisions. Does the judge know, for example, that the "simple purse-snatching" resulted in injuries that have required continual medical treatment? And if he knows, does he take the information into account in sentencing?

The primary purpose of this study, "The Criminal Justice Response to Victim Harm," initiated and sponsored by the National

⁹ Office of the Attorney General, "Guidelines for Victim and Witness Assistance," (July 1983).

¹⁰ For a complete review see Victim/Witness Legislation: Considerations for Policymakers, American Bar Association, Section of Criminal Justice, 1981.

¹¹ Donald J. Black, "The Social Organization of Arrest," Stanford Law Review 23, (June 1971): 1087; Richard Block, "Victim-Offender Dynamics in Violent Crime," The Journal of Criminal Law and Criminology 72, no. 2 (Summer 1981): 743; Robert O. Dawson, Sentencing: The Decision as to Type, Length, and Conditions of Sentence (Boston: Little, Brown and Co., 1967); Michael J. Hindelang and Michael Gottfredson, "The Victim's Decision not to Invoke the Criminal Justice Process," in William F. McDonald (ed.), Criminal Justice and the Victim (Beverly Hills, CA: Sage Publications, 1976); Kristen Williams, The Role of the Victim in the Prosecution of Violent Crime, (Washington, DC: Institute for Law and Social Research, 1977).

Institute of Justice, was to gain a clearer understanding of how police officers, prosecutors, and judges learn about victim harm, how victim harm affects their decision making, and how victims respond to their experiences with the criminal justice system. While research has provided some evidence that the severity of harm to the victim has some impact on decision makers, and that this impact, in turn, may influence the victims' regard for the criminal justice system,¹² further study is needed to explore these issues in greater detail.

"Victim harm" encompasses the total effect of victimization, including psychological trauma, physical injury, and financial loss. For some victims the loss, burdens, and adjustments may be merely inconvenient; for others, the crime can be completely disabling; and for victims of homicide, the loss of life and costs to survivors defy measurement. Certain levels of harm are measurable, e.g., number of days in the hospital, full or partial paralysis; but the lasting trauma, the destructive and damaging psychic effects, are much more difficult to assess. How does one measure the damage to an elderly person caused by the fear he or she feels about entering a dark house because of a burglary? How can a woman be compensated for her inability to form an intimate relationship with a man because she has been raped? How can we measure the loneliness and grief a parent feels whose child has been murdered? Victim harm is not just the broken arms, black eyes, lost wallets, or medical bills; it is also fear and loneliness, shame and depression, frustration and hatred.

In civil cases there is an attempt to measure pain and suffering in order to award damages. But in criminal matters the primary concern is to determine guilt or innocence. Criminal statutes make gross distinctions in degree of harm sustained and intent of the offender; some jurisdictions now have enhancement statutes that allow the judge to give a longer sentence if the victim is elderly. Except for these very broad standards there are no measurable criteria or standards relating to victim harm and how it fits into decisions in criminal cases.

Through personal interviews and a mail survey, this project has attempted to fill this information void. Specifically, the project has addressed the questions: Do criminal justice practitioners take victim harm into consideration when they make decisions to arrest a suspect, to accept the case for

¹² Some evidence already supports this conjecture. For example, see Harry Kalven, Jr., and Hans Zeisel, The American Jury (Boston: Little, Brown and Co., 1966); John Hogarth, Sentencing as a Human Process (Toronto: University of Toronto Press, 1971); Brian Forst and Kathleen Brosi, "A Theoretical and Empirical Analysis of the Prosecutor," Journal of Legal Studies, vol. 6 (1977), 177-91; William Rhodes and Catherine Conly, An Analysis of Federal Sentencing Decisions, (Washington, DC: INSLAW, 1981).

prosecution, and to impose sentence? If so, to what extent? How do police officers, prosecutors and judges learn about victim harm, and how do they deal with it? How do victims learn about court events and decisions? Who usually keeps them most informed? What determines victim satisfaction, and what can the criminal justice system do to increase it?

Chapter II briefly describes the study's methodology. It explains the site and interviewee selection processes and the interview techniques. Chapter III discusses how the various practitioners communicate with victims about victim harm and case activity. Chapter IV analyzes how practitioners use victim harm information, obtained by the means discussed in the preceding chapter, in their decision making. Then Chapter V discusses victims' reaction to their experiences with the criminal justice system. The final chapter addresses the policy implications of the study's findings for criminal justice practitioners and suggests topics for further study.

The appendices include copies of the interview instruments, descriptions of the participating jurisdictions, technical discussion of the analysis, and an explanation of the mail survey techniques.

II. STUDY DESIGN: METHODOLOGY AND POPULATION SURVEYED

The primary data source for the project was interviews with victims, police officers, prosecutors, and judges in eight jurisdictions. The interviews focused on five felony crimes: homicide, sexual assault, aggravated assault, robbery, and burglary.¹ Informal interviews were also held with staff members of local victim assistance programs. This section describes the site selection process, interview methodology, and respondent sampling procedures.

A. SITE SELECTION

One of the first tasks of the project was to select eight jurisdictions to participate in the project. Sites were chosen that would give the project regional representation, a mix in terms of population size, and variety in the types of victim services offered. Ten sites were invited, and two refused.

With regard to victim services, a balance was sought between sites that offered an extensive range of victim services and those with a more limited range of programs. After the sites were selected, however, we found that in two sites chosen for their well-respected, community-based victim assistance programs the majority of the program's clients were victims whose cases never resulted in prosecution.² Those two agencies were unable to provide a sufficiently large sample for victim interviews, and the effect on victims of having contact with a well-respected, community-based victim assistance program could not be described. Nevertheless, as the analysis progressed it became clear that victim responses from sites with prosecutor-based victim-witness programs that offered a full range of victim services were often noticeably different from victim responses in jurisdictions that had no active prosecutor-based victim-witness unit. Results are presented with this differentiation in mind.

The eight jurisdictions that constituted the final list of participants were: Essex County (Salem), Massachusetts; Baltimore County, Maryland; the Thirteenth Judicial Circuit (Greenville), South Carolina; Orleans Parish (New Orleans), Louisiana; Jackson County (Kansas City), Missouri; Hennepin County (Minneapolis), Minnesota; Santa Clara County (San Jose),

¹ In homicide cases, victim harm refers to the harm incurred by close family members who survived the death of the victim.

² These agencies serve many clients whose cases do not result in arrest (e.g., purse snatching, burglary) or clients who prefer not to prosecute (e.g., spouse abuse, sexual assault).

California; and Multnomah County (Portland), Oregon. Appendix D contains brief descriptions of each site.

Greenville, Minneapolis, and Portland are the sites with prosecutor-sponsored victim-witness programs that offer a wide range of victim services, including crisis counseling, referral to other community agencies, emotional support during prosecution, assistance with compensation and restitution programs and outreach programs. Kansas City, San Jose, and New Orleans either have no prosecutor-sponsored victim programs or have programs with a very limited scope, such as providing only notification of court dates and returning property used as evidence. The prosecutor's office in both Salem and Baltimore offer a full repertoire of victim services; these two sites were designated as the special sites where "real case" interviews were conducted, as described below.

B. INTERVIEW TECHNIQUES

Two complementary interview methodologies were used. In Salem and Baltimore, practitioners were asked to describe and explain their actions in actual, recently closed cases. In the other six sites, practitioners simulated their decision making processes using scenario cases and described their typical interactions with victims. The two methods were complementary in that the "real case" interviews helped to explain and validate the responses from the "scenario" interviews.

Each of these two approaches has its advantages and limitations. The scenario technique permitted a more systematic measurement of the effects of various aspects of victim harm on practitioners' decision making. On the other hand, answers given in scenario cases might not reflect actual decision patterns with complete accuracy, considering the somewhat abstract nature of scenarios and the possible tendency to remember the more remarkable cases while being asked about routine and common cases. Nevertheless, the efficiency of this approach yields much larger numbers of interviews, thus enabling a more quantifiable assessment of the effect of victim harm variables on the practitioners' decisions.

In contrast, the realism of actual cases is an indisputable advantage. However, the opportunity to interview the victim (or survivor) and the responsible police officer, prosecutor, and judge in a case presented itself in relatively few instances. Judges, in particular, were usually unable to recall details of their cases unless the case went to trial. Therefore, isolating the effect of victim harm on criminal justice decisions from the other factors that influence those decisions could not be accomplished using only real cases.

The number of respondents in the "real case" sites is very small (see Table II.1), and the responses are not included in the main tables of the report. Instead, they are presented in narrative form throughout the body of the report to provide clarification or illustration of the responses received in the scenario sites.

C. POPULATIONS INTERVIEWED

1. Practitioner Respondents

The chief judge in each site was contacted for permission to invite the judges of the criminal bench to participate. Each participating judge was interviewed in person.

The district attorney and chief of police were personally invited to participate. He or his assistant then either selected 20 attorneys or police officers to be interviewed or asked for volunteers.³ Four senior attorneys and officers in each site were interviewed in person; the remaining were interviewed by telephone.

In-person interviews with police, prosecutors, and judges lasted approximately one hour. Telephone interviews were generally 30-45 minutes. All interviews were combined into one format for analysis.

The randomness of the sample is not guaranteed since participation in the study was voluntary and some practitioners were selected by their supervisors. All participants were required to have experience with victims of sexual assault, robbery, burglary, aggravated assault, and with survivors of homicide victims. Two judges indicated that they refused to be interviewed. No police or prosecutors were known to have refused.

2. Victim Respondents

To obtain the victim sample in the six scenario sites, every tenth case from the closed, 1981 prosecutor files was selected. If the charges in the case included robbery, assault, sexual assault, homicide, or burglary, the case was added to the sample

³ In New Orleans and San Jose more than 20 police officers volunteered. Twenty-one were interviewed in New Orleans, and 22 were interviewed in San Jose.

until there were 150 cases for each site.⁴ Table II.1 shows the proportion of respondents by crime category and disposition type.

In all sites except Kansas City (Jackson County) and Minneapolis (Hennepin County), victims received an explanatory cover letter and questionnaire without prior introduction to the project.⁵ In Kansas City and Minneapolis, the prosecutor preferred to contact victims to allow them to choose to participate or not. This prior screening by the prosecutor seemed to affect the response rate in Minneapolis but not Kansas City. (See Table II.2.)

The sample was, for the most part, homogeneous in its demographic characteristics. (See Table II.3.) An exception is racial composition--Portland and San Jose had substantially fewer black respondents than the other sites. However, analysis showed that race did not influence the victim responses and therefore did not bias the findings. The victim sample is also somewhat skewed toward the upper end of the socio-economic status.⁶

⁴ We expected a response rate of 50 percent, or 75 responses from each site, for a total of 450 victim respondents. Not all sites were able to provide 150 cases, and although the overall response rate was 51 percent, the total number of victim respondents (389) was below our target.

A local chapter of Parents of Murdered Children (a self-help, victim advocacy organization) contacted us requesting to participate in the study. They were excited that the Federal government cared enough to survey victims/survivors about their opinions. The sampling procedure of the research design did not permit the inclusion of the 15 responses in the study; however, when analyzed separately the responses were found not to differ significantly from other survivors of murder victims. The comments, however, tended to be more articulate and introspective than those of other victims/survivors.

⁵ Samples of the questionnaire and introductory letter are in Appendix A.

⁶ This is an inherent shortcoming in mail surveys. Mail survey respondents are typically better educated than the general public. See Robert Fitzgerald and Linda Fuller, "I Hear You Knocking But You Can't Come In: The Effects of Reluctant Respondents and Refusers on Sample Survey Estimates," Sociological Methods and Research 11, no. 1 (August 1982): 3-32; Mildred Parten, Surveys, Polls, and Samples (New York: Cooper Square Publishers, Inc., 1966); Richard Sparks, Hazel Glenn, David Dodd, Surveying Victims (New York: John Wiley, 1977).

The majority of victim participants were interviewed by mail, but a pretest group of about eight victims was interviewed in person in each of the six scenario sites before developing the mail survey. A member of the local victim-assistance program selected and contacted potential in-person interviewees who were articulate and had a friendly relationship with the victim-assistance staff. Interviews were scheduled at the interviewees convenience and usually occurred in the victim's home. They lasted from 30 minutes to 3 hours, depending on the nature of the case and the victim's willingness and ability to elaborate on his or her responses. Responses from in-person interviews were combined with mail survey responses for analysis.

⁷ There is potential bias in combining responses from the pretest interview group with the responses from the mail survey. The victims in the pretest group were not randomly selected--all had had contact with a victim assistance program. However, it should be noted that responses in the two groups were not significantly different from one another.

