

1996 National Victim Assistance Academy

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1996 National Victim Assistance Academy

Preparing Future Leaders for the Field of Victim Services

The National Victim Assistance Academy is a university-based foundation level course of study in victim assistance and victimology that was developed through a grant from the U.S. Department of Justice Office for Victims of Crime to a coordinated team of co-sponsors: VALOR, the Victims' Assistance Legal Organization, Inc., California State University-Fresno, and the National Crime Victim Research and Treatment Center at the Medical University of South Carolina. This unique collaboration among a non-profit organization and academic institutions has produced a solid foundation for state-of-the-art education and training.

Three Academy Sites

The 1996 Academy is being conducted simultaneously on the campuses of California State University-Fresno, the University of Maryland in College Park, MD, and Washburn University in Topeka, KS. The three Academy classes will be joined utilizing state-of-the-art distance learning technology for 20 of the 45 hours. A team of expert faculty in residence and visiting faculty at each site will teach course sections. The course includes lectures, interactive and experiential exercises, working group assignments, and self examinations.

Course Overview

The 45-hour academic-based, rigorous course curriculum emphasizes foundations in victimology and victims' rights and services, as well as new developments in the field of victim assistance. While it is assumed that students have had previous training in their areas of specialization, this course focuses on academic instruction and study. The comprehensive Academy Text covers 32 different subject areas and serves as the course curriculum. Academy students are expected to attend the entire program and to participate in laboratory and working group sessions.

Academic Credit

Academic credit at both the graduate and undergraduate levels is being offered by California State University-Fresno (CSUF) to all Academy students who successfully complete the 45-hour course. The course credit is fully transferrable, as CSUF is a nationally accredited institution of higher learning. A fee of \$114 for academic credit is required to cover CSUF's administrative costs in monitoring and processing course credit.

Certificate of Graduation

All Academy students will be awarded a certificate from the U.S. Department of Justice Office for Victims of Crime and the co-sponsoring organizations for successful completion of the Academy. An additional certificate will be awarded by CSUF to students who elect to receive academic credit.

Acknowledgments

Tremendous effort went into planning and implementing America's second National Victim Assistance Academy. Coordinating the faculty, curriculum content, schedule, and logistics for three Academy university-based sites was quite challenging, and was only accomplished through the efforts of myriad individuals who contributed to the Academy's success. We thank all those who participated in the many phases of the Academy Project.

The National Victim Assistance Academy is a result of the vision, leadership, and support of the U.S. Department of Justice Office for Victims of Crime. Special thanks is extended to OVC Director Aileen Adams, whose commitment to quality services set the standard for the Academy. Federal Project Officer Laura Federline offered guidance and support every step of the way; her active involvement in the Academy Project assured its comprehensiveness and timely completion.

A stellar Project Team -- comprised of leading experts in victim services and criminal justice from non-profit organizations and academic institutions -- contributed countless hours to research, curriculum development, detailed planning, implementation, and visioning for the future. In addition, a wide array of experts in our field contributed by writing and editing the Academy Text and teaching at the three Academy sites. The broad range and large number of victim advocacy professionals and organizations involved in the Academy are unprecedented, and have served to ensure breadth, depth, and quality.

Logistical arrangements for 120 Academy resident students, 12 resident faculty, and scores of additional visiting faculty were accomplished through the efforts of site coordinators and supportive university officials at California State University-Fresno, Washburn University, and the University of Maryland. Also, the technical staff associated with the compressed video at each site were essential to achieving effective distance learning.

The design of the Academy logo and artwork was created by Park Graphics in Washington, D.C. -- a consistent contributor of artistic vision to the field of victim services. This striking design has become a recognizable and lasting symbol of the Academy.

Last, but not least, the Academy students who have shown a commitment to improve their ability to assist and support victims of crime by attending the National Victim Assistance Academy deserve our respect and admiration. Perhaps most important, the National Victim Assistance Academy is grateful to the millions of crime victims in America who have taught us through their courage to prevail, and their commitment to improving the criminal justice system.

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Co-Sponsoring Agencies and Institutions

The Office for Victims of Crime

The Office for Victims of Crime (OVC) is one of five agencies within the Office of Justice Programs, U.S. Department of Justice. Since it was established in 1983, OVC has served as America's chief advocate for all issues affecting our nation's crime victims. This role translates into a broad offering of programs and activities designed to help crime victims cope with the personal and financial devastation resulting from victimization.

OVC plays a pivotal leadership role in the victims' movement. With the enactment of and subsequent amendments to the *Victims of Crime Act* (VOCA) of 1984, OVC was given responsibility for administering the Crime Victims Fund, the primary financial resource for all federally supported victim programs. The Office supplements, reinforces and encourages an expansion of state compensation and assistance programs throughout the country. OVC also awards grants to sponsor high quality training and technical assistance on cutting edge substantive issues of interest to victim advocates, as well as to criminal justice system personnel who regularly interface with victims. OVC's leadership at the federal level also encompasses activities designed to draw public attention to crime victims' needs and to promote victims' rights through legislation and public policy.

Victims' Assistance Legal Organization

The Victims' Assistance Legal Organization, Inc., (VALOR) was founded in 1979 by the late Frank Carrington as a national organization dedicated to promoting the rights of victims of crime in the civil and criminal justice systems. With support from foundations, individuals and government grants and contracts, VALOR accomplishes its mission through: promoting public education and awareness about the rights and needs of crime victims; advancing public policy reforms on the federal, state and local levels; and improving services to assist crime victims in their emotional, financial and physical recovery through education and training programs

VALOR's recent activities include: administration of the 1995 and 1996 National Victim Assistance Academy; developing OVC's 1995 and 1996 *National Crime Victims Rights Week Resource Guide*; conducting the OVC-sponsored Restitution Reform Project; and providing leadership on criminal justice system reforms in the areas of sentencing, parole, child abuse, and juvenile justice.

California State University-Fresno

California State University-Fresno (CSUF) is the Academic lead for the 1996 Academy and provides elective undergraduate and graduate credit for Academy students in all sites. The on-campus sponsor for the Academy is the Department of Criminology, which has a long history of leadership in university-based crime victim related education. CSUF was the first University in the nation to develop and conduct a program of study in victim services. Started in 1985,

today it is the only University in the nation that offers an undergraduate degree in victimology, a graduate degree with a specialization in victimology, and a month-long summer institute on victim services.

The Justice Center at CSUF is also actively involved in victims' issues including research on various forms of domestic violence with the California District Attorneys Association. CSUF is the lead campus with the California State University and University of California Systems for the development of a Joint Doctorate Degree in Criminology with an emphasis in Victimology. It is anticipated that this will be the first Ph.D. program of Victimology in the nation. The University established an important precedent by providing academic credit for the OVC-sponsored Civil Remedies Training Series in 1992 and 1993.

National Crime Victim Research and Treatment Center, Medical University of South Carolina

The National Crime Victim Research and Treatment Center (CVC) is a division of the Department of Psychiatry and Behavioral Sciences at the Medical University of South Carolina in Charleston, South Carolina. Since 1974, CVC has been devoted to developing a better understanding of the impact of criminal victimization on adults, children, and their families. Program activities include: research; professional education; clinical service; and public policy consultation at the local, state and federal levels. The faculty members of the CVC are widely regarded as leaders in scientific research on the consequences of crime and victimization and as experts in assessment and treatment of crime-related psychological trauma.

Washburn University

Washburn University was founded as a municipal university in the state capital, Topeka, in 1865. In response to escalating concerns about crime and violence, staff and faculty from a variety of administrative and academic departments recently formed the Center on Violence and Public Policy. The Center serves as a consortium for University-sponsored initiatives intended to address issues from a multi-disciplinary perspective. The Center includes staff and faculty from criminal justice, social work, human services, psychology, legal technology, and continuing education. The Victim Assistance Program (VAP), an educational series for professionals who serve those who have experienced loss and trauma, was established as a program of the Center in 1995. The Center on Violence and Public Policy serves as host for the 1996 National Victim Assistance Academy at Washburn University.

University of Maryland

The University of Maryland at College Park is considered the flagship of the Maryland state university system and the state's primary center for graduate study and research in a broad spectrum of academic disciplines. The university's state-of-the-art Instructional Television System offers a myriad of opportunities for the application of distance learning technology. The Center for Applied Policy Studies serves as the Academy sponsor at the University of Maryland.

1996 Academy Project Team

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Biographies

Aileen Adams, J.D., was appointed by President Clinton and confirmed by the United States Senate to be the Director of the Office for Victims of Crime (OVC) in the U.S. Department of Justice in October 1994. Prior to her Presidential appointment, Ms. Adams worked as an advocate for sexual assault victims, consumers, and older Americans for more than two decades. She has an extensive background in law enforcement and victims' rights, consumer advocacy, fire safety and emergency medical care, and as a civic leader. She has worked in many different phases of the criminal justice system -- serving as a prosecutor, a police reserve officer, a probation officer, a legal advocate for sexual assault victims, and the director of a facility for sexually abused children.

David Austern, J.D., is the General Counsel of the Manville Trust and a former Assistant District Attorney in New York, as well as a former Assistant United States Attorney in Washington, D.C. He was in private practice for 13 years, and is the author of three books, including *The Crime Victims Handbook*. Mr. Austern is also President of the National Victim Center's Board of Directors. As a law professor at Georgetown University, he taught Criminal and Procedural Law; presently he teaches as an Adjunct Professor at The American University. He has written a book on government ethics.

Samuel Aymer, C.S.W., is a certified social worker and a psychotherapist. He has worked in the human services field for 15 years and has conducted workshops and lectured on domestic violence, trauma-related issues, African-American family issues, and cross-cultural counseling as well as clinical work with victims and batterers. Mr. Aymer is also an adjunct professor at Hunter College School of Social Work and at Fordham University Graduate School of Social Service. In addition to his current position as Director of Training at Victim Services, Mr. Aymer has a private practice where he provides psychotherapy to individuals, families, and couples.

Diane Batres is the Victim/Witness Project Coordinator for San Joaquin County Victim/Witness Center in Stockton, California. She has served in that position since 1980 and developed the Big Brother-Big Sister Program within that agency. She has been a member of the Office for Criminal Justice Planning, Victim Services Training Advisory Committee since 1985. Ms. Batres' accomplishments include: the Susan B. Anthony Award, San Joaquin and Delinquency Prevention Commission, and the State of California Governor's Victim Service Award for Outstanding Contributions and Services to Crime Victims.

David Beatty, J.D., has served as Director of Public Policy for the National Victim Center since 1989 and as Acting Director of the Center since 1995. He serves as the Center's spokesman on policy and legal issues, and provides research, training and technical assistance for legislators, policy leaders, victims, victim advocates and members of the media. He currently serves on the Victims Committee of the American Bar Association, and is a member of the Victims' Constitutional Amendment Network Steering Committee. In 1996, he received the President's

Victims Service Award in a White House ceremony for his outstanding work on behalf of crime victims.

Barbara L. Bonner, Ph.D., a Clinical Child Psychologist, is an Associate Professor and Director of the Center on Child Abuse and Neglect in the Department of Pediatrics at the University of Oklahoma Health Sciences Center. Dr. Bonner established a treatment program for adolescent sex offenders in 1986 and has presented seminars on the program throughout the U.S. and in several foreign countries. She also directs a research project funded by the National Center on Child Abuse and Neglect to compare two approaches to treatment for children with sexual behavior problems. Her clinical and research interests include the assessment and treatment of abused children, forensic evaluation of alleged sexually abused children, prevention of child fatalities, and treatment of children and adolescents with inappropriate or illegal sexual behavior. Dr. Bonner currently serves on the Board of Councilors of the International Society to Prevent Child Abuse and is Past President of the American Professional Society on the Abuse of Children.

Jane Nady Burnley, Ph.D., is the Director of the National Victim Assistance Academy Project and Executive Director of VALOR, the Victims' Assistance Legal Organization, Inc., a national non-profit organization founded in 1979 to advocate for crime victims' rights. Dr. Burnley is the former director of the U.S. Justice Department's Office for Victims of Crime (1987-1991) where she administered the *Victims of Crime Act* and established innovative programs to assist Native American victims and victims of federal crimes. She served as Associate Commissioner of the U.S. Children's Bureau (1984-1987) and Special Assistant to the Commissioner on Developmental Disabilities (1982-1984). In the former position, she managed federal child welfare programs and the National Center on Child Abuse and Neglect. She also serves on the U.S. Advisory Board on Child Abuse and Neglect (1992-1996). Prior to government service, she worked for more than ten years with children and their families in schools and public health settings. She has spoken widely on the impact of child abuse, domestic violence, and other violent crimes, and has testified on numerous occasions before committees of the U.S. House of Representatives and U.S. Senate. In 1991, Dr. Burnley was honored by NOVA as the first recipient of the Senator John Heinz Award for Outstanding Service on Behalf of Crime Victims.

Robert Davis has covered crime and breaking news for *USA Today* since January, 1992. A former paramedic, his specialty is "parachute journalism," jumping into the middle of disasters to cover breaking stories on deadline. He covered the Oklahoma City bombing, the federal standoff with Branch Davidians in Waco, Texas, and a string of natural and manmade disasters ranging from Hurricane Andrew to plane and train crashes across the nation. He covered the Susan Smith double-murder trial, as well as the John Wayne and Lorena Bobbitt trials. Mr. Davis began his journalism career in Colorado, where he covered crime and breaking news for two small newspapers. He is a writing coach who teaches young journalists how to cover the big stories and a regular speaker at seminars on how criminal justice and victims advocates deal with the media.

Debbie Deem, M.Ed., M.S.W., has been the Northern California Federal Victim/Witness Coordinator for the U.S. Attorney's Office in San Francisco since 1992 and implements a victim/witness assistance program in a District of 15 counties. She works directly with individual victims and witnesses of crimes including bank robbery, armed car jacking, sexual

assault, child sexual abuse, and other violent crimes that occur on federal property or military property if the perpetrator is a civilian. She also works with victims of white collar crimes. Her office was recently chosen by the Office for Victims of Crime to create a demonstration project to assist victims of white collar crime. In the past Ms. Deem has served as a victim/witness advocate in prosecutor- or independent nonprofit-based victim service programs in San Jose, Albuquerque and Anchorage, Alaska. She has also worked for the Attorney General's Office in Santa Fe, New Mexico, assisting consumer fraud victims. Her experience includes teaching autistic and other developmentally-delayed children.

Tony DeNardi has worked for the Bureau of Alcohol, Tobacco and Firearms since 1972. During his 24-year career with ATF, he has been stationed in Texas, New Jersey, Florida, Ohio, and, since 1990, Kansas. Mr. DeNardi is currently assigned as the supervisor of a firearms and narcotics group that is responsible for the enforcement of federal statutes relating to firearms, narcotics, and explosives violations. He graduated from Eastern New Mexico with a degree in political science and taught in the public school system in Lubbock, Texas for two years.

Dan Eddy, J.D., is the Executive Director of the National Association of Crime Victim Compensation Boards, the organization comprising all of the state compensation programs. He plans and implements training and technical assistance activities and operates a referral and resource information service on compensation issues. Previously, he directed the Crime Victim Project at the National Association of Attorneys General, assisting state Attorneys General with legislative and programmatic efforts. He is an attorney with several years experience in private practice.

Christine Edmunds is the Senior Consultant for Curriculum Development for the National Victim Assistance Academy Project and a consultant specializing in criminal justice reforms and victims' rights and services. She has worked in the victims' movement for over a decade, including as assistant Director of Public Affairs and Senior Trainer for the National Organization for Victim Assistance and as Director of Program Development for the National Victim Center. She has developed and directed numerous federal, state, and local training, evaluation, and technical assistance programs for service providers, prosecutors, judges, and law enforcement in over 40 states. Her experience includes conducting 40-hour training of trainers programs and development of the Legal Remedies for Crime Victims Against Perpetrators training series. She also developed NVC's INFOLINK, a national toll-free information and referral program covering 65 different topics. Since 1989, she has served as Adjunct Instructor in the Department of Criminology at California State University-Fresno.

Carroll Ann Ellis, M.S., is the Director of Fairfax Police Department's Victim/Witness Unit, which provides a wide array of comprehensive services to victims and witnesses of violent crimes. She is the co-founder and co-facilitator of the Fairfax Peer Survivors Group (FPSG), a support group for family members of homicide victims. The FPSG has been the feature of a documentary entitled *From Fury to Forgiveness*. She is also a frequent guest lecturer at the National FBI Academy at Quantico, Virginia.

Rick Ellis, M.S., is an Assistant Professor of Human Services at Washburn University. He has developed courses in juvenile violence and drug abuse and serves as an instructor in the Victims Assistance Program seminar, "Issues of Human Diversity and Victims of Bias Crimes." Mr.

Ellis' professional experience includes service as education coordinator for an AIDS intervention program, evaluation administrator of alcohol and drug treatment programs, and counselor at a special needs school. He has a masters degree in special education of the emotionally disturbed and is currently working towards a doctorate in human ecology.

James H. Flory, J.D., has been the Supervisory Assistant U.S. Attorney in Topeka, Kansas, since 1993. Previously he was a federal prosecutor in the Office of the District Attorney in Kansas City, Kansas, for two years. Mr. Flory has also served as the District Attorney for the Seventh Judicial District in Lawrence, Kansas, and worked in the Office of the Attorney General of Kansas. He received a Juris Doctor from the University of Kansas. Mr. Flory began his career in the criminal justice system as a deputy sheriff.

Mario Thomas Gaboury, Ph.D., J.D., is Director of the Center for the Study of Crime Victims' Rights, Remedies, and Resources at the University of New Haven. He is formerly Deputy Director of the U.S. Department of Justice Office for Victims of Crime, currently a regular consultant and advisor to projects conducted by the Victims' Assistance Legal Organization and the National Victim Center, and formerly Legislative Specialist for the National Organization for Victim Assistance. He serves as Chair of the Victims' Rights Committee of the Connecticut Bar Association and Vice Chair of the Victim Committee of the American Bar Association. Dr. Gaboury also maintains a private law and consulting practice. He has authored several book chapters and delivered over 75 professional papers, workshops and speeches.

Barbara J. Hart, J.D., is Legal Director of the Pennsylvania Coalition Against Domestic Violence, Associate Director of the Battered Women's Justice Project and Legal Consultant to the National Resource Center on Domestic Violence. Her work includes public policy making, training and technical assistance on issues such as: coordinated community intervention systems, court procedures, program standards for batterer treatment services, collaboration between the research and practitioner communities, and effective intervention against domestic violence. She authored *State Codes on Domestic Violence: Analysis, Commentary and Recommendations* and is the co-author of *Confronting Domestic Violence: Effective Police Response* and *Seeking Justice: Coordinated Justice System Intervention Against Domestic Violence*. She also wrote *Safety for Women: Monitoring Batterers' Programs and Accountability: Program Standards for Batterer Intervention Services*. She has a private consultation and training practice, providing assistance to lawmakers, business leaders, battered women's programs and treatment programs for battering men.

Carolyn Hightower, M.P.A., is the Deputy Director for the U.S. Department of Justice Office for Victims of Crime (OVC). She began her career in the federal government in 1984 as a Presidential Management Intern in the Justice Department. Since that time, she has devoted much of her attention to crime victims' issues and services. During her tenure as Director of the State Victim Assistance and Compensation Division in OVC (1990-1995), she managed hundreds of millions of dollars in grants to states and the development of federal rules related to the administration of the *Victims of Crime Act*. As Deputy Director of the Office, Ms. Hightower is responsible for program and administrative activities related to VOCA state grant funds, funding to assist federal victims of crime, and training and technical assistance to improve the treatment of crime victims. Ms. Hightower has served as keynote speaker and trainer for a number of statewide conferences, and she has extensive experience in policy development,

program planning and implementation, and management and supervision. Previously, Ms. Hightower served as research assistant in the Bankruptcy Court in the Central District of California and clerk in the Los Angeles Superior Court Appeals Unit.

Deloris Huff, Ed.D., received her doctorate from Harvard. She is a professor of Indian Studies at California State University-Fresno and has taught courses at Stanford and UCLA. She is a member of the Cherokee Nation of Oklahoma and authored a number of journal articles regarding Indian issues and concerns. She serves as a consultant for a number of local, state, and national organizations and agencies, including the U.S. Office of Education in Washington, D.C., the Sherman Indian School in Riverside, California, and the Native American Center in Chicago, Illinois.

Jerome Jackson, Ph.D., is a professor in the Department of Criminology, California State University-Fresno. For the last four years he has taught undergraduate and graduate classes including "Gender and Ethnic Issues in Victimology," "Victimology," and "Victim Services." He has published numerous articles in national and international journals, including the recent "Race and Correctional Officers' Punitive Attitudes Toward Treatment Programs for Inmates" in the *Journal of Criminal Justice* and "Fraud Masters: Professional Credit Offenders and Crime" in the *Criminal Justice Review*. In addition, he has served as a national reviewer on such topics as "Blacks and Crime: A Function of Class;" "Black-on-Black Crime;" and "Blacks and White Collar Crime" for the *Criminal Justice Review*. He has presented extensively at national professional and academic conferences. Dr. Jackson is also an associate pastor at St. Rest in Fresno.

Dean G. Kilpatrick, Ph.D., is Professor of Clinical Psychology and Director of the National Crime Victim Research and Treatment Center at the Medical University of South Carolina in Charleston, South Carolina, where he has been on the faculty since 1970. Since 1974, his primary research interest has been studying the scope and mental health impact of violent crime with particular emphasis on crimes against women. His research has resulted in over 120 publications and 275 presentations at scientific and professional meetings. In 1985, he received the National Organization for Victim Assistance Stephen Schafer Award for Outstanding Research Contribution to the Victim Assistance Field, and in 1990, President George Bush presented Mr. Kilpatrick with the nation's highest award for Outstanding Service on Behalf of Victims of Crime.

Janice Harris Lord, M.S.S.W., is a licensed professional counselor who joined Mothers Against Drunk Driving in 1983 as National Director of Victim Services, the position she continues to hold. As a writer, Ms. Lord founded and is editor of *MADDVOCATE* magazine, a publication for victims of drunk driving crashes and their advocates. She is the author of two books, *Beyond Sympathy* and *No Time for Goodbyes*. She is certified both as an educator and trainer by the Association for Death Education and Counseling, and has designed a highly successful Death Notification workshop. Ms. Lord received national recognition from Attorney General Janet Reno in 1993 for Outstanding Service on Behalf of Victims of Crime.

Lissa Lord, M.L.S., is Head of Reference and Circulation Services at the Washburn University School of Law. She is the creator of RELAW: The Virtual Law Reference Desk, a reference database of legal information on the Internet. Ms. Lord also worked on a committee to establish

a home page for the Kansas Kids Voting project. She provides instruction on accessing and utilizing the Internet through the Division of Continuing Education at Washburn University.

Michael Manske, J.D., is an Assistant Professor of Criminal Justice at Washburn University. He teaches courses on criminal justice, law, and ethics and also serves as instructor in the Victims Assistance Program seminar, "Investigative and Judicial Process: Victims and Offenders." Prior to coming to Washburn, Mr. Manske was a practicing attorney in Nebraska, with experience as both a prosecutor and in private practice. He also serves in the United States Marine Corp Reserve. He received a Juris Doctorate from the University of Nebraska College of Law.

Edwin Meese III, Attorney General of the United States from 1985 to 1988, was instrumental in ensuring that the U.S. Department of Justice, for the first time in history, played a leadership role in advancing the rights of crime victims. During his tenure, the first federal Office for Victims of Crime was established; the first federal support for local victim assistance programs was provided using criminal fines and penalties; and for the first time, victim/witness coordinators served crime victims in every U.S. Attorney's Office. As a key advisor to President Reagan, he served as Chairman of the Domestic Policy Council and the National Drug Policy Board and as a member of the National Security Council. During the 1970s, Mr. Meese was Director of the Center for Criminal Justice Policy and Management and Professor of Law at the University of San Diego. He earlier served as Chief of Staff for then-Governor Reagan and was a local prosecutor in California. Mr. Meese is currently a Ronald Reagan Fellow in Public Policy at the Heritage Foundation in Washington, D.C., and a Distinguished Visiting Fellow at the Hoover Institution in California.

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Brian Ogawa, D.Min., C.T.C., is the founding Director of the National Academy for Victim Studies, Department of Criminal Justice, University of North Texas. The mission of the Academy is to foster continuing education, academic training and research regarding victims of crime and violence. Dr. Ogawa has over 25 years of university teaching and research, community service, counseling, and professional criminal justice experience. He is recognized internationally as a speaker, trainer, and consultant on crime victim-related issues. In 1995, Dr. Ogawa received the Crime Victim Service Award presented by the President of the United States and the Attorney General in a ceremony at the White House. He has served on numerous national boards and advisory communities, including the Violence Against Women Advisory Council to the U.S. Departments of Justice and Health and Human Services, the Executive Committee of

the National Organization for Victim Assistance, and the Victim Issues Committee of the American Probation and Parole Association. Dr. Ogawa is also the author of a number of important writings in the victim services and counseling fields, including the acclaimed books *Walking On Eggshells*, *To Tell The Truth*, and *Color of Justice*.

Sterling O’Ran III is presently serving as an administrator for the California Department of Corrections in the “Three Strikes” Planning Unit. He formerly served as an Ombudsman for HIV/AIDS inmates; the Chief of the Special Projects Branch, administering the Crime Victim Services Program; and the Staff Director of the Blue Ribbon Commission on Inmate Population Management. Mr. O’Ran was also the Chief of the Legislative Division for the Governor’s Office of Criminal Justice Planning and California’s first administrator for Victim Service Programs. As a probation officer and juvenile counselor, he created one of California’s first probation-based victim/witness programs. Mr. O’Ran has received numerous awards for his work with crime victims including the National Organization for Victim Assistance’s (NOVA) Margery Fry award for victim services. He has been a member of NOVA for 19 years and has served as a member of the Board of Directors.

Greg D. Richardson, J.D., M.P.A., is a Founding Director of the Restorative Justice Institute, a charitable organization that brings authentic restorative justice to bear on the criminal justice system. Mr. Richardson currently serves as the president of the National Community Sentencing Association. He is a member of the American Bar Association Section of Criminal Justice’s Committee on Corrections and Sentencing, and the American Correctional Association’s Community Corrections Committee. He has also served on the board of directors of a program for victims of domestic violence, planned and coordinated a number of national conferences, and written numerous articles for publication in professional and academic journals. Prior to founding the Restorative Justice Institute, Mr. Richardson did criminal justice reform work with Justice Fellowship for over nine years, and practiced law as a criminal prosecutor and in a corporate legal office.

Albert R. Roberts, D.S.W., is a Professor of Social Work and Criminal Justice at Rutgers University School of Social Work. From 1990-1993, he chaired the Administration of Justice Department within the Rutgers School of Social Work. Dr. Roberts has been a pioneer in the development of undergraduate and graduate level course work focusing on social work and criminal justice aspects of victimology and victim services. He has developed several courses related to victimology and family violence intervention. Dr. Roberts has 25 years of experience in survey research related to victims’ issues and social work practices. His studies have included detailed analyses of the organizational structure and functions of battered women’s shelters, prosecutor-based victim and witness assistance programs, rape crisis programs, law enforcement training academies, and crisis intervention units of community mental health centers. Dr. Roberts also has authored nearly 100 publications, including 15 books, on social work and criminal justice related topics. He currently serves as Editor in Chief of the *Crisis Intervention and Time-Limited Treatment Journal*.

Anne Seymour is a consultant specializing in criminal justice, crime victims’ rights and services, and public safety. Her current work includes public policy development, training and technical assistance, program evaluation, and research in juvenile justice, corrections-based victim services, family violence, the news media’s coverage of crime, and drug treatment for

non-violent offenders, as well as developing new technologies to improve criminal justice and victim services. She has over a decade of experience, first as the Director of Public Affairs for the National Office of Mothers Against Drunk Driving and, from 1985 to 1993, as co-founder and Director of Communications of the National Victim Center. She has appeared in virtually every news medium -- including all network morning shows and evening newscasts, *Nightline*, *Larry King Live*, *Crossfire*, *The Oprah Winfrey Show*, and *Frontline* -- as an expert on crime victims' rights. Ms. Seymour has received numerous honors for her efforts, including the 1992 "Outstanding Service to Crime Victims" award from President Bush.

Emmett (Skip) Sigmon III is the Victims Information Specialist in the Office for Victims of Crime Resource Center (OVCRC). He provides information support to victim advocates and allied criminal justice professionals, and conducts training on victims information resources of the U.S. Department of Justice. Prior to his present position, he served as Senior Criminal Investigator in the Office of the District Attorney General in Nashville, Tennessee, where he also worked as a Victim/Witness Assistant.

Eric Smith, J.D., is President of the Jacksonville City Council and President of the Board of VALOR, the Victims' Assistance Legal Organization, Inc. He was elected to the City Council as an at-large member in 1979 and has been re-elected four times. He is a member of the Florida Bar Association and the Jacksonville Bar, a practicing attorney, and a consultant with The New England, a national life insurance firm. From 1972-1978, Mr. Smith served as a member of the Florida House of Representatives, where he was the prime sponsor of the Crimes Compensation Act of 1977 and chaired the House Select Committee to investigate Organized Crime. He was also a co-founder of the National Organization for Victim Assistance in 1975 and currently serves as a board member of the National Victim Center. He was instrumental in creating the City of Jacksonville, Human Services Department's Victim Services Division and passing legislation to create and fund the construction of the Victim Services Center, the first such center ever built in the United States. He was also the prime sponsor of anti-crime legislation creating the 9-1-1 Emergency Lifeline System and the Automated Fingerprint Identification System. Mr. Smith is also a past president of the Florida League of Cities (1989-90) and currently a member of the National League of Cities Public Safety and Crime Prevention Steering Committee.

H. Dan Smith, Ed.D., is a Professor and Chair of the Department of Counseling and Special Education at California State University-Fresno. He obtained his Ed.D. from the University of Northern Colorado. He teaches graduate classes in counseling and is a licensed Marriage, Family, and Child Counselor. He became involved with the World Wide Web while writing a home page for the Department and since that time has acted as a consultant for other educators, members of the public and businesses regarding the Internet.

Karen M. Spinks has administered the federal victim/witness program since October, 1987 for the U.S. Attorney's Office in the Eastern District of Virginia, with divisions in Alexandria, Richmond and Norfolk. Included within the jurisdiction are 16 military installations, 123 combat ships, or one third of the U.S. Navy's entire fleet, whose home port is Norfolk -- thereby comprising the "floating" Eastern District of Virginia, and numerous federal parks and battlefields. She serves as the Chairperson of the Eastern District of Virginia's Law Enforcement Coordinating Committee's subcommittee on victims and witnesses and is actively involved in various victims' issues and organizations across the Commonwealth of Virginia.

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Steven D. Walker Ph.D., is a professor of psychology at Kansas City Community College in Kansas City, Kansas, and is in private practice in Kansas City, Missouri. Formerly, he was Associate Professor at California State University-Fresno where he administered the Victim Services Certificate Program, started the Victim Services Summer Institute in 1989, and created the nation's first victimology major in 1992. Over the past eight years, Dr. Walker also has conducted numerous workshops on training standards in victim services.

Harvey Wallace, J.D., is currently an Associate Professor and Director of the Justice Center in the Department of Criminology, California State University-Fresno. He is the former City Attorney for Fresno, California and the former County Counsel for Butte County, California. In both positions, he was involved in advising law enforcement agencies on domestic violence. He served as a Deputy District Attorney for the San Diego District Attorney's Office where he prosecuted numerous felony and misdemeanor cases. Mr. Wallace is the author of *Family Violence: Legal, Medical, and Social Perspectives* (1995) and is in the process of writing several other books in the area of criminal justice.

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Francie Wendelborn has been the Victim/Witness Coordinator for the Eastern District of Wisconsin since 1988. She is the Chairperson of the Victim Bank Tellers Task Force, which provides support to bank employees who have been victims of a robbery. She is also a member of the Child Abuse Multidisciplinary Team on the Menominee Reservation and a member of the Wisconsin Attorney General's Task Force for Children In Need. Ms. Wendelborn was the 1995 recipient of the Attorney General's Award for Superior Performance in Victim/Witness Assistance. Prior to coming to the United States Attorney's Office, she was a staff assistant to a United States Senator.

Carole Williams is a Court Services Officer for the Third Judicial District Court Services in Topeka, Kansas. She also works as a Juvenile Intake Counselor for the Kansas Children's Service League. Ms. Williams has experience as a corrections officer at Hutchinson Correctional Facility and at the Wichita Work Release Center, and has worked in an emergency youth shelter and at the Shawnee Youth Center.

Marlene A. Young, Ph.D., J.D., was a founding member of the board of the National Organization for Victim Assistance (NOVA) in 1975 and has served as Executive Director since 1981. She is also on the Executive Committee of the World Society of Victimology, past treasurer of the International Society for Traumatic Stress Studies, co-chair of the Victim Services Committee of the International Association of Chiefs of Police, and a member of the Victims Committee of the American Bar Association. She was also a founding board member of the American Professional Society on the Abuse of Children. In her capacity as NOVA's Executive Director, Dr. Young developed the first 40-hour, victim-oriented training curricula ever published for allied professional groups of law enforcement patrol officers and managers, prosecutors, and mental health providers. She also designed one of the first 40-hour training courses for victim advocates, victim counselors, and victim service program managers. Dr. Young has published some 75 articles, chapters, and monographs. She has traveled to 49 states and nine countries and spoken on victim-related issues at over 800 conferences and training seminars. Her leadership in the victims' movement has resulted in 50 state, national, and international honors. In 1988, she was the recipient of one of the annual awards of the Foundation for Justice Improvement. In 1992, she was honored by President George Bush for "Outstanding Service in Behalf of Crime Victims."

National Victim Assistance Academy

Introductory Exercise

- Assessing Your Knowledge and Skills for Assisting Crime Victims
- Assessing your Foundation-Level Knowledge of the Civil and Criminal Justice System

This is a learning exercise; your responses will be used for discussion and may help to identify areas for further training. For each item below, please circle “Yes” or “No” to indicate whether the statement is appropriate or not appropriate when speaking to crime victims. You will have an opportunity to discuss your answers with the Academy Faculty. Thank you.

Comments to Victims

- | | | |
|---|---|--|
| Y | N | I am sorry you were raped. |
| Y | N | You should not hesitate to report to the police. |
| Y | N | You should feel lucky to be alive. |
| Y | N | I know how angry you are. |
| Y | N | Hopefully, you have some type of insurance. |
| Y | N | Your crime did not occur in my jurisdiction. |
| Y | N | A pelvic exam is no big deal. Women have them all the time. |
| Y | N | You can call me at home tonight if you need to talk. |
| Y | N | The suspect will be prosecuted to the fullest extent of the law. |
| Y | N | I had my purse stolen once, so I know how you feel. |

- Y N It's okay to feel frustrated.
- Y N You are having a normal reaction to a traumatic event.
- Y N You are not going crazy, but I'd like to give you some counselors' names and phone numbers.
- Y N Since you have been raped, you may be worried about HIV/ AIDS. You need to call the Health Department.
- Y N Many people feel they should have done something differently, but we don't necessarily have control over our body when we are faced with danger.
- Y N Don't cry. You have to get yourself under control.
- Y N Do you know if the person who did this was with the military or lived on a reservation?
- Y N I don't know the answer, but I'll find out and call you back.
- Y N Get a grip!
- Y N You are eligible for Crime Victim's Compensation.
- Y N What was your name again?
- Y N Mrs. Yelnrub, oh, I'll just call you Jane.

Criminal and Civil Justice Process

- Y N One difference between felonies and misdemeanors is that felonies are punishable by prison time while misdemeanors are punishable by time in the county jail.
- Y N You will get restitution for your losses and it will be paid directly to you by the perpetrator.
- Y N Before a defendant pleads guilty, you can submit a victim impact statement.

- Y N It is important for the victim to be present at the arraignment if he or she chooses to do so.
- Y N If a defendant is arrested, it is reasonable to expect that he/she will be in jail until their arraignment.
- Y N The victim has the right to decide to a plea negotiation.
- Y N If the perpetrator was a juvenile, you have no rights.
- Y N If the abuse happened to you when you were a child, there's not much I can do for you now.
- Y N Our court is very busy, and there may be lots of continuances, so we need to talk about plea bargaining.
- Y N You're lucky; this sounds like a federal crime, and you may have greater rights.
- Y N The victim is not allowed in the courtroom during trial except when he/she is testifying because witnesses are excluded.
- Y N If the victim desires, his/her phone number and address may be kept from the defendant.
- Y N A victim impact statement will be required at sentencing.
- Y N Unfortunately, fraud victims cannot expect to receive most notification and participation rights.
- Y N The District Attorney's office handles civil cases.
- Y N Beyond a reasonable doubt means 99% certainty.
- Y N If you are thinking about suing the perpetrator, wait until after the prosecution.
- Y N It depends on the location of the crime as to what rights you are entitled to as a victim.
- Y N If the grand jury issues a "true bill," they have decided that the defendant is innocent.

- Y N Because of confidentiality restrictions, I can't tell you much about the juvenile who assaulted you but he was found guilty in juvenile court.
- Y N Victim's Compensation will pay for the replacement of damaged or lost property.
- Y N Compensation does not apply to federal crime victims under many circumstances.
- Y N Discovery is a defendant's first appearance before a judge.
- Y N It is usually necessary for the victim to testify at the trial.
- Y N The criminal justice system will take care of *all* of your needs.

(This has been adapted and expanded from: *Focus on the Future: A Systems Approach to Prosecution and Victim Assistance*, presented by the National Victim Center, Mothers Against Drunk Driving and American Prosecutors Research Institute and sponsored by U.S. Department of Justice, The Office for Victims of Crime.)

Chapter 1

The Scope of Violent Crime and Victimization

Abstract: Violent crime in America has become a national crisis, and, as a result, America's mental health, health and public safety systems are seriously challenged. Recent surveys have helped create new understanding of the scope of rape and its impact. Data suggest that millions of women have been raped in their lifetime, many when they were still children. The mental health impact of violent crime can be seen in the prevalence of PTSD among women with a history of violent victimization and individuals who have lost a family member to homicide.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The extent to which violent crime is a concern for Americans.
 2. The scope of violent crime and the extent to which it has increased in recent years.
 3. The extent to which concerns or fears about crime have affected the way Americans live.
 4. The broader impact of violence on an individual's view of the world.
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Statistical Overview

- There was one violent crime every 16 seconds in 1993. (*Federal Bureau of Investigation, 1994, "Crime in the United States, 1993," U.S. Department of Justice, Washington, D.C.*)
- There were an estimated 43,547,400 criminal victimizations in the United States in 1993, including 10, 848,090 crimes of violence, and 32,182,320 property crimes. (*Bureau of Justice Statistics, 1995, "Sourcebook of Criminal Justice Statistics, page 230, U.S. Department of Justice, Washington, D.C.*)
- Slightly over one-third (35.1 percent) of all crimes were reported to police in 1993, with 41.6 percent of crimes of violence reported to police. (*Ibid., page 245*)
- In 1993, a weapon was used in 27.3 percent of crimes of violence in the United States. (*Ibid., page 236*)
- During 1994, law enforcement agencies made an estimated 14.6 million arrests for all criminal infractions other than traffic violations. The arrest rate was 5,715 arrests per 100,000 population in the United States. Of all persons arrested in 1994, 45 percent were under the age of 25; 80 percent were male; and 67 percent were white. (*Federal Bureau of Investigation, 1995, "Crime in the United States, 1994," U.S. Department of Justice, Washington, D.C.*)
- From 1993 to 1994, violent crimes collectively decreased by three percent. The 1994 total was, however, two percent higher than the 1990 figure and 40 percent above the 1985 level. (*Ibid.*)
- From 1973 to 1991, 36.6 million people were injured as a result of violent crime. Annually, about two million people are injured as a result of violent crime. (*Bureau of Justice Statistics, 1993, "Highlights from 20 Years of Surveying Crime Victims," page 15, U.S. Department of Justice, Washington, D.C.*)
- Of victims of crime who are injured, 51 percent required some type of medical treatment; 19 percent received treatment at a hospital emergency room or were treated at a hospital and released that day, and four percent required hospitalization for at least one night. (*Ibid., page 15*)
- One-third of violent crimes (32 percent) involve a weapon, including 92 percent of aggravated assaults, 55 percent of robberies, and 20 percent of rapes. (*Ibid., page 29*)
- Victims take some type of measure to protect themselves in nearly 71 percent of all violent victimizations; 82 percent of rapes; 58 percent of robberies; and 73 percent of assaults. (*Ibid., page 30*)

- More than 5.1 million Americans -- or almost 2.7 percent of the adult population -- were under some form of correctional supervision in 1994. Almost three-quarters of these men and women were being supervised in the community on probation or parole. The others were confined in jail or prison. (Gilliard, Darrell and Allen Beck, 1995, "The Nation's Correctional Population Tops Five Million," Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C.)
- At the end of June 1995, there were 1,104,074 men and women incarcerated in the nation's prisons. (Gilliard, Darrell and Allen Beck, 1995, "Prisoners at Midyear, 1995," Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C.)

Introduction

According to Webster's New World Dictionary, "disaster" is defined as "any happening that causes great harm or damage, serious or sudden misfortune, or calamity." Using this definition, violence in America is clearly a health, public safety, and mental health disaster. Violence affects not only individuals, children, and adults; it also affects America's families, America's communities, and our nation at large.

Violence is a major concern of all Americans:

- In a 1991 survey of a national probability sample of 1,000 adult Americans, more than four out of five Americans (82%) said they were personally very concerned about violent crime (Kilpatrick, Seymour, and Boyle, 1991).
- More Americans were concerned about violent crime and drug abuse than about unemployment, pollution, the deficit, or educational quality (Kilpatrick, et al., 1991).

This survey, sponsored by the National Victim Center, also found that a majority of Americans (54%) think that violent crime is more of a problem now than it was ten years ago.

Information about the magnitude of the violent crime problem suggests that Americans' concerns about crime are not misplaced. Data from *The National Women's Study*, a National Institute of Drug Abuse-funded survey of a national probability sample of 4,008 adult American women, indicated that 3.5% of the sample, or an estimated 3.7 million adult women, were victims of some type of sexual or aggravated assault during a one year period; 2.5%, or an estimated 2.4 million American women, were victims of rape or aggravated assault; 1.8%, or approximately 1.7 million American women, were victims of aggravated assault; and 0.71%, or an estimated 683,000 American women, were victims of completed rape (Kilpatrick, Edmunds, & Seymour, 1992; Resnick, Kilpatrick, Dansky, Saunders, & Best, in press). These estimates of rape are much higher than those obtained in the *National Crime Survey* because *The National Women's*

Study used screening questions that were specifically designed to measure rape and other types of sexual assault (Kilpatrick, et al., 1992).

Thus, millions of American men, women and children are victims of criminal violence each year. Particularly for rape and sexual assault, official statistics substantially underestimate the extent of the problem. Information from non-retrospective studies is particularly poor about violence directed at children under 12, adolescents and/or men.

Americans are vulnerable to criminal victimizations throughout the lifespan. For example, *The National Women's Study* found that:

- 22.6% of sample members, or an estimated 21.7 million women in America, had been victims of some type of sexual assault throughout their lifetime.
- 12.9% of the sample, or an estimated 12.1 million people in America, had been victims of one or more completed rapes.
- 10.3%, or an estimated 9.8 million women, had been victims of aggravated assault.
- 13.4%, or an estimated 12.8 million women, had lost a family member or close friend to criminal homicide or alcohol-related vehicular homicide.

Over a third of the sample members (35.6%), or an estimated 34.1 million adult women in America, had been victims of forcible sexual assault, aggravated assault, or had suffered the homicide death of a relative or close friend (Resnick, et al., in press).

For many women, rape is a tragedy of youth. *The National Women's Study* obtained information about up to three forcible rapes per person; her first, most recent, and "worst" rape if other than the first or most recent.

- Almost 40% of women who had been raped had been raped more than once.
- Twenty-nine percent of all rapes happened before the victim was age 11, and an additional 32.3% happened between the ages of 11 and 17 (Kilpatrick, et al., 1992).
- Thus, almost two thirds (62.6%) of all rapes happened during childhood or adolescence.

A National Institute of Justice-funded national study of the indirect effects of criminal homicide (*The National Homicide Study*) found that 1.58% of the sample, or an estimated 2.8 million

adults in America, had lost an immediate family member to criminal homicide (Amick-McMullan, Kilpatrick, & Resnick, 1991).

- Another 1.48% of the sample, or an estimated 2.6 million adults, had lost another relative to homicide.
- An additional .75% of the sample, or an estimated 1.3 million adults in America, had lost a close friend to criminal homicide.
- In total, an estimated 3.82% of the sample, or an estimated 6.7 million adults, had suffered a homicide death of an immediate family member, other relative or close friend (Amick-McMullen, et al., 1991).

The *National Homicide Study* was conducted in 1987, preceding an increase in the homicide rate. Therefore, these estimates are extremely conservative as to the number of Americans indirectly affected by homicide.

The Mental Health Impact of Violence

The mental health impact of criminal violence is substantial. For example:

- *The National Women's Study* found that 12.8% of the adult women in the sample, or an estimated 12.3 million adult women in America, had Post-traumatic Stress Disorder (PTSD) at some time (Kilpatrick, et al., 1992; Resnick, et al., in press):
- Also 5.3%, or an estimated 5 million adult women, met DSM-III-R diagnostic criteria for PTSD within the past six months (see Table 6).
- Other findings from *The National Women's Study* suggest that PTSD was much more likely to develop after violent crime experiences than other types of potentially traumatic events such as accidents or natural disasters. Data from *The National Homicide Study* indicated that 19.1% of all sample members who had lost a family member due to criminal homicide had developed PTSD and that 5.2% still had PTSD (Amick-McMullen, et al., 1991).
- Preliminary data from the National Comorbidity Study conducted by Kessler, Bromet and Nelson found that 11% of adult women and 5.5% of adult men had PTSD at some time, and that 3.1% of adult women and 1.6% of adult men had PTSD within the past month.

These data indicate that violence-related PTSD is endemic among Americans.

The mental health impact of violence is not limited to PTSD. A history of violence substantially increases the risk for a host of other mental health disorders and problems including depression, suicide attempts, anxiety disorders, alcohol and other drug abuse problems (Burnam, et al, 1988; Kilpatrick, et al, 1985; Kilpatrick, et al, 1992; Kilpatrick & Resnick, 1993; Saunders, et al., 1992). Illustrative are these data from *The National Women's Study* comparing the rates of PTSD, major depression, suicidal ideation and suicide attempts among rape victims and nonvictims of crime (Kilpatrick, et al., 1992; see Figure 6):

- Compared to their non-crime victim counterparts, rape victims were 6.2 percent more likely to develop PTSD (31% vs. 5%), three times more likely to develop major depression (30% vs. 10%), 4.1 times more likely to have seriously contemplated suicide (33% vs 8%), and 13 times more likely to have actually made a suicide attempt (13% vs. 1%).

There is also evidence that violence affects the longer-term physical health as well as the mental health of its victims. At least one study found that health care utilization and health problems increased following violent attacks (Koss, Woodruff, & Koss, 1990).

The Broader Impact of Violence

Not only does being a victim of violence affect physical and mental health; it also influences how one views the world. Many violence victims are no longer able to see the world as a safe place, as a just place, or as a place with meaning. Violence often breeds a cynicism and distrust that unravel the very fabric of social life.

Violence and fear of violence have taken away Americans' freedom. A majority of adult respondents interviewed in *America Speaks Out* reported that they were at least "a little fearful" of being attacked or robbed (Kilpatrick, Seymour, and Boyle, 1991):

- When traveling on vacation or business (72%).
- Out alone at night in their own neighborhoods (61%).
- At home in their own house or apartment (60%).

Fear of crime restricts freedom of people to go where they want, when they want. Because of the threat of crime, many people in our nation restrict their behavior and/or have purchased some manner of protective device.

In America Speaks Out:

- Sixty percent limited the places they will go by themselves.
- Almost a third limited the places or times they go shopping.
- More than one person in five limited the types of places he or she will work.
- More than one person in four has installed a home security system.
- Perhaps more dramatically, nearly one out of every five adults (18%) reports that the fear of crime has caused them to purchase a weapon for self protection.

Fear of crime and fear of crime-related restrictions on lifestyle and behavior take a much heavier toll on women than on men.

Crime and fear of crime also place a heavy burden on the lives of racial and ethnic minorities. The *America Speaks Out* survey of 1,000 adults asked if respondents had ever been a victim of a violent crime involving the use or threat of force:

- Three out of ten Hispanics (30%) and almost three out of ten African-Americans (28%) but slightly less than two out of ten whites (19%) had been victims of violent crime (Kilpatrick, et al., 1991). *Note:* These crime prevalence rates are almost certainly an underestimate because only one screening question was used.
- A higher proportion of African-Americans and Hispanics than whites say they are either very or somewhat afraid of being attacked or robbed at home (44% vs. 35% vs. 27%), on the streets of their neighborhood in the daytime (30% vs. 25% vs. 16%), alone at night in their neighborhood (48% vs. 50% vs. 31%) and with others at night in their neighborhood (28% vs. 23% vs. 13%). Fears of being attacked or robbed while traveling were more similar across racial/ethnic groups.
- With the exception of limiting places they go by themselves, which was high for all racial/ethnic groups, a higher percentage of African-Americans and Hispanics than whites say fear of crime has caused them to limit times or places they will work (33% vs. 37% vs. 19%), purchase a weapon for protection (27% vs. 25% vs. 16%), and purchase a home security system (34% vs. 41% vs. 22%).

Racial/ethnic minorities are more likely than whites to have been violent crime victims. Their fear of crime is higher than whites, and their fear of crime causes them to place more restrictions on their lifestyles than whites.

Conclusion

Several unescapable conclusions emerge from this brief review of violent crime and its effects:

- Violence is endemic in America.
- The mental health consequences of violence are substantial for individuals, families, communities, and for our nation as a whole.
- The economic cost of violence is enormous.
- Americans are extremely concerned about violence, thereby providing a large potential base of support for addressing the problem of violence and its consequences.
- The scope of the problem of violence and its mental health impact is so great that it will require a comprehensive approach to address the problem.
- Violence and fear of crime are problems for *all* people in our nation.

The Scope of Violent Crime and Victimization

- 1) To what extent are people who live in America concerned about violent crime in the U.S.?

- 2) How has a concern about violent crime affected the way people in America view the world and live their lives?

- 3) What is the likelihood that a female friend of yours, aged 35, was raped at some point in her life?

- 4) What are the mental health consequences of rape or the homicide of a family member?

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Chapter 2

History and Overview of the Victims' Movement

Abstract: This chapter will discuss the four somewhat diverse movements that pre-dated the victims' movement and set the stage for its emergence, and outline the history in four distinct stages. Legislative changes, victim involvement, and changes in victims' services are discussed in each stage. In addition, the emergence of new organizations dedicated to assisting crime victims is described, as well as challenges facing the field today. Following the discussion of the evolution of the victims' movement, a twenty-year overview of the victims' movement is provided.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The origins and early influences of the crime victims' rights movement in the United States.
2. The historical stages of the victims' movement.
3. The major crime victim advocacy organizations and the context in which they were founded.
4. The critical legislative accomplishments of the victims' movement over the past two decades.
5. The issues that face the victims' movement today.

Historical Stages of the Victims' Movement

Four Primary Movements Influenced Victims' Rights

- Civil Rights Movement
- Anti-war Movement
- Women's Movement
- "Law and Order" Movement

Stage One: Response to Crime (1972-1976)

- First Crime Victims' Compensation Program (1965)
- National Commissions and the Law Enforcement Assistance Administration (LEAA)
- National Crime (Victimization) Survey
- Grass-roots Programs
- National Organization for Victim Assistance (NOVA)
- First Victim Impact Statement

Stage Two: Polarization and Unstable Funding (1977-1981)

- LEAA Funding
- New Organizations
 - A. National Coalition Against Sexual Assault (NCASA).
 - B. National Coalition Against Domestic Violence (NCADV)
 - C. Parents of Murdered Children (POMC)
 - D. Mothers Against Drunk Driving (MADD)
 - E. Victims' Assistance Legal Organization (VALOR)
- President Proclaims "Crime Victims' Week"
- Legislative Developments

Stage Three: Public Awareness (1982-1986)

- President's Task Force on Victims of Crime
- *Federal Victim and Witness Protection Act*
- State Legislation
- *Victims of Crime Act (VOCA)*
- Establishment of the Office for Victims of Crime (OVC)
- National Victim Center (NVC)
- New Programs
- Theoretical Concepts

Stage Four: Legislation and Professionalism (1987-Present)

- Four Major Issues
 - A. Funding
 - B. Victims' Rights
 - C. Law and Order Concerns
 - D. Professionalism

History and Overview of the Victims' Movement

In the last twenty years, the victims' movement has emerged as a powerful source of social, legal and political change. This chapter will discuss the four somewhat diverse movements that predated the victims' movement and set the stage for its emergence. It will also outline the history in four distinct stages. An effort will be made to review legal changes, victim involvement and services, changes in service providers' attitudes, and new theoretical concepts during each phase. Any historical description by necessity is not inclusive of all the facts; rather, the purpose here is to acquaint the reader with the *zeitgeist*, or spirit, of each stage.

There were four movements that strategically opened the way for the victims' movement:

- Civil Rights Movement (1963-72);
- Anti-war Movement (1967-72);
- Women's Movement (1970-Present); and
- "Law and Order" Movement (1968-Present).

Civil Rights Movement

Dr. Martin Luther King, Jr. and other leaders of the Civil Rights Movement changed this country's view of civil disobedience, clarified that *all* Americans have rights under the U.S. Constitution, and focused on forging change through non-violent means. Even though this country has had a long history of civil disobedience dating back to the Boston Tea Party and continued by 19th Century literary figures (Thoreau, Whitman, etc.), this approach had been progressively diluted through 20th Century patriotism engendered by two world wars.

Civil disobedience was not new in 1963, but re-emerged and was applied to a new group: American minorities. The Civil Rights Movement enabled society's disenfranchised minorities to exert power over American governmental and private institutions, and demand equal rights and equal access to society's opportunities.

The Anti-War Movement

The Anti-war Movement focused on America's propensity towards violence, the influence and predilections of governmental/military bureaucracy, and expressed a distrust in authority that is still evident today. This movement, through its well orchestrated marches in cities across America, showed that grass-roots (street-level) politics could overpower establishment politics (if even for a brief period). More importantly, it raised questions not only about governmental decision-making, but also about the moral implications of these decisions. This movement

clarified that even young people can have power in a democratic society. Many of those in the Anti-war Movement believed that this power did not entail difficult personal and political choices; this critical mistake was not made by the next important movement.

The Women's Movement

The Women's Movement focused on American family values, traditional male/female roles, sexism in bureaucracy (especially the criminal justice system), and economic discrepancies between men and women. This is the most important precursor of the victims' movement (Karmen, 1990). The definition and discussion of male/female roles have not been the same since it began. The victimization of women, and bureaucratic facilitation of this violence in all areas of society, were clarified and politicized. This movement stated that the other fifty percent of society should have equal political and economic opportunity and power. A direct result of increasing the power of women was the formation of rape crisis centers and domestic violence shelters in the early 1970s.

The "Law and Order" Movement

The "Law and Order" Movement predated the victims' movement, but actually allied itself with some victim advocates ten years later to press for stiffer punishment of offenders. Since the emergence of this movement in the 1960s, there has been a focus on the common person who deserved at least equal rights with the criminal. However, this movement firmly believed the common citizen could manage his or her own protection, and "justice" should be accomplished without expanding governmental assistance and monetary support (Karmen, 1990). They felt that criminals should be punished more; potential victims should be more careful; and victims, once victimized, should be self-sufficient. By the early 1980s, there was a shift that resulted in more emphasis on victims' needs. The support for increased offender accountability and a "back to the basics" constitutional approach produced new emphasis on restitution and individual rights. The "Law and Order" Movement has been particularly influential in the fourth stage of the victims' movement.

Stage One: Response to Crime (1972-1976)

Starting in the early 1960s, crime began to steadily rise in the United States, reaching its highest point in 1981. By the early 1970s, the effect on American life was evident. In response, the victims' rights movement began on multiple fronts (Young, 1986).

In 1965, the first crime victims' compensation program was established in California. However, the major strides of this period were accomplished by the energy of volunteers, many of whom

were victims themselves of both a major crime and of less than appropriate responses by various agencies that interacted with them.

In 1972, volunteers founded the first three victim assistance programs:

- Aid for Victims of Crime, St. Louis, Missouri
- Bay Area Women Against Rape, San Francisco, California
- Rape Crisis Center, Washington, D.C.

Throughout the 1960s and early 1970s, many state and federal commissions were established to study crime and its consequences. Following these efforts, the federal government took two significant steps to address the problem: the creation of the first government sponsored victimization survey (*National Crime Survey*, 1972) and the Law Enforcement Assistance Administration (LEAA) (Karmen, 1990).

- The *National Crime Survey* gathered crime data from individuals and households all across America -- an approach that was very different from the FBI's *Uniform Crime Report* (UCR), a compilation of statistics *reported* to law enforcement agencies. The new information made it devastatingly clear that the rates of child abuse, rape, and domestic violence were much higher than imagined.
- The *National Crime Survey* (renamed the *National Crime Victimization Survey* in 1990) identified actual crime rates that were three or four times higher than the UCR's published "official" rates:
- LEAA monies were used to combat victimization by increasing law enforcement funding and establishing victim/witness programs around the United States. Funds were also used to help educate and increase the sensitivity of police officers in dealing with victims.

By 1974, the first battered women's shelter had also been established in Denver. These first service programs were operated by volunteers using their own funds and donations. Their major focus was to provide victim support utilizing the approach of self-help groups. Their goals quickly expanded to target insensitive and unfair treatment of victims by the criminal justice system (Young, 1986).

Fortunately, several key leaders within the criminal justice system recognized the problems of victims and witnesses and responded (National Victim Center [NVC], 1994):

- LEAA created some pilot victim/witness programs (1974).

- James Rowland, Chief Probation Officer in Fresno, California, in 1976, developed the first victim impact statement used by the criminal justice system to clearly ascertain and specify the victims' losses (1976).
- In Fort Lauderdale, Florida and Indianapolis, Indiana, the first law enforcement-based victim/witness programs were established.

In 1975, Frank Carrington's book, *The Victims*, was published, promoting "the proposition that the victim's current sorry status in the criminal justice system *need not be so* and that something can and must be done to enhance the rights of the victim." That same year, LEAA called together leading victim activists to discuss methods of increasing victims' rights.

- The major result of this meeting was the founding of the National Organization for Victim Assistance (NOVA).
- The following year, 40 to 50 leaders met in what has been called the first victim assistance conference in Fresno, California (Young, 1986).

During this first stage, mental health providers had limited involvement at the grassroots level. However, practitioners working with victims of sexual assault recognized characteristics common to many victims.

- In 1974, Anne Burgess coined the term "rape trauma syndrome." Although not officially used or universally accepted until years later, its initial use during this time would later facilitate better services for victims in both the mental health and criminal justice systems.
- In addition, the attention of child advocates and the Congress to the work of C. Henry Kempe, (the "battered child syndrome," 1962) led to creation of the National Center on Child Abuse and Neglect in the Department of Health, Education and Welfare (1974).

Stage Two: Polarization and Unstable Funding (1977-1981)

During this second stage, it appeared that many of the gains of the victims' movement might be lost. Federal funding began to diminish and, in 1979, LEAA ceased to exist due to lack of congressional support. As is often the case when there is limited funding paired with identified needs, the various community-based and government-based programs began to compete for limited resources (Lurigio, 1990).

The issues of professionalism and training emerged as divisive themes. Despite their common purpose of assisting victims, the contrasting perspectives, purposes, structure, and operation of grassroots victim programs versus criminal justice-based programs increasingly an issue. This was exacerbated by the frequent complaint of victim advocates that the criminal justice system did not adequately support victims of rape and domestic violence. Even today, some of the residual animosity from this period is still evident.

In 1978, sexual assault programs and domestic violence programs created their own national organizations to pursue their specific agendas (Young, 1986):

- National Coalition Against Sexual Assault (NCASA)
- National Coalition Against Domestic Violence (NCADV)

During this period, program leaders and administrators debated the strengths and weaknesses of the various programs. Less time and money were directed toward those in need. The focus and direction of the victims' movement was consequently diluted.

Many movements (including some of the precursors of the victims' movement) fail because there is no "second generation" trained to continue with the original fervor and energy. Fortunately, this was not true for the victims' movement. In spite of the dissension between the established programs, new grassroots organizations developed. These organizations used the media very effectively. Often led by victims, they directly attacked the indifference of the criminal justice system and the stigmatizing approach of the mental health system.

Two new grassroots programs grew in response to a void in services to underserved victims. The cumulative effect was a new infusion of energy into the movement. These were:

- Parents of Murdered Children (POMC)
founded by Robert and Charlotte Hullinger (1978)
- Mothers Against Drunk Driving (MADD)
founded by Candy Lightner (1980)

Also during this time, in 1978, Frank Carrington founded the Crime Victims' Legal Advocacy Institute, renamed the Victims' Assistance Legal Organization (VALOR) in 1981, to advocate for the legal rights of crime victims.

By the late 1970s, mental health providers became more aware of the trauma of victimization. Research began to show the efficacy of peer support groups; some research indicated that these groups were much more helpful than professionals, often because these professionals had little training in the grieving process and crisis therapy.

As specialized service providers gained new insights into victimization, mental health practitioners began to acknowledge their lack of expertise, and began to listen to advocates and victims. For example:

- The description of the “battered woman syndrome” was published and provided a theoretical framework for working with victims of domestic violence.

On the legislative front, crime victim advocates pressed for reforms and state legislators enacted laws that increasingly supported victims (National Victim Center, 1994):

- In 1977, Oregon passed the first law mandating arrest in domestic violence cases.
- In 1978, Minnesota enacted legislation to allow warrantless arrest in domestic violence cases, whether or not there was a prior protection order.

In 1981, Ronald Reagan became the first President to proclaim “Crime Victims’ Week.” Later that year, the Attorney General’s Task Force on Violent Crime issued its report. The Task Force, which included Frank Carrington, a leading advocate for improved treatment of crime victims, recommended that a separate Task Force be created to consider victims’ issues.

Stage Three: Public Awareness (1982-1986)

As the revitalized victims’ movement learned to better access the news media, public awareness of victims’ issues increased. The 1981 *Uniform Crime Report* had clearly shown the increase in victimization, and the movement actively used these new statistics for its cause.

- In 1982, Ronald Reagan appointed a Task Force on Victims of Crime. Chaired by Lois Haight Herrington, this Task Force published 68 recommendations to improve the treatment of crime victims. The recommendations were directed at all segments of public and private sector, including the criminal justice system. The Report included a recommendation for a constitutional amendment for crime victims’ rights.
- Later that year, Congress passed the first law addressing victim/witness issues: the *Federal Victim and Witness Protection Act*. This *Act* provided for witness protection, restitution, and fair treatment for federal victims and witnesses of violent crimes.

Changes at the federal level led to legislative changes at state levels: Victims' Bills of Rights, proposals for training and education, and expansion of existing victim/witness programs. The single greatest event in the victims' movement to date occurred in 1984: the passage of the *Victims of Crime Act (VOCA)*.

- This act established the Crime Victims Fund to provide funds for local victim assistance programs and state victim compensation. The fund was made up of money from federal criminal fines, penalties, and bond forfeitures.
- The Office for Victims of Crime (OVC), created in the Department of Justice in 1983 to implement the 68 recommendations of the President's Task Force, was designated as responsible for administering VOCA. OVC distributed VOCA funds to states for existing victim programs.

With increased public awareness and high level political support for victims' issues, numerous programs were started and myriad laws were passed during this period. The greatest increase in victim/witness programs occurred in this third stage. Some of the highlights of this stage were the following:

1. National Conference of the Judiciary on Victims of Crime (1983)
2. *Missing Children's Assistance Act*, which included the establishment of the National Center for Missing and Exploited Children by Congress (1984)
3. Attorney General's Task Force on Family Violence (1984)
4. *Family Violence Prevention and Services Act* (1984)
5. National Victim Center (1985)
6. NOVA Constitutional Amendment Meeting (1986)

While "second generation" grass-roots organizations feared that increased governmental involvement and new competition for funding of victims' programs would lead to dissension as in previous years, these fears were not realized.

In addition, during this stage, theoretical concepts were put to more practical use in both the criminal justice and mental health systems.

- The concept of "second victimization" made it clear that often, the victim was harmed as much by the system's response as by the crime itself.
- The various syndromes identified earlier were being discussed within the context of a diagnosis of post-traumatic stress disorder (PTSD). With the identification of PTSD, a general diagnosis was now developed that did *not* stigmatize the victim, but clarified and legitimized the victim's normal response to an abnormal situation. (This diagnosis was recognized by the field of psychiatry and formalized with the publication of DSM-III-R in 1987.)

In addition, better training in trauma and crisis intervention enabled mental health professionals to learn about victims' issues. They also began to provide better supportive services. Peer support groups began to be seen as a necessary adjunct to successful individual therapy.

- In academia, California State University-Fresno created a Victim Services Certificate Program, offering academic credit for victim services training for the first time at the university level.

During this period, the victims' movement came of age and was more focused and sophisticated (Andrews, 1992). The first ten years were initiated and perpetuated by strong leaders with forthright personalities. During this period an important paradigm shift was taking place. The movement had expanded beyond the dynamics of individual-level politics to group-level national politics, resulting in necessary change for growth in the next period.

Stage Four: Legislation and Professionalism (1987-Present)

An axiom among historians is that every generation re-writes history. It is reasonable to believe that the next generation of victimologists will write about the present stage and preceding ones, since the victims' movement is an ongoing phenomenon. However, the recent years of the victims' movement have been very active and productive, and must be discussed.

Since 1987, four major issues have emerged:

- Victim service funding
- Victims' rights
- Law and order concerns
- Professionalism

The growing sophistication of the victims' movement noted earlier enabled advocates to exert power and influence on several fronts. Political efforts during this time were much more organized and presented a clear and cohesive agenda. This agenda included efforts that addressed funding, victims' rights, and law and order efforts including:

- Increasing the cap on VOCA funding to provide expanded and more stable funding for both crime victim compensation and victim assistance programs.
- Promoting a common sense interpretation of the Bill of Rights as it pertains to due process rights of criminals.
- Expanding victims' rights through more extensive and more effective state legislation.

- Adopting crime victims' rights constitutional amendments in state constitutions.

This agenda has been very successful as symbolized by the following facts (NVC, 1995):

1. In 1988, VOCA was reauthorized and the Office for Victims of Crime was established in legislation. Crime victim compensation was expanded to include victims of both domestic violence and drunk driving.
2. As of 1995, all 50 states and the District of Columbia have enacted Crime Victim Compensation Programs.
3. As of 1995, 20 states have passed constitutional amendments.
4. As of 1995, 48 states have passed victims' rights legislation in the form of Victims' Bills of Rights for a series of statutory protections that essentially mirror a unified Victims' Bill of Rights statute.
5. Congress has passed major legislation that addresses hate crimes, campus security, child protection, violence against women, sexual assault, kidnapping, and gun control; and the U.S. Supreme Court has upheld the use of victim impact statements in capital cases.

Professionalism and Training

The final issue in recent years is professionalism and training. As with other grass roots movements, there is fear of "professionalizing" a community-based service system that originated and developed its strength as volunteers extended themselves personally to victims in need. Many of the victim service programs are led by dedicated professionals who have years of experience working with victims in a specialized setting.

The historical distrust of professionals who have no "specialized" training or experience in victim treatment issues has persisted in many areas. Experience has made some of these concerns both legitimate and urgent. However, salary issues, increased availability of training, and growing interest in program evaluation and quality services have increased discussion in the area. For example:

- Victim service providers work in a very diverse array of settings. Advocates typically perform a variety of tasks that require an understanding of social, psychological, and legal principles, and clerical skills.

- The areas of expertise and the training needed are multidisciplinary in nature.
- There is a growing recognition that in order to be accepted by other professionals, certification or some other form of credentialing is necessary.
- Such a step would be beneficial in pursuing professional-level salaries for experienced victim services program and administrative staff.

The changes in this area have often been small, almost unnoticed, and yet significant. Some states have adopted training guidelines (especially in the areas of rape crisis and domestic violence) and certification initiatives are underway in several states. A handful of community colleges and universities also offer extensive training to victim service providers.

Some victimology programs have also developed legal advocacy components in addition to their training, technical assistance, and educational activities, e.g., the Center for the Study of Crime Victim Rights, Remedies, and Resources of the University of New Haven in Connecticut. This program, part of the School of Public Safety and Professional Studies, provides *Amicus* Briefs in selected appellate cases including victim issues, such as a recent Connecticut Supreme Court case involving evidence in cases of sexual assault. This rounds out the programs curriculum focus with courtroom advocacy for victims' legal rights.

In the Summer of 1989, California State University-Fresno started the first Victim Services Institute to make its Certification Program available to professionals in other states. By 1990, the number of graduates from this program had tripled. By 1991, CSUF had developed the first victimology major and, by 1993, the first graduate major in victimology. At least 10 community colleges throughout the United States have developed certificate programs.

- Such steps represent the foundation for expanding professionalism of the field.
- Academics, advocates and criminal justice and allied professionals have worked together as equals in order for these changes to occur.

Academic credit and the development of a degree will be necessary for the next phase of the victims' movement to take place.

The next step is the development of curriculum standards to be used at the national and state levels. The National Victim Assistance Academy curriculum offers that opportunity. As a part of National Victim Assistance Academy supported by OVC, participants are indeed a part of the history of the victims' movement.

Overview of the History of the Victims' Rights Movement

- Federal Executive Branch / Judicial Activities and Events
- Federal Legislative Activities and Events
- National Activities and Events
- State Activities and Events
- Local Activities and Events

Federal Executive / Judicial Branch Activities and Events

1974	The federal Law Enforcement Assistance Administration (LEAA) funds the first victim/witness programs in the Brooklyn and Milwaukee District Attorneys' offices, plus seven others through a grant to the National District Attorneys Association, to create model programs of assistance to victims, encourage victim cooperation, and improve prosecution.
1979	The Office on Domestic Violence is established in the U.S. Department of Health and Human Services (but is closed in 1981).
1980	The U.S. Congress passes the <i>Parental Kidnapping Prevention Act</i> of 1980.
1981	The Attorney General's Task Force on Violent Crime recommends that a separate Task Force be created to consider victims' issues.
1982	In a Rose Garden ceremony, President Reagan appoints the Task Force on Victims of Crime, which holds public hearings in six cities across the nation to create a greatly needed national focus on the needs of crime victims. The Task Force <i>Final Report</i> offers 68 recommendations that become the framework for the advancement of new programs and policies. Its final recommendation, to amend the Sixth Amendment of the U.S. Constitution to guarantee that ". . . the victim, in every criminal prosecution, shall have the right to be present and to be heard at all critical stages of judicial proceedings . . .," becomes a vital source of new energy pushing toward the successful efforts to secure state constitutional amendments in the late 1980s and in this decade.
1983	The Office for Victims of Crime (OVC) is created by the U.S. Department of Justice within the Office of Justice Programs to implement recommendations from the President's Task Force on Victims of Crime. OVC establishes a national resource center, trains professionals and develops model legislation to protect victims' rights.

1983 (cont.)	The U.S. Attorney General establishes a Task Force on Family Violence, which holds six public hearings across the United States.
	The U.S. Attorney General issues guidelines for the fair treatment of and assistance to federal crime victims and witnesses.
	In April, President Reagan honors crime victims in a Rose Garden ceremony at the White House.
	President Reagan proclaims the first National Missing Children's Day in observance of the disappearance of missing child Etan Patz.
	The first National Conference of the Judiciary on Victims of Crime meets at the National Judicial College in Reno, NV.
1984	The Task Force on Family Violence presents its report to the U.S. Attorney General with recommendations for action in many areas, including: the criminal justice system's response to battered women; prevention and awareness; education and training; and data collection and reporting.
	The first National Symposium on Sexual Assault is co-sponsored by the Office of Justice Programs and the Federal Bureau of Investigation.
	A victim/witness notification system is established within the Federal Bureau of Prisons.
	The Office for Victims of Crime hosts the first national symposium on child molestation.
	Victim/Witness Coordinator positions are established in U.S. Attorneys' Offices within the U.S. Department of Justice.
1985	The Federal Crime Victims Fund deposits total \$68 million.
	President Reagan announces a Child Safety Partnership with 26 members. Its mission is to enhance private sector efforts to promote child safety, to clarify information about child victimization, and to increase public awareness about child abuse.
	The U.S. Surgeon General issues a report identifying domestic violence as a major health problem.
1990	The first <i>National Incidence Study on Missing, Abducted, Runaway and Throwaway Children</i> in America shows that over one million children fall victim to abduction annually.
1991	The Attorney General's Summit on Law Enforcement and Violent Crime focuses national attention on victims' rights in the criminal justice system.

1991 (cont.)	The U.S. Attorney General issues new comprehensive guidelines that establish procedures for the federal criminal justice system to respond to the needs of crime victims. The 1991 Attorney General's Guidelines for Victim and Witness Assistance implement new protections of the <i>Crime Control Act of 1990</i> , integrating the requirements of the <i>Federal Crime Victims' Bill of Rights</i> , the <i>Victims of Child Abuse Act</i> and the <i>Victim and Witness Protection Act of 1982</i> .
	The first national conference that addresses victims' rights and needs in corrections is sponsored by the Office for Victims of Crime in California.
	In an 8-0 decision, the U.S. Supreme Court rules in <i>Simon & Schuster v. New York Crime Victims' Board</i> that New York's notoriety-for-profit statute was over broad and, in the final analysis, unconstitutional.
1995	Attorney General issues comprehensive new federal guidelines for victim and witness assistance. The guidelines incorporate the rights and protections for federal crime victims and witnesses contained in the <i>1994 Violent Crime Control and Enforcement Act</i> as well as provisions in prior victims' statutes. In addition, the guidelines establish procedures for the implementation of federal crime victims rights by federal investigative, prosecutorial, and correctional personnel. The Attorney General also establishes the Violence Against Women Office in the U.S. Department of Justice to administer the <i>Violence Against Women Act</i> .

Federal Legislative Activities and Events

1978	The U.S. Congress passes the <i>Child Abuse Prevention and Treatment Act</i> , which establishes the National Center on Child Abuse and Neglect. The new Center creates an information clearinghouse, provides technical assistance and training, and promotes research and model programs.
1979	The U.S. Congress fails to enact the federal Law Enforcement Assistance Administration (LEAA) and federal funding for victims' programs is phased out. Many grassroots and "system-based" programs are closed.
1980	The U.S. Congress passes the <i>Parental Kidnapping Prevention Act of 1980</i> .
1982	The <i>Federal Victim and Witness Protection Act of 1982</i> brings "fair treatment standards" to victims and witnesses in the federal criminal justice system.
	The passage of the <i>Missing Children's Act of 1982</i> helps parents guarantee that identifying information on their missing children is promptly entered into the FBI National Crime Information Center (NCIC) computer system.

1984	The passage of the <i>Victims of Crime Act (VOCA)</i> establishes the Crime Victims Fund, made up of federal criminal fines, penalties, and bond forfeitures, to support state victim compensation and local victim service programs.
	President Reagan signs the <i>Justice Assistance Act</i> , which establishes a financial assistance program for state and local governments and funds 200 new victim service programs.
	The <i>National Minimum Drinking Age Act of 1984</i> is enacted, providing strong incentives to states without "21" laws to raise the minimum age for drinking, which is credited with saving an estimated 5,000-plus young lives in years to come.
	The U.S. Congress passes the <i>Family Violence Prevention and Services Act</i> , which earmarks federal funding for programs serving victims of domestic violence.
1988	The <i>Federal Drunk Driving Prevention Act</i> is passed, raising the minimum drinking age in all states to 21.
	VOCA amendments legislatively establish the Office for Victims of Crime, elevate the position of Director by making Senate confirmation necessary for appointment, and induce state compensation programs to cover victims of domestic violence and drunk driving.
1990	The U.S. Congress passes the <i>Hate Crime Statistics Act</i> requiring the U.S. Attorney General to collect data of incidence of certain crimes motivated by prejudice based on race, religion, sexual orientation or ethnicity.
	The U.S. Congress passes the <i>Victims' Rights and Restitution Act</i> , adding a Federal Victims' Bill of Rights.
	The <i>Student Right-to-Know and Campus Security Act</i> , requiring institutions of higher education to disclose murder, rape, robbery and other crimes on campus, is signed into law by President Bush.
	The <i>Victims of Child Abuse Act of 1990</i> , which features reforms to make the federal criminal justice system less traumatic for child victims and witnesses, is passed by the U.S. Congress.
	Legislation proposed by MADD to prevent drunk drivers and other offenders from filing bankruptcy to avoid paying criminal restitution or civil fines, is passed by the U.S. Congress.
	The <i>National Child Search Assistance Act</i> requires law enforcement to enter reports of missing children and unidentified persons in the NCIC computer.
1991	U.S. Representative Ilena Ros-Lehtinen (R-FL) files the first Congressional Joint Resolution to place victims' rights in the U.S. Constitution.

1991 (cont.)	The <i>Violence Against Women Act of 1991</i> is considered by the U.S. Congress.
	The <i>Campus Sexual Assault Victims' Bill of Rights Act</i> is introduced in the U.S. Congress.
	The <i>International Parental Child Kidnapping Act</i> makes the act of unlawfully removing a child from the United States a federal felony.
1992	The U.S. Congress reauthorizes the <i>Higher Education Bill</i> which includes a <i>Sexual Assault Victims' Bill of Rights</i> .
	The <i>Battered Women's Testimony Act</i> , which urges states to accept expert testimony in criminal cases involving battered women, is passed by Congress, and signed into law by President Bush.
1993	Congress passes the "Brady Bill" requiring a waiting period for the purchase of handguns.
	Congress passes the <i>Child Sexual Abuse Registry Act</i> establishing a national repository for information on child sex offenders.
1994	Congress passes the most comprehensive package of federal victims' right legislation as part of the <i>Violent Crime Control and Law Enforcement Act</i> . Bill includes: <ul style="list-style-type: none"> ■ Violence Against Women Act, which authorizes more than \$1 billion in funding for programs to combat violence against women. ■ Enhanced VOCA funding provisions. ■ Establishment of National Child Sex Offender Registry. ■ Enhanced sentences for drunk drivers with child passengers.
1995	The Federal Crime Victims Fund deposits total \$233,907,256.
	The <i>Crime Victims' Rights Act of 1995</i> is introduced in the U.S. Congress.
1996	A federal Constitutional Amendment is introduced in the U.S. Senate with an immediate hearing held by the Senate Judiciary Committee.
	The <i>Community Notification Act</i> provides for notifying communities of location of convicted sex offenders by amendment to the Child Sexual Abuse Registry legislation.

National Activities and Events

1975	Citizen activists and criminal justice professionals from across the country unite to expand victim services and increase recognition of victims' rights through the formation of the National Organization for Victim Assistance (NOVA).
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1976	The National Organization for Women forms a task force to examine the problem of battering. It demands research into the problem and money for battered women's shelters.
	The first national conference on battered women is sponsored by the Milwaukee Task Force on Battered Women in Milwaukee, WI.
1978	The National Coalition Against Sexual Assault (NCASA) is formed to combat sexual violence and to promote services for survivors.
	The National Coalition Against Domestic Violence (NCADV) is organized as a voice for the battered women's movement on a national level. NCADV initiates the introduction of the <i>Family Violence Prevention and Services Act</i> in the U.S. Congress.
	Parents of Murdered Children (POMC), a self-help support group, is founded in Cincinnati, Ohio.
1980	Mothers Against Drunk Driving (MADD) is founded after the death of Candy Lightner's 13-year-old daughter Cari, who was killed by a repeat offender drunk driver. The first two MADD chapters are created in Sacramento, CA and Annapolis, MD.
	The First National Day of Unity in October is established by NCADV to mourn battered women who have died, celebrate women who have survived the violence, and honor all who have worked to defeat domestic violence. This day becomes Domestic Violence Awareness Week and, in 1987, expands to a month of awareness activities each October.
1981	Frank G. Carrington, considered by many to be the "Father of the Victims' Rights Movement," founded the Victims' Assistance Legal Organization (VALOR) to promote the rights of crime victims in the civil and criminal justice systems.
	The disappearance and murder of missing child Adam Walsh prompts a national campaign to raise public awareness about child abduction and enact better laws to protect children.
1982	The first victim impact panel sponsored by MADD, which educates drunk drivers about the devastating impact their criminal acts have on innocent victims, is organized in Ruthland, MA.
1983	The first National Conference of the Judiciary on Victims of Crime meets at the National Judicial College in Reno, NV.
	The International Association of Chiefs of Police Board of Governors adopts a Crime Victims' Bill of Rights and establishes a victims' rights committee to bring about renewed emphasis on the needs of crime victims by law enforcement officials nationwide.

1984	The first of several international affiliates of Mothers Against Drunk Driving is chartered in Canada.
	The National Center for Missing and Exploited Children (NCMEC) is created as the national resource for missing children. Passage of the <i>Missing Children's Assistance Act</i> provides a Congressional mandate for the Center.
	The Spiritual Dimension in Victim Services is founded to involve the religious community in violence prevention and victim assistance.
	A national ad-hoc committee on constitutional amendments formalizes its plans with a key decision to secure passage of amendments at the state level.
	Concerns of Police Survivors (COPS) is organized at the first police survivors' seminar held in Washington, D.C., by 110 relatives of officers killed in the line of duty.
	Remove Intoxicated Drivers (RID) calls for a comprehensive Sane National Alcohol Policy (SNAP) to curb aggressive promotions aimed at youth.
1985	The National Victim Center is founded in honor of Sunny von Bulow to promote the rights and needs of crime victims, and to educate Americans about the devastating effects of crime on our society.
1986	Over 100 constitutional amendment supporters meet in Washington, D.C., at a forum sponsored by NOVA to refine a national plan to secure constitutional amendments for victims of crime.
	MADD's "Red Ribbon Campaign" enlists motorists to display a red ribbon on their automobiles, pledging to drive safe and sober during the holidays.
1987	The Victims' Constitutional Amendment Network (VCAN) and Steering Committee is formed at a meeting hosted by the National Victim Center.
	Security on Campus, Inc. (SOC) is established by Howard and Connie Clery, following the tragic robbery, rape and murder of their daughter Jeanne at Lehigh University in Pennsylvania. SOC raises national awareness of the hidden epidemic violence on our nation's campuses.
	The American Correctional Association establishes a Task Force on Victims of Crime.
	NCADV establishes the first national toll-free domestic violence hotline.
1988	The National Aging Resource Center on Elder Abuse (NARCEA) is established through a cooperative agreement among the American Public Welfare Association, the National Association of State Units on Aging and the University of Delaware.
	The National Association of Crime Victim Compensation Boards opens a national office in Washington, D.C.

1991	The Spiritual Dimension in Victim Services facilitates a conference of leaders of 13 religious denominations to plan ways in which these large religious bodies can increase awareness of crime victims' needs and provide appropriate services.
	California State University, Fresno approves the first Bachelors Degree Program in Victimology in the nation.
	The results of the first national public opinion poll to examine citizens' attitudes about violence and victimization, <i>America Speaks Out</i> , are released by the National Victim Center during National Crime Victims' Rights Week.
	The first national conference that addresses crime victims' rights and needs in corrections is sponsored by the Office for Victims of Crime in California.
	The first International Conference on Campus Sexual Assault is held in Orlando, Florida.
	The American Probation and Parole Association (APPA) establishes a Victim Issues Committee to examine victims' issues and concerns related to community corrections.
1992	<i>Rape in America: A Report to the Nation</i> , published during National Crime Victims' Rights Week by the National Crime Victims Research and Treatment Center and the National Victim Center, clarifies the scope and devastating effect of rape in this nation, including the fact that 683,000 women are raped annually in the United States.
	The Association of Paroling Authorities, International establishes a Victim Issues Committee to examine victims' needs, rights and services in parole processes.
1994	The American Correctional Association Victims Committee publishes the landmark <i>Report and Recommendations on Victims of Juvenile Crime</i> , which offers guidelines for improving victims' rights and services when the offender is a juvenile.
1995	The National Victims' Constitutional Amendment Network proposes the first draft of language for a federal constitutional amendment for victims' rights.

State Activities and Events

1965	California becomes the first state to establish a crime victim compensation program.
1976	Nebraska becomes the first state to abolish the marital rape exemption.

1977	Oregon becomes the first state to enact legislation mandating arrest in domestic violence cases.
1978	Minnesota becomes the first state to allow probable cause (warrantless) arrest in cases of domestic assault, regardless of whether a protection order had been issued against the offender.
1980	Wisconsin passes the first "Crime Victims' Bill of Rights."
1982	California voters overwhelmingly pass Proposition 8, which guarantees restitution and other statutory reforms to crime victims.
1986	Rhode Island passes a constitutional amendment granting victims the right to restitution, to submit victim impact statements, and to be treated with dignity and respect.
1987	Victim advocates in Florida, frustrated by five years of inaction on a proposed constitutional amendment by their legislature, begin a petition drive. Thousands of citizens sign petitions supporting constitutional protection of victims' rights. The Florida legislature reconsiders, and the constitutional amendment appears on the 1988 ballot.
1988	The membership of the Missouri Victim Assistance Network (MOVA) passes a resolution establishing a committee to explore a constitutional amendment for victims' rights.
	Constitutional amendments are introduced in Arizona, California, Connecticut, Delaware, Michigan, South Carolina and Washington. Florida's amendment is placed on the November ballot where it passes with 90% of the vote. Michigan's constitutional amendment passes with 80% of the vote. Three amendments in Arizona, Delaware, and Washington are defeated in Committee.
1989	South Carolina and Washington victims and advocates begin exploring constitutional amendment strategies. Crime victims and advocates in Arizona plan to launch an initiative/petition drive to secure an amendment.
	Crime victims' constitutional amendments are introduced in Maryland, Ohio and Texas, and re-introduced in Washington. The legislatures in Texas and Washington pass their respective amendments, which are both ratified by voters in November.
1990	The Arizona petition to place the victims' rights constitutional amendment on the ballot succeeds, and the amendment is ratified by voters.
	Victims' rights constitutional amendments are introduced in Illinois, Missouri, New Jersey, New York and Wisconsin. Oregon advocates launch an initiative drive. Crime victims and advocates in Colorado, Indiana, Maine, New Mexico, North Carolina, South Carolina and Vermont form coalitions in support of constitutional amendments.

1991	The New Jersey legislature passes a victims' rights constitutional amendment which is ratified by voters in November.
	Colorado legislators introduce a constitutional amendment on the first day of National Crime Victims' Rights Week. Fifteen days later, the bill is unanimously passed by both Houses to be placed on the ballot in 1992.
1992	Five states -- Colorado, Kansas, Illinois, Missouri and New Mexico -- ratify constitutional amendments for victims' rights.
	Twenty-eight states pass anti-stalking legislation.
	Massachusetts passes a landmark bill creating a statewide computerized domestic violence registry and requires judges to check the registry when handling such cases.
1993	Wisconsin ratifies its constitutional amendment for victims' rights, bringing the total number of states with these amendments to 14.
	Twenty-two states pass anti-stalking statutes, bringing the total number of states with anti-stalking laws to 50, plus the District of Columbia.
1994	Six additional states pass constitutional amendments for victims' rights -- the largest number ever in a single year -- bringing the total number of states with amendments to 20. States with new amendments include: Alabama, Alaska, Idaho, Maryland, Ohio, and Utah.
1995	Legislatures in three states -- Indiana, Nebraska, and North Carolina -- pass constitutional amendments which will be placed on the ballot in 1996.

(Excerpted from: National Victim Center, *History of the Victims' Movement* 1994, developed for National Victim Center "Strategies for Action" Kit, 1992-1994 and updated and incorporated by VALOR into OVC-sponsored 1995 and 1996 National Crime Victims' Rights Week Resource Guide.)



History and Overview of the Victims' Movement

- 1) What are the four movements that set the stage for the victims' movement?

- 2) What were the original grassroots crime victim programs and how would you describe them?

- 3) Which victim service/advocacy programs were established in later years?

- 4) List three major federal laws that were passed to benefit crime victims in the 1980s?

- 5) What are the four primary issues facing the victims' movement today?

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Chapter 3

Theoretical Perspectives of Victimology and Critical Research

Abstract: This chapter will provide the information about the evolution of the concept of “victim” and the study of victimology. Victimology is a term first coined for a specialty within the field of criminology. In recent times, victimology has come to embrace a wide array of professional disciplines working with victims. In its original form, victimology examined characteristics of victims and how they “contributed” to their victimization. The emergence of the crime victims’ rights movement has influenced the field of victimology and the nature of the research. Current research has been helpful in identifying risk factors related to victimization, *without* blaming victims.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The definition of “victim”.
 2. Research that created the field of victimology.
 3. Evolution of the field of victimology.
 4. High-risk factors related to likelihood of victimization.
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Overview of Victimology

The Concept of Victim

The concept of victim dates back to ancient cultures and civilizations. Its original meaning was rooted in the exercise of sacrifice -- the taking of the life of a person or animal to satisfy a deity. (Karmen, 1990)

Over the centuries, the word victim came to have additional meanings, so as to include any person who experiences injury, loss, or hardship due to any cause.

Today, the word victim is used in many different contexts and is broadly interpreted. It is not unusual to hear the word "victim" paired with a wide range of human experiences: cancer victims, holocaust victims, accident victims, victims of injustice, hurricane victims, crime victims, and others. Each of these conjures up visual images of suffering, devastation and often individual heroism or endurance in the face of powerful destructive forces. (Karmen, 1990)

One commonality has come to apply to virtually all usages of the term victim: *That an individual has suffered injury and harm by forces beyond his or her control, and not of his or her personal responsibility.*

The frequent and diverse use of the term "victim" -- both in conversation and in print -- has changed the way people think of victims today. The current connotations of the word extend well beyond the historical meaning.

A review of the definitions of "victim," listed in the American Heritage Dictionary, illustrates the breadth of the accepted meaning of the term "victim":

- 1) Someone who is put to death or subjected to torture or suffering by another.
- 2) A living creature slain and offered as sacrifice to a deity or as part of a religious sacrifice.
- 3) Anyone who is harmed by or made to suffer from an act, circumstance, circumstance agency or condition: victims of war.
- 4) A person who suffers injury, loss, or death as a result of a voluntary undertaking: a victim of his own scheming.
- 5) A person who is tricked, swindled, or taken advantage of; a dupe.

Thus, a victim may be an innocent, led to slaughter, a dupe, or someone whose suffering is caused by his or her own scheming or ineptitude. It is no wonder that society has become confused about how positively or negatively to regard some victims.

The term "crime victim" has been used to include a person, groups or people, or entities who have suffered injury or loss due to illegal activity. The harm can be physical, psychological, or economic. By definition, this includes victims of fraud or financial schemes, businesses, or even the government. In tax or Medicaid fraud cases, the victim is the government, and the loss of revenue is ultimately felt by honest citizens who dutifully fulfill their responsibilities.

For the purposes of crime victims' rights and services, the legal definition of "victim" typically includes the following:

- A person who has suffered direct, or threatened, physical, emotional or pecuniary harm as a result of the commission of a crime, including:
 - A. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference): a spouse; a legal guardian; a parent; a child; a sibling; another family member; or another person designated by the court; and
 - B. In the case of a victim that is an institutional entity, or an authorized representative of the entity.

The crime victims' movement has focused most attention on the needs of victims of violent crime. In these cases, terminology has expanded beyond "primary crime victims" to include "secondary crime victims" who also experience the harm first hand, such as intimate partners or significant others of rape victims or children of a battered woman.

Some people who have been harmed by crime feel that defining themselves as a "victim" has negative connotations, and choose instead to define themselves as a "survivor." This is a very personal choice that can *only* be made by the person victimized, and not by any other individual. The term "survivor" also has multiple meanings in society, e.g. survivor of a crime, "survivor benefits." It remains to be seen whether this terminology for victims of crime will endure.

Who is a Victim?

Media attention on several high profile cases in recent years has clouded the issue of "who is a victim?" For example, cases in which a victim clashes with antagonists have resulted in the "victim" being tried in the courts, and have complicated the delineation of victim and offender, i.e. the so-called "subway vigilante," a man who shot four teenagers with an unlicensed revolver

on a subway train when he feared he would be robbed. Reportedly, he perceived himself to be a victim of a mugging, and used a weapon on perceived perpetrators, in order to “defend himself.” The “would-be victim” was tried for attempted murder, assault and reckless endangerment. To some, he is/was a victim standing up for himself; to others, he is a trigger-happy gunman who reportedly overreacted to an inaccurately perceived threat. (Johnson, 1986; Sullivan, 1989; Karmen, 1990)

One of the first books entirely devoted to victims of crime was *The Crime Victims Book* (Bard, and Sangrey, 1979), which addressed the issue of “who is the victim?” Bard and Sangrey attempted to paint a picture of crime victims, stating that:

“Every victim of personal crime is confronted with a brutal reality: the deliberate violation of one human being by another. The crime may be a murder or a rape, a robbery or a burglary, the theft of an automobile, a pocket picking, or a purse snatching -- but the essential internal injury is the same. Victims have been assaulted -- emotionally and sometimes physically -- by a predator who has shaken the world to its foundations.”

Recent Developments

"Victim defenses" have recently emerged in cases of parricide and homicide of batterers by abused spouses, and have also served to blur the previously articulated distinctions between victims and offenders. Advocates for battered women were among the first to recognize the issue, and promote the “battered woman syndrome” defense to defend women who killed or seriously injured a spouse or partner after enduring years of physical, emotional and/or sexual abuse. Attorneys defending children or young adults who are accused of killing a parent have also drawn upon theories of Post-traumatic Stress Disorder to explain the cause of the fatal incident. Such cases have been widely and vigorously debated by victim advocates and criminal justice professionals. Intense media attention to several of these “high profile” cases has influenced public opinion and spread confusion over who is the actual “victim” and who is the “victimizer.” The emergence of apparently overlapping labels (victim and victimizer) underscores the need for a scientific approach to the study of victimology.

The Study of Victimology

Andrew Karmen, who wrote a comprehensive text on victimology entitled *Crime Victims: An Introduction to Victimology* in 1990, broadly defined victimology:

"The scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system -- that is, the

police and courts, and corrections officials -- and the connections between victims and other societal groups and institutions, such as the media, businesses, and social movements."

Since victimology originated from the study of crime, some would say that victimology is the study of crime (not victimization) from the perspective of the victim. (Roberson, 1994)

History of Victimology

The scientific study of victimology can be traced back to the 1940s and 1950s. Until then, the primary focus of research and academic analysis in the field of criminology was on criminal perpetrators and criminal acts, rather than on victims. Two criminologists, Mendelsohn and Von Hentig, began to study the other half of the offender/victim dyad: the victim. They are now considered the "fathers of the study of victimology." (Roberson, 1994)

In their efforts to understand crime, these new "victimologists" began to study the behaviors and vulnerabilities of victims, such as the resistance of rape victims and characteristics of the types of people who were victims of crime, especially murder victims.

In the course of his legal practice, Mendelsohn interviewed his clients to obtain information about the crime and the victim. He viewed the victim as one factor among many in the criminal case. His analysis of information about victims led him to theorize that victims had an "unconscious aptitude for being victimized." (Roberson, 1994)

Von Hentig studied crime and victims in the 1940s, and published *The Criminal and His Victim*. His analysis of murder focused on types of people who were most likely to be victims of homicide. The most likely type of victim he identified is the "depressive type" who was seen as an easy target, careless and unsuspecting. The "greedy type" was seen as easily duped because his or her motivation for easy gain lowers his or her natural tendency to be suspicious. The "wanton type" is particularly vulnerable to stresses that occur at a given period of time in the life cycle, such as juvenile victims. Von Hentig's last type was the "tormentor," the victim of attack from the target of his abuse, such as the battered woman. (Roberson, 1994)

Von Hentig's work provided the foundation for analysis of victim-proneness that is still evident in the literature today. Wolfgang's research followed this lead and later theorized that "many victim-precipitated homicides were, in fact, caused by the unconscious desire of the victims to commit suicide." (Roberson, 1994)

Viewed from the perspective of criminology, victimology initially devoted much of its energy to the study of the how victims contribute -- knowingly or unknowingly -- to their own

victimization, and potential ways they may share responsibility with offenders for specific crimes.

Chapter Two of the National Victim Assistance Academy curriculum, *History of the Victims' Movement*, discusses the emergence and growth of the crime victims' rights movement in the 1960s, 1970s and 1980s. The crime victims' movement brought increased social and political attention to the poor treatment of crime victims by the criminal justice system and challenged the treatment of victims by the criminal justice system.

The negative effects of "victim blaming" have been a key tenant of the fight to improve the treatment of crime victims. Research into ways in which victims "contribute" to their own victimization was (and continues to be) viewed by victims and victim advocates as both unacceptable and destructive.

As crime victim services and rights have expanded throughout the last two decades, practitioners and public policy-makers have looked to research to provide a more scientific foundation for service design and delivery.

More recent avenues of studies in victimology have included:

- How various components of the criminal justice system treat victims;
- The impact of victimization; and
- The effectiveness of certain interventions with crime victims.

Extensive qualitative and quantitative research about the nature and scope of crime victim services has been conducted and published. Studies about the effectiveness of interventions with crime victims have also been done. In addition, the debate about the scope and focus of victimology is evolving and is illustrated in the sharply contrasting topics of research that are found in a variety of victimology journals.

Societal Influences

During the same period, public opinion was influenced by the explosion of media attention on issues of crime and victimization. Newspaper headlines and television news broadcasts inundated citizens with endless reports of violent crime and its victims. (Karmen, 1990)

While "victim blaming" has been a persistent defense used by many to combat the growing fear of crime, sensitive portrayals in the media of the stories of individual crime victims have made the experience more real. In addition, the crime rate has reached such high levels that few have been untouched by crime. The seemingly random nature of more and more serious crime, and an increased sense of vulnerability have the majority of Americans fearful of crime.

In addition, America's "law-and-order" movement has continued to overlap with the movement to enhance the legal standing and improve treatment of crime victims. Criminal justice reformers seeking greater accountability for offenders through tougher sentencing found allies in outspoken violent crime victims and politicians who recognized the public's concern about crime and its impact. The combination has brought greater political support for crime victims' rights legislation and increased funding for crime victim services. (Karmen, 1990)

An example of the careful blending of these two movements can be seen in the many laws passed at the state and national level that have authorized the use of criminal fines, penalties, and bond forfeitures to finance the creation or expansion of direct services for crime victims.

Who are America's Violent Crime Victims?

Recent data on lifetime likelihood of crime victimization reinforce the notion that nobody living in America is completely free from the risk of becoming a crime victim. While crime victim-related research of 40 and 50 years ago examined the characteristics of victims, much of it approached the issue from the perspective of "shared responsibility," that is how crime victims were, in part, "responsible" for their victimization. In recent decades, the paradigm has shifted. The study of the characteristics of crime victims has tended to focus on identifying risk factors in order to better understand the phenomena, without attributing blame to the victims. Information about the risk for victimization has been used to develop crime prevention and enforcement strategies.

Research indicates that there is a host of individual, situational, and community-level factors that increase risk of criminal victimization (see Sampson & Lauritsen, 1994, for a comprehensive review).

Note: The following material is extracted from a book chapter by Hanson, Kilpatrick, Falsetto & Resnick (in press).

Demographic Characteristics

The risk of becoming a crime victim varies as a function of demographic variables such as:

- Gender
- Age
- Race
- Socioeconomic class

(Bachman, 1994; Bureau of Justice Statistics, 1992; *FBI Uniform Crime Reports*, 1992; Hanson, Freedy, Kilpatrick, and Saunders, 1993; Kilpatrick, Seymour & Boyle, 1991; Breslau, Davis, Andreski, and Peterson, 1991; Kilpatrick, Resnick, Saunders, and Best, in press; Norris, 1992; Adler et al., 1994; Reiss & Roth, 1993; Rosenberg & Mercy, 1991).

Gender

With the exception of sexual assault and domestic violence, men have higher risk of assault than women (Gelles & Straus, 1988; Hanson et al., 1993; Norris, 1992).

Lifetime risk of homicide is three to four times higher for men than women (Bureau of Justice Statistics, 1992).

Age

Adolescents have substantially higher rates of assault than young adults or older Americans (Bureau of Justice Statistics, 1992; Hanson et al., 1993; Kilpatrick, Edmunds & Seymour, 1992; Kilpatrick et al., in press; Reiss & Roth, 1993; Whitaker & Bastian, 1991).

Data from the *National Crime Victimization Survey* indicate that 12-to-19 year olds are two to three times as likely as those over 20 to become victims of personal crime each year (Whitaker & Bastian, 1991).

Data from *The National Women's Study* indicate that 62% of all forcible rape cases occurred when the victim was under 18 years of age (Kilpatrick et al., 1992).

Race

Racial and ethnic minorities have higher rates of assault than other Americans (*FBI Uniform Crime Report*, 1992; Hanson et al., 1993; Kilpatrick et al., 1991; Reiss & Roth, 1993).

In 1990, African-Americans were six times more likely than white Americans to be homicide victims (FBI Uniform Crime Report, 1992). Rates of violent assault are approximately twice as high for African- and Hispanic-Americans compared to White Americans (Reiss & Roth, 1993).

Kilpatrick et al. (1991) found that African-Americans (28%) and Hispanic-Americans (30%) were significantly more likely than White Americans (19%) to have ever been violent victims of crime.

Socioeconomic Class

Violence disproportionately affects those from lower socioeconomic classes (U. S. Bureau of the Census, 1991). Family income is related to rates of violence and victimization, with lower income families at a higher risk than those from higher income brackets (Reiss & Roth, 1993).

- For example, in 1988, the risk of victimization was 2.5 times greater for families with the lowest incomes (under \$7,500) compared to those with the highest (\$50,000 and over) (Reiss & Roth, 1993).

Using longitudinal data from *The National Women's Study*, Kilpatrick et al., (in press) found that women with household incomes less than \$10,000 had odds 1.8 times greater than those with incomes of \$10,000 or more of becoming a rape or aggravated assault victim in the two year follow-up period. Poverty increased the risk of assault even after controlling for the effects of prior victimization and sensation seeking.

However, some other studies report that family income is a less important predictor of victimization than gender, age, or ethnicity (Reiss & Roth, 1993).

Interpreting Demographic Characteristic Data

Some of the conflicting findings about demographic characteristics as risk factors for violent crime are attributable to methodological variations across studies. Another reason for conflicting findings is that many demographic variables are confounded. That is, they are so interrelated as to cause some difficulty in separating out their relative contributions.

Demographic variables of age, gender, and racial status all tend to be confounded with income: young people tend to be poorer than older people; women tend to have less income than men; and African-Americans tend to have less income than white Americans.

Repeat Victimization and the Cycle of Violence

Until recently, there was little appreciation of the extent to which many people are victims of crime *not* just once, but several times during their lifetime. There was sufficient understanding of how repeated victimization increases the risk for and complexity of crime-related psychological trauma. Nor did we understand the extent to which victimization increases the risk of further victimization and/or of violent behavior by the victim.

Several studies show that a substantial proportion of crime victims has been victimized more than once and that a history of victimization increases the risk of subsequent violent assault (e.g.

Kilpatrick et al., in press; Koss & Dinero, 1989; Resnick, Kilpatrick, Dansky, Saunders & Best, 1993; Kilpatrick et al., 1992; Reiss & Roth, 1993; Wyatt, Guthrie & Notgrass, 1992; Zawitz, 1983).

Other research suggests that the risk of developing PTSD and substance use/abuse problems is higher among repeat victims of violent assault than among those who have experienced only one violent assault (e.g., Kilpatrick et al., in press; Breslau et al., in press; Kilpatrick, Resnick, Saunders, Best & Epstein, 1994).

Still other evidence suggests that youth victimization history increases risk of involvement with delinquent peers and of subsequent delinquent behavior (Ageton, 1983; Dembo et al., 1992; Straus, 1984; Widom, 1989, 1992).

Some research shows that involvement with delinquent or deviant peers increases the risk of victimization (e.g., Ageton, 1983), and that substance use also increases risk of victimization (e.g., Kilpatrick et al., 1994; Cottler, Compton, Mager, Spitznagel, and Janca, 1992).

Another line of research has found that a history of child abuse and neglect increases risk of delinquent behavior during childhood and adolescence and of being arrested for violent assault as an adult (e.g., Widom, 1989, 1994).

This new knowledge about repeat victimization and the cycle of violence has several implications for appropriate mental health counseling for crime victims:

- Mental health professionals should include crime prevention and substance abuse prevention in their work with victims to decrease the risk that new victimization or substance abuse problems will occur (e.g., Kilpatrick et al., in press; Kilpatrick et al., 1994).
- Mental health professionals should not assume that the crime they are treating is the *only* one the victim has experienced. This requires taking a careful crime victimization history.
- Providing effective mental health counseling to victims may well be an effective way to reduce the risk of future victimization, substance use/abuse, delinquency and violent behavior.

Residential Location

Where an individual lives influences one's risk of becoming a violent crime victim. Reiss and Roth (1993) report that violent crime rates increased as a function of community size. For example, the violent crime rate was 359 per 100,000 residents in cities of less than 10,000; but

2,243 per 100,000 in cities with populations over a million translates to rates seven times greater. (Reiss & Roth, 1993; p. 79). Data including non-reported crimes from the *National Crime Victimization Survey* (NCVS) also indicate that violent crime rates are highest in central cities, somewhat lower in suburban areas, and lowest in rural areas (Bureau of Justice Statistics, 1992). The UCR and the NCVS are better at measuring street crime than at measuring violent crimes perpetrated by acquaintances or partners. Thus, the assumption that the increased risk of violent assault associated with residential location most likely results from stranger attacks, not necessarily from attacks by family members or other intimates, is a function of the limits of the measurement device.

Exposure to Potential Assailants

No violent assault can occur unless an assailant has access to a potential victim. Someone could have *every* previously discussed risk factor for violent assault and be completely safe from assault unless approached by an assailant.

A prominent theory attempting to predict risk of criminal victimization is the *routine activities theory*. As described by Laub (1990), the risk of victimization is related to a person's lifestyle, behavior, and routine activities. In turn, lifestyles and routine activities are generally related to demographic characteristics (e.g., age and marital status) and other personal characteristics.

If a person's lifestyle or routine activities places him or her in frequent contact with potential assailants, then they are more likely to be assaulted than if their routine activities and lifestyle do not bring them into as frequent contact with predatory individuals.

For example, young men have higher rates of assaultive behavior than any other age-gender group (Reiss & Roth, 1993; Rosenberg & Mercy, 1991). Thus, those whose routine activities or lifestyles involve considerable contact with young men should have higher rates of victimization. Likewise, people who are married, who never leave their houses after dark, and who never take public transportation should have limited contact with young men, and therefore have reduced risk of assault.

Although some have argued that routine activities theory has substantial support in the empirical literature (Laub, 1990; Gottfredson, 1981), most of the crime victimization data that are used to evaluate assault risk measure stranger assaults much better than partner or acquaintance assaults. Thus, the theory is probably much more relevant to stranger assaults than to other assaults.

Why Should the Criminal Justice System Concern Itself With Crime Victims' Crime-related Psychological Trauma?

Crime-related psychological trauma impairs the ability and/or willingness of many crime victims to cooperate with the criminal justice system.

The President's Task Force argued that victims must be treated better by the criminal justice system because it cannot accomplish its mission without the cooperation of victims. At every key stage of the criminal justice system process--from contemplating making a report to police, to attending a parole hearing--interactions can be stressful for victims and often exacerbates crime-related psychological trauma.

Victims whose crime-related fear makes them reluctant to report crimes to police or who are too terrified to testify, effectively make it impossible for the criminal justice system to accomplish its mission. Thus, it is important to understand:

- Victims' crime-related mental health problems.
- What aspects of the criminal justice system process are stressful to victims.
- What can be done to help victims with their crime-related mental health problems.
- What can be done to help victims cope with criminal justice system-related stress.

Effective partnerships among the criminal justice system, victim assistance personnel, and trained mental health professionals can help victims with crime-related psychological trauma and with criminal justice system-related stress. By helping victims through such partnerships, the criminal justice system also helps itself become more effective in curbing and reducing crime.

As Kilpatrick and Otto (1987) noted, there are several psychological theories that are useful in understanding why victims might develop psychological trauma, and why interactions with the criminal justice system are usually stressful for victim.

Why is the Criminal Justice System Stressful for Victims?

This section describes one theory that has particular relevance for understanding why the criminal justice system is so stressful for many victims.

Classical Conditioning Theory

The Russian physiologist, Ivan Pavlov, first described a basic type of learning called classical conditioning (Pavlov, 1906). Briefly described, classical conditioning occurs when a neutral stimulus is paired with a stimulus that produces a particular response. For example, if food is placed in a dog's mouth, a salivation response naturally occurs. If the neutral stimulus of a bell ringing is presented to the dog at approximately the same time that the food stimulus is presented, the bell stimulus (conditioned stimulus) will acquire the capacity to produce a conditioned response of salivation similar to the unconditioned response of salivation produced by the unconditioned stimulus of food. What does this have to do with crime-related mental health problems or the criminal justice system?

- Kilpatrick, Veronen, & Resick (1982) noted that a violent criminal victimization is a real life classical conditioning experience in which being attacked is an unconditioned stimulus that produces unconditioned responses of fear, anxiety, terror, helplessness, pain, and other negative emotions.
- Any stimuli that are present during the attack are paired with the attack and become conditioned stimuli capable of producing conditioned responses of fear, anxiety, terror, helplessness, and other negative emotions.

Classical conditioning theory predicts that any stimuli present at the time of a violent crime are potential conditioned stimuli that will produce conditioned fear, anxiety and other negative emotions when the victim encounters them.

- Thus, *characteristics of the assailant* (e.g., age, race, attire, distinctive features), or *characteristics of the setting* (e.g., time of day, where the attack occurred, features of the setting) might become conditioned stimuli.

Classical conditioning theory also suggests that negative emotional responses conditioned to a particular stimulus can generalize to similar stimuli.

- Thus, a woman who exhibits a conditioned fear response to the sight of her rapist might also experience fear to the stimulus of men who resemble the rapist through the process of *stimulus generalization*.
- Eventually, this stimulus generalization process may result in the rape victim showing conditioned fear to all men.

Avoidance Behavior

The most common response to crime-related conditioned stimuli is *avoidance behavior*. Thus, there is a natural tendency for crime victims to avoid contact with crime-related conditioned stimuli and to escape from situations which bring them in contact with such stimuli.

Second-order Conditioning

A final classical conditioning mechanism with important implications for understanding the behavior of crime victims is *second-order conditioning*. If a neutral stimulus is paired with a conditioned stimulus (without presenting the unconditioned stimulus), this neutral stimulus becomes a *second order conditioned stimulus* that can also produce a conditioned response.

- Thus, any stimuli present at the same time a crime-related conditioned stimulus is present can become a second-order conditioned stimulus that also evokes fear, other negative emotions, and a strong tendency to engage in avoidance behavior.
- This is important for practitioners as police, prosecutors, and victim service providers may become associated as a second-order conditioned stimulus.

Classical Conditioning and Victims' Reactions to the Criminal Justice System

Application of these classical conditioning principles to victims' interactions with the criminal justice system helps us understand why the criminal justice system is so stressful for many victims.

First, involvement with the criminal justice system requires crime victims to encounter many cognitive and environmental stimuli that remind them of the crime. These range from:

- Having to look at the defendant in the courtroom.
- Having to think about details of the crime when preparing to testify.
- Confronting a member of "second-order conditioned stimuli" in the form of police, victim/witness advocates, and prosecutors.

Second, encountering all these crime-related conditioned stimuli often results in avoidance behavior on the part of the victims.

- Such avoidance behavior is generated by conditioned fear and anxiety, not by apathy. Avoidance can lead victims to cancel or not show up for appointments with criminal justice system officers, or victim advocates.

Other Sources of Stress

Aside from conditioning, there are several other reasons that interacting with the criminal justice system can be stressful for victims.

- One reason interactions are stressful is because victims lack information about that system and its procedures, and victims fear the unknown.
- A second reason interactions are stressful is that victims are concerned about whether they will be believed and taken seriously by the criminal justice system.

Most victims view the criminal justice system as representative of society as a whole, and whether they are believed and taken seriously by the system indicates to them whether they are believed and taken seriously by society.

Theoretical Perspectives of Victimology and Critical Research

- 1) When did the study of victims of crime originate and what was its focus?

- 2) Describe the origins of the term “victim” and the evolution of its definition and connotations?

- 3) How has the crime victims’ rights movement influenced the field of victimology?

- 4) Briefly explain “classical conditioning” and how it might affect victims’ reactions to the criminal justice system and victim service providers.

- 5) Identify three high risk factors associated with likelihood of crime victimization?

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Chapter 4

History of Law: The Evolution of Victims' Rights

Abstract: The establishment of victims' rights under a system of laws is not a new phenomenon. Indeed, some of the earliest known writings involve organizing and re-recording legal rights. Many vestiges of earlier systems endure today and provide the essential context within which to understand modern day victims' rights laws.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The development of law and its impact on victims.
 2. The definition of *stare decisis*.
 3. The various theories of what law is and what it does.
 4. The different classifications of crimes.
 5. The various types of defenses and their impact on victims.
 6. The development of victims' rights in criminal law.
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Historical Overview

Critical Dates in the History of Law:

- **2000-1750 B.C.** Code of Hammurabi adopted.
- **450 B.C.** Twelve Tables written.
- **Roman Empire** Justian Code drafted.
- **1066 A.D.** Norman Conquest of England.
- **Middle Ages** Development of the Common Law.
- **1215 A.D.** Magna Carta signed.
- **1787 A.D.** U.S. Constitution written.
- **1965** First victims' rights law passed in America.

The Development of the Concept of Law

A complete and accurate understanding of the concepts inherent in our American criminal law system can only be attained by a review of its history, philosophy, and development. Modern criminal law is the result of a long evolution of laws that have attempted to deal with and define deviant behavior in society.

Code of Hammurabi

The Code of Hammurabi is considered one of the first known attempts to establish a written code of conduct. King Hammurabi ruled Babylon at approximately 2000 B.C. He was the sixth king of the First Dynasty of Babylonia for about 55 years. During that period of time, Babylon was a commercial center for most of the known and civilized world. Since its fortune lay in trade and other business ventures, the Code of Hammurabi provided a basis for order and certainty essential for commerce. The Code established rules regarding theft, sexual relationships, interpersonal violence, and other issues. It was intended to replace blood feuds with a system sanctioned by the state.

The Code of Hammurabi was divided into five sections:

- A penal or code of laws.
- A manual of instruction for judges, police officers, and witnesses.
- A handbook of rights and duties of husbands, wives, and children.
- A set of regulations establishing wages and prices.
- A code of ethics for merchants, doctors, and officials (Masters and Roberson, 1985).

The code established certain obligations and objectives for the citizens of Babylon to follow. These included:

- *An assertion of the power of the state.* This was the beginning of state-administered punishment. The blood feuds that had occurred previously between private citizens were barred under the code.
- *Protection of the weaker from the stronger.* Widows were to be protected from those who might exploit them, elder parents were protected from sons who would disown them, and lesser officials were protected from higher ones.
- *Restoration of equity between the offender and the victim.* The victim was to be made as whole as possible and, in turn, he or she was required to forgive vengeance against the offender.

Of noteworthy importance in the code was its concern for the rights of victims. In reality, this code may have been the first "victims' rights statute" in history. Unfortunately, as will be seen, society began to neglect victims in its rush to punish the offender, with the result that victims' rights would not resurface until the present century (Gordon, 1957).

Early Roman Law

Another important milestone in the development of American law was early Roman law. Roman law was derived from the Twelve Tables, written about 450 B.C. These tables were a collection of basic rules relating to conduct of family, religious and economic life. Early Roman legions conquered England in the middle of the first century. Roman law, customs, and language were forced upon the English people during the next three centuries of Roman rule.

Emperor Justinian I codified the Roman laws into a set of writings. The Justinian Code, as these writings became known, distinguished between two major types of laws:

- *Public laws:* Dealt with the organization and administration of the Republic.
- *Private laws:* Addressed issues such as contracts, possession and other property rights, the legal status of various persons such as slaves, husbands and wives, and injuries to citizens.

It contained elements of both our civil and criminal law and influenced Western legal theory into the Middle Ages.

The Bible

It is unclear when the fifth book of the Old Testament, Deuteronomy, was written, and indeed, as "oral history," the very first version was not written at all (it was probably written for the first time in about 100 B.C.). In any event, Deuteronomy instructs that with respect to certain crimes, the penalty shall be "... eye for eye, tooth for tooth, hand for hand, foot for foot." (Chapter 19, Verse 15.) Because the rabbinic tradition taught that this penalty was not to be interpreted literally and that what the Biblical instruction really meant was that a victim of an assault or other crime should receive from the criminal the *value* of an eye, or the *value* of a foot, arguably Deuteronomy presents the first more formalized scheme of victim restitution since the Code of Hammurabi.

The Legal System in England

Prior to the Norman conquest of 1066 A.D., the legal system in England was very decentralized. There was little written law except for crimes against society. As a society, England had forgotten or moved away from the teaching of the Code of Hammurabi, and crimes during this period were again viewed as personal wrongs. Compensation was paid to the victim or his/her family for the offense. If the perpetrator failed to make payments, the victim's family could seek revenge resulting in a blood feud. For the most part during this period, criminal law was designed to provide equity to what was considered a private dispute.

The Norman Conquest under William the Conqueror established royal administrators who rode circuit to render justice. These royal judges would use local custom and rules of conduct as a guide in rendering their judgments. This system, known as *stare decisis* (Latin for the phrase "to stand by the decided law"), would have far reaching effects on modern American criminal law.

Common Law

The next major development in the history of law was the acknowledgment of the existence of Common Law. Early English Common Law forms the basis for much of our present day legal system. Common Law is a traditional body of then unwritten legal precedents created by court decisions (as distinguished from statutory law written by a Congress or other legislative body) during the Middle Ages in England. During this period of time when cases were heard, judges would start their deliberations from past decisions that were as closely related as possible to the case under consideration. In the eleventh century, King Edward the Confessor proclaimed that Common Law was the law of the land. Court decisions were finally recorded and made available to lawyers who could then use them to plead their cases. This concept is one of the most important aspects of today's modern American law.

The Magna Carta and U.S. Constitution

The Magna Carta of England and the U.S. Constitution both stand as great documents and moments in the history of American law. The Magna Carta was signed on June 15, 1215 and was later interpreted to grant basic liberties to all British citizens. The U.S. Constitution established certain individual rights, defined the power of the federal government, and -- among other things -- limited punishment for violation of laws.

American law combines both Common Law and written statutes.

- Statutory laws are enacted by state legislatures and Congress, and are the major sources of American criminal law today.
- These laws are usually compiled in various codes, and are subject to revision by the legislatures and Congress.

An offshoot of written law, administrative law is comprised of rules and regulations adopted by governmental agencies at the federal, state and local levels. Many governmental agencies are invested with the power to pass regulations that prohibit certain types of conduct. Some of these regulations provide for fines rather than imprisonment of the offender.

Constitutional Law

Constitutional law is at the foundation of American criminal law. The Constitution does not define new crimes (the only crime defined in the Constitution is treason); rather, it sets limits on other laws as they apply to individuals. An example of this principle is the U.S. Supreme Court's ruling that flag burning, which was proscribed as criminal conduct by a state statute, is protected under the First Amendment right to freedom of expression.

What Is Law?

Max Weber, an acclaimed sociologist during the early twentieth century, stated that the primary purpose of law is to regulate the flow of human interaction (Rheinstein, 1954).

Dr. Weber, who is famous for a number of modern day concepts including the concept of bureaucracy, believed that laws make the behavior of others predictable (Wallace, Roberson, and Steckler, 1994). Thus, one of the accepted purposes of law is to support social order.

Laws also serve other purposes including:

- Banishing private retribution.
- Reflecting public opinion.
- Deterring criminal acts.
- Punishing offenders.
- Providing socioeconomic control (Siegel, 1989).

Banishing retribution occurs because laws replace the power of individuals to carry out revenge against the perpetrator. The law shifts the burden and responsibility of making the victim whole from the individual to the state. Laws reflect public opinion by defining the boundaries between current concepts of illegal behavior and allowing individuals to guide their conduct according to these written requirements. Some argue that laws deter potential law violators. The threat of punishment is sufficient to prevent individuals from committing the prohibited act. Punishment of offenders occurs when laws grant the government the ability or power to sanction wrongdoers. Finally, socioeconomic control occurs when laws support and maintain the social and economic systems they serve.

Roscoe Pound, one of the great legal scholars of modern times, believed that law was a type of social engineering (1968). The law was a *tool* that met the needs of men and women living and working together in society. Pound believed that law must change with the advent of new ideas. He articulated a series of *Jural Postulates* that were propositions setting forth the basis of all law because they reflected the shared needs of society.

Classifications of Crimes and Defenses

There are three basic types of crimes:

- Felonies
- Misdemeanors
- Petty offenses/infractions

There are three categories of defenses:

- Personal defenses
- Special defenses
- Procedural defenses

Because of the wide variety of state and federal statutes dealing with these topics, only a brief and basic discussion is possible. However, understanding these concepts is essential to progress to more complex issues.

Types of Crimes

- Felonies are the most serious form of crimes. English Common law required that felons suffer death and/or have their property confiscated by the state. Today, a felony is a criminal offense that is punishable by death or imprisonment in a state or federal institution for more than a year.

- Misdemeanors are the next most serious form of crime and are usually punishable by a fine and/or incarceration in a local penal facility for up to one year in length.
- The least serious crimes are called by a variety of names, e.g.: petty offenses, infractions, petty crimes, etc. These crimes are minor violations of the law, normally are punished by a fine, and do not carry any imprisonment.

Categories of Defenses

Defenses are those claims that state the defendant should not be held accountable for his or her acts, even though the defendant may have acted in violation of the criminal law. Defenses may be personal, special or procedural in nature (Wallace and Roberson, 1996).

Personal Defenses

The most common personal defenses include infancy, insanity, involuntary intoxication, and certain syndromes. Each of the personal defenses raises issues that have caused controversy within our American judicial system.

- *Infancy.* The defense of infancy is grounded on the concept that minors below a certain age cannot form the intent necessary to commit the criminal act. The concept of infancy is one of the reasons for the formation of juvenile courts. These special courts are discussed in greater detail in the chapter on the judicial system and victims of crime.
- *Insanity.* Insanity defenses are among the most complex and controversial areas of criminal law (Wallace and Roberson 1996). Criminal laws generally require that the offender have the requisite mind-set, or criminal intent, as a threshold to being found guilty of a crime. Insanity at the time the act was committed, sometimes called “diminished capacity,” negates the required mental state of the actor and, therefore, the individual is not considered to be responsible for committing the crime. For example, battery requires a general intent to commit the offense. If, however, the individual does not have the ability to formulate the required criminal intent, or “mens rea,” one of the essential elements of the crime is missing and the individual is not held responsible for having committed battery.

Insanity at the time of trial is referred to as “incompetency to stand trial.” The accused must have a sufficient mental state in order to assist his or her attorney in the defense of the case. If the accused does not have sufficient mental state, then the trial must be delayed. Unlike the question of mental state at the time of the act, which negates the guilt, incompetency to stand trial refers only to the ability of the accused to assist his or her counsel and does *not* negate the commission of the offense. If the accused is

determined to be incompetent to stand trial, the state is required to delay the trial until the individual is competent.

Insanity is a legal term that excuses the defendant's conduct based upon his or her lack of required mental state. This concept uses medical/psychiatric knowledge to come to a determination regarding the defendant's mental status.

There are five basic tests for insanity which have been used in the American court system:

1. The McNaghten Test
2. The Irresistible Impulse Test
3. The Durham Rule
4. The Federal Test
5. The Model Penal Code or ALI Test

- *It is no defense if one voluntarily consumes alcohol or other drugs and commits a crime.* However, involuntary intoxication by ingestion of drugs or alcohol may occur when a person is tricked or forced into consuming the intoxicating substance. Spiked drinks or drug-laced food may cause a person to be under the influence of controlled substances without his or her choice or knowledge, thereby alleviating their criminal culpability. Because the effects and taste of alcohol are so widely known in America, this defense is difficult to prove.
- *Certain syndromes* have become more acceptable as defenses in recent years. These defenses include the battered women syndrome. This defense is used when a battered spouse kills her abuser (Wallace, 1994, p. 133).

Special Defenses

The most common special defenses include: self-defense; defense of others; defense of property; mistake; necessity; alibi; duress; and entrapment.

- *Self Defense.* Self-defense is one of the best known defenses in American law. Depending on the jurisdiction, a person raising this defense must satisfy all of the following elements:
 1. They did not provoke the attack.
 2. They were threatened with death or great bodily injury.
 3. The danger was imminent.
 4. They used only the amount of force necessary to repel the attack.

These elements are judged by the "reasonable person standard" and not the subjective point of view of the victim.

- *Defense of Others.* The concept of defense of others is very similar to self-defense, and allows a person to come to the aid of another person who is being attacked. The rescuer is allowed to use the amount of force that the victim could have used if he or she was able to resist the attack.
- *Defense of Property.* Defense of property is an old defense and allows a person to protect his or her property from theft or destruction. Unlike self-defense and defense of others, individuals are not allowed to use deadly force in reclaiming property. It should be noted that when people are attacked in their home, they are defending themselves and not property. Therefore, the rules that normally apply in these situations are those set forth in the special defense of self-defense.
- *Mistake.* Mistake is a complex and confusing personal defense. A person may raise mistake of law or mistake of fact. Mistake of law is rarely accepted as a defense to crimes. Mistake of fact is more common but still confusing. Mistake of fact negates the intent to commit the crime, and therefore does away with a necessary element of any offense.
- *Alibi.* The alibi defense is unique among the personal defenses in that it denies that the defendant even committed the criminal act. Most alibi defenses are proved by testimony of defense witnesses who indicate that the defendant could not have been present at the scene of the crime because he or she was elsewhere when the crime was committed.
- *Duress.* Duress is based upon the concept that the law will forgive the lesser of two evils. For duress to be a valid defense, the threat must be to harm the victim or his or her immediate family. Additionally, duress is not applicable in homicide cases.
- *Entrapment.* Entrapment regulates police conduct and allows a defendant to go free if he or she can prove that law enforcement officers planted the idea of committing the crime in the defendant's mind. Entrapment has been used successfully in many criminal cases.

Procedural Defenses

The most common procedural defenses include lack of a speedy trial, selective prosecution, double jeopardy, and prosecutorial misconduct.

- *Lack of Speedy Trial.* The right to a speedy trial is guaranteed by the Sixth Amendment of the U.S. Constitution. The purpose of this amendment is to prevent un-convicted persons from being held in jail for prolonged periods awaiting trial. The federal government and most states have statutes that define the time limit necessary for a trial.

- *Selective Prosecution.* Selective prosecution is a concept that is based upon the Fourteenth Amendment's guarantee of equal protection under the law. This concept prohibits the government from unfairly prosecuting a person based upon a protected classification such as race, age, gender or religious affiliation. This defense is hard to prove since prosecutors have a wide range of discretion that courts are reluctant to overturn convictions based on this defense.
- *Double Jeopardy.* Double jeopardy is based upon the Fifth Amendment of the U.S. Constitution, which prohibits any individual from being tried twice for the same offense. It is intended to prevent the government from harassing individuals by repeatedly trying them for the same or similar offenses. However, some crimes can be violations of both state and federal laws and an acquittal of one does not bar the prosecution of the other. The Rodney King case is an example of this principle. Mr. King's assailants were acquitted on state criminal charges and convicted on federal charges; however, the charges differed in each system. Double jeopardy does not apply to cases where a trial court has made an error and the appellate court reversed that outcome, nor does it apply when the defense moves for a mistrial.
- *Prosecutorial Misconduct:* Prosecutorial misconduct occurs when prosecutors engage in conduct that unfairly prejudices the defendant. This may occur when the prosecutor hides the existence of evidence favorable to the defense or makes misstatements to the jury.

The Modern Day Evolution of Victims' Rights

As the above discussion indicates, we have evolved from the time of blood feuds, to payment of funds to victims, to the concept that the state is the "victim."

The chapter on the history and overview of the victims' movement includes a list of many of the significant milestones in the victims' movement. This section will briefly examine some of the more important areas of victims' rights that directly affect the criminal justice process.

- In 1965, California passes the first victims' rights law (victim compensation). Subsequently, other states and the federal government follow suit with the institution of numerous laws aimed at providing victims of crime with basic rights.
- In 1976, James Rowland, the Chief Probation Officer in Fresno County, California, creates the first victim impact statement to provide judges with an objective account of the victim's injuries prior to sentencing.
- In 1980, Congress passes the *Parental Kidnapping Prevention Act* and Wisconsin passes the first *Crime Victims' Bill of Rights*.

- In 1982, the *Federal Victim and Witness Protection Act* brings "fair treatment standards" to victims and witnesses in the federal court system, and the *Missing Children's Act of 1982* guarantees that identifying information on missing children will be entered into the FBI National Crime Information Center. California voters pass Proposition 8 which guarantees restitution and other reforms for crime victims.
- In 1984, the *Victims of Crime Act (VOCA)* establishes the Crime Victims Fund. This fund is made up of federal criminal fines, penalties and bond forfeitures used to support state and local victim services, including compensation for victims of crime. President Reagan signs the *Justice Assistance Act* that establishes a financial assistance program for state and local governments. The *National Minimum Driving Age Act of 1984* is passed and provides strong incentive for states to raise the minimum age for drinking to 21. The *Missing Children's Assistance Act* provides federal funding for the National Center for Missing and Exploited Children. During 1984, Congress also passes the *Family Violence Prevention and Services Act* that earmarks federal funding for programs serving victims of domestic violence.
- In 1986, Rhode Island passes the first constitutional amendment for victims granting them the rights to restitution, to submit a victim impact statement, and to be treated with dignity and respect.
- In 1988, the *Federal Drunk Driving Prevention Act* is passed, raising the minimum drinking age in all states to 21. VOCA amendments establish the Office for Victims of Crime and induce state compensation programs to cover victims of domestic violence and drunk driving. *State v. Ciskie* is the first case to allow the use of expert testimony to explain the behavior and mental state of an adult rape victim. The testimony is used to explain why the rape victim did not immediately report the assault.
- In 1990, the *Hate Crime Statistics Act* is passed, requiring the Attorney General to collect data of incidences of certain hate motivated offenses. The *National Child Search Assistance Act* requires law enforcement officers to enter reports of missing children in the NCIC computer. The *Student Right-to-Know and Campus Security Act* requires institutions of higher learning to disclose certain violent crimes on campus. The *Victims of Child Abuse Act of 1990* is passed, which features reforms that make the federal criminal justice system less traumatic for child victims and witnesses. Legislation to prohibit drunk drivers from filing bankruptcy to avoid paying restitution or civil fines is enacted by Congress. *Maryland v. Craig* allows child victims to testify via closed circuit television.
- In 1991, the Attorney General's *Guidelines for Victim and Witness Assistance* implement new protections of the *Crime Control Act of 1990*, integrating the requirements of the *Federal Crime Victims' Bill of Rights* and the *Federal Victim and Witness Protection Act of 1982*. The *International Parental Child Kidnaping Act* makes it a federal offense to

unlawfully remove a child outside the United States. The U.S. Supreme Court rules in *Simon & Schuster v. New York Crime Victims Board* that New York's notoriety-for-profit statute is unconstitutional. While this is a blow to the victims' movement, the Supreme Court rules favorably in *Payne v. Tennessee*, which allows victims to make victim impact statements prior to sentencing in capital cases.

- In 1992, Congress reauthorizes the *Higher Education* bill that includes a *Sexual Assault Victims' Bill of Rights*. The *Battered Women's Testimony Act*, which urges states to accept expert testimony in criminal cases involving battered women, is passed. The U.S. Supreme Court, in *R.A.V. v. City of St. Paul*, strikes down a local hate crimes ordinance in Minnesota.
- In 1993, Congress passes the "Brady Bill" which requires a waiting period for the purchase of handguns. The *Child Sexual Abuse Registry Act* establishing a national repository for information on child sex offenders is enacted. Twenty-two states pass anti-stalking laws, bringing the total to 50 states plus the District of Columbia.
- In 1994, five states pass constitutional amendments granting victims participatory rights throughout the criminal justice system, bringing the total number of states with amendments to 20. Congress passes the most comprehensive package of federal victims' rights legislation in its history as part of the *Violent Crime Control and Law Enforcement Act*. This *Act* includes the *Violence Against Women Act*, enhanced VOCA funding, establishment of the National Child Sex Offender Registry, enhanced sentences for drunk drivers with child passengers, mandatory restitution for certain categories of federal crime victims, and allocution at sentencing for federal victims of violent crime.
- In 1996, a federal constitutional amendment was introduced in the U.S. Senate. Amending the Constitution on behalf of victims was recommended by the *President's Task Force on Victims of Crime* in 1982. The culmination of many years of combined efforts, this amendment to the U. S. Constitution, if passed and ratified, could result in sweeping improvements in balancing the criminal justice system on behalf of victims. The text of the proposed amendment follows here:

Victims' Rights Constitutional Amendment

Section 1. To ensure that the victim is treated with fairness, dignity, and respect, from the occurrence of a crime of violence and other crimes as may be defined by law pursuant to section two of this article, and throughout the criminal, military, and juvenile justice processes, as a matter of fundamental rights to liberty, justice, and due process, the victim shall have the following rights: to be informed of and given the opportunity to be present at every proceeding in which those rights are extended to the accused or convicted offender; to be heard at any proceeding involving sentencing, including the right to object to a previously negotiated plea,

or a release from custody; to be informed of any release or escape; and to a speedy trial, a final conclusion free from unreasonable delay, full restitution from the convicted offender, reasonable measures to protect the victim from violence or intimidation by the accused or convicted offender, and notice of the victim's rights.

Section 2. The several States, with respect to a proceeding in a State forum, and the Congress with respect to a proceeding in a United States forum, shall have the power to implement further the rights established in this article by appropriate legislation.

While progress has been made in the area of victims' rights, there is still much to be done. Slowly, society is beginning to realize that victims of crime should have access to the criminal justice system in the same manner as criminal defendants. Understanding the history of the American criminal law system allows us to be more effective advocates for victims.

Definition of Terms

Common Law: A traditional body of unwritten legal precedents created by court decisions during the Middle Ages in England.

Defenses: Those claims that state the defendant should not be held accountable for his or her acts, even though the defendant may have acted in violation of the criminal law. Defenses may be personal, special or procedural in nature.

Felony: A criminal offense that is punishable by death or imprisonment in a state or federal institution for more than a year.

Infractions or Petty Crimes: The least serious crimes which are minor violations of the law and normally are punished by a fine, and do not carry any imprisonment.

Misdemeanor: Are usually punishable by a fine and/or incarceration in a local penal facility for up to one year in length.

Stare Decisis: Judges would use local customs and rules of conduct as a guide in rendering their judgment. It is a Latin phrase meaning "to stand by the decided law."

History of Law: The Evolution of Victims' Rights

- 1) What is the significance of the Code of Hammurabi?

- 2) What is the purpose of laws?

- 3) What are the three various classifications of crimes?

- 4) List the different types of defenses available to a person charged with a crime.

- 5) Discuss the evolution of the victims' movement as it relates to the development of American law.

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Chapter 5

The Role of Federal and State Law: The Judicial System and Victims of Crime

Abstract: Understanding the role and functions of the various court systems in the United States provides victim service providers with a solid foundation for understanding the dynamics of the law. It is a complex aspect of our legal system that can be confusing and frustrating to victims when they are first exposed to it. Knowing some of the rationale for its present day structure may help victims understand the manner in which laws operate and interact.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The principle of federalism and how it affected the structure of our court system.
 2. How the dual system of state and federal courts function.
 3. The characteristics of the American court system.
 4. How the juvenile court system functions.
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Statistical Overview

- In 1992, 12,548 defendants were convicted of murder/manslaughter in state courts, and 124 defendants were sentenced for murder/manslaughter in U.S. District Courts.
- In 1992, 21,655 defendants were convicted of rape in state courts, and 302 defendants were sentenced for sexual offenses in U.S. District Courts.
- In 1992, 51,878 defendants were convicted of robbery in state courts, and 1,903 defendants were sentenced for robbery in U.S. District Courts.

(Reference: *Felony Sentences in the United States, 1992*. (1996, May). Bureau of Justice Statistics Bulletin.)

The Characteristics of the U.S. Criminal Justice System

In order to understand the role of federal and state law, it is essential to have a firm grasp of the principles of how the American criminal justice system functions. There is no more confusing, frustrating, and complex environment for victims of crimes than the criminal court system. This section will provide a brief overview of the judicial system in the United States.

Historical Context: The Principle of Federalism

The court system in the United States is based upon the principle of federalism. The first Congress established a federal court system, and the individual states were permitted to continue their own judicial structure. There was general agreement among our nation's founders that individual states needed to retain significant autonomy from federal control. Under this concept of federalism, the United States developed as a loose confederation of semi-independent states having their own courts, with the federal court system acting in a very limited manner. In the early history of our nation, most cases were tried in state courts. It was only later that the federal government and the federal judiciary began to exercise jurisdiction over crimes and civil matters. Jurisdiction in this context simply means the ability of the court to enforce laws and punish individuals who violate those laws.

A Dual System of State and Federal Courts

As a result of this historical evolution, a dual system of state and federal courts exists today. Therefore, federal and state courts may have concurrent jurisdiction over specific crimes. For example, a person who robs a bank may be tried and convicted in state court for robbery, then tried and convicted in federal court for the federal offense of robbery of a federally-chartered savings institution.

Court System Performs its Duties With Little or No Supervision

Another characteristic of the American court system is that it performs its duties with little or no supervision. A Supreme Court Justice does not exercise supervision over lower court judges in the same way that a government supervisor or manager exercises control over his or her employees. The U.S. Supreme Court and the various state supreme courts exercise supervision only in the sense that they hear appellate cases from lower courts and establish certain procedures for these courts.

Specialization Occurs Primarily at the State and Local Level

A third feature of our court system is one of specialization that occurs primarily at the state and local level. In many states, courts of limited jurisdiction hear misdemeanor cases. Other state courts of general jurisdiction try felonies. Still other courts may be designated as juvenile courts and hear only matters involving juveniles. This process also occurs in certain civil courts that hear only family law matters, probate matters, housing matters, or civil cases involving damages. At the federal level, there are courts such as bankruptcy that hear only cases dealing with specific matters.

Geographic Organization of the American Court System

The fourth characteristic of the American court system is its geographic organization. State and federal courts are organized into geographic areas. In many jurisdictions these are called judicial districts and contain various levels of courts. For example, on the federal level, the 9th Circuit Court of Appeals has district (trial) courts that hear matters within certain specific boundaries; and an appellate court that hears all appeals from cases within that area. Several studies have been conducted regarding the difference in sentences for the same type of crime in geographically distinct courts. For example, in Iowa the average sentence for motor vehicle theft was 47 months while the average sentence for the same offense in New York was 14 months. (Pursley, 1994). This should not be taken as a criticism; rather it may reflect different social values and attitudes within specific geographic areas.

The State Court System

Historically each of the thirteen original states had their own unique court structure. This independence continued after the American Revolution and resulted in widespread differences among the various states, some of which still exist today. Because each state adopted its own system of courts, the consequence was a poorly planned and confusing judicial structure. As a result, there have been several reform movements whose purpose has been to streamline and modernize this system.

Many state courts can be divided into three levels:

- Trial courts
- Appellate courts
- State supreme courts

Trial courts are where criminal cases start and finish. The trial court conducts the entire series of acts that culminate in either the defendant's release or sentencing. State trial courts can be further divided into courts of:

- Limited or special jurisdiction
- Courts of general jurisdiction.

The nature and type of case determines which court will have jurisdiction.

Limited Jurisdiction

Courts which only hear and decide certain limited legal issues are courts of limited jurisdiction:

- Courts of limited jurisdiction hear and decide issues such as traffic tickets or set bail for criminal defendants.
- Typically, these courts hear certain types of minor civil or criminal cases.
- There are approximately 13,000 local courts in the United States.
- They are called county, magistrate, justice or municipal courts.
- Judges in these courts may be either appointed or elected.

In many jurisdictions these are part-time positions, and the incumbent may have another job or position in addition to serving as a judge. However, simply because they handle minor civil and criminal matters does not mean these courts do not perform important duties. Often, the only contact the average citizen will have with the judicial system occurs at this level.

In addition, courts of limited jurisdiction may hear certain types of specialized matters such as:

- Probate of wills and estates
- Divorces
- Child custody matters
- Landlord - tenant disputes
- Juvenile proceedings

These types of courts may be local courts or, depending on the state, may be courts of general jurisdiction that are designated by statute to hear and decide specific types of cases. For example, in California, a superior court is considered a court of general jurisdiction; however, certain superior courts are designated to hear only juvenile matters, thereby becoming a court of limited jurisdiction when sitting as a juvenile court.

General Jurisdiction

Courts of general jurisdiction are granted authority to hear and decide all issues that are brought before them. These are courts that normally hear all major civil or criminal cases. These courts are known by a variety of names, such as:

- Superior Courts
- Circuit Courts
- District Courts
- Courts of Common Pleas

Since they are courts of general jurisdiction, they have authority over all types of cases and controversies, and, unless otherwise geographically limited, may decide issues that occur anywhere within the state. Some larger jurisdictions such as Los Angeles or New York may have hundreds of courts of general jurisdiction within the city limits. It is important to be certain about naming of courts in each jurisdiction. For example, the New York Supreme Court is the state's trial court and its highest court is called the Superior Court. Just the reverse is true in some neighboring jurisdictions.

Typically, these courts hear civil cases involving the same type of issues that courts of limited jurisdiction hear, although the amount of damages will be higher and may reach millions.

- These courts also hear the most serious forms of criminal matters including death penalty cases.

Courts of general jurisdiction traditionally have the power to order individuals to do or refrain from doing certain acts.

- These courts may issue injunctions that prohibit performing certain acts or require individuals to do certain functions or duties.
- This authority is derived from the equity power that resides in courts of general jurisdiction.

Equity is the concept that justice is administered according to fairness as contrasted with the strict rules of law. In early English Common Law, such separate courts of equity were known as Courts of Chancery. These early courts were not concerned with technical legal issues; rather they focused on rendering decisions or orders that were fair or equitable. In modern times, the power of these courts has been merged with courts of general jurisdiction, allowing them to rule on matters that require fairness as well as the strict application of the law.

- The power to issue temporary restraining orders (TROs) in spousal abuse cases comes from the equitable powers of the court.

Appellate Jurisdiction

Appellate jurisdiction is reserved for courts that hear appeals from both limited and general jurisdiction courts.

- These courts do not hold trials or hear evidence.
- They decide matters of law and issue formal written decisions or "opinions."

There are two classes of appellate courts:

- *Intermediate*, or Courts of Appeals
- *Final*, or Supreme Courts

Courts of Appeals

The intermediate appellate courts are known as courts of appeals. Approximately half the states have designated intermediate appellate courts.

- These courts may be divided into judicial districts that hear all appeals within their district.
- They will hear and decide all issues of law that are raised on appeal in both civil and criminal cases.

- Since these courts deal strictly with legal or equitable issues, there is no jury to decide factual disputes.
- These courts accept the facts as determined by the trial courts.
- Intermediate appellate courts have the authority to reverse the decision of the lower courts, and to send the matter back with instructions to retry the case in accordance with their opinion.
- They also may uphold the decision of the lower court.

In either situation, the party who loses the appeal at this level may file an appeal with the next higher appellate court.

Supreme Courts

Final appellate courts are the highest state appellate courts. They may be known as *supreme courts* or *courts of last resort*. There may be five, seven or nine justices sitting on this court depending on the state. This court has jurisdiction to hear and decide issues dealing with all matters decided by lower courts, including ruling on state constitutional or statutory issues. This decision is binding on all other courts within the state. Once this court had decided an issue, the only appeal left is to file in the federal court system.

The Federal Court System

While state courts had their origin in historical accident and custom, federal courts were created by the U.S. Constitution. Section 1 of Article III established the federal court system with the words providing for "one Supreme Court, and . . . such inferior Courts as the Congress may from time to time ordain and establish." From this beginning, Congress has engaged in a series of acts that has resulted in today's federal court system. The *Judiciary Act of 1789* created the U.S. Supreme Court and established district courts and circuit courts of appeals.

Federal District Courts

Federal District Courts are the lowest level of the federal court system. These courts have original jurisdiction over all cases involving a violation of federal statutes. These district courts handle thousands of criminal cases per year.

Federal Circuit Courts

Federal Circuit Courts of Appeals are the intermediate appellate level courts within the federal system. These courts are called circuit courts because the federal system is divided into 11 circuits. A Twelfth Circuit Court of Appeals serves the Washington D.C. area. These courts hear all criminal appeals from the District Courts and habeas corpus appeals from state court convictions. These appeals are usually heard by panels of three of the appellate court judges rather than by all the judges of each circuit.

U.S. Supreme Court

The United States Supreme Court is the highest court in the land. It has the capacity for judicial review of all lower court decisions, as well as state and federal statutes. By exercising this power, the Supreme Court determines what laws and lower court decisions conform to the mandates set forth in the U.S. Constitution. The concept of *judicial review* was first referred to by Alexander Hamilton in the Federalist Papers, where he described the Supreme Court as ensuring that the will of the people will be supreme over the will of the legislature. (The Supreme Court of the United States, no date). This concept was firmly and finally established in our system when the Supreme Court asserted its power of judicial review in the case of *Marbury v. Madison* (1803).

Although it is primarily an appellate court, the Supreme Court has original jurisdiction in the following cases:

- Cases between the United States and a state.
- Cases between states, and cases involving foreign ambassadors, ministers and consuls.
- Cases between a state and a citizen of another state or country.

The court hears appeals from lower courts including the various State Supreme Courts. If four justices of the U.S. Supreme Court vote to hear a case, the court will issue a Writ of Certiorari. This is an order to a lower court to send the records of the case to the Supreme Court for review. The court meets on the first Monday of October and usually remains in session until June. The court may review any case it deems worthy of review but it actually hears very few of the cases filed with it. Of approximately 5000 appeals each year, the court agrees to review about 200, but may not issue an opinion on each case.

Victim Cases at Supreme Court Level

The Supreme Court handles perhaps the broadest conceivable array of legal and social issues, among these are victim issues. Recent victim-related Supreme Court decisions have addressed the following topics:

- Victim Impact Statements
- Hate Crimes
- Child Victims of Crime
- Notoriety-for-Profit for Perpetrators

An in-depth discussion of these issues will be provided in Chapter 6.

The Juvenile Court System

Because of the significant increase of importance of juvenile crime in our society, an overview of juvenile courts within the state and federal court system is important. While there are some differences, both federal and state systems were initially founded upon the concept of rehabilitation of young offenders. Additionally, both systems wanted to shield juveniles from public scrutinies; therefore, each contained provisions for keeping matters confidential.

The Federal Court Juvenile System

When Congress addressed the issue of juvenile offenders, it established two alternatives for the prosecution of juveniles:

- The juvenile can waive his or her rights to be treated as a juvenile.
- The juvenile can have the matter treated as a civil proceeding called juvenile adjudication.

If the court finds that the juvenile committed the offense, he or she faces a series of federal sanctions including incarceration. There is a federal preference for state prosecution of juveniles since there is no separate federal juvenile court judge or juvenile detention system. If a juvenile is adjudicated to be a delinquent, he or she is placed in a state juvenile facility. The federal government contracts with states for this service.

Until the passage of the *Crime Control Act of 1990*, the federal government only prosecuted juveniles who committed crimes on federal reservations, where the states had no jurisdiction. The *Crime Control Act* added two other categories of juveniles who fall under federal juvenile court jurisdiction: juveniles who commit felony crimes of violence and/or those juveniles involved in certain drug felonies. Similar to most state court systems, federal law allows for the transfer or certification of a juvenile to "adult status." This procedure allows juveniles to be tried as adults in either the state or federal court system.

Under federal law, juveniles are those persons under 21 who commit a federal offense before their eighteenth birthday. A federal judge acts as the federal equivalent of the state juvenile court

judge. The proceedings are confidential with no members of the public or press in attendance. federal jurisdiction in juvenile matters is established where:

- The state does not have jurisdiction
- The state does not have programs or services available for juveniles
- The offense charged is a violent felony or drug offense and there is a substantial federal interest in the case

A juvenile proceeding is initiated by the filing of an information. In most cases, the U.S. Attorney must file a certification stating there are grounds for federal jurisdiction. The hearing in federal court is very similar to a court trial.

The State Court Juvenile System

The separate handling of juvenile justice matters has roots throughout history. Even in earlier periods in America, certain specific juvenile accommodations were in use. However, the present day American state-level juvenile court system dates back to 1899 when the state of Illinois passed the *Illinois Juvenile Court Act*. It was at that time that the juvenile court system as we know it today came into existence (Fox, 1972). This statute separated the juvenile court system from the adult criminal system. It labeled minors who violated the law as “delinquents” rather than criminals, and required that juvenile court judges determine what “is in the best interests of the minor” in rendering their decision.

The juvenile court system is guided by five basic principles:

1. The state is the ultimate parent of all children within its jurisdiction, the doctrine of *parens patrea*; and has the power to step into the parental role *in loco parentis*.
2. Children are worth saving and the state should utilize non-punitive measures to do so.
3. Children should be nurtured and not stigmatized by the court process.
4. Each child is different and justice should be tailored to meet individual needs and requirements.
5. The use of noncriminal sanctions are necessary to give primary consideration to the needs of the child (Cadwell, 1966, p. 358).

It is important to note that each state determines its own jurisdictional age of “minors” handled by its juvenile system. Most involve children who are under 18 years of age. A few states use

higher ages, up to 21 usually for specific issues. Three states cover children up to 15 years of age, adjudicating their 16-year-olds in adult criminal courts.

While these principles were originally adopted for delinquents or minors who committed criminal acts, they have been broadly applied to proceedings involving children who are victims of abuse. Juvenile courts have jurisdiction over three types of minors:

- Delinquents
- Status offenders
- Dependent children

Delinquents are minors who have committed criminal offenses. *Status offenders* engage in acts that are not problematic if committed by an adult, such as when minors are truant from school, run away from home or are considered incorrigible. *Dependent children* are those who are in need of state intervention because of abuse or neglect by their caretakers.

Abuse and Neglect Proceedings

While the procedure is basically the same for delinquents as well as dependent minors, the juvenile court process dealing with children who are victims of abuse or neglect is of particular importance to victim service providers:

- This process is normally initiated by filing a petition with the court.
- A petition is a formal pleading that alleges that the parents or custodians endangered the health or welfare of the child.
- The petition may allege neglect, physical, emotional or sexual abuse of the child and gives the juvenile court authority to act.

Detention Hearings in Child Maltreatment

Once the petition is filed, many jurisdictions hold a show cause or detention hearing. This hearing is usually conducted within 24 to 48 hours after filing the petition or the emergency removal of the child. The detention hearing requires child protective services or police to produce evidence justifying the emergency removal of the child, or to present evidence that would allow the court to order the removal of the child if he or she is still in the custody of the parents. The parents may also admit or deny the allegations contained in the petition at this hearing.

- If they admit the allegations, the court orders child protective services to conduct an investigation to determine where the child should be placed as a result of the admissions by the parents.
- If the parents deny the allegations, the court sets a date for an adjudicatory or jurisdictional hearing.

Pending this hearing, the court may order the child temporarily placed in a living arrangement outside the home.

Child Abuse and Neglect Adjudicatory or Jurisdictional Hearing

An adjudicatory or jurisdictional hearing is used to determine if there is sufficient evidence to determine that the allegations in the petition are true. At the conclusion of this hearing, the court will render its decision. If the petition is upheld, the court sets a date for a dispositional hearing. If the petition is not upheld, the child is returned to the parents and the case is dismissed.

- During the adjudicatory hearing, the state presents evidence to support its claim that the child has been abused.
- This may take the form of having the child testify to the incident, or experts employed by the state may render their opinion regarding the facts surrounding the case.
- The state is represented by a juvenile prosecutor, state's advocate, county counsel or other governmental attorney.
- The parents have a right to cross examine witnesses and present any evidence they desire in rebuttal to the state's evidence.
- At the end of the hearing, both parties may present arguments in favor of their position.

The burden of proof to uphold the abuse or neglect petition is the same as a civil case. In civil trials, the plaintiff has the burden of proving the case by a preponderance of the evidence. This is normally defined as slightly more than fifty percent. A criminal case requires proof beyond a reasonable doubt. This is not proof beyond all doubt, but it is proof of the "material facts to a moral certainty" that they did occur.

- In juvenile dependency cases, in order to remove the child from the custody of his or her parents, some jurisdictions require proof by clear and convincing evidence. This is more than a preponderance of the evidence, but less than beyond a reasonable doubt (Otterson, 1979).

Once the adjudicatory or jurisdictional hearing is concluded, the next hearing to occur is the dispositional hearing. This hearing is to determine where the child should be placed. The court will decide whether the child should be immediately returned to his or her parents or placed in an out of home environment for a period of time. The guiding principle in this hearing is "the best interests of the child". If the court orders the child placed outside the home, it may schedule

periodic reviews to determine if or when the child will be reunited with the parents. Typically, a specific plan regarding placement is established and monitored.

From the beginning of the intervention process until the final dispositional hearing and beyond, every party in the action has certain rights. The parents and the child each has distinct rights which must be observed and protected. These rights include:

- Notice
- An opportunity to be heard and present evidence
- The right to confront and cross-examine witnesses
- Effective representation by an attorney

In a dependency hearing, the rights of a child include appointing an attorney who will speak on behalf of the child. This attorney must represent what he or she believes is in the best interests of the child regardless of what CPS or the parents advocate believes is appropriate. In some jurisdictions this is a government-funded attorney; in others, it is a private attorney appointed by the court to represent the child. Depending on the case, the attorney may side with the parents and argue for return of the child to their care, or the attorney may take the position that it is in the best interests of the child to be removed from the custody of the parents. Even if the child is removed temporarily from the custody of his or her parents, the child has a right to re-unification efforts after a reasonable time.

Many jurisdictions additionally engage Court Appointed Special Advocates (CASAs), or similarly trained (typically non-attorney) individuals. The role of these child advocates is to present to the court an independent analysis of what is best for the child. This is particularly important; as the child's legal representative, the court appointed lawyer must forward the child's wishes when an objective view would be to the contrary. For example, the lawyer may decide that they must vigorously advocate a juvenile's wish to return home, when an independent child advocate may determine that this is not actually in the child's best interest.

During dependency hearings, parents have a right to notice of the hearing, an opportunity to be present at that hearing and to be represented by an attorney. They may present any evidence they desire to rebut the charges. If the child is removed from their custody they have the right in most jurisdictions to a re-unification plan that will allow them to regain custody of the child once they have finished treatment or counseling.

Victims' Rights in Juvenile Delinquency Matters

Among the most rapidly changing areas in the victim assistance field is the extension of victim rights in juvenile delinquency proceedings. Historically, juvenile courts have been closed proceedings and records have been generally confidential. Even the victim was unable to learn much, if anything, about the progress of a case against the juvenile who offended against them.

Juvenile delinquency proceedings are analogous, in many ways, to adult criminal trials, with all the typical obstacles to victim participation. The juvenile court's privacy provisions exacerbate these obstacles tremendously.

Many states have, or are, considering rolling back their previously hard and fast confidentiality statutes. States like Connecticut, Missouri, and Arizona have gone further to provide for victim rights and accommodations in juvenile courts that mirror those in adult courts. This provides fertile ground for expansion of victim advocacy and assistance efforts to a previously underserved population, victims of juvenile crime.

Definition of Terms

Adjudicatory or Jurisdictional Hearing: Used to determine if there is sufficient evidence to find the allegations in the petition are true.

Delinquents: Those minors who have committed criminal offenses.

Status Offenders: Minors who are truant from school, run away from home or are considered incorrigible.

Dependent Children: Those who are in need of state intervention because of neglect or abuse by their caretakers.

Detention Hearing: Requires child protective services or police to produce evidence justifying the emergency removal of the child or present evidence that would allow the court to order the removal of the child if he or she is still in the custody of the parents.

Dispositional Hearing: To determine where the child should be placed.

Parens Patrea: Meaning "the country is the parent," this doctrine is fundamental to the juvenile court's power to decide on placements, treatment and other determinations regarding children.

Petition: A formal pleading that alleges that the parents or custodians endangered the health or welfare of the child.

Writ of Certiorari: An order to a lower court to send the records of the case to the Supreme Court for review

THE DUAL SYSTEM OF COURTS IN AMERICA

FEDERAL COURTS

U.S. Supreme Court

- Chief justice and 8 associate justices
- Appointed by President with "advice and consent" of Senate
- Rarely acts as a trial court

U.S. Court of Appeals

- 12 judicial circuits
- Normally hears cases in panels
- No original jurisdiction
- Appellate cases only

U.S. District Courts

- Basic federal trial court
- At least 1 district court in each state
- States are divided geographically into federal judicial districts

Magistrate Courts

- Not separate courts
- Minor offenses and pre-trial matters

STATE COURTS

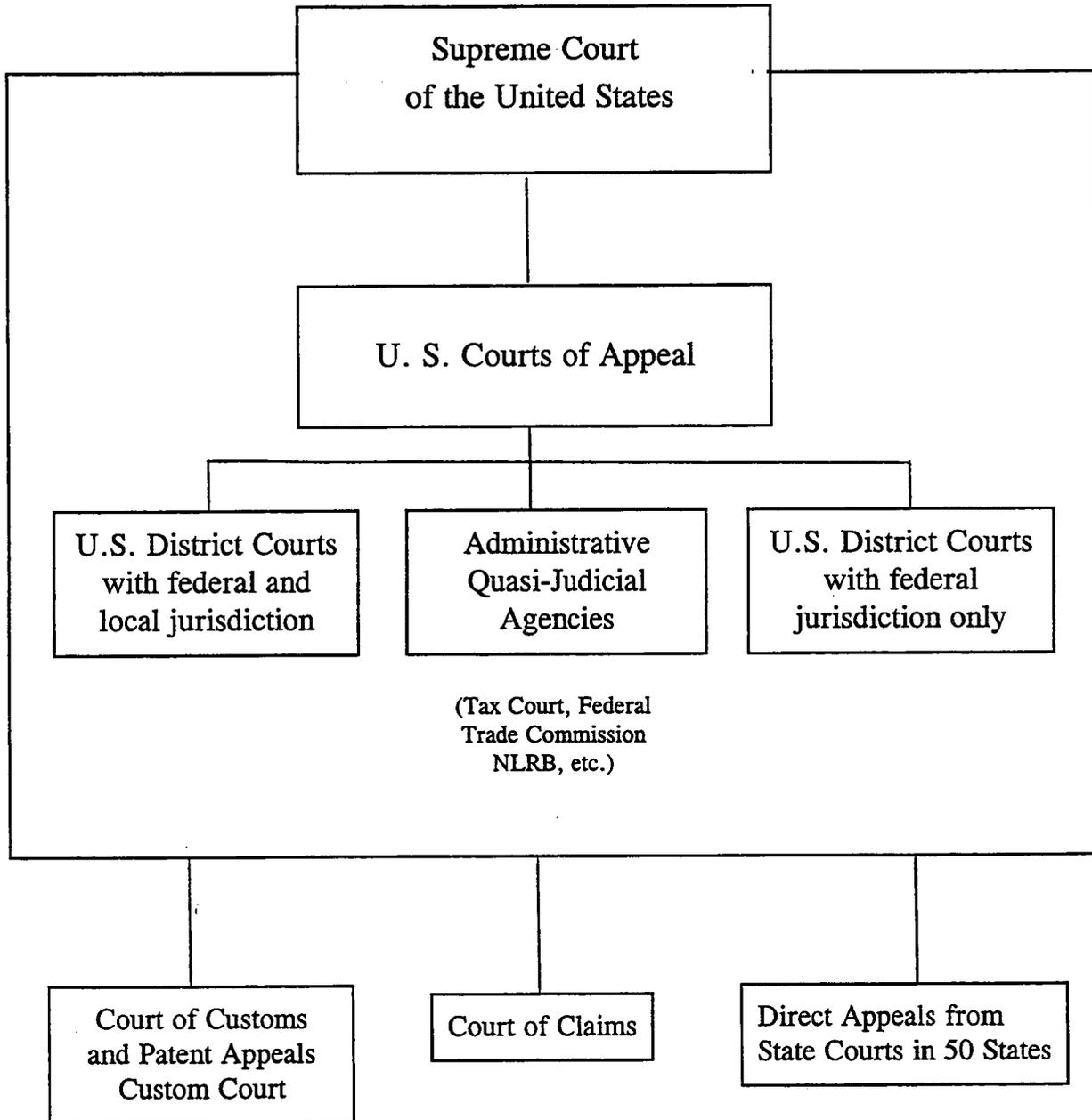
State Supreme Court

Intermediate Appellate Courts

Trial Courts of General Jurisdiction

Lower Courts

FEDERAL JUDICIAL SYSTEM



The Role of Federal and State Law: The Judicial System and Victims of Crime

- 1) Describe how the federal and state courts function.

- 2) What are courts of limited and general jurisdiction?

- 3) What are the principles that the juvenile justice system was founded upon?

- 4) Describe the cases that the U.S. Supreme Court has original jurisdiction over.

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Chapter 6

Dynamics of the Criminal Justice System and the Current Status of Victims' Rights

Abstract: The criminal justice system involves many different agencies and individuals. Each of these has specific roles and responsibilities within the system. The victims' role within the system must be understood in this context. In large part, legislatively established "rights" provide victims with the means to make the system more accountable to them.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The basic roles and responsibilities of professionals along the criminal justice system continuum.
2. The interactions among these individuals and entities, and how these can assist victims.
3. The basic tenants of victims' rights legislation.

Introduction

Among the most basic functions of civilized society is the protection of its citizenry from criminal victimization.

In modern day, the primary responsibility for protecting innocent citizens from those who would harm them rests with the criminal justice system. The criminal justice system involves many components that are reviewed in this chapter. The effectiveness of this system relates directly to the appropriate balancing of rights, roles, and responsibilities of the various participants within the system.

In his preface to *The Price of Perfect Justice*, Macklin Fleming (1974) reminds us that "the Goddess of Justice is traditionally depicted holding in one hand the scales of justice, with which she weighs the right, and in the other the sword, with which she executed it." The criminal justice system involves a delicate balance among its many components in the search for truth and justice. This chapter discusses the dynamics of this balance among the various professionals within the criminal justice system, and how the victim of crime figures into these dynamics.

Elements of the Criminal Justice Continuum

There are many elements and "players" within the criminal justice system that need to be understood if one is to effectively advocate for the rights of victims of crime. Of course, a fundamental precondition is that many of these rights have been established within the legislative and case law framework in different states.

Assuming certain basic rights and protections are in place, then the victim and his or her advocate has some foothold to enforce these rights. Those primarily responsible for assuring victims are afforded the protections and assistance they deserve are criminal justice system professionals.

The criminal justice system, at its fundamental level, includes:

- Law enforcement
- Prosecution
- Defense counsel
- Judiciary
- Probation
- Institutional corrections
- Parole

In addition, victims are often involved in cases where the perpetrator is a juvenile who is served by professionals in the juvenile justice system. Moreover, there are allied professions that are often brought to bear on the criminal justice system, such as mental health professionals, child welfare workers, medical professionals, and others. The dynamics between each of these components and professional perspectives within the system need to be understood to best protect victims' rights.

Need for Improved Treatment of Victims

Victims of crime have generally been treated less than adequately within the criminal justice system, particularly in modern times. The historic vestiges of a victim-oriented or victim-driven system, with private prosecution or so called "vigilantism" justice, have given way over the last decades to an offender-based criminal justice system. (See, e.g., Carrington (1975) and Shapland (1985), and Wallace, this publication, Chapter 3). Much progress has been made in recent years to begin balancing the system to provide victims with rights and services (Carrington, 1975; Shapland, 1985). In order to continue these important efforts, victims and their advocates must understand and learn to work with the delicate balance among the various entities within the criminal justice system.

Victims and the Criminal Justice System

Victims of crime deserve rights and services in the criminal justice system that begin at the point of reporting crime to the police, and continue through the entire criminal justice and corrections processes.

The criminal justice system is charged with processing cases from the point of victimization, through investigation, arrest, prosecution and sanctions. At each point along this continuum, criminal justice agencies and professionals have opportunities and obligations to provide victims with assistance, services and accommodations to ease their difficulties in what is already a very trying, tragic time. The criminal justice system can minimize and avoid inflicting "secondary victimization" that has often characterized much of the plight of victims of crime.

Access to Services

Access to services is an extremely important component of any service delivery plan, and depends greatly on the physical location and accessibility of such services. For example, police officers should be trained and updated on a regular basis about existing victim service programs -- including 24-hour emergency crisis response and shelter -- and how to make appropriate referrals. Court-based advocacy programs should be established in *all* adult and juvenile court facilities. Probation officials must guarantee that crucial victim impact information is

incorporated into their recommendations to the court relevant to an offender's sentencing and community supervision plan. Correctional institutions should include important victim information -- such as notification requests and victim impact statements -- in offender files or databases, with security precautions established to protect victim confidentiality. Paroling authorities should encourage and accept victim impact statements, and offer victims whatever reasonable protections they request if an offender is released to parole supervision.

Training and Technical Assistance

Victim sensitivity training should be provided to *all* criminal and juvenile justice professionals, as part of mandatory orientation educational programs, as well as continuing education. Such training should include, but not be limited to:

- The scope of crime and victimization.
- The trauma of victimization, with an emphasis on responses that are unique to different types of victims.
- Victims' rights accorded by constitutional and statutory mandates, as well as by agency policy.
- The short- and long-term needs of victims (physical, financial and psychological), with a focus on why appropriate referrals for follow-on assistance are so important.
- Cultural diversity and sensitivity.
- The need for multidisciplinary approaches to victim assistance and services from the criminal justice system -- including the use of inter-agency agreements that stipulate the various agencies' roles and responsibilities -- to ensure a "seamless" delivery of services.
- The role of allied professionals in enhancing criminal justice-based victims' rights and services.

"Cross training" is also essential to improving the delivery of services to victims within the criminal justice system. Just as service providers want criminal justice system officials to be knowledgeable about and consistent in their enforcement of victims' rights, criminal justice system officials want victim advocates to understand the scope and processes of the criminal justice system. Orientation, continuing education and cross training help guarantee that the criminal justice system continuum *includes* and *involves* victims and their concerns.

Core Components of Victim Services

All agencies along the full continuum of the criminal justice system should develop a comprehensive system of services that is "victim-centered." The National Victim Center, through an Office for Victims of Crime-sponsored project entitled *Focus on the Future*, has identified nine core components of an effective criminal justice-based victim assistance program.

These components are designed to help victims navigate the criminal justice process, afford victims their legal rights, and make their overall participation less intimidating and burdensome.

There are nine core components of comprehensive victim services in the criminal justice system. These services, which can be multidisciplinary, include:

1. Orientation to the criminal justice system and process.
2. Assistance to victims and witnesses who must testify.
3. Crisis intervention.
4. Information about individual case status and outcome.
5. Assistance with compensation and restitution.
6. Facilitating victim participation in the criminal justice system.
7. Facilitating property return.
8. Information about and referral to community services.
9. Education and training for the public, justice system personnel, and other local service providers about the needs and rights of victims in the criminal justice system.

In addition, witness coordination and post-disposition services are very important.

Basic services should be available at *every* stage of the criminal justice process for victims and witnesses, as described below. It is important to note that these victim services can be provided by multiple agencies or through multidisciplinary efforts.

Criminal Justice System Agencies' Roles and Responsibilities

Law Enforcement

Evolving from the earlier vestiges of sheriffs or constables, modern police forces are highly structured organizations that are accorded considerable authority, particularly the power of arrest that is provided each sworn law enforcement officer (Pacific Law Journal, 1992). Law

enforcement agencies have traditionally addressed issues involving the general welfare of the public at large. As noted in Ryan (1994), in 1829, Sir Robert Peel included the following in his basic tenets of policing:

“To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interest of community welfare. . . .”

As the "first responders" to most crimes, police departments serve a critical and primary role in providing immediate intervention and assistance to victims of crime. Unlike most social service agencies, police departments are typically open every day of the year, 24-hours-a-day. As such, there is tremendous responsibility on the part of law enforcement officers and civilian personnel to provide sensitive and supportive victim services.

It is important to keep in mind that the three primary function of law enforcement are to:

- Protect life and property
- Prevent crime
- Apprehend offenders (Barlow, 1990)

Police Role in Victim Services

Although police departments today tend to provide more and better victim services, these services were not always part of traditional policing. The positive change on behalf of providing quality victim services has been very encouraging; however, many police officials have perceived their victim assistance responsibilities as a secondary responsibility, at best.

Victim sensitivity training for police officers comprises an important improvement. Historically, police academies have not provided adequate training for law enforcement personnel regarding victimization and the effect violent crime has on crime victims. This means that undertrained law enforcement personnel come into contact with an emotionally distraught victim, which can result in a combination of effects that decreases a victim's confidence and willingness to participate in the criminal justice system.

Much progress has been made over the last decade to increase law enforcement sensitivity to victims' issues. The establishment and expansion of law enforcement-based victim services programs have benefitted both law enforcement and victims. When effective victim service programs are provided through a police department, law enforcement officers are able to devote their time to the primary law enforcement responsibilities of investigating crimes and arresting suspects. Victims are well served because basic services are provided by law enforcement. This

is extremely important because in a large majority of crimes, no perpetrator is ever apprehended. This means that court-based programs will never come into contact with large numbers of victims. Their only hope for assistance from the criminal justice system would be at the police-based level.

The move toward *community policing* in many jurisdictions has important implications for victims and those who serve them. With more officers visible and active on the street and in neighborhoods, the delivery of victim services can be provided more swiftly, and involve supportive advocacy from *all* facets of a neighborhood or community (such as businesses, churches and social services).

The Specific Roles and Responsibilities of Law Enforcement Officials to Victims of Crime

Police-based services provide essential assistance to victims of crime. These include on-site crisis intervention and securing emergency medical assistance. Additionally, law enforcement programs may provide information and referrals to services and resources that can aid in a victim's short and long-term reconstruction. Essential services should include, but are not limited to:

- Orientation to the law enforcement and investigatory process.
- Provision of or referral and accompaniment to crisis intervention and psychological first aid.
- Accompaniment to emergency medical services in cases involving injury.
- Contacting a victim service professional to provide on-site assistance and support, upon request from the victim.
- Providing information to crime victims about their constitutional and statutory rights, and the availability of crime victim compensation.
- Securing the victim's property if personal safety has been compromised as a result of crime.
- Personally contacting the victim by telephone or in person 24-to-48 hours following the initial response to see if assistance has been sought and/or received.
- Immediate referrals (verbally and in writing) to community agencies that offer emergency services to victims, as well as information about financial assistance, should be provided to all victims. For example, a brochure should be developed

in different languages and given to victims that includes information about emergency and long-term services and victim compensation.

Law enforcement agencies should also establish and enforce strict property return protocol and procedures. This should be a standardized, jurisdiction-wide program -- closely coordinated with prosecutors' offices and the courts -- that can eliminate potential confusion about exactly which property return rights and procedures are enforced by different law enforcement agencies.

Essentially, police-based services, when adequately staffed and funded, can provide critical assistance and information to victims as they progress through the criminal justice system.

Perhaps most important, every law enforcement agency -- at the federal, state and local levels -- should assign a staff member to serve as a liaison to crime victims and victim services. This designation will enhance all roles and responsibilities described above, and will coordinate and streamline the victims' rights and the delivery of victim services.

Prosecution

When law enforcement has investigated a crime and a suspect has been arrested, the cases are then referred to prosecutors. Although each state's laws and procedures provide for different ways to initiate a criminal action, this is usually handled through either an initial court appearance or some process leading to charging and arraignment. At this point, information regarding the investigation and facts of the crime is presented by law enforcement to the court with the assistance of prosecutors, and appropriate charges are levied against the defendant. When appropriate, he or she is "bound over for trial" on the charges levied.

Again, victim advocates should be mindful that the prosecutor's primary role is the successful prosecution of criminal cases. This is accomplished within specific budgetary and human resources limitations. Therefore, there is tremendous motivation to utilize the typically limited resources made available to prosecutors to dispose of each case in the most just, yet *efficient* manner possible. The motivation to dispense cases due to the typically overwhelming work load handled by most prosecutors' offices often comes into direct conflict with the needs and desires of individual victims, who want their particular perpetrator prosecuted to the full extent of the law. However, victims' expectations are often not fulfilled, and the case is disposed of early on, most often through the use of a plea negotiation, usually referred to as *plea bargaining*.

Plea Bargaining

Plea bargaining allows the defendant to avoid a trial and the possibility of a verdict that may result in a more severe sentence by agreeing to plead guilty to a lesser offense. Victims are often most distressed at the perceived ability of the defendant to "get off easy" by bargaining with the

prosecutor to lower the offenses of which they may actually be guilty. Many victims and advocates rightfully consider victim participation in the plea negotiation process as essential to providing victims with a voice in the system. Any plea negotiation should include an opportunity to present the impact of the crime on the victim -- a victim impact statement.

Trial

Assuming a case goes beyond the plea negotiation stage to trial, the defendant continues to receive basic protections found in the United States Constitution, state constitutions and various case law holdings. Volumes of materials are available on defendants' rights. These include, for example, the right to obtain all exculpatory evidence from the prosecution, which would tend to prove the innocence of the defendant. Also, the defendant has the right to confront and cross-examine his or her accusers. Often, this is very difficult for the victim, who must be well prepared to withstand the onslaught of cross-examination by often aggressive defense counsel. Defense counsel typically use methods that involve the strategy of "defense by distraction". This approach is based on the notion that in order to place any possible "reasonable doubt" within the minds of the jury, a defense lawyer will attempt to focus attention on any other possible factor than the defendant's own actions. If the defendant is not released on various technical violations of his or her rights that may arise (for example from search and seizure issues), attempts will be made to blame others for the situation. The police will be accused of other violations, society may be implicated as the true cause of the problem, and especially victims are often blamed for their "contribution" to their own victimization. This can be a very difficult time for victims, and they need to be well prepared and supported.

There are a number of services that can and should be provided by prosecutor-based victim assistance programs. The most important of these are appropriate notification programs regarding the status of the case and the delays that often occur in the progress of a criminal prosecution. Victims are most often distressed by the lack of progress in their cases and the need to rearrange their personal and work lives repeatedly to attend court hearings that are often delayed. Also, victims may require assistance in attending and participating in court proceedings, protection from intimidation and harm, basic orientation to the criminal justice system and their appropriate role within it, as well as other services and interventions that are described at length in other chapters. Of course, referrals to appropriate victim assistance and victim compensation programs should be made by the prosecutor's office.

The American Bar Association has provided numerous guidelines for prosecutors, and others within the criminal justice system regarding the incorporation of victims' rights and needs into daily practice. These various guidelines involving victims' issues are listed in the resource materials at the end of this chapter. Regarding prosecutorial roles, issues such as protection from intimidation and harm are recognized, as well as the effect of continuances and case delays, and notification services, and prosecutors' involvement in assisting victims in obtaining restitution. The ABA guidelines provide a useful compilation of victims' issues within the criminal justice

system, and they are commended to the reader for further review (APA Guidelines; see also Kelly, 1991).

Specific Roles and Responsibilities of Prosecutors To Victims

While the prosecutor's role is to present the government's case to the court, and see that justice is achieved in every case forwarded to his or her office, many important activities rely upon the involvement of victims. Although they are *not* the "victim's attorney," prosecutors have opportunities to keep victims informed and involved, to provide appropriate accommodations in the pre-trial and court settings, and to follow-up with information and referral, as needed. These opportunities should include, but are not limited to:

- Providing orientation to the criminal justice process.
- Providing information about the criminal justice system and proceedings in simple, layperson's terms to help victims understand the maze of the criminal justice system. Victim information should be available in multi-lingual formats.
- Providing notification of case status at key stages of the criminal justice system.
- Sponsoring witness alert programs to place witnesses on "stand-by" to come to court appearances, thus saving victims time and money.
- Coordinating witness appearances, i.e. scheduling witnesses, providing witness fees, per diem fees and accommodations for out-of-town witnesses, as well as assistance with transportation.
- Sponsoring victim/witness information telephone lines to provide up-to-date information after hours to subpoenaed witnesses.
- Providing educational and accompaniment programs to familiarize victims with the courtroom.
- Providing a waiting area for victims and witnesses and their families in the courthouse that is separate by sight and sound from the offender. These areas must be "child-friendly," safe and secure.
- Offering assistance to victims in completing victim compensation applications.
- Coordinating the inclusion of victim impact information, i.e. written statements, allocution, audio or video statements, into court proceedings (including plea bargains, pre-sentence reports and sentencing) with probation and the judiciary.

- Offering employer, landlord, and/or creditor intervention services.
- Expediting the prompt return of property, closely coordinating such efforts with law enforcement.
- Providing intervention, protection and recourse to victims and witnesses who are being intimidated or harassed by perpetrators.

In addition, many prosecutors are establishing “vertical prosecution units,” especially for domestic violence cases, where specially trained prosecutors maintain caseloads of one type of victimization. Vertical prosecutors work on cases from the initial filing of charges through disposition. This relatively new approach to administering justice streamlines this stage of the criminal justice system, for the victim. Instead of several prosecutors working on the case at various stages in the prosecution, one prosecutor is assigned the case from the point of charging through trial.

Judiciary

The judiciary is intended to be a neutral entity that oversees the progress of a criminal action. Judges should equally weigh and protect the rights of *all* parties involved in a criminal prosecution. Of course, a judge can typically only take actions that are specified by law and procedural rules, or otherwise are within the discretion mandated by law.

Judges can provide essential protections to victims. For example, when cases involve children, certain accommodations such as allowing the victim to testify through close circuit television or granting orders requiring defense counsel to lower themselves to the child's eye level and not raise his or her voice, as well as other methods of making the courtroom less intimidating to a child, can be ordered. Judges can also expedite trials so as not to further victimize the crime victim due to additional delays during an already difficult process. Judges can deny motions by the defense that are clearly aimed at offending the victims.

One common technique is for a defense counsel to subpoena the victims’ family members as potential witnesses, request that the court order that witnesses be excluded from the courtroom (sequester) and then never call the victim’s family to testify - thereby preventing their attendance in the courtroom. However, the defendant’s family is allowed to sit in the courtroom, showing support for their family member who is on trial, while the victim’s family appears to be uninterested in supporting the victim or the prosecution's case. Such motions can, and *should*, be denied.

Judges are empowered to sentence convicted criminals for the crimes for which they have been convicted. It is important that judges include information regarding the impact of the crime on

the victim in their assessment of appropriate sentences. Often this information is provided through the prosecutor-based victim assistance program, a probation office, or another official source, and is typically referred to as a victim impact statement (VIS). VIS information is often the only comprehensive assessment of the injuries caused by the offender available to the judge; it is crucial that this information be conveyed to the sentencing court. Judges are also involved in various post disposition decisions, such as reconsideration of sentences and appeals.

Specific Role and Responsibilities of Judges to Victims

Judges can help assure victims are provided their rights under the law, as well as with adequate court-based services, which should include the following:

- Courtroom orientation for victims.
- Providing victims with physical waiting accommodations that are safe, secure and separate by sight and sound from the defendant or his/her family and friends.
- Considering victim impact information in all cases prior to sentencing (including in change of plea hearings if they do not coincide with the sentencing).
- Asking attorneys if they have consulted with the victim.
- Including any reasonable measures requested by the victim to ensure his or her safety and security, such as protection or “no contact” orders.
- Ordering restitution payments that are realistic, receiving priority above fines and other offender obligations.
- Ensuring that restitution orders do not “fall through the cracks” by developing a system of collection, disbursement, enforcement and victim recourse (that involves probation, the clerk of court, corrections and parole).
- In inter-familial criminal cases, ordering convicted offenders to pay financial obligations -- such as child support, costs of counseling, legal fees, or mortgage/rent payments -- that help the victim gain independence from the perpetrator.
- Ensuring that all relevant victim information be included in convicted offenders’ files -- with victim confidentiality and the security of this information guaranteed -- that are sent to probation, parole, or institutional corrections.

Finally, judges can steer their courts toward processes that are not only “offender directed,” but “victim centered” as well. While conflicts can arise between the rights of the accused/convicted

offender and crime victims, more often there is no disagreement about the importance of making participation the status quo for *all* participants in the criminal justice system.

Probation

Probation is often a condition of a plea bargain, or is the actual sentence handed down by a court following a trial. Prior to any agreement of probation, the probation officer should interview victims as part of the pre-sentence investigation (PSI) to determine the physical, financial and emotional impact the crime had on them. When an offender is sentenced to probation, he or she submits to community supervision from a probation officer. The probationer may be required to fulfill certain requirements -- called *conditions of probation* -- that might include: no contact with the victim; payment of monetary obligations to the victim, such as restitution, child support, mortgage payments, etc.; payment of fines (that often support law enforcement and victim services); no use of alcohol or other drugs (with an agreement to submit to random testing); specific treatment that addresses the probationer's criminal activities (such as sex offender treatment, alcohol or other drug counseling, anger management, etc.); and/or community service. While restitution payments are monitored by probation agencies, they are usually collected by the court.

An important condition of probation is that the probationer commit no new crimes during his or her period of community supervision. If a probationer violates any condition of his or her sentence, the probation agency can rescind or "revoke" probation, resulting in the offender's incarceration in jail or prison.

Specific Role and Responsibilities of Probation Officials to Victims of Crime

Probation officials' roles and responsibilities to victims should include, but are not limited to:

- Contacting victims to assess the psychological, financial and physical impact the crime had on them as part of the pre-sentence investigation (PSI).
- Incorporating any victim impact statement (allocution, written, