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# CRIMINOLOGY

## PLACEBO JUSTICE: VICTIM RECOMMENDATIONS AND OFFENDER SENTENCES IN SEXUAL ASSAULT CASES

ANTHONY WALSH\*

### I. INTRODUCTION

After many years of neglect, crime victims have recently been rediscovered, and concern for them has become an important item on the agenda of the criminal justice system.<sup>1</sup> Feminist activists have exerted particular pressure on the criminal justice system to reform its attitudes and practices relating to the concerns of sexual assault victims.<sup>2</sup> One might reasonably expect that this upsurge of concern will result in sexual assault victims exerting greater influence on decision-making at all stages of the processing of offenders.

Victim characteristics have always had a measure of significance for the treatment of offenders. Throughout history, the probability of arrest and prosecution, as well as the severity of punishment, has varied according to the respective statuses of the victim and the offender.<sup>3</sup> Studies have shown that in contemporary America, police are less likely to bring charges against offenders who are related to their victims<sup>4</sup> and that police do respond to victims' wishes in mak-

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\* Assistant Professor of Criminal Justice, Boise State University. Ph.D., Bowling Green State University, 1983; M.A., University of Toledo, 1977; B.A., Eastern Michigan University, 1975.

<sup>1</sup> See A. KARMEN, *CRIME VICTIMS: AN INTRODUCTION TO VICTIMOLOGY* 3-23 (1984); Scherer, *An Overview of Victimology*, in *VICTIMIZATION OF THE WEAK* (1982).

<sup>2</sup> See Rafter & Natalizi, *Marxist Feminism: Implications for Criminal Justice*, 27 *CRIME & DELINQ.* 81 (1981); Robin, *Forcible Rape: Institutionalized Sexism in the Criminal Justice System*, 23 *CRIME AND DELINQ.* 137 (1977).

<sup>3</sup> See, e.g., H. BARNES, *THE STORY OF PUNISHMENT* (1972).

<sup>4</sup> See Truninger, *Marital Violence: The Legal Solutions*, 23 *HASTINGS L.J.* 259, 271 (1971).

ing arrest decisions.<sup>5</sup> Victims' increased participation in the prosecution of offenders has been shown to increase the probability of conviction.<sup>6</sup> Victim concerns and activism do, therefore, appear to influence decisions in the early stages of offender processing.

It is unclear whether victims' involvement is limited to the early stages of processing, but Edward McCabe indicates that it is when he notes: "[i]f victims do become involved with the criminal justice system, they are more likely to participate and have influence during the initial stages of the process rather than the later stages."<sup>7</sup> There are many stages in offender processing during which victim participation may influence the outcome. With the exception of parole decisions, however, the sentencing stage is the final opportunity that victims have to influence decisions regarding the offender's fate. But, as Hall points out: "[r]esearch data concerning the victim's role in the sentencing process is scant and unsatisfactory . . . . [L]ittle attempt is made to clarify or measure the impact . . . ."<sup>8</sup>

Studies that have addressed the issue of victim influence on sentencing have generally focused on various victim characteristics rather than on victim participation in processing. These studies have found minor effects on sentencing based on victim characteristics such as: judicial perceptions of the victim's character, any indication of victim cooperation (i.e., victim "blameworthiness"),<sup>9</sup> the racial composition of the offender/victim dyad,<sup>10</sup> the victim's sex and alleged misconduct,<sup>11</sup> and the victim's race.<sup>12</sup> These studies, however, are based entirely on the passive role of the victim in the sentencing process. Victim characteristics, therefore, are said to have an impact on sentencing decisions independent of the victims' wishes and concerns. We located only one study where victims participated actively in sentencing decisions.<sup>13</sup> In this study, the victims

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<sup>5</sup> See Smith & Visher, *Street Level Justice: Situational Determinants of Police Arrest Decisions*, 29 SOC. PROBS. 167, 173 (1981).

<sup>6</sup> See Hall, *The Role of the Victim in the Prosecution Disposition of a Criminal Case*, in PERSPECTIVES ON CRIME VICTIMS 318, 323 (1981).

<sup>7</sup> McCabe, *The Quality of Justice: Victims of the Criminal Justice System*, in VICTIMIZATION OF THE WEAK 128 (1982).

<sup>8</sup> Hall, *supra* note 6, at 333.

<sup>9</sup> Williams, *The Effects of Victim Characteristics on the Disposition of Violent Crimes*, in CRIMINAL JUSTICE AND THE VICTIM 177, 191 (1976).

<sup>10</sup> See LaFree, *The Effects of Sexual Stratification by Race on Official Reactions to Rape*, 45 AM. SOC. REV. 842 (1980).

<sup>11</sup> See Myers, *Offended Parties and Official Reactions: Victims and the Sentencing of Criminal Defendants*, 46 SOC. Q. 529, 537-38 (1979).

<sup>12</sup> See J. Foraker-Thomson, *Explaining Judicial Decisions to Order Restitution in the Second Judicial District of New Mexico* (1984) (paper presented at the annual meeting of the ACS).

<sup>13</sup> See Davis, Kunreuther & Connick, *Expanding the Victim's Role in the Criminal Court*

directly expressed their wishes to the court.<sup>14</sup> This study, however, provided limited statistical analysis, failed to include dispositions of imprisonment and was primarily concerned with restitution for victims.

A major reason for this paucity of relevant studies is the rarity of jurisdictions in which victims are invited to express their sentencing wishes to the sentencing judge. This lack of victim input at the sentencing stage was a concern expressed by the President's Task Force on Victims of Crime when it recommended that "[j]udges should allow for, and give appropriate weight to, input at sentencing from victims of violent crime."<sup>15</sup>

Under our judicial system, presently the only way that victims can influence sentencing decisions is through their expressed recommendations contained in a presentence report. With reference to this point, McCabe states: "[w]hile little is known about these expressed [sentencing] preferences, these views probably have some, albeit minor, effects on sentencing decisions."<sup>16</sup> In this study, we explore these effects on the sentencing of offenders convicted of sexual assault.

In our study we focused on the criminal code of Ohio. The criminal code of Ohio requires that a "victim impact" statement be included in all presentence reports and that a victim sentencing recommendation be included in cases involving personal assault.<sup>17</sup> On the surface, this requirement manifests an increased concern for victims and implies that victim recommendations are taken seriously and have a significant impact on sentencing. Eleanore Chelimsky, however, feels that such concern is spurious and that the pro-victim requirements reflect needs of the system such as good public relations, rather than the needs of victims.<sup>18</sup> If Chelimsky is correct, victim recommendations may have no effect at all on offender sentencing.

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*Dispositional Process: The Results of an Experiment*, 75 J. CRIM. L. & CRIMINOLOGY 491 (1984).

<sup>14</sup> *Id.* at 498.

<sup>15</sup> See PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME: FINAL REPORT 76 (1982).

<sup>16</sup> McCabe, *supra* note 7, at 132.

<sup>17</sup> See OHIO REV. CODE ANN. § 2947.051 (Baldwin 1983). Davis, Kunreuther, and Connick feel that given what they term "the strong disincentives" for court officials to consider victims' interests, victims' concerns will never be adequately addressed until we see "legislative action mandating that victims be given the chance to express their opinions orally or in writing." Davis, Kunreuther & Connick, *supra* note 13, at 505. The Ohio Revised Code provides victims with this opportunity. OHIO REV. CODE ANN. § 2947.051.

<sup>18</sup> See Chelimsky, *Serving Victims: Agency Incentives and Individuals*, in EVALUATING VICTIM SERVICES (1981).

In addition to exploring the overall effect of victim recommendations on sentencing, this study attempts to determine if victim recommendations have a differential impact within various categories of victim/offender relationships. It is widely known that victims who are related to their assailants are less likely to vigorously seek the offenders' arrest and prosecution.<sup>19</sup> Therefore, it is reasonable to expect that the closer the relationship is between the offender and the victim, the less likely it is that the victim will recommend imprisonment. Actual sentences, however, do not necessarily reflect victim recommendations. In the case of sexual assault within the family, for instance, lenient victim recommendations may not translate into lenient sentencing given the general opprobrium attached to incestuous behavior.<sup>20</sup> Conversely, assaults—sexual or otherwise—by strangers usually result in more severe sentences.<sup>21</sup>

Sexual activity which, although illegal, is apparently consensual, such as repeated encounters with underage victims or the acceptance of money or other rewards by the victim, may result in lenient dispositions due to perceptions of victim "blameworthiness." Judicial perceptions of blameworthiness have been shown repeatedly to result in more lenient disposition for sex offenders.<sup>22</sup>

In this study we address five questions: (1) Do victim recommendations have any significant impact on sentencing independent of legally relevant considerations such as crime seriousness and prior record? (2) Do victims recommend leniency significantly more often as their relationship to the offender becomes closer? (3) Is there a differential impact of recommendations on sentencing according to victim/offender relationship? (4) Does the apparent victim's cooperation in his or her own victimization have a significant independent impact on victim recommendations and/or offender sentencing? and (5) Does the rendering of a victim recommendation, regardless of the type of recommendation, have any general independent impact on offenders for whom recommendations are made compared to offenders whose victims do not make a recommendation?

## II. METHODS AND PROCEDURES

The data consisted of 417 sexual assault cases in a metropolitan Ohio county during the years 1980 through 1983. Of these cases,

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<sup>19</sup> See Smith & Visher, *supra* note 5, *passim*.

<sup>20</sup> See J. McCARY, *SEXUAL MYTHS AND FALLACIES* (1971).

<sup>21</sup> See Kleck, *Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty*, 46 AM. SOC. REV. 783 (1981).

<sup>22</sup> See Williams, *supra* note 9, *passim*.

248 victims (59.5%) made a sentencing recommendation, and 169 victims (40.5%) did not. The following crimes were represented in this study: rape, attempted rape, sexual battery, corruption of a minor and gross sexual imposition. All of these crimes were felonies and included incestuous and non-incestuous encounters. All of the offenders were male.

Sentences were rendered in terms of probation/prison dichotomies, the form in which victim recommendations were made known to the sentencing judge in the presentence investigation reports (PSI's). These recommendations were made either by the victims themselves or by their parents or guardians if the victims were minors.<sup>23</sup>

Any study of sentencing must contain adequate controls for the effects of legally relevant variables such as crime seriousness and prior record. Our measures of crime seriousness and prior record were those measures actually in use by the Ohio courts and were based on non-binding sentencing guidelines.<sup>24</sup> Offender/victim relationships were coded as follows: father/stepfather (n = 63), other relative (n = 33), acquaintance (n = 84), and stranger (n = 68). Victim cooperation with the offender in the sexual encounter was coded "Yes" (n = 25) and "No" (n = 223). Victim cooperation was coded affirmatively only if the PSI contained unambiguous statements to this effect. Data analysis was based on chi-square and regression analysis and their associated statistics.<sup>25</sup>

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<sup>23</sup> The validity of substituting the recommendation of a parent or guardian for that of the victim might be questioned. It is, however, the general practice of this probation department not to interview child victims of sexual assault, but rather to interview his or her parents or legal guardian and request a recommendation from them. The rationale for this is based on published statements of the chief court psychiatrist of this particular jurisdiction, Dr. Henry Hartman: "Intense emotional reactions on the part of parents, repeated questioning by police, unpleasant appearances and cross-examination in courtrooms may all be as traumatic or even more traumatic than the offense itself." *BASIC PSYCHIATRY FOR CORRECTIONS WORKERS* 217 (1978). Thus, where the victim is a minor, obtaining parent or guardian recommendations is consistent with departmental procedure.

<sup>24</sup> For a complete explanation of the measurement of these variables and of the sentencing guidelines, see Walsh, *Differential Sentencing Patterns Among Felony Sex Offenders and Non-Sex Offenders*, 75 *J. CRIM. L. & CRIMINOLOGY* 443, 445-47 (1984).

<sup>25</sup> While there is debate regarding the appropriateness of using OLS regression techniques with dichotomous dependent variables, this technique is more readily interpretable and yields similar results to logistic regression when the mean on the dependent variable is close to .50; this is the case with the sentence variable in the present study. See Aldrich & Cnudde, *Probing the Bounds of Conventional Wisdom: A Comparison of Regression, Probit, and Discriminant Analysis*, 19 *AM. J. POL. SCI.* 571 (1975). Other authors go further in asserting the similarity of these techniques when the mean of the dependent variable ranges from .25 to .75. See, e.g., Bose, *Household Resources and U.S. Women's Work: Factors Affecting Gainful Employment at the Turn of the Century*, 49 *AM. SOC. REV.* 474,

## III. RESULTS

We first examined findings relating to those cases for which some type of sentencing recommendation was made ( $n = 248$ ). The preliminary chi-square analysis presented in Table 1 indicates

TABLE 1  
CROSTABULATION OF VICTIM  
RECOMMENDATION AND SENTENCE TYPE

SENTENCE	VICTIM RECOMMENDATION		Totals
	Probation	Prison	
Probation	46 (64.8%)	87 (49.2%)	133 (53.6%)
Prison	25 (35.2%)	90 (50.8%)	115 (46.4%)
	71	177	248

$$X^2 = 4.98, p < .05, \text{tau } b = .14$$

that victim recommendations are significantly related to the sentence received ( $X^2 = 4.98, p < .05, \text{tau } b = .14$ ). Seventy-one (28.6%) offenders received a probation recommendation from their victims and 177 (71.4%) received a recommendation of imprisonment. The computed odds ratio for these data is 1.9. This indicates that the odds in favor of a recommendation/sentence agreement are 1.9:1.<sup>26</sup> However, an analysis of the conditional odds—the odds that an offender will receive a certain sentence given the type of victim recommendation he received—reveals that recommendation/sentence agreement is almost completely a function of probation recommendations. If an offender received a recommendation for probation from his victim, his odds of receiving probation are 1.84:1. On the other hand, if he received a recommendation of imprisonment, the odds that he will be incarcerated are almost even at 1.03:1.

An analysis of the various sub-categories of offender/victim relationship is presented in Table 2. This table reveals the divergent effects of recommendations on sentencing. In the father/stepfather

480 (1984); Goodman, *The Relationship Between Modified and Usual Multiple-Regression Approaches to the Analysis of Dichotomous Variables*, in *SOCIOLOGICAL METHODOLOGY* 86 (1976).

<sup>26</sup> The odds ratio is the familiar crossproduct ratio for a 2 x 2 table: odds ratio =  $(f_{11})(f_{22})/(f_{21})(f_{12})$ . The conditional odds are obtained by  $(f_{11})/(f_{21})$ . See, e.g., D. KNOKE & P. BURKE, *LOG LINEAR MODELS* 9-10 (1980).

**TABLE 2**  
**NUMBERS AND PERCENTAGES OF JUDICIAL AGREEMENT WITH**  
**VICTIM RECOMMENDATIONS FOR PROBATION, PRISON, AND**  
**OVERALL, BROKEN DOWN BY OFFENDER/VICTIM RELATIONSHIP**

OFFENDER/VICTIM RELATIONSHIP	TOTAL	PROBATION		PRISON		OVERALL	
	N	N	%	N	%	N	%
Father/stepfather	63	47	55.3	16	12.5	28	44.4
Other Relative	33	8	75.0	25	28.0	13	39.4
Acquaintance	84	14	85.7	70	48.6	46	54.8
Stranger	68	2	100.0	66	71.2	49	72.1
Totals	248	71	64.8	177	50.8	136	54.8

category, 74.6% of the victims ( $n = 47$ ) recommended probation and 25.4% ( $n = 16$ ) recommended prison. The courts agreed with a probation recommendation in 55.3% of the cases, however, the courts agreed with a prison recommendation in only 12.5% of the cases. Victim recommendations were significantly related to sentences, but in a negative direction ( $X^2$  (corrected) = 4.03,  $p < .05$ , tau  $b = -.29$ ).<sup>27</sup> The conditional odds of receiving probation given a probation recommendation were only 1.2:1 and the conditional odds of receiving a prison sentence given a prison recommendation were 7:1 against. The overall odds ratio was 5.6:1 against an offender receiving the recommended sentence in this category.

In the "other relative" category, 8 offenders (24.2%) received a probation recommendation and 25 offenders (75.8%) received a recommendation of imprisonment. No recommendation/sentence relationship was observed for this category ( $X^2$  (corrected) = 0.00).

In the "acquaintance" category, 14 (16.7%) of the offenders received a probation recommendation and 70 (83.3%) received a recommendation for imprisonment. The recommendation/sentence relationship was significant for this category ( $X^2$  (corrected) = 4.3,  $p < .05$ , tau  $b = .26$ ). The odds ratio was 5.6:1 that an offender would receive the recommended sentence. Again, interpretive caution should be exercised because the conditional odds of receiving probation given a probation recommendation (6:1) primarily account for this agreement. The conditional odds of receiving a prison sentence given a prison recommendation were 1.1:1 against.

<sup>27</sup> The corrected chi-square is used when any cell of a  $2 \times 2$  table contains less than five cases. The correction factor is applied by reducing the value of the term ( $F$  obs. -  $F$  exp.) by .5 before squaring the difference and dividing by the expected frequency for that cell.



The statistics for the "stranger" category were uninterpretable because only 2 of the 68 offenders in this category received a probation recommendation. Both of these offenders received the recommended sentence. Of the 66 for whom prison was recommended, 71.2% received a prison sentence and 28.5% received probation.

Overall, Table 2 reveals a "perfect" inverse relationship between the degree of closeness of the offender/victim relationship and judicial agreement with victims' recommendation in both the probation and prison categories. The percentage of probation agreements ranged from 55.3% to 100% and the percentage of prison agreements ranged from 12.5% to 71.2%.

The relationship between victim cooperation and sentence type (not shown in tabular form) was in the predicted direction, but it was not significant ( $X = 2.3$  n.s.,  $\tau b = .10$ ). The conditional odds for receiving probation if the victim cooperated in the assault were 2.1:1 and the conditional odds for receiving probation given non-cooperation were 1.1:1.

The relationship between victim cooperation and victim recommendation was significant ( $X = 7.4$ ,  $p < .01$ ,  $\tau b = .17$ ). In those cases where the victim cooperated in the offense, 52% of the victims recommended probation; only 26% of those victims who were not cooperative recommended probation. The conditional odds for a probation recommendation given victim cooperation were 1.1:1 and, given non-cooperation, the conditional odds were 2.8:1 against receiving a probation recommendation. These data suggest that the victim implicitly recognized his or her role in the offense by generally making a lenient sentencing recommendation.<sup>28</sup>

#### A. REGRESSION ANALYSIS OF THE RECOMMENDATION/SENTENCE RELATIONSHIP

For our regression analysis of the recommendation/sentence relationship we dummy-coded the relationship variable and used

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<sup>28</sup> As we noted in the methods section, victim cooperation was coded affirmatively only if the PSI contained unambiguous statements to this effect (i.e., the victim's own admission). Some may find it difficult to conceptualize the voluntary submission of a child to sexual encounters, and it may be especially difficult to conceptualize this submission if his or her father or stepfather was the offender. Nevertheless, such voluntary submission does occur, usually in return for money or other rewards such as being favored over other siblings. Victim cooperation, however, is less frequent in the father/stepfather category than in the other relative or acquaintance categories. The numbers and percentages of cases in which victim cooperation occurred are as follows: father/stepfather = 5 (7.9%); other relative = 4 (12.1%); acquaintance = 14 (16.7%); stranger = 2 (2.9%). The chi-square for these data (not shown in tabular form) was significant ( $X^2 = 8.3$ ,  $df = 3$ ,  $p < .04$ , Cramer's  $V = .18$ ).

the "stranger" category as the reference category.<sup>29</sup> Table 3 reveals that victim recommendation has no effect on the sentence type re-

**TABLE 3**  
**STANDARDIZED BETAS AND RELATED STATISTICS FOR VARIABLES**  
**REGRESSED ON SENTENCE TYPE**

VARIABLE	b*	t	sig.
Crime Seriousness	.556	9.2	.0000
Prior Record	.255	4.9	.0000
Acquaintance	.102	1.5	.1331
Father/stepfather	.068	0.9	.3906
Victim Cooperation	.053	1.0	.3055
Other Relative	.025	0.4	.6859
Victim Recommendation	-.024	-0.4	.7087
(Constant)		-1.1	.2597
Adjusted R <sup>2</sup> = .399, n = 248			

CODING: Sentence type: Probation = 0, Prison = 1.  
 Victim cooperation: Yes = 0, No = 1.  
 Victim recommendation: Probation = 0, Prison = 1.  
 Relationship variables dummy coded.

ceived by sex offenders. Any agreement initially observed between recommendation and sentence is entirely mediated by the legally relevant variables of crime seriousness and prior record. The only other variable that even approaches significance is the dummy-coded acquaintance category. Victim cooperation has no independent impact on sentencing, indicating that judges do not ascribe great weight to victim "blameworthiness," after we statistically adjusted for the impact of legally relevant variables.

Due to the previously determined differential impact of victim recommendations on sentence type according to victim/offender relationship, we decided to run two separate regression analyses: one to assess the impact of victim recommendations on sentence type for close family members (father/stepfather) and one for all other victim/offender relationships combined. These results are presented in Table 4. In the father/stepfather category, we observed a weak, non-significant tendency for victim recommendations to be negatively related to sentence type. In the "other" category,

<sup>29</sup> Dummy variable analysis is a technique whereby a categorical independent variable is transformed into a set of  $k - 1$  unordered variables so that separate effects of each category of the independent variable on the dependent variable can be estimated. The constant (the y intercept) and its associated statistics represent the independent effect and significance level for the reference category. See, e.g., D. KLIENBAUM & L. KUPPER, *APPLIED REGRESSION ANALYSIS AND OTHER MULTIVARIABLE METHODS* 188-89 (1978).

we observed, after adjusting for the effects of other variables, a weak but statistically significant positive relationship between recommendation and sentence.

The differential impact of the legally relevant variables in the two models is interesting. In the father/stepfather category, the most important variable is prior record, while in the "other" category, prior record has no significant independent impact. Conversely, crime seriousness has no significant impact on sentencing in the father/stepfather category, but it is the most important determinant of sentencing in the "other" category. Victim cooperation had no impact in either model. On the crime seriousness measure used in this jurisdiction, the "other" category scored significantly higher than the father/stepfather category (means of 3.09 and 1.84, respectively,  $t = 4.2$ ,  $p < .001$ ). The relative lack of variance in crime seriousness for the father/stepfather category accounts for the inability of this variable to exert any independent effect on sentencing. The low crime seriousness mean also indicates that, legally speaking, incestuous encounters are considered less serious in relation to other sexual assaults. There was no significant difference on the measure of prior record (means of 3.94 and 3.62).

#### B. DETERMINANTS OF VICTIM RECOMMENDATIONS

Consistent with our expectations, Table 5 shows that having father or stepfather status is the most powerful determinant of a probation recommendation. Victim cooperation remains a significant determinant of a probation recommendation after adjusting for the effects of the other variables in the model. Surprisingly, crime seriousness does not exert a significant independent effect on victim recommendations. It is important to recall, however, that two-thirds of the probation recommendations were made by victims whose assailants were fathers or stepfathers. Although the stranger category (represented by the constant) is reported as significant, it is meaningless since only two victims in this category recommended probation. These findings should be treated with caution since the mean of the dependent variable (.714) approaches the upper range limit beyond which OLS regression can underestimate the effects of continuous variables (crime seriousness and prior record) relative to the effects of dummy variables.<sup>30</sup>

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<sup>30</sup> See, e.g., Bose, *supra* note 25; Vanneman & Pampel, *The American Perception of Class and Status*, 42 AM. SOC. REV. 422 (1977).

**TABLE 4**  
**STANDARDIZED BETAS AND ASSOCIATED STATISTICS FOR THE**  
**DETERMINANTS OF SENTENCE TYPE FOR FATHER/STEPFATHER AND**  
**"OTHER" CATEGORIES**

VARIABLE	FATHER/STEPFATHER			OTHER		
	b*	t	sig.	b*	t	sig.
Prior record	.621	6.1	.0000	.080	1.4	.1558
Victim Recommend.	-.161	-1.5	.1471	.112	2.1	.0394
Crime Seriousness	.041	0.4	.6888	.632	10.8	.0000
Victim Cooperation	.023	0.2	.8319	.040	0.7	.4754
(Constant)		0.7	.4943		-1.7	.0947
Adjusted R <sup>2</sup> = .410, n = 63				R <sup>2</sup> = .496, n = 185		

CODING: Sentence type: Probation = 0, Prison = 1.  
 Victim cooperation: Yes = 0, No = 1.  
 Victim recommendation: Probation = 0, Prison = 1.  
 Relationship variables dummy coded.

C. RECOMMENDATION VERSUS NON-RECOMMENDATION: THE EFFECT  
 ON SENTENCING

This section compares the sentencing of those offenders for

**TABLE 5**  
**STANDARDIZED BETAS AND RELATED STATISTICS FOR THE**  
**DETERMINANTS OF VICTIM RECOMMENDATION**

VARIABLE	b*	t	sig.
Father/stepfather	-.623	-9.1	.0000
Victim Cooperation	.180	3.6	.0004
Crime Seriousness	.111	1.8	.0687
Other Relative	-.100	-1.6	.1088
Acquaintance	-.060	-0.9	.3751
Prior Record	-.041	-0.8	.4338
(Constant)		2.1	.0334
Adjusted R <sup>2</sup> = .401, n = 248			

CODING: Sentence type: Probation = 0, Prison = 1.  
 Victim cooperation: Yes = 0, No = 1.  
 Victim recommendation: Probation = 0, Prison = 1.  
 Relationship variables dummy coded.

whom a recommendation was made, regardless of the type of recommendation (n = 248), with the sentencing of those offenders for whom no victim recommendation was made (n = 169). A chi-square analysis (not shown in tabular form) revealed that, as a

group, those offenders for whom a recommendation was made received significantly more lenient sentences ( $X^2 = 12.4$ ,  $p < .001$ ,  $\tau b = .17$ ) than did offenders receiving no recommendation. In the former group, 53.6% received probation and 46.4% were sent to prison. Of the 169 offenders who did not receive any recommendation from their victims, 36.1% received probation and 63.9% were sent to prison. The odds ratio (2.05:1) indicates that the latter group was just over twice as likely to be sent to prison as the former group.

The regression analysis presented in Table 6 indicates that this

**TABLE 6**  
**STANDARDIZED BETAS AND RELATED STATISTICS ASSESSING THE**  
**IMPACT ON SENTENCING FOR OFFENDERS WHO RECEIVED A**  
**RECOMMENDATION AND THOSE WHO DID NOT**

VARIABLE	b*	t	sig.
Crime Seriousness	.466	11.7	.0000
Prior Record	.293	7.3	.0000
Recommendation Made	.133	3.5	.0005
Victim Cooperation	-.005	-0.5	.8874
(Constant)		0.5	.6416
Adjusted R <sup>2</sup> = .418, n = 417			

Coding: Recommendation made: Yes = 0, no = 1.  
Other variables same as Table 3.

differential sentencing effect is independent of legally relevant variables and of victim cooperation. This effect is undoubtedly a function of the probation recommendations that were made. In other words, it appears likely that some of the sex offenders granted probation would have been imprisoned were it not for the probation recommendations they received from their victims. In general terms, then, the overall impact of victim recommendations in this jurisdiction appears to have been the mitigation of the offender's punishment.

#### D. CHARACTERISTICS OF RECOMMENDING AND NON-RECOMMENDING VICTIMS

Because offenders were treated differently based simply on whether or not a sentencing recommendation was made, it would appear necessary to determine what differences, if any, exist between the characteristics of those cases. To make this determination, we examined the following variables: the offender/victim

relationship, victim cooperation, crime seriousness as determined by the measure used by the Ohio courts, victim harm, the victim's sex, age, and race, and the racial composition of the victim/offender dyad.

The offender/victim relationship had a significant effect on whether or not a recommendation was made ( $X^2 = 9.0$ ,  $df = 3$ ,  $p < .03$ ,  $V = .15$ ). Those victims in the acquaintance category, the category containing the greatest percentage of cooperating victims, were the least likely to make a recommendation (51.5%). The percentages in the other categories were: stranger (60.2%), father/stepfather (66.3%), and other relative (71.7%).

Consistent with these findings, we found that victims who cooperated with their assailants were significantly more likely to decline to make a sentencing recommendation ( $X^2 = 6.7$ ,  $p < .01$ ,  $\tau b = -.13$ ). It is perhaps not surprising that these individuals would be reluctant to speak with a probation officer about sentencing for an illegal encounter in which they freely participated.

We found no differences in crime seriousness and victim harm between the recommending and non-recommending groups. The mean scores of the sentencing guidelines on crime seriousness for both groups were essentially similar ( $t = -0.31$ , n.s.). Victim harm was categorized as: (1) no harm (2) minor harm (3) hospitalized (4) psychological and (5) pregnancy.<sup>31</sup> The chi-square value for victim harm and whether or not a recommendation was made was not significant ( $X^2 = 7.7$ ,  $df = 4$ ,  $p > .10$ ). To explore this further, we dichotomized the victim harm variable into "some harm" and "no harm" categories. This categorization also failed to provide a statistically significant difference ( $X^2 = 1.6$ ).

The victim's sex ( $X^2 = 0.9$ ), race ( $X^2 = 1.7$ ) and age ( $t = -0.54$ ), did not significantly differentiate between the recommending and non-recommending groups. There were 354 female victims and 63 male victims; 276 were white and 141 were black.

Among the 276 white victims of sexual assault, the race of the offender (224 whites and 52 blacks) had no significant impact on whether or not a recommendation was made ( $X^2 = 0.7$ ). Among the black victims, the race of the offender (15 whites and 126 blacks) also made no significant difference ( $X^2 = 0.1$ ). We then divided the sample into whites who were assaulted by whites ( $N = 224$ ) and blacks who were assaulted by blacks ( $N = 126$ ), disregarding the interracial assaults. This procedure also failed to significantly differentiate between the two groups in their propensity to make a sen-

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<sup>31</sup> For a complete explanation of the victim harm variables, see Walsh, *supra* note 24.

tencing recommendation ( $X^2 = 1.1$ ). Thus, only victim/offender relationship and victim cooperation had any statistically significant effect on whether or not a sentencing recommendation was made.

#### IV. DISCUSSION

Our findings suggest that requiring a victim impact statement and recommendation as part of the presentence report is a mere genuflection to ritualistic legalism. Nonetheless, this requirement may have a placebo value in that it creates the impression that "something is being done." Based on our observation that there was greater overall agreement than disagreement between victim recommendations and imposed sentences (64.8% for probation, 50.8% for prison), the majority of victims in this jurisdiction may indeed feel that their wishes and concerns were taken into account. They do not know, of course, that this agreement is *almost entirely* mediated by legally relevant variables.

This study raises the question of whether or not victims should have a significant influence on the sentencing process. Certainly, a distinction must be made between the wishes of victims and the rights of defendants and the needs and requirements of the system. The fact that 89.5% of the victims in this study who were sexually assaulted by non-relatives recommended imprisonment reveals a high level of vindictiveness. While this vindictiveness may be understandable, one of the primary functions of the law is to mitigate the natural urge for vengeance by subjecting personal grievances to evaluation by disinterested third parties and formalized rules. Victims certainly deserve more consideration by the law and its agents, but the law cannot simply become the instrument of their revenge.

It is an entirely different matter, however, when the courts ignore victim recommendations that their assailants be granted probation. While such a recommendation does not necessarily signify forgiveness, it is clearly inconsistent with a desire for revenge. The father/stepfather category was the only category in which probation was recommended more often than imprisonment. To ignore the wishes of the victim for probation in these cases may amount to a double victimization, a victimization which may result in more detrimental effects than the sexual assault itself. This victimization may take the form of guilt, of the victim feeling responsible for the father's or stepfather's punishment, animosity from other family members toward the victim, and economic deprivation resulting from the offender's incarceration.

Of course, judges must consider issues that are broader than

the possible implications of the sentence for the victim. In our criminal justice system, the offended party is society as a whole, rather than the individual. Criminal justice decision-makers perhaps feel that their primary responsibility is to protect the rest of society by ordering incarceration when it is warranted by legally relevant variables. By taking such action, they also send a symbolic message to potential offenders. This argument, however, has greater force in cases of acquaintance and stranger sexual assaults.

One might speculate that a recommendation of probation for fathers and stepfathers may, in some cases, result from threats of retribution, either from the offender or other family members, or from factors other than the victim's genuine concern for the fate of the offender. Our study does not answer this question. The only data available to us was the stated preference of the victims; we did not have access to their motivations.

There is a marked disregard for the preferences of victims of incestuous sexual assault. This tendency was true not only when the recommended disposition was for probation, but also when the stated preference was for incarceration. We suggest that the lack of agreement with probation recommendations for fathers and stepfathers convicted of sexual assault may reflect society's general distaste for incestuous sexual encounters. The greater lack of agreement with imprisonment recommendations in this category can only be explained in terms of legal and systemic considerations.

Our analysis of the groups for whom recommendations were and were not made revealed that those offenders who received a recommendation were significantly less likely, as a group, to be imprisoned. Since these two groups differed only in terms of whether or not they received a recommendation and since most of those receiving a recommendation received a prison recommendation, the observed sentencing differential appears to be almost entirely a function of probation recommendations. If an offender, therefore, received a recommendation of probation from his victim, and if probation seemed warranted according to legal criteria, such as crime seriousness and prior record, the recommendation tipped the scale in favor of probation and away from prison. If, however, prison appeared to be the legally warranted disposition, it was highly unlikely that an offender would receive probation even if the victim recommended it.

A comparison of the characteristics of those victims who made a sentencing recommendation with those victims who did not showed that of the nine variables tested only the victim/offender relationship and victim cooperation had any significant impact on the deci-



sion to recommend a probation sentence. We conclude that the requirement of a victim recommendation has some symbolic and possibly some substantive value. In cases where judges were uncertainly poised between probation versus a prison decision, undoubtedly more than one offender was granted probation because of a victim recommendation.