Table II.1. PROPORTION OF VICTIM RESPONDENTS BY
CRIME CATEGORY AND DISPOSITION TYPE

	Crime Category (N=377)		Disposition Type (N=371)
	%		%
Robbery	27	Declination	12
Burglary	27	Dismissal	14
Assault	20	Probation	27
Sexual Assault	20	Incarceration	39
Homicide	$\frac{6}{100\%}$	Not Guilty	*
		Conviction, but Sentence unknown	$\frac{8}{100\%}$

* Less than 1 percent.

Table II.2. RESPONDENT SAMPLE

Scenario Case Sites*								
Site	Victims		Police		Prosecutors		Judges	
	N	Response Rate	N	Response Rate	N	Response Rate	N	Response Rate
Greenville	47	48%	19	95%	11	100%	2	100%
Minneapolis	45	66%	15	75%	15	75%	11	110%
Portland	87	54%	19	95%	19	95%	9	90%
Kansas City	90	44%	16	80%	17	85%	9	90%
San Jose	71	54%	22	110%	19	95%	10	100%
New Orleans	49	44%	21	105%	20	100%	7	70%
TOTALS	389	51%	112	93%	101	92%	48	92%

Real Case Sites*		
	Salem (N=12)	Baltimore (N=9)
Interviews with Victim and:		
All three Practitioners in the case (Police, Prosecutor, and Judge):	1	1
Two Practitioners in the case:	7	2
One Practitioner in the case:	4	6

* Scenario case sites: sites in which practitioners were asked about their typical actions and made decisions in simulated (scenario) cases.

Real Case sites: sites in which practitioners were asked about actions taken in actual ("real") cases.

Table II.3. BACKGROUND CHARACTERISTICS OF VICTIM RESPONDENTS

	Green- ville (N=43) %	Minnea- polis (N=45) %	Port- land (N=83) %	Kansas City (N=83) %	San Jose (N=67) %	New Orleans (N=45) %	Total (N=389) %
<u>Sex</u>							
Male	47	47	41	46	46	53	46
Female	54	53	59	54	54	47	54
<u>Race</u>							
Black	30	18	8	43	2	50	24
White	70	79	87	57	81	46	71
Other	-	4	5	-	18	5	5
<u>Household Income</u>							
< \$5K	18	16	22	20	9	19	18
5-10K	13	14	13	18	15	19	16
10-20K	29	30	16	27	22	37	25
20-30K	16	19	23	17	28	9	20
30K +	24	21	26	18	26	16	22
<u>Employment</u>							
Working	59	60	57	60	67	62	61
Not working	22	13	19	17	6	16	15
Homemaker	5	13	6	4	10	2	7
Retired/Disabled	12	7	7	13	6	16	10
Student	2	7	11	6	10	4	7
<u>Education</u>							
< High School	28	18	18	30	21	24	23
High School							
Graduate	28	33	28	36	27	22	29
High School +	45	49	54	35	52	53	47
<u>Age</u>							
Mean	37	36	33	38	34	36	36
Range	10-68	11-78	9-79	11-78	7-74	13-75	7-79

N's vary slightly due to missing information.

III. HOW CRIMINAL JUSTICE OFFICIALS LEARN ABOUT VICTIM HARM: COMMUNICATION BETWEEN VICTIMS AND PRACTITIONERS

For the practitioner to make decisions that reflect the nature and degree of victim harm, he or she must first obtain information about victim harm. This chapter first assesses how the practitioner gathers information about victim harm and then describes aspects of the interaction between victims and practitioners.

A. SOURCES OF INFORMATION

One San Jose police officer seemed perplexed when asked how he learns about the harm the victim experienced. His response: "Why, I ask the victim, of course!" The victim knows best how the crime affected his or her life. But not all criminal justice decision makers have the opportunity to communicate directly with the victim regarding the effects of the crime. (Nor do all believe it is necessary to talk with the victim to make the right decisions about the case.) Each practitioner uses different sources of information to learn about victim harm, and the availability and usefulness of each source vary widely.

Practitioners were asked what sources of victim harm information are available to them, how frequently the information is available, and what two or three sources give them the most useful information about victim harm. Useful information was defined as reliable and complete; it gives the practitioner information he or she can depend on when making a decision.

Table III.1 shows the three sources of information about victim harm practitioners reported as being most frequently available, and the percentage of respondents who cited the source as useful.

Table III.1 reflects the nature of each practitioner's role in the adjudication process. Police sources are directly related to the victim and the crime scene. Eighty-nine percent of the police said a conversation with the victim is the most available source of information, and 80 percent said this is a source they rely on in making decisions about the case.

Prosecutors' sources are used to determine whether the case has prosecutorial merit and what the appropriate charges should be. Most prosecutors (92 percent) said the police report is the most available source, but only 45 percent cited it as a useful source of information about victim harm. The source that is useful to the most prosecutors (90 percent) is a conversation with the victim; most prosecutors (76 percent) do have an opportunity to talk with the victim.

Table III.1. AVAILABILITY AND USEFULNESS OF
VICTIM HARM INFORMATION SOURCES

<u>Source</u>	<u>Average Percentage of Cases in Which Source is Available</u>	<u>Percentage of Respondents Citing Sources as Useful</u>
<u>Police</u>		
Conversation with victim	89%	80%
Observation of scene	81%	31%
Conversation with non- victim witnesses	64%	35%
<u>Prosecutors</u>		
Police report	92%	45%
Medical report (in assault cases)	81%	43%
Conversation with victim	76%	90%
<u>Judge</u>		
Attorney's arguments	90%	56%
Presentence Investigation Report	82%	91%
Trial Testimony	16%	38%

The presentence investigation (PSI) report is useful to most judges (91 percent) and is available in 82 percent of the cases up for sentencing. Ninety percent of the judges said that listening to attorneys present the case is one of the three most available sources, but because attorney arguments are often one-sided, this source was cited as useful by only 56 percent of the judges. The victim's trial testimony is generally the only direct contact judges have with victims; however, few cases go to trial and judges estimated that testimony is available in only 16 percent of their cases.

In the three sites that have a full range of victim services, the responses reveal that the victim-witness program plays an important part in communicating to prosecutors the degree of harm to the victim. Sixty-three percent of the prosecutors in Greenville, 32 percent in Portland, and 33 percent in Minneapolis said that the victim-witness program in their office is an important source of information.

When asked who learns the most detail about the harm the victim suffered, both judges and prosecutors responded that the prosecutor learns the most detail; police officers thought the police learn the most detail. (See Table III.2.) A substantial proportion (29 percent) of the judges also believed probation officers learn the most detail. Yet only four percent of the prosecutors and no police officers mentioned the probation officer.¹ The judges' responses are not too surprising; probation officers write the presentence investigation report, which is the most important source of victim harm information for judges. This response might nonetheless surprise most victims, since only 25 percent of the victims whose cases ended in conviction reported having contact with probation officers (see Table III.5). In fact, the probation officer gathers much of the information about the victim from second-hand sources, such as the police report, medical reports, and discussion with the prosecutor, not directly from the victim. The presentence report the judge sees is thus largely third-hand information about the

¹ It is possible that some of this variation in perceptions is due to the fact that the police see many more victims than prosecutors (not all crimes are prosecuted), and prosecutors see more than judges. It is possible that for the narrow subset of cases that end in conviction, the probation officer may learn more than the prosecutor, and the prosecutor more than the police officer. Findings reported later, however (this text paragraph and Table III.5), make this unlikely. It should be recognized, nonetheless, that the perceptions of the various practitioners reported here are likely to refer to the different sets of cases that survive arrest and prosecution, and that these differences may limit the comparability of the responses.

Table III.2. WHO LEARNS THE MOST
 DETAIL ABOUT THE HARM THE VICTIM EXPERIENCED?

	<u>Population Interviewed</u>		
	<u>Police (N=109)</u>	<u>Prosecutor (N=100)</u>	<u>Judge (N=41)</u>
Police	73%	27%	12%
Prosecutor	6	42	41
Victim/witness program	13	24	5
Judge	0	0	12
Probation officer	0	4	29
Other	<u>8</u>	<u>3</u>	<u>0</u>
Total	100%	100%	100%

victim. So, for the vast majority of cases, the most important avenue the victim has to the judge is both narrow and indirect.²

It should be noted again that in the sites where active victim-witness units are part of the prosecutor's staff, a majority of prosecutors said the victim-witness program learns the most detail. In Greenville and Portland, the victim-witness staff also works very closely with the police and sheriff's departments. As a result, 42 percent of the police in Greenville and 22 percent in Portland said the victim-witness staff learns the most detail.³

An important potential new source of information about the effects of crime on the victim can be found in "victim impact" statements, now used in several jurisdictions across the country. The victim impact statement is a formal document appended to the presentence investigation (PSI) report to assist in determining the sentence. The statement generally describes the extent of injury to the victim, makes an assessment of the effect the crime has had on the victim's life, and sometimes contains the victim's opinion about sentencing.

San Jose was the only jurisdiction in this study that uses victim impact statements. Legislation in California requires that probation officers contact the victim for input into the presentence investigation report. However, judges in San Jose estimated that only 38 percent of all PSI reports contain a victim statement.

When practitioners were asked if they thought a victim impact statement would be useful to them, large majorities of police and

² See also Martha A. Myers, "Offended Parties and Official Reactions: Victims and the Sentencing of Criminal Defendants," Sociological Quarterly 20 (Autumn 1979): 529-540; and John Hagan, "Victims Before the Law: A Study of Victim Involvement in the Criminal Justice Process," Journal of Criminal Law and Criminology 73, no. 1 (1982): 317-30.

³ In sites without a victim-witness unit, only one prosecutor and no police officers mentioned any victim assistance programs as a source that learns the most detail. In Portland, the Rape Victim Advocates (RVA) is a program within the victim assistance program; among their other functions, RVAs meet rape victims at the hospital. Officers in Portland frequently said that the RVA learns the most detail in rape cases, but in most other types of cases the police officer learns the most detail. These responses were coded as police officer rather than victim assistance because although the RVA learns the most in rape cases, this one crime type did not warrant assigning a code of victim assistance to all the crime types.

prosecutors saw a benefit to having the statement.⁴ (See Table III.3.) They said it would give the judge a better picture of the victim's feelings and reaction to the crime. However, only slightly more than half the judges said a victim impact statement would be useful. Most respondents who were unenthusiastic about victim impact statements were concerned that the increased time and paperwork might not be worth the benefit received because they believe the PSI report already contains information about the victim.

Judges also expressed concern about the purpose of sentencing. As one judge said: "I assume the worst about the harm the victim suffered. The real question is what will keep the offender from committing more crimes." Their responses suggest that they want to be neutral, judicious arbitrators who are above the emotionalism of the case and who have the interests of both parties in mind.

B. VICTIM-PRACTITIONER INTERACTION

One can learn more about how victims and practitioners communicate about victim harm by examining the frequency and nature of their interaction. All respondents were asked to estimate the average number of contacts they have with each other and to describe the nature of their communication. Three topics of conversation were defined for respondents: 1) discussing specific evidentiary facts about the crime; 2) discussing non-evidentiary harm the victim experienced, i.e., problems and concerns resulting from the offense; and 3) general information about court procedures and where and when to appear next. Respondents were asked to add any other subjects discussed.

Generally, practitioners and victims gave similar estimates about the frequency of their contacts and the amount of time they spent talking about each of the three major topics. Table III.4 compares responses by crime type for prosecutors, police, and victims who reported contact. Table III.5 shows the number of contacts victims have with all practitioners by crime type. Table III.6 presents the average time spent discussing each topic.

It should be noted that the responses in Tables III.4 and III.5 are the average number of contacts only for respondents who reported contact. The most frequently occurring response was substantially lower because most victims reported little or no contact with a practitioner. Many victims also made it clear that the time they spent with court officials was brief and often

⁴ Judges in San Jose were not asked this question. Instead they were asked to estimate the proportion of PSIs that contain a victim statement.

Table III.3. PERCENTAGE OF PRACTITIONERS WHO BELIEVE
A VICTIM IMPACT STATEMENT WOULD BE USEFUL

<u>Police</u> (N=98)	<u>Prosecutor</u> (N=80)	<u>Judge</u> (N=32)
66%	71%	56%

Table III.4. VICTIM-PRACTITIONER CONTACTS
(Average Number of Contacts Per Crime Type)

<u>Crime Type</u>	<u>Prosecutor-Victim</u>		<u>Police-Victim</u>	
	Prosecutor Estimates of Contacts with Victims (N=*)	Victim Estimates of Contacts with Prosecutor (N=*)	Police Estimates of Contacts with Victims (N=*)	Victim Estimates of Contacts with Police (N=*)
Homicide	10.9	11.1	8.1	9.5
Sexual Assault	8.7	9.7	9.4	6.3
Robbery	4.7	3.8	4.7	4.4
Assault	4.5	6.9	6.4	4.4
Burglary	2.3	3.0	5.2	3.7

* Ns for each category:

	<u>Prosecutor</u>	<u>Victim</u>	<u>Police</u>	<u>Victim</u>
Homicide	71	19	83	20
Sexual Assault	73	58	83	66
Robbery	70	66	86	91
Assault	71	61	84	65
Burglary	71	64	86	84

Table III.5. VICTIM ESTIMATES OF AVERAGE NUMBER OF CONTACTS WITH PRACTITIONERS, BY CRIME TYPE

<u>Crime Type</u>	<u>Police (N=**)</u>	<u>Prosecutor (N=**)</u>	<u>Judge (N=**)</u>	<u>Victim Assistance Staff (N=**)</u>	<u>Probation Officer (N=**)</u>	<u>Parole Officer (N=**)</u>
Homicide	9.5	11.1	*	20.0	*	*
Sexual Assault	6.3	9.7	1.9	12.8	2.1	*
Robbery	4.4	3.8	1.4	5.4	*	*
Assault	4.4	6.9	1.1	12.6	4.2	*
Burglary	3.7	3.0	1.2	3.1	2.8	*

* Less than 10 observations.

** Ns for each category:

<u>Crime Type</u>	<u>Police</u>	<u>Prosecutor</u>	<u>Judge</u>	<u>Victim Assistance Staff</u>	<u>Probation Officer</u>	<u>Parole Officer</u>
Homicide	20	19	5	11	5	1
Sexual assault	66	58	21	48	15	2
Robbery	91	66	24	13	9	2
Assault	65	61	25	28	18	2
Burglary	84	64	21	14	21	5

Table III.6. NATURE OF VICTIM-PRACTITIONER INTERACTION

<u>Topic of Conversation</u>	<u>Average of Time Spent on Each Topic</u>		
	<u>Prosecutor</u> (N=86)	<u>Police</u> (N=102)	
Practitioners' Response:			
Evidence, facts of the case	55%	61%	
Victim's problems and concerns	17	15	
Court matters	26	22	
Other	2	3	
	<u>100%</u>	<u>101%</u>	
Victims' Responses:	Prosecutor (N=215)	Police (N=276)	Victim- Assistance (N=101)
Evidence, facts of the case	51%	68%	34%
Victim's problems and concerns	13	14	34
Court matters	35	17	30
Other	1	1	3
	<u>100%</u>	<u>100%</u>	<u>100%</u>

frustrating. One victim said: "They were always so busy, and I felt like I was getting the run around." Many victims also complained that they had to initiate the contact with court officials: "I had to continually get in touch with the DA. I was never told anything unless I asked."

As the crime seriousness, defined by statute, increases (and thus to some degree the severity of victim harm), the number of contacts between victims and practitioners also increases. As crime seriousness, perceived by the victim, increases, the likelihood that the victim will have contact with the prosecutor and the victim assistance staff also increases. Victims were more likely to report contact with the prosecutor and the victim assistance staff if they also reported intense emotional and physical harm and great personal difficulty adjusting to the victimization.⁵ In the "real case" interviews, prosecutors, when asked about their contacts with the victim, frequently insisted that the interviewer also talk with the victim advocate to obtain a complete picture of the interaction with victims. The real case interviews confirm that victims in more serious cases have more contact with the victim witness staff.

As might be expected, when victims talk with victim assistance staff, they spend more than twice as much time as with practitioners talking about their problems and concerns resulting from the crime and almost half as much time talking about the facts of the case.⁶ Victim-assistance agencies are designed specifically to deal more with the victim's problems than are police departments or prosecutors' offices; one might be surprised to learn that more than one-third of the time is given to evidentiary matters.

More victims reported contact with police officers than with any other practitioner. While fewer victims reported having contact with prosecutors than with police, those who did have contact with the prosecutor reported a greater number of contacts than with police. Judges are the furthest removed from the victim. They usually do not have contact with victims, and the number of contacts they do have are fewer than any other criminal justice official.

⁵ See Appendix A, "Victim Questionnaire," Questions 17 and 18 for the list of emotions and problems to which the victim responded and Appendix C for the correlation matrix for the significant numbers for each variable.

⁶ The survey of victims did not ask respondents to distinguish between prosecutor-sponsored victim-witness programs and all other victim assistance agencies. Respondents were simply asked if they had contact with an agency or office that assists victims of crime. Responses about victim assistance programs, therefore, do not distinguish between the various types of programs.

Although 91 percent of the judges said the PSI report prepared by the probation officer was one of their most useful sources of victim harm information, the survey reveals that victims have even less contact with probation officers than with judges. Nevertheless, judges are the least likely to see a need for additional victim information in the PSI report. Police and prosecutors, who have much more contact with victims than judges, tend to be strongly in favor of including a victim impact statement in the presentence report.

While the sample was small (N=21), the results in Salem and Baltimore (where practitioners were interviewed about real cases) agreed with those described here--victim and practitioner estimates concerning the time spent discussing each topic was generally the same.

The mean and mode for burglary and robbery were approximately the same as reported in the six sites where practitioners were asked to estimate the typical number of contacts they have with victims. However, the Salem and Baltimore sample sizes for assault, sexual assault, and homicide cases were too small to validate the number of contacts in cases involving these crime types.

IV: EFFECT OF VICTIM HARM ON DECISIONS: HOW INFORMATION ABOUT VICTIM HARM IS USED

The preceding chapter examined how practitioners and victims communicate about the harm incurred by victims of crime. (Recall that "victim harm" refers to the physical injury, financial losses, emotional trauma, and adverse social effects of the crime on the victim.) Attention turns now to examine how practitioners use this information in their decisions.

A. EFFECTS OF CASE CHARACTERISTICS

1. The Decision to Arrest a Suspect

The discretionary nature of police work allows the officer to consider a great many factors when deciding whether to make an arrest or open an investigation. About half (52 percent) of the police officers interviewed said that they consider victim harm when deciding whether to arrest a suspect. Police officers who do not consider victim harm in their decisions to arrest explained that if there is sufficient evidence to show that a crime was committed, and if they have a suspect, they will make an arrest regardless of the extent of victim harm.

Even though victim harm may not always affect the decision to arrest, it does affect the officer's decision to pursue and investigate the case in the first place. Officers told us that if the victim has been seriously injured, or if the victim was particularly vulnerable (e.g., an elderly person or a child), they tend to work harder to find the evidence needed to strengthen the case so that the prosecutor will accept it. This response is consistent with other research. Bynum, et al.,¹ found that in property crimes, there was a direct correlation between the amount of money lost and the amount of investigative effort involved--if a great deal of money was involved, police tended to spend more resources investigating the crime. The interview data tend to confirm this. The more serious the crime, the more effort practitioners reported devoting to the case.

2. The Decision to Accept a Case For Prosecution

After an arrest is made the case is reviewed for prosecutory merit. This review stage is commonly called the "screening"

¹ Tim Bynum, et al. "Victim and Offense Characteristics: Impact on Police Investigative Decision-Making," Criminology 20, nos. 3 and 4, (November 1982): 301-319.

stage,² and more cases are dropped at this early point than at any other.² Prior research has produced evidence to show that several victim-related factors play a role in the decision to accept a case for prosecution, e.g. the victim's character, credibility, culpability and willingness to prosecute.³ However, little is known about the extent to which victim harm plays a role in the screening decision.

To measure the effect of victim harm systematically, prosecutors and police officers were asked to estimate the rate at which each of 10 different case types is typically accepted for prosecution. Each practitioner reviewed 10 case scenarios. They were asked to think of a "typical" distribution of cases like the scenario case: "Given a typical mix of 100 cases similar to the one described, as they normally arise in your experience, please estimate how many would be accepted for prosecution by using a scale of 0 to 100, with 0 being the condition in which no such case would be accepted for prosecution and 100 being the condition in which all such cases would be accepted." This was interpreted as the estimate of the likelihood (from 0 to 100 percent) that the prosecutor would accept the case for prosecution.

As described in Chapter II, the use of case scenarios permitted systematic measurement of the effects of various case factors on the screening and sentencing decisions. Each case had from seven to nine case factors, which were divided into four main categories:

Victim harm variables: 1) physical injury: 10 days hospitalization vs. no physical injury, 2) psychological injury: victim needs psychological counseling as a result of the crime vs. victim does not need counseling, and 3) cash value of property: \$1,000 vs. \$20;

² Barbara Boland, et al., Prosecution of Felony Arrests (Washington, DC: INSLAW, 1983); Brian Forst, "Prosecution and Sentencing," in James Q. Wilson, (ed.), Crime and Public Policy, (San Francisco: Institute for Contemporary Studies, 1983).

³ Donald Hall, "Role of Victim in the Prosecution and Disposition of a Criminal Case," Vanderbilt Law Review 28, no. 5 (October 1975): 932-85; Martha A. Myers and John Hagan, "Private and Public Troubles: Prosecutors and the Allocation of Court Resources," Social Problems 26, (1979); Elizabeth Anne Stanko, "The Impact of Victim Assessment on Prosecutors' Screening Decisions: The Case of the New York County District Attorneys Office," Law and Society Review 16, no. 2 (1981-82): 225-239; and Kristen M. Williams, The Effects of Victim Characteristics on the Disposition of Violent Crimes (Washington, DC: Institute for Law and Social Research, 1976).

Victim characteristic variables: 1) victim sex, 2) victim age: 65 years old vs. 25 years old and, for sexual assault only, 65 years old vs. 25 years old vs. 10 years old, and 3) relationship between victim and offender: strangers vs. immediate family;

Defendant-related variable: prior record: one prior felony conviction vs. no criminal record;

Evidence variables: 1) property recovered vs. no property recovered and 2) one witness other than the victim vs. no witnesses.

For the most part the case factors were randomly rotated. However, some combinations which are fairly uncommon were not included such as physical injury in burglary cases, and male victims in sexual assault cases. In sexual assault cases the victim/defendant relationship was always immediate family when the victim was a child; when the victim was an adult (either 25 years old or 65 years old), the victim/defendant relationship was always stranger. Similarly, sexual assault, assault, and homicide cases included a description of witness availability and psychological injury, but did not contain property value or evidence availability variables. Robbery and burglary cases included a description of the property value and evidence availability but did not contain witness availability and psychological injury variables. Sample cases are presented in Table IV.1.

Table IV.2 and IV.3 summarize which case factors have a significant impact on the screening decision, based on the police and prosecutor responses, respectively. The numbers are the approximate percentage by which each variable increased or decreased the likelihood the case would be accepted for prosecution. For example, the prosecutor responses suggest that if property is recovered in a robbery case, the likelihood the case will be accepted increases at least 14 percent; the police responses suggest a slightly stronger effect (25 percent).

More variables influenced police than prosecutors, but the results are nonetheless similar. For both groups the evidence variable (i.e., testimonial evidence for crimes of assault, tangible evidence for property crimes) influenced decisions in most crime categories.⁴ Victim-related variables affected case

⁴ This finding reinforces two previous NIJ-sponsored studies. Brian Forst, Judith Lucianovic, and Sarah Cox, What Happens After Arrest (Washington, DC: Institute for Law and Social Research, 1977); Brian Forst, et al., Arrest Convictability as a Measure of Police Performance (U.S. Department of Justice, National Institute of Justice, 1982).

Table IV.1. SAMPLE CASE SCENARIOS

CASE NUMBER 1

Offense: Armed robbery on a city street
Vic/Def Relationship: Strangers
Prior Criminal Record: Defendant has one prior felony conviction
Physical Injury: Injury requiring 10 days hospitalization
Sex of Victim: Female
Age of Victim: 25 years old
Psychological Injury: Victim needs psychological counseling as a result of the crime
Cash Value/Property Stolen: \$20
Evidence: No property was recovered

CASE NUMBER 2

Offense: Sexual assault
Vic/Def Relationship: Immediate family
Prior Criminal Record: Defendant has one prior felony conviction
Physical Injury: Injury requiring 10 days hospitalization
Sex of Victim: Female
Age of Victim: 10 years old
Psychological Injury: Victim needs psychological counseling as a result of the crime
Witness Availability: One witness other than the victim is available

CASE NUMBER 3

Offense: Homicide
Vic/Def Relationship: Strangers
Prior Criminal Record: Defendant has no prior record
Sex of Victim: Male
Age of Victim: 25 years old
Psychological Injury: Survivors do not need psychological counseling as a result of the crime
Witness Availability: No witnesses are available

Table IV.2. THE SCREENING DECISION: POLICE RESPONSES

Approximate percentage each variable increased or decreased the estimated likelihood the case will be accepted for prosecution

	Armed Robbery (N=107)	Burglary (N=107)	Sexual Assault (N=214)	Assault W/Knife (N=215)	Homicide (N=211)
<u>Victim Harm Variables</u>					
10 days hospitali- zation	-	NI	11**	44***	NI
Psychological counseling needed	-	-	-	-	-
\$1000 property loss	-	-	NI	NI	NI
<u>Victim Characteristics</u>					
Strangers	NI	NI	NI	18**	-
Female victim	-36**	-	NI	-	-
65 yr. old victim	26**	-	NI	-	-
For Sexual Assault Only:					
65 yr. old victim	NI	NI	17***	NI	NI
25 yr. old victim	NI	NI	-	NI	NI
<u>Defendant Related Variables</u>					
Defendant has a prior felony conviction	-	-	-	-	-
<u>Evidence Variables</u>					
Property recovered	25**	18*	NI	NI	NI
One witness	NI	NI	25***	17**	36***

Legend

NI = variable not included for this crime

Level of statistical significance:

*** = .01

** = .05

* = .10

- = not statistically significant

Table IV.3. THE SCREENING DECISION: PROSECUTOR
RESPONSES

Approximate percentage each variable increased
or decreased the estimated likelihood the case
will be accepted for prosecution

	<u>Robbery</u> (N=99)	<u>Burglary</u> (N=98)	<u>Sexual</u> <u>Assault</u> (N=198)	<u>Assault</u> <u>w/knife</u> (N=198)	<u>Homicide</u> (N=197)
<u>Victim Harm Variables</u>					
10 days hospitali- zation	-	NI	18***	-	NI
Psychological counseling needed	-	NI	-	-	-
\$1000 property loss	-	-	NI	NI	NI
<u>Victim Characteristics</u>					
Strangers	NI	NI	NI	18***	-
Female victim	-	-	NI	-	-
65 yr. old victim	-	-	NI	-	-
For Sexual Assault Only:					
65 yr. old victim	-	-	20***	-	-
25 yr. old victim	-	-	-	-	-
<u>Defendant-Related</u> <u>Variables</u>					
Defendant has a prior felony conviction	-	-	-	-	-
<u>Evidence Variables</u>					
Property recovered	14*	-	NI	NI	NI
One witness	NI	NI	20***	-	44***

Legend

NI = variable not included for this crime

Level of statistical significance:

*** = .01

** = .05

* = .10

- = not statistically significant

acceptance only for crimes of assault, especially sexual assault. Prior record was not significant in the screening decision.⁵

Of the three victim harm variables (physical injury, psychological injury, and value of property stolen) only physical injury appears to be important in the screening decision. Although physical injury is clearly a victim harm variable, practitioners may have viewed it largely as evidence. Ten days of hospitalization indicates serious harm to the victim, but it can also yield substantial corroborating evidence for the prosecutor. This is especially true in crimes of assault, for which solid evidence is often difficult to obtain. As one prosecutor explained: "Ten days in the hospital is an awfully long time. There's been a crime committed here, and we have some obligation to accept this case if the victim is willing to prosecute."

The victim characteristic variables (victim sex, age, relationship with defendant) appear to have little overall effect on case acceptance. There was some effect in sexual assault and ordinary assault cases: if the sexual assault victim was 65 years old the case was more likely to be accepted,⁶ and if the victim and offender were strangers in assault cases, the case was also more likely to be accepted. This may have to do with the credibility and reliability of the victim's testimony. Prior research has consistently shown that cases are more likely to proceed through the system when the victim and defendant are strangers rather than friends, neighbors, or acquaintances.⁷

⁵ This finding corroborates a body of research on the effects of prior record on the decision to prosecute. For example, Brian Forst and Kathleen Brosi "A Theoretical and Empirical Analysis of the Prosecutor," Journal of Legal Studies 6, no. 1 (January 1977): 177-91; Joan Jacoby, Prosecutorial Decisionmaking: A National Study (Washington, DC: Bureau of Social Science Research, 1981).

⁶ In the sexual assault scenarios, the offender and victim were always strangers in adult cases, and always immediate family for child victim cases.

⁷ See for example Wayne R. LaFave, Arrest: The Decision to Take the Suspect into Custody (Boston: Little, Brown and Co., 1965); Donald Hall, "The Role of the Victim in the Prosecution and Disposition of a Criminal Case," Vanderbilt Law Review 28, no. 5 (October 1975): 932-985; Kristen Williams, The Role of the Victim in the Prosecution of Violent Crime (Washington, DC: Institute for Law and Social Research, 1977).

3. The Sentencing Decision

If victim harm has only a modest impact on the screening decision, what kind of an impact does it have on the sentencing decision? To address this question, prosecutors and judges were asked to give an appropriate sentence in each of 10 scenario cases. Like the screening scenarios, each scenario included from seven to nine case factors; respondents were asked to think in terms of the typical mix of cases they see with characteristics like the sample cases and to estimate the average sentence they would impose (or recommend) if they were to impose (recommend) sentence in the typical mix of 100 cases like the sample case.

Case factors for sentencing cases, listed below, were similar to the screening cases:

Victim harm variables: 1) physical injury: 10 days hospitalization vs. no physical injury; 2) psychological injury: victim needs counseling as a result of the crime vs. victim does not need counseling; and 3) cash value of property stolen: \$1,000 vs. \$20;

Victim characteristic variables: 1) victim sex, 2) victim age, 65 year old victim vs. 25 year old victim and for sexual assault only, three age categories: 65 year old, 25 year old or 10 year old victim; 3) the victim/defendant relationship: strangers vs. immediate family;

Defendant-related variables: 1) the defendant's criminal history: one prior felony conviction vs. no record; and 2) conviction type: a guilty plea vs. trial.

Table IV.4 shows the variables that significantly affect the prosecutor's sentencing recommendation for each crime type and the approximate number of months by which each variable increases or decreases the length of the sentence for defendants who are incarcerated.⁸ Table IV.5 shows similar information for judges.

⁸ See G.S. Maddala, Limited-Dependent and Qualitative Variables in Econometrics (Cambridge: Cambridge University Press, 1983), p. 161, for a discussion of the interpretation of tobit parameters, which are reported in Table IV.4 and IV.5. These only approximate the estimated change in sentence lengths.

Tables IV.2-4 show the combined results of the two regression techniques that were used: two-limit tobit and ordered probit regressions. Both methodologies were used to identify variables that affect the sentencing recommendations. The justifications for the assumptions underlying the individual techniques do not appear strong enough to warrant conclusions based on only one technique. But when used in combination, the methodologies produce results that are robust, thus validating the conclusions.

(Footnote continued)

A comparison of Tables IV.4 and IV.5 reveals several interesting findings. At a glance it is clear that more variables influenced the sentencing decisions of prosecutors than of judges--15 for prosecutors but only 7 for judges. This may be primarily, if not exclusively, due to the fewer number of observations for judges. (Forty-eight judges were interviewed compared with 101 prosecutors.) It is therefore difficult to draw definitive conclusions about judges' behavior. However, when the judge and prosecutor responses are considered together a consist pattern emerges that makes clearer which variables are important in the sentencing decision. Except for the victim's age in homicide cases, all the variables that were significant for judges were also significant for prosecutors, and all in the same direction; four of the six common variables, moreover, are victim-related variables (physical injury in assault, relationship in homicide, and age in burglary and sexual assault cases).⁹

With regard to the victim-related variables, the age of sexual assault victims had an important influence. In sexual assault cases, when the victim is a child (10 years old), the offender tends to be incarcerated for substantially fewer years than if the victim is 25 or 65 years old, and if the victim is 65 years old, the defendant tends to receive a longer sentence than if the victim is 25 years old.

⁸(continued)

The dependent variable was operationalized as ordered categories: "no time," "1-12 months," etc. Ordered probit is a suitable statistical technique when the dependent variable is so ordered. Although ordered probit is useful in identifying the qualitative effect of variables that appear in the scenarios, the quantitative impact is more difficult to interpret. Two-limit tobit also tests for qualitative significance, but has the advantage of providing a quantitative measure of the impact of a single variable on the time imposed, holding other variables constant. Two-limit tobit is similar to ordinary least-squares regression, but can accommodate the fact that the dependent variable is "censored"; that is, it has an upper and lower limiting value. The disadvantage of the two-limit tobit is that the dependent variable had to be converted from the ordinal scale to a cardinal scale, which was accomplished by assigning the midpoint of the category to the converted dependent variable. The ordered probit model validated this assumption.

⁹ It is noteworthy that the responses of both prosecutors and judges suggest that defendants tend to receive shorter sentences in burglary cases when the victim is older. Note also that this finding is not significant at the .05 level for either prosecutors or judges.

Table IV.4. THE SENTENCING DECISION:
PROSECUTORS' RESPONSE

Approximate number of months each variable
increases or decreases the estimated
length of incarceration

	Robbery (N=95)	Burglary (N=193)	Sexual Assault (N=188)	Assault w/knife (N=96)	Homicide (N=181)
<u>Victim Harm</u>					
10 days hospitali- zation	-	NI	48***	29**	NI
Psychological counseling needed	-	NI	32*	-	-
\$1000 property loss	-	-	NI	NI	NI
<u>Victim Characteristics</u>					
Strangers	NI	-	NI	NI	93***
Female victim	-	-	NI	-	-
65 yr. old victim	-	-23*	NI	-	-
For Sexual Assault Only:					
65 yr. old victim	NI	NI	148***	NI	NI
25 yr. old victim	NI	NI	90***	NI	NI
<u>Defendant-Related Variables</u>					
Defendant has a prior felony conviction	78***	24*	-	-	38*
Defendant pled guilty	-57***	-19**	-62***	-37***	-55***

Legend

NI = variable not included for this crime

Level of statistical significance:

*** = .01

** = .05

* = .10

- = not statistically significant

Table IV.5. THE SENTENCING DECISION:
JUDGES' RESPONSE

Approximate number of months each variable
increases or decreases the estimated length
of incarceration

	Robbery (N=48)	Burglary (N=95)	Sexual Assault (N=93)	Assault w/knife (N=45)	Homicide (N=90)
<u>Victim Harm Variables</u>					
10 days hospitali- zation	-	NI	-	27**	NI
Psychological counseling needed	-	NI	-	-	-
\$1000.00 property loss	-	-	NI	NI	NI
<u>Victim Characteristics</u>					
Strangers	NI	-	NI	NI	52**
Female victim	-	-	NI	NI	-
65 yr. old victim	-	-33*	NI	-	58***
For Sexual Assault Only:					
65 yr. old victim	NI	NI	56**	NI	NI
25 yr. old victim	NI	NI	-	NI	NI
<u>Defendant-Related Variables</u>					
Defendant has a prior felony conviction	-	52***	-	-	-
Defendant pled guilty	-	-38***	-	-	-

Legend

NI = variable not included for this crime

Level of statistical significance:

*** = .01

** = .05

* = .10

- = not statistically significant

The fact that defendants in child sexual assault cases receive less severe sentences is likely to reflect the relationship between the offender and the victim in such cases. In the child sexual assault cases the defendant-victim relationship was always defined as immediate family. According to practitioners' comments, their current attitude about such cases is that when the offender is incarcerated, the resulting emotions experienced by the victim and the victim's mother (guilt, anxiety, and so on) is unhealthy and unproductive. It is more common, therefore, for the offender to receive probation rather than a term of incarceration and to be required to receive treatment as a condition of probation.

That the offender receives a longer sentence when the victim is 65 years old than when she is 25 years old may be because older victims are generally perceived to be more vulnerable and more traumatized by victimization;¹⁰ the crime in such cases is usually perceived to be particularly pernicious, and more severe punishment is warranted. In one of the real case interviews a prosecutor told the interviewer that victim harm played an important part in her handling of the case: "I was outraged that this little old lady was robbed at her neighborhood grocery store. It would have been different if it was me, but she was old and vulnerable." In another case an elderly male robbery victim was not upset by the robbery and would not have reported the crime if his daughter had not insisted that he do so. Although this particular elderly victim did not report being traumatized by the crime, both the police officer and the prosecutor reported that the victim's age was an important factor in their handling of the case. That the victim was old and vulnerable influenced their decisions.

The prosecutors' responses clearly indicate that when they recommend incarceration in sexual assault cases, victim harm and victim characteristics play a significant role in the recommendations. But the victim-related variables have only limited influence on their decision in assault, burglary, and homicide cases and have no significant influence in robbery cases.

¹⁰ Although women and the elderly are perceived by many to be more traumatized by victimization, victims' self-assessments of the strength of their emotional reaction to the victimization show that older victims did not have a greater emotional reaction than younger victims, and for some emotions (guilt, revenge, shame), they reported weaker feelings than younger victims.

In a recent study in New York City neither age nor sex was significantly related to the magnitude of emotional problems stemming from criminal victimization. See Kenneth Friedman, et al., Victims and Helpers: Reactions to Crime (Washington, DC: National Institute of Justice, 1982).

Defendant-related variables, however, are important factors in the sentencing decision for all crime types. In the real case interviews practitioners often mentioned that the defendant factor was as important or more important than the victim factor. In one case, for example, the prosecutor said: "Anytime anybody's faced with a gun it's important. But in this case, we were tempted to consider the defendant rather than the victim because he was the neighborhood crazy and was known to go on these binges. This time something had to be done." The defendant received a term of incarceration, several years of probation, and was required to receive alcoholic treatment.

In the real case interviews in Salem and Baltimore, practitioners explained how victim harm affected the negotiations and sentences. In one robbery case, the victims were very frightened of the defendants who had been released on bail over the prosecutor's objections. The prosecutor said he agreed to a more lenient term of incarceration to get the defendants off the streets more quickly. He could have taken the case to trial or pushed harder during the plea negotiations, but knowing the victims' fears, he agreed to something more expeditious than he might have otherwise. In another instance, a commercial burglary was dismissed in exchange for a guilty plea to a residential burglary. The prosecutor explained that although the commercial burglary involved more financial loss, the residential burglary involved more trauma for the victim. The evidence was such that the prosecutor did not want to take both cases to trial so he accepted a plea to the more serious residential burglary case and dismissed the commercial burglary.

As might be anticipated, differences in policies and statutes among the jurisdictions led to differences in the sentencing decision. The correlation between the length of sentence and the jurisdiction was statistically significant for all crime types except assault, and was particularly strong in homicide cases.

To explain how victim harm factors affected decision making within a site, the correlations between length of sentence and case factors within each site were measured.¹¹ Victim harm variables and victim characteristics were found to have the greatest influence on sentencing decisions in Greenville and Portland, both of which have very active victim-assistance programs located in the prosecutor's office.

¹¹ The ordinary least-squares and ordered probit statistical techniques were used to test effects within the jurisdictions.

B. THE EFFECT OF THE DECISION MAKER

For both screening and sentencing, victim-related factors are not always as important to the practitioner as other case factors, namely the strength of the evidence in screening and defendant-related factors in sentencing. In order to put these case-related effects into proper perspective, it is important to examine the effects of another factor that was found to have an important influence on case processing decisions--the personal beliefs, attitudes, and experience of the individual decision maker.

The effect of the decision maker was clearly demonstrated in an interview about actual case decisions. The judge stated candidly that the deciding factor for him in a particular burglary case was not so much the amount of property stolen, the defendant's prior record, or any other case-related factor. Rather, what influenced his decision was this: "I sentenced the offender more harshly largely because he committed the crime in my neighborhood."

To isolate the effect the individual decision maker has on screening and sentencing decisions, all practitioners reviewed two screening and two sentencing scenarios that were identical for each practitioner. These two "anchor" cases were developed in response to the observation that there appeared to be too many variables in rotation to permit a definitive separation of victim harm effects from respondent effects.¹² The variation in the responses to these anchor cases measures the effect of the practitioner by eliminating the effect of case related variables. The anchor cases are presented on the following page.

To assess the practitioner effect, the variance (i.e., the degree to which a particular response varied from the average response) was measured in both the anchor and non-anchor cases. The variance in the non-anchor cases is attributable to the combination of a systematic rotation of case factors, the jurisdiction, and the practitioner factor. The variance in the anchor cases is attributable only to the jurisdiction and the practitioner. And within a given jurisdiction the variance in the anchor cases can be attributed solely to the individual respondents.¹³

Comparison of the variance in anchor and non-anchor cases shows that the differences are not great. (See Appendix Table C.f) There was approximately as much variance in the anchor cases, which measure only the respondent effect, as in the

¹² We are grateful to project Advisory Board member Marvin Wolfgang for making this observation.

¹³ The district effect is shown in Table IV.6, below.

SCREENING DECISION: ANCHOR CASE NUMBER 1

Offense: Burglary of a home
Victim/Defendant Relationship: Strangers
Prior Criminal Record: Defendant has one prior felony conviction
Sex of Victim: Female
Age of Victim: 25 years old
Cash Value/Stolen Property: \$1,000
Evidence: No property was recovered

SCREENING DECISION: ANCHOR CASE NUMBER 2

Offense: Armed robbery on a city street
Victim/Defendant Relationship: Strangers
Prior Criminal Record: Defendant has no prior record
Physical Injury: Victim was not physically injured
Sex of Victim: Female
Age of Victim: 25 years old
Psychological Injury: Victim needs psychological counseling as a result of the crime
Cash Value/Stolen Property: \$20
Evidence: No property was recovered

SENTENCING DECISION: ANCHOR CASE NUMBER 1

Offense: Assault with a knife
Victim/Defendant Relationship: Immediate family
Prior Criminal Record: Defendant has no prior record
Physical Injury: Injury requiring 10 days hospitalization
Sex of Victim: Male
Age of Victim: 25 years old
Psychological Injury: Victim does not need psychological counseling as a result of the crime
Conviction Type: Guilty by jury

SENTENCING DECISION: ANCHOR CASE NUMBER 2

Offense: Armed robbery on a city street
Victim/Defendant Relationship: Strangers
Prior Criminal Record: Defendant has no prior record
Physical Injury: Victim was not physically injured
Sex of Victim: Male
Age of Victim: 65 years old
Psychological Injury: Victim needs psychological counseling as a result of the crime
Cash Value/Stolen Property: \$1,000
Conviction Type: Guilty Plea

non-anchor cases, which measure both respondent and case-factor effects.

Part of the variance found in the scenarios is due to differences across jurisdictions--statutes and policies vary from one jurisdiction to another. Part of the variance is also due to the practitioner's interpretation of the scenario case. The scenarios come close to real life cases, yet in real life, there are more details available, fewer factors are open to interpretation, and attorneys may effectively present both sides of the case and help the judge apply statutory requirements. Nevertheless, when all case factors are held constant, as they were in the anchor cases, and the responses within a jurisdiction are measured, it is clear that who the decision maker is has a significant effect on the decision.

Table IV.6 presents the judges' responses to the anchor cases by site. Since jurisdictional and case-related factors are held constant, the variation in responses provides a measure of the effects of the judge's attitudes, values, and experiences. Interestingly, even in California and Minnesota, where there is narrow court discretion and no discretionary parole board release, sentencing recommendations varied by as much as 49 months. While some of this variation may be due to the fact that the information in the scenarios was not always sufficient to allow an unambiguous determination of the guideline sentence, it is noteworthy that the Minneapolis judges almost invariably commented in response to the scenarios that the Minnesota guidelines give them no latitude in determining the sentence. The variation in recommendations is only slightly smaller in Minneapolis than in the other five jurisdictions.

C. SUMMARY

The project's primary goal was to assess how criminal justice practitioners use information about victim harm in their decision making. The discretionary nature of police work gives an officer a great deal of leeway to make an arrest. The interviews with police officers reveal that victim harm affects the decision to arrest in about half the arrests that are made. In the decision to pursue an investigation, however, victim harm plays a more important role. The more serious the crime, the more effort police officers reported devoting to the case. The more harm to the victim, the more likely the police officer will devote time and attention to the investigation.

Analysis revealed that the screening decision is affected most consistently by evidence factors, rather than victim factors. Certain victim-related characteristics appear as important or more important than the non-victim related factors in certain crime categories. In screening sexual assault cases, physical injury and the victim's age are significant. In screening aggravated assault cases, the relationship between the

Table IV.6. JUDGES' RESPONSES TO ANCHOR CASES BY SITE

Minneapolis

Judge Number	Assault		Robbery	
	Incarceration*	Probation**	Incarceration*	Probation**
1	5	0	5	0
2	4	0	3	0
3	3	0	4	0
4	2	4	4	0
5	2	4	3	0
6	2	4	3	0
7	1	4	4	0
8	1	3	3	0
9	1	3	4	0
10	0	3	4	0
11	0	3	3	0
mean	1.9	2.5	3.6	0

San Jose

Judge Number	Assault		Robbery	
	Incarceration*	Probation**	Incarceration*	Probation**
1	6	0	4	0
2	4	0	5	0
3	4	0	5	0
4	2	5	4	0
5	2	5	5	0
6	2	4	4	5
7	2	4	2	5
8	1	4	4	0
9	1	3	5	0
10	refused		5	0
mean	2.6	2.8	4.3	1.0

New Orleans

Judge Number	Assault		Robbery	
	Incarceration*	Probation**	Incarceration*	Probation**
1	5	0	7	0
2	4	0	7	0
3	3	0	5	0
4	2	4	6	0
5	1	5	7	0
6	0	5	7	0
7	0	3	5	0
mean	2.1	2.4	6.3	0

Kansas City

Judge Number	Assault		Robbery	
	Incarceration*	Probation**	Incarceration*	Probation**
1	6	0	5	0
2	5	0	6	0
3	4	0	6	0
4	4	0	5	0
5	3	0	5	0
6	3	0	5	0
7	1	2	0	3
8	0	5	1	5
9	0	5	0	5
mean	2.9	1.3	3.7	1.4

Greenville

Judge Number	Assault		Robbery	
	Incarceration*	Probation**	Incarceration*	Probation**
1	2	5	7	0
2	4	5	7	0
mean	3.0	5.0	7.0	0

Portland

Judge Number	Assault		Robbery	
	Incarceration*	Probation**	Incarceration*	Probation**
1	5	0	6	0
2	5	0	5	0
3	5	0	5	0
4	5	0	4	0
5	2	5	5	0
6	2	5	5	0
7	2	5	4	0
8	1	4	4	0
9	refused		6	0
mean	3.4	2.4	4.9	0

* Incarceration

** Probation

0 = no prison time
 1 = up to 6 months time
 2 = 7 months to 1 year
 3 = 13 months to 2 years
 4 = 25 months to 4 years
 5 = 49 months to 10 years
 6 = 121 months to 20 years
 7 = more than 20 years

0 = no probation
 1 = up to 6 months probation
 2 = 7 months to 1 year
 3 = 13 months to 2 years
 4 = 25 months to 4 years
 5 = 49 months to 10 years
 6 = more than 10 years

victim and the offender is significant. When these victim-related variables are significant factors in the screening decision, they appear to be significant primarily because they contribute additional evidence that the offender is guilty. Remembering that constitutional safeguards are designed to prevent false arrest and imprisonment, it can be argued that victim harm should not be a factor in the decision to accept the case. The prosecutor must infer probable cause that the offender committed the crime before proceeding with the case; only if victim-related factors support this conclusion can they contribute to the decision to prosecute.

On the other hand, the sentencing decision would seem to be a more appropriate time to consider victim harm variables. Once guilt has been determined, the court should weigh the effects of the crime on the victim as well as the defendant's prior record before imposing sentence. However, in the sentencing scenarios the defendant's prior record emerged as consistently more important than victim factors. Only in sexual assault cases did a victim-related factor appear as significant as defendant factors. (Defendants were likely to receive a longer sentence if the victim was elderly than if she was 25 years old.) Ironically, most recent determinate sentencing systems tend to focus on the seriousness of the offense rather than the defendant's prior record.¹⁴

Some jurisdictions are testing procedures to bring the victim into the sentencing decision, for example, by providing a victim impact statement, and allowing the victim the opportunity to address the court at sentencing. These procedures may or may not change the practitioner's attitude about the state's obligation toward victims. As the scenarios clearly show, it is the practitioner, with his or her personal attitudes and style of exercising discretion, that has the greatest impact on prosecution and sentencing decisions. Those individuals who are sympathetic to victims' rights tend to be more likely to consider victim harm an important ingredient in the sentencing decision than those who are less sympathetic. Procedural changes that include consideration of victim rights without violating defendant rights could be a step in the direction of increasing sensitivity of all practitioners to victims' needs.

¹⁴ Criminal Courts Technical Assistance Project, Judicial and Executive Discretion in the Sentencing Process: Analysis of Felony State Code Provisions (Washington, DC: American University, 1982).

V. DETERMINANTS OF VICTIM SATISFACTION

Norval Morris has acknowledged a degree of respect that is owed to the victim:

If the criminal process is the taking over by the state of the vengeful instincts of the injured persons--buttressed by the recognition that the harm to the victim is also harm to the state--then it would seem at first blush, that the victim at least has the right to be informed of, and where appropriate involved in, the process that has led to whatever is the state settlement of the harm that has been done to him. In that respect, one would hardly need to make an affirmative argument; it is a matter of courtesy and respect to the dignity of the individual victim.¹

Regardless of whether one agrees with Morris's view of the courtesy and respect that the criminal process should pay to the dignity of the victim, it is difficult to argue against a policy of assigning higher priority to cases involving greater victim harm. Such a policy may, despite other intentions, tend to raise the level of victim satisfaction and community goodwill.

Unfortunately, there is little literature describing how, as John Hagan has said, "victims, as consumers of justice, respond to their experience of it."² Although many factors may affect victim satisfaction that this study could not measure, a link between sensitivity to victim issues and increased victim satisfaction is nonetheless evident. In the site where victims were the most satisfied (Greenville), analysis of the practitioners' responses to the scenarios show that victim-related variables more frequently influenced practitioners' decisions than in other sites. Greenville practitioners also believe their community is very responsive to victim needs.

A. DETERMINANTS OF SATISFACTION

Victims were asked to rate their level of satisfaction with various aspects of their experience with the criminal justice system. They were also asked a series of questions to assess

¹ Norval Morris, The Future of Imprisonment (Chicago: University of Chicago Press, 1974): 56.

² John Hagan, "Victims Before the Law: A Study of Victim Involvement in the Criminal Justice Process," Journal of Criminal Law and Criminology 73, no. 1 (1982): 317.

their attitude toward the court system. Their responses are shown in Tables V.1 and V.2.³

The responses indicate that satisfaction--both with the way their cases turned out and with the criminal justice system generally--is highly correlated with victims' perceptions of whether they influenced the outcome of the case, knowledge of the outcome, contact with a victim assistance program, a disposition of guilty, and a conviction that results in incarceration.⁴ On average, 64 percent of the respondents were satisfied with how their case was handled (see Table V.1), and 31 percent had a sense of confidence in the criminal justice system (see Table V.2).

When asked what the legal system could have done to make them more satisfied, the responses show that victims tend to have strong interests in crime control and retribution. About 40 percent would have been more satisfied if the offender had been convicted of the original charge rather than a reduced charge, received a more severe sentence, served the full sentence without parole, and made restitution for the crime.⁵ Forty-eight percent also said they would have been more satisfied had they been better informed about case progress.

The real case interviews validated the importance of keeping the victim properly informed of case outcome. In one case, the victim said the charge of burglary of his business establishment

³ Note that the columns in Tables V.1 and V.2 are sorted by level of overall victim/survivor satisfaction. This order is used in all tables in this chapter in which jurisdictions are listed.

⁴ See Appendix C for step-wise regression and correlation analysis tables.

Many factors affect satisfaction that we could not measure, such as community attitudes toward law enforcement. One cannot infer from these findings that one jurisdiction has a less effective prosecution system than another jurisdiction. For example, although victims were less satisfied in New Orleans than in other jurisdictions, New Orleans has high conviction and incarceration rates, which we have found generally contributes to victim satisfaction. See Table V.3, below; also, Barbara Boland, Prosecution of Felony Arrests (Washington, DC: U.S. Department of Justice, forthcoming, 1984).

⁵ Table 3 in Appendix C shows victims' responses concerning what would have made them more satisfied.

See also The Role of the Complaining Witness in an Urban Criminal Court (New York: Vera Institute, 1980) for discussion of similar findings concerning victim satisfaction.

Table V.1. VICTIM SATISFACTION WITH HANDLING OF THEIR CASE
(Percentage, by Site)

	<u>Green- ville (N=30)</u>	<u>Minnea- polis (N=29)</u>	<u>Port- land (N=61)</u>	<u>San Jose (N=45)</u>	<u>Kansas City (N=55)</u>	<u>New Orleans (N=29)</u>	<u>Total (N=249)</u>
Overall Satisfaction*	75%	67%	67%	66%	63%	55%	64%
Satisfaction With:							
Police	N=37	N=42	N=82	N=62	N=75	N=40	N=338
	81%	74%	92%	82%	81%	70%	80%
Prosecutors	N=32	N=34	N=76	N=53	N=61	N=34	N=290
	75%	67%	68%	74%	62%	53%	67%
Judge	N=21	N=19	N=51	N=38	N=49	N=30	N=208
	74%	69%	67%	53%	57%	50%	54%
Victim Assistance Staff	N=28	N=17	N=44	N=26	N=28	N=10	N=153
	86%	65%	64%	73%	71%	40%	67%
Disposition	N=31	N=38	N=72	N=55	N=64	N=34	N=294
	58%	54%	40%	47%	45%	51%	49%

* Overall satisfaction is calculated as the weighted average of the ratings given in the five categories.

Table V.2. VICTIMS' ATTITUDES TOWARD THE CRIMINAL JUSTICE SYSTEM*

	<u>Green- ville (N=32)</u>	<u>Minnea- polis (N=38)</u>	<u>Port- land (N=72)</u>	<u>San Jose (N=55)</u>	<u>Kansas City (N=68)</u>	<u>New Orleans (N=36)</u>	<u>Total (N=301)</u>
	%	%	%	%	%	%	%
Percentage With Positive Attitude**	41	33	34	29	26	25	31
Percentage Who Agreed That:							
Court system is too slow and wastes a lot of time	70	71	70	82	82	82	77
Guilty offenders are not punished enough	74	82	85	90	91	90	86
Courts do about as good a job as we can expect	32	33	38	28	26	40	32
In general, judges make fair decisions	68	53	60	62	53	43	63
Court system cares about victims' needs	52	32	29	27	30	17	30

* Ns vary slightly because of missing information.

** A "positive attitude" was calculated as a simple composite of the five statements. Those victims who disagreed with the first two statements and agreed with the last three statements were judged to have expressed a sense of confidence in the system and a belief in the legitimacy of the courts.

had been dismissed for lack of evidence. The victim had attended court on the morning of the arraignment and in a hurried exchange with the prosecutor was informed of the dismissal. When the prosecutor was interviewed, it became clear that the case had not been dismissed; it had been combined with a residential burglary case involving the same defendant. The commercial burglary charge was dismissed in exchange for a guilty plea to the more serious residential burglary charge.

This was clearly a case where victim harm played a role in the prosecutor's decision. The residential burglary involved a victim's personal property more directly (a bicycle was stolen from a woman who used the bike as her sole means of transportation, as opposed to a battery that was stolen from the insured businessman's truck). The businessman had expressed dissatisfaction with the police and prosecutor for not investigating the case further. Had he been properly informed about the disposition, he may have expressed less dissatisfaction.

Who keeps the victim most informed about such case decisions and case activity? Table V.3 reports the victims' perceptions of who kept them most informed, as well as the practitioners' perception of who keeps the victim most informed. Several findings are noteworthy. First is the considerable discrepancy between the perceptions of practitioners and victims. Practitioners generally perceive themselves to be better communicators than victims reported them to be. The police responses came closest to corresponding to victim responses, and judges' responses differed the most from victim responses.⁶

In one of the real case interviews the victim said the prosecutor kept him most informed, but his contacts with the police were more satisfying because they were more personal. The police officer explained that there were separate cases for each of the five defendants and that he had great sympathy for the victim who was required to appear in each separate case. The prosecutor also sympathized with the victim but admitted he is often so busy he rarely takes the time to communicate more than a brief summary of the outcome of court events and what will happen next. "I just don't have the time to be nice. That's what the victim-witness people do."

The existence of a victim-witness program appears to decrease the number of victims who reported never having been informed. In sites without victim-witness programs, as many as five times

⁶ This reinforces the finding in Chapter III that police appear to be most in touch with victims and judges most distant. The policy implications of these findings will be discussed further in Chapter VI.

Table V.3. PERCEPTION OF WHO KEEPS THE VICTIM MOST INFORMED

	Respondent			
	Victim (N=358)	Police (N=106)	Prosecutor (N=100)	Judge (N=39)
Police	25%	51%	11%	5%
Prosecutor	35	25	60	90
Victim-Witness	14	13	28	5
Victim initiative	5	1	0	0
No one	16	11	2	0
Other	<u>6</u> 100%	<u>0</u> 100%	<u>0</u> 100%	<u>0</u> 100%

more victims reported that no one kept them informed.⁷ (See Table V.4).

Although 78 percent of all victims knew the outcome of their case, at least half the respondents in all sites except Greenville wanted to be better informed about the case.⁸ Being better informed apparently means victims want to be informed about more than simply the disposition. This could include more frequent updates, more explanation about case activity, and information about whom to call to get information. This is an area in which more research could yield a clearer picture of relations between victims and the courts.

Twenty-one percent of the victims also said they wanted to be given greater opportunity to express their opinions. The analysis in this study indicates that there is a high correlation between satisfaction and the victim's perception that he or she influenced the outcome. Involvement and influence are intangible qualities and difficult to measure, but it may be argued that keeping victims informed of case progress can involve them in prosecution and allow them at least the opportunity to express an opinion and thus influence the outcome. Explaining what is happening and what increases the victim's understanding of how the process works--that the legal system is complex and obtaining arrests, convictions, and stiff sentences is difficult. Victims are generally more satisfied with the way their case is handled when they are informed and have access to someone in the criminal justice system who listens to and appears to care about their opinions.⁹

⁷ A study in Alameda County, California, in 1975 by the National District Attorneys' Association found that before the implementation of the victim-witness program, only 25 percent of all victims were notified of case outcome. After implementation, 90 percent were notified. National District Attorneys' Association, Victims and Witness Survey--Alameda County California (1975).

⁸ Only 21 percent of victims in Greenville responded that keeping them better informed would increase their satisfaction, compared with an average of 52 percent in the other sites. The largest majority of Greenville victims wanted the defendant to serve his full sentence--61 percent of Greenville and 39 percent in the other sites. See Table C.3 in Appendix C.

⁹ Recent studies tend to confirm this conclusion. In Barbara Smith's study of non-stranger violence, factors that contributed to victim satisfaction were: a prompt, helpful response by police, being able to talk with the prosecutor and judge, and clear, formal court procedures. The author states that these factors seem to be related to victims' perceptions of having

(Footnote continued)

Table V.4. VICTIM RESPONSE: WHO KEPT YOU MOST INFORMED, BY SITE

	Green-ville* (N=43)	Minnea-polis* (N=45)	Port-land* (N=80)	Kansas City (N=81)	San Jose (N=64)	New Orleans (N=45)
Police	23%	20%	20%	27%	42%	9%
Prosecutor	25	38	44	38	17	47
Victim-Witness	37	22	20	4	3	4
Nobody	5	11	8	25	19	29
Victim initiative	5	4	5	1	11	2
Other	<u>5</u> 100%	<u>4</u> 100%	<u>4</u> 100%	<u>5</u> 100%	<u>8</u> 100%	<u>9</u> 100%

*Sites with prosecutor-sponsored victim-witness programs.

justice system who listens to and appears to care about their opinions.⁹

Satisfaction and a sense of having influenced the outcome are terms that can be interpreted in numerous ways. Victims and practitioners, however, appear to have similar perceptions about their meaning. In Salem and Baltimore (where practitioners were asked about their actual decisions in recently disposed cases), both victims and practitioners were asked to assess the amount of influence the victim had in deciding the outcome of the case. Practitioners' perceptions of the amount of influence the victim had agreed with the victims' perceptions 65 percent of the time. Practitioners' perceptions of the victim's level of satisfaction agreed with the victims' response 77 percent of the time. These findings should be interpreted cautiously because they are based on only 26 practitioner interviews and 21 victim interviews, and because both Salem and Baltimore have active victim-witness programs in the prosecutor's office. Nevertheless, they do indicate that victims and practitioners can agree about the victim's influence in the case.

Ultimately, both the victim's role in case outcome and level of satisfaction may be affected by events that are largely outside the scope of the criminal justice system as it currently operates. One victim, for example, told the following story:

I am deeply concerned about the victims rights in my case. My medical bills ran to \$750.00 which in my case I had

⁹ Recent studies tend to confirm this conclusion. In Barbara Smith's study of non-stranger violence, factors that contributed to victim satisfaction were: a prompt, helpful response by police, being able to talk with the prosecutor and judge, and clear, formal court procedures. The author states that these factors seem to be related to victims' perceptions of having participated in and possibly having influenced the outcome of their cases regardless of whether they did actively participate or actually influence the proceedings. Barbara Smith, Non-Stranger Violence: The Criminal Courts' Response (U.S. Department of Justice, National Institute of Justice, October 1981).

Two additional studies show that victims who attended, but did not necessarily participate in, a plea negotiation conference with the judge, defendant, defense counsel, and prosecutor had a more favorable attitude toward court functioning, judges' fairness, and the criminal justice system's interest in victims' needs. Attendees were also better informed about case outcome, but were not significantly more satisfied with case outcome. Evaluation of Structured Plea Negotiations, INSLAW, forthcoming, (1984) and Wayne Kerstetter and Anne Heinz, Pretrial Settlement Conference: An Evaluation, (Washington, DC: NILECJ, 1979).

no medical insurance. I am also unemployed. The court dropped charges from first degree to third degree assault, without my knowledge because of no prior record on the assailant.

He was released from jail before I was even released from the emergency room (emphasis in original). The judge ordered restitution of \$25.00 monthly...which would take 2 1/2 years to be paid in full. Payments have been several months late. I am now being harassed by bill collectors wanting their money.

I feel it is very unfair that I am the one that has got bad credit now and the assailant seems to have got off with just a slap on the wrist. My bitterness from this case has made me have a very low opinion about our court system.

Under the current criminal justice system, this person was victimized by more than the physical assault. He was also victimized by a system that allowed the financial burdens of the assault to become oppressive. A victim compensation fund could have immediately paid the victim's medical bills and the defendant's restitution could have replenished the fund. One can only guess at the effect this would have had on this victim's perception of the criminal justice system.

B. PRACTITIONER VIEWS OF INCREASED VICTIM INVOLVEMENT

Fifty-eight percent of victims reported having at least some influence in the handling of their case. Would practitioners be willing to increase the current level of victim involvement? Tables V.5 and V.6 show that the majority of practitioners believe the current level of victim involvement is satisfactory.¹⁰ Involvement was defined as "non-binding involvement"--the victim is consulted and may express an opinion, but the decision maker is not required to follow the victim's wishes.

¹⁰ Judges were not asked to assess the current level of victim involvement because this assessment was added to the telephone interview questionnaire.

Practitioners were asked to rate the level of victim involvement at various stages of prosecution (screening and charging, bail setting, diversion, plea bargaining, and sentencing). Practitioners agree about the current level of victim involvement only at the screening and charging stage. At all other stages police rate victim involvement at a much lower level than do prosecutors. See Appendix C for responses.

Table V.5. PRACTITIONER ASSESSMENT OF HOW INVOLVED VICTIM SHOULD BE

	<u>Police (N=110)</u>	<u>Prosecutor (N=99)</u>	<u>Judge (N=48)</u>
Victim should be more involved	48%	30%	33%
Victim should be less involved	2	1	3
Current involvement about right	50	69	64
	<u>100%</u>	<u>100%</u>	<u>100%</u>

Table V.6. PRACTITIONER ASSESSMENT OF CURRENT LEVEL OF VICTIM INVOLVEMENT

	<u>Police (N=88)</u>	<u>Prosecutor (N=75)</u>
Not involved at all	66%	20%
Somewhat involved	26	59
Involved a great deal	9	20
	<u>100%</u>	<u>100%</u>

Police believe more strongly than the other practitioners that victims should have greater involvement. Prosecutors and judges generally think the current amount of involvement is about right.¹¹ These responses are understandable. If current procedures were changed to involve victims more, prosecutors and judges would have to make more accommodations and adjustments than police.¹²

It is apparent that many practitioners do not think there is much need for change because they believe their jurisdictions are already fairly responsive to victims' needs. Table V.7 shows that practitioners generally rated their jurisdictions high when asked to assess effectiveness in responding to victim needs.¹³

Practitioners in sites with prosecutor-based victim-witness assistance programs (Greenville, Portland, and Minneapolis) believe their jurisdictions are more effective than do practitioners in sites that do not have such programs. Practitioners in Greenville stand out as being particularly satisfied with the job they are doing.

Referring to the previous discussion of victim satisfaction and attitudes, the high rating Greenville practitioners gave themselves may be justified, according to the victim's views--Greenville victims tended to be more satisfied and had more positive attitudes toward the criminal justice system than victims from the other jurisdictions. Greenville victims were more likely to feel influential, were better informed about case outcome, and were most likely to have contact with the victim-witness staff.

¹¹ The most striking differences of opinion are over the victim's role in plea bargaining. A large proportion of police believe the victim is not currently involved with plea bargaining and should be more involved, whereas prosecutors are quite satisfied with current victim involvement in that activity.

Although the question was not asked directly, many of the police officers made it clear that they think they too should be more involved in the process. They believe they know the most detail about how the crime affected the victim as well as how "bad" the offender is, but believe they have very limited input after arrest, except for the few cases that go to trial.

¹² Recall that judges and prosecutors were also less likely than police to want victim impact statements because they believe they already receive adequate information about victims.

¹³ An "effective" response to victims' needs was defined for respondents as helping victims understand what is happening in their cases and being sensitive to the problems and concerns caused by the crime.

Table V.7. PRACTITIONERS' RATING OF THEIR JURISDICTION'S EFFECTIVENESS IN RESPONDING TO VICTIMS' NEEDS BY SITE

	Green-ville* (N=31)	Minnea-polis* (N=39)	Port-land* (N=45)	San Jose (N=47)	Kansas City (N=42)	New Orleans (N=48)
<u>Site Summary</u>						
Ineffective	6%	26%	13%	38%	33%	35%
Average	6	49	31	45	38	35
Effective	<u>87</u>	<u>36</u>	<u>36</u>	<u>17</u>	<u>19</u>	<u>29</u>
	100%	100%	100%	100%	100%	100%

* Sites with prosecutor-based victim-witness assistance programs.

The regression analysis also revealed several factors that tended to decrease victim satisfaction. Victims who reported an intense emotional reaction and many personal problems as a result of the victimization, and victims who feared the offender would return to harm them or their family, were significantly more likely to be dissatisfied. Emotional harm can be so severe that the victim's need for support exceeds what the criminal justice system can deliver.

One of the real case interviews exemplifies the difficulty of meeting victim's needs in these very serious cases. The victim and his neighbor had an argument, the neighbor lost his temper and struck the victim on the temple, killing him instantly. Afterward, the surviving family members were closely involved in all stages of the adjudication process, were well informed of case progress, and the defendant was convicted and incarcerated--all contributing factors to increased victim satisfaction. Yet they were frustrated, confused, and more suspicious of the system than most victims despite the special attention they had received from the prosecutor and victim-witness advocate. The limits of the ability of the criminal justice system to satisfy victims become more apparent in serious crimes such as these.

VI. POLICY IMPLICATIONS AND OVERALL ASSESSMENT

The goal of this study was to contribute to the understanding of how harm to the victim influences practitioners' decisions and how those decisions, in turn, affect the victim's perceptions of the court system. This chapter discusses the policy implications of the findings presented in the previous chapters.

A. INTERACTION BETWEEN VICTIMS AND PRACTITIONERS

As the case progresses from arrest through prosecution and adjudication, the practitioner at each stage learns about victim harm in increasingly indirect ways. Police officers are the most directly in touch with victims; judges are most removed. The methods by which different practitioners learn about victim harm reflect important aspects of our system of justice. One of the most significant of these is that the prosecutor presents the state's case to the judge, not the victim's case. The victim is merely the state's witness. Another is that huge case loads in most jurisdictions limit the ability of practitioners to show patience and sensitivity to victims.

At the same time, there is widespread acceptance of the "just deserts" theory of punishment, which holds that the offender should be punished in direct proportion to the seriousness of the crime.¹ Obviously, in order for this principle to operate, the judge must have sufficient and accurate information about the seriousness of the crime to punish the offender accordingly.² Presentence reports, as now written, generally contain a description of the offense and background information about the offender gleaned from rap sheets, the police report, prosecutor's report, and an interview with the offender. The offender's background information and version of the offense is obtained directly from the offender. Background about the victim and the financial, psychological, and physical impact of the crime on the victim tend to receive little or no attention.

¹ Leslie Sebba discusses implications for the theoretical basis of the criminal process as the shift toward a retribution-type model becomes more apparent. He proposes two new models that take into account the victim's role in light of the victim's injury and the victim's needs. Leslie Sebba, "The Victim's Role in the Penal Process: A Theoretical Orientation," American Journal of Comparative Law 30, no. 2 (Spring, 1982): 217-40.

² Irregularities in presentence report information have been reported by Brian Forst and William Rhodes, "Structuring the Exercise of Sentencing Discretion in the Federal Courts," Federal Probation, vol. 46 (March 1982): 3-13.

A presentence report that includes a victim impact statement is one way the judge can better learn how the crime affected the victim. Even in the absence of such a statement, probation officers, who typically write the presentence report, could be encouraged by judges and others to insure that the report contains complete and accurate information about the victim--collected from the police and from the victim directly.

A victim impact statement appended to the presentence report would accomplish two important objectives: 1) it would give the judge a more detailed picture of the harm to the victim and 2) it would give the victim more of an opportunity to express opinions directly to the judge, thereby increasing the victim's perception that he or she contributed to the sentencing decision and had an influence on the outcome of the case.

Judges expressed hesitation and doubts about the value of victim impact statements. Barely a majority (56 percent) said the victim impact statement would be useful. The reasons for resisting the procedure had to do with the judges' perception that they already receive adequate information about the victim. The 46 percent who favor use of the statement expressed interest in having additional information as a basis for their decisions. One may conclude from the judges' comments that implementing legislation requiring victim impact statements may be difficult, for it necessitates a change in attitudes--often a delicate, lengthy process.

B. IMPACT OF VICTIM HARM ON CASE PROCESSING DECISIONS

A major finding of the study is that victim harm has less impact on the arrest, screening, and sentencing decisions than do other variables. The practitioner's first consideration in the arrest and screening decisions is whether there is sufficient evidence to warrant arrest and prosecution. The power of the state to issue criminal charges is constrained in such a way that police and prosecutors are required to have sufficient evidence to justify prosecution on those charges.

In the sentencing decision, judges (and prosecutors offering recommendations) consider whether the defendant pled guilty or was found guilty at trial, and whether the defendant has a prior record. Only in sexual assault cases do victim-related variables play as important a role, although aspects of victim harm are important in some other situations as well (e.g., physical injury in assault cases).

That harm is a factor in sexual assault cases appears to indicate that efforts in the last several years to sensitize practitioners to the special trauma of sexual assault have begun to have an effect. For many years advocates have worked to change the handling of rape cases. One might expect advocates

for victims to produce similar results, without infringing upon defendants' rights.

C. IMPACT OF HAVING INFLUENCE AND BEING INFORMED

An important finding concerning victims' views is that the perception of having influenced the outcome of the case significantly increases victims' satisfaction with the outcome of the case in particular, and with the criminal justice system in general.

Being informed about case outcome was correlated with victim satisfaction, and being better informed was a high priority for victims when they were asked what could have made them more satisfied. As victims are apprised of the case progress it may be that the interaction gives victims the opportunity to ask questions and express their concerns and views, thus contributing to a sense of having influenced the outcome.

This study did not explore in depth what contributes to the perception that one has influence. And there are many intangible variables that do not lend themselves easily to quantitative analysis, such as a caring attitude on the part of the practitioner, the social and political temper of the victim, and attitudes in the local community. There is, nonetheless, a link between being informed and the perception that one has played an influential part: being informed means increased communication between criminal justice personnel and the victim.

Generally, victims reported that the prosecutor kept them most informed and, where a victim-witness unit exists, 20 to 37 percent of victims reported that the victim-witness staff kept them most informed. In the two "real case" sites, both of which have active prosecutor-sponsored victim-witness programs, interviewers found that victims were often unable to differentiate between the prosecuting attorney and the victim-witness staff. One victim said he wasn't sure who called to tell him about court events: "I don't think she was an attorney, but I'm not sure." The interviewer had just completed an interview with the male attorney responsible for the case and concluded that the person who had notified this victim was not the male prosecuting attorney, but rather was probably the victim advocate who had identified herself as being from the prosecuting attorney's office.

That prosecutors keep victims most informed supports the recommendation of the President's Task Force on Victims of Crime that the prosecutor's office should assume ultimate responsibility for informing victims of the status of a case. Informing the victim need not be the prosecuting attorney's role,

however.³ Victims who used the services of a victim assistance agency reported that the agency was especially useful in three areas: helping them to understand the legal process, keeping them informed of case progress, and helping them to deal with the emotional impact of the victimization. All three are related to victim satisfaction. These findings also support the President's Task Force on Victims of Crime recommendations that the prosecutor establish and maintain direct liaison with victim-witness units and other victim service agencies.

D. SUGGESTIONS FOR IMPROVED RELATIONS BETWEEN VICTIMS AND THE COURT

Victims and practitioners were asked to suggest ways relations between victims and the court system might be improved.⁴ Table VI.1 shows the suggestions that were mentioned by at least 10 percent of the respondents.

The four suggestions that practitioners and victims made in approximately equal proportions were the following:

- . improve social services for victims;
- . make increased use of restitution;
- . improve ways of keeping victims informed about case events;
and
- . give victims more input into the decision-making process.

Since knowing the outcome of the case and having an influence in the outcome appear in fact to contribute to increased satisfaction and increased confidence in the courts, it is encouraging that practitioners recognize those needs.

The greatest differences of opinion among practitioner groups and between victims and practitioners emerge in three areas: the need to treat defendants more severely; the need to increase the number and improve the training of police, prosecutors, and judges; and the need for additional compensation funds. The differences reflect attitudes that typify each group.

³ Several prosecutors spoke disparagingly of the "hand-holding" role. These respondents emphasized that their training is in the law; they neither want to be nor know how to be effective social workers.

⁴ The open-ended question was: "If your jurisdiction were given funds, or other resources were available to create ways to improve relations between victims and the courts, can you suggest how the funds or resources might be used."

Table VI.1. VICTIM AND PRACTITIONER SUGGESTIONS
TO IMPROVE RELATIONS BETWEEN VICTIMS
AND THE COURTS*

	Victim (N=247)	Police (N=111)	Prosecutor (N=101)	Judge (N=48)
	%	%	%	%
Improve court efficiency, make system speedier	15	6	5	8
Treat offender more harshly	36	38	6	-
Provide compensation for victims (medical bills, property damage, etc.)	6	11	16	33
Require restitution more frequently	11	11	14	13
Improve training and increase staff of police, prosecutors and judges	10	40	37	2
Increase victim/witness staff	9	12	27	10
Keep victims better informed	30	25	25	21
Give victims more input into decision making process	9	14	8	17
Improve social services for victims	19	18	16	17

* Percentages reflect the frequency with which each category was suggested. Percents do not total 100 because respondents often made more than one suggestion.

Judges are concerned with sentencing alternatives--one-third suggested using compensation as a part of sentencing, and none mentioned harsher treatment for offenders.⁵ Police suggestions reflect law-and-order concerns. Prosecutors, like police, want more law enforcement and courtroom personnel. They also want additional victim-witness staff. They probably reap the most direct benefit when an advocate explains criminal justice procedures to victims and witnesses, keeps them informed about case activity, and responds to other of their needs.

Victims said their greatest concern was that the offender be punished in proportion to the victim's view of the seriousness of the crime. Their comments indicate that they frequently equate justice and punishment.⁶ If practitioners care about victim satisfaction, then victims should have a very clear understanding of the disposition and why it turned out as it did. Understanding why the offender was not incarcerated may not increase satisfaction with the sentence, but the correlation between victim satisfaction and being informed shows that it would increase satisfaction with the legal process and "the system".

E. TOPICS FOR FURTHER RESEARCH

Understanding how the victim's experiences with the criminal justice system affect the victim's attitudes and perceptions can help to inform legislators and criminal justice practitioners of the public's desires and needs. The methodology of this study was not designed, however, to provide policy makers and social service agencies with precise descriptions or details about the victim's reaction to his or her experiences. Selection of the sample did not, for example, rigorously control for the time at which the disposition of the case occurred. The time frame varied by as much as twelve months; prior research shows that victim's perceptions, attitudes, and desires change over time.⁷

⁵ Practitioners who prefer compensation to restitution believe restitution is very difficult, and often impossible to collect. Defendants usually do not have enough money to hire a lawyer, let alone reimburse the victim. A publicly supported compensation fund is a more practical idea according to these respondents. See the quote on page 52-53 for a description of the consequences of a lack of such a fund.

⁶ The correlation between satisfaction and a sentence involving incarceration was statistically significant.

⁷ See Deborah Buchner, et al., An Evaluation of Structured Plea Negotiation (Washington, DC: INSLAW, forthcoming); James Garofalo, "Victimization Surveys: An Overview," in Burt Galaway and Joe Hudson (eds.), Perspective on Crime Victims (St. Louis: (Footnote continued)

Nor did the methodology control for differences between a prosecutor-based victim-witness program and community-based victim services agencies. Victims who had access to a victim assistance program appear to be more satisfied. Additional research could be conducted to determine how such programs affect victims' attitudes toward the criminal justice system, and particularly how different types of programs (with different sponsoring agencies, services available, focus, etc.) affect the victim's perceptions of the system. There is still a great deal we do not know about the underlying basis for victim satisfaction or dissatisfaction with individual experiences with the criminal justice system.⁵

Victims who felt that they did influence the outcome of the case were significantly more likely to express satisfaction and confidence in the court system. Yet we know very little about what gives the victim the impression that he or she was influential. Since this factor was highly significant it warrants further investigation.

A third important area for further research is the means by which judges receive information about the victim. Judges rely heavily on the presentence report, but victims have little contact with probation officers, who prepare that report. As the case progresses, communication with the victim decreases. The possibility that the presentence report contains misinformation or lacks information about the victim may be great. The use of victim impact statements warrants further investigation. It could contribute substantially to our knowledge of the role of victim harm in the sentencing decision.

⁷(continued)

C. V. Mosby, 1981); John Hagan, "Victims Before the Law: A Study of Victim Involvement in the Criminal Justice Process," Journal of Criminal Law and Criminology 73, no. 1 (1982): 317-330; and Anne L. Schneider, "Methodological Problems in Victims Surveys and Their Implications for Research in Victimology," Victims of Crime: A Review of Research Issues and Methods (U.S. Department of Justice, National Institute of Justice, 1981).

⁸ For discussion of victims' perception of their experiences in the criminal justice system see D. Knudten, et al., Executive Summary, Victims and Witnesses: Their Experience with Crime and the Criminal Justice System (Department of Justice, NILECJ, Law Enforcement Assistance Administration, 1977); Irvin Waller and Norman Okihiro, Burglary: The Victim and the Public (Toronto: University of Toronto Press, 1978); and Edward Ziegenhagen "Toward Theory of Victim-Criminal Justice System Interaction," in William MacDonald (ed.), Criminal Justice and the Victim (Beverly Hills, CA: Sage Publications, 1976).

BIBLIOGRAPHY

- American Bar Association, Section of Criminal Justice
Victim/Witness Legislation: Considerations for Policymakers
(1982).
- Black, Donald J., "The Social Organization of Arrest," Stanford Law Review 23, (June 1971).
- Block, Richard, "Victim-Offender Dynamics in Violent Crime," The Journal of Criminal Law and Criminology 72, no. 2 (Summer 1981).
- Boland, Barbara, et. al. Prosecution of Felony Arrests
(Washington, DC: INSLAW, forthcoming).
- Brownmiller, Susan, Against Our Will: Men, Women and Rape (New York: Simon & Schuster, 1975).
- Buchner, Deborah, et. al., An Evaluation of Structured Plea Negotiation (Washington, DC: INSLAW, forthcoming).
- Bynum, Tim, et. al. "Victim and Offense Characteristics: Impact on Police Investigative Decision-Making," Criminology 20, no. 3 & 4, (November 1982).
- Cannavale, Frank J. and William D. Falcon (ed.), Witness Cooperation, Institute for Law and Social Research
(Lexington, MA: Lexington Books, 1976).
- Criminal Courts Technical Assistance Project, Judicial and Executive Discretion in the Sentencing Process: Analysis of Felony State Code Provisions (Washington, DC: American University, 1982).
- Dawson, Robert O., Sentencing: The Decision as to Type, Length, and Conditions of Sentence (Boston: Little, Brown & Co., 1967).
- Fitzgerald, Robert and Linda Fuller, "I Hear You Knocking But You Can't Come In: The Effects of Reluctant Respondents and Refusers on Sample Survey Estimates," Sociological Methods and Research 11, no. 1 (August 1982).
- Forst, Brian "Prosecution and Sentencing," in James Q. Wilson, (ed.), Crime and Public Policy, (San Francisco: Institute for Contemporary Studies, 1983).
- _____ and Kathleen Brosi, "A Theoretical and Empirical Analysis of the Prosecutor," Journal of Legal Studies 6, (1977).

- _____, Judith Lucianovic, and Sarah Cox, What Happens After Arrest (Washington, DC: Institute for Law and Social Research, 1977).
- _____, et. al., Arrest Convictability as a Measure of Police Performance (U.S. Department of Justice, National Institute of Justice, 1982).
- _____ and William Rhodes, "Structuring the Exercise of Sentencing Discretion in the Federal Courts," Federal Probation 46, (March 1982).
- _____ and Charles Wellford, "Punishment and Sentencing: Developing Sentencing Guidelines Empirically From Principles of Punishment," Rutgers Law Review 33, no. 3 (Spring 1981).
- Freidman, Kenneth, Helen Bischoff, Robert Davis, and Andrea Person, Victims and Helpers: Reactions to Crime, Victim Services Agency, (National Institute of Justice 1982).
- Garofalo, James, "Victimization Surveys: An Overview," in Burt Galway and Joe Hudson, (eds.), Perspectives on Crime Victims (St. Louis: C. V. Mosby Company, 1981.)
- Geis, Gilbert, "Victims of Crimes of Violence and the Criminal Justice System," in Duncan Chappel and John Monahan, (eds.), Violence and Criminal Justice, (Lexington, MA.: Lexington Books, 1975).
- Hagan, John, "Victims Before the Law: A Study of Victim Involvement in the Criminal Justice Process," Journal of Criminal Law and Criminology 73, no. 1 (1982).
- Hall, Donald, "The Role of the Victim in the Prosecution and Disposition of a Criminal Case," Vanderbilt Law Review 28, no. 5, (October 1975).
- Hindelang, Michael J. and Michael Gottfredson, "The Victim's Decision not to Invoke the Criminal Justice Process," in William F. McDonald (ed.), Criminal Justice and the Victim (Beverly Hills, CA: Sage Publications, 1976).
- Hogarth, John Sentencing as a Human Process (Toronto: University of Toronto Press, 1971).
- Jacoby, Joan, Prosecutorial Decisionmaking: A National Study (Washington, DC: Bureau of Social Science Research, 1981).
- Kalven, Harry, and Hans Zeisel, The American Jury (Boston: Little, Brown, and Co., 1966).

- Kerstetter, Wayne and Anne Heinz, Pretrial Settlement Conference: An Evaluation (Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, 1979).
- Knudten, D. et. al., Executive Summary, Victims and Witnesses: Their Experiences with Crime and the Criminal Justice System (Department of Justice, NILECJ, Law Enforcement Assistance Administration, 1977).
- LaFave, Wayne R., Arrest: The Decision to Take the Suspect into Custody (Boston: Little, Brown & Co., 1965).
- McDonald, William (ed.), Criminal Justice and the Victim (Beverly Hills, CA: Sage Publications, 1976).
- Maddala, G.S., Limited-Dependent and Qualitative Variables in Econometrics (Cambridge: Cambridge University Press, 1983).
- Marsh, Jeanne C., Alison Geist and Nathan Caplan, Rape and the Limits of Law Reform (Boston: Auburn House, 1982).
- Myers, Martha A. "Offended Parties and Official Reactions: Victims and the Sentencing of Criminal Defendants," Sociological Quarterly 20, (Autumn 1979).
- _____, and John Hagan, "Private and Public Troubles: Prosecutors and the Allocation of Court Resources," Social Problems 26, (1979).
- Morris, Norval, The Future of Imprisonment (Chicago & London: University of Chicago Press, 1974).
- National District Attorneys' Association, Victims and Witness Survey, Alameda County California (National District Attorneys' Association, 1975).
- Office of the U.S. Attorney, "Guidelines for Victim and Witness Assistance," (July 1983).
- Parton, Mildred, Surveys, Polls, and Samples (New York: Cooper Square Publishers, Inc., 1966).
- President's Task Force on Victims of Crime, Final Report (Washington, DC: December 1982).
- Rhodes, William, and Catherine Conly, An Analysis of Federal Sentencing Decisions (Washington, DC: INSLAW, 1981).
- Russell, Diana E. H., The Politics of Rape: The Victim's Perspectives (New York: Stein & Day, 1975).

- Schneider, Anne L. "Methodological Problems in Victim Surveys and Their Implications for Research in Victimology," Victims of Crime: A Review of Research Issues and Methods (U.S. Department of Justice, National Institute of Justice, 1981).
- Sebba, Leslie, "The Victim's Role in the Penal Process: A Theoretical Orientation," American Journal of Comparative Law 30, no. 2 (Spring 1982).
- Smith, Barbara, Non-Stranger Violence: The Criminal Courts' Response (U.S. Department of Justice, National Institute of Justice, October 1981).
- Sparks, Richard, Hazel Glenn, David Dodd, Surveying Victims (New York: John Wiley, 1977).
- Stanko, Elizabeth Anne, "The Impact of Victim Assessment on Prosecutors' Screening Decisions: the Case of the New York County District Attorneys Office," Law and Society Review 16, no. 2 (1981-82).
- U.S. Department of Justice, Bureau of Justice Statistics, Victims of Crime, NCJ-79615 (November 1981).
- _____, Victim and Witness Assistance, NCJ-87934 (May 1983).
- Vera Institute, The Role of the Complaining Witness in an Urban Criminal Court (New York: Vera Institute, 1980).
- Waller, Irvin and Norman Okihiro, Burglary: The Victim and the Public (Toronto: University of Toronto Press, 1978).
- Williams, Kristen, The Role of the Victim in the Prosecution of Violent Crime (Washington, DC: Institute for Law and Social Research, 1977).
- Ziegenhagen, Edward, "Toward A Theory of Victim-Criminal Justice System Interaction," in William F. McDonald (ed.), Criminal Justice and the Victim (Beverly Hills: CA: Sage Publications, 1976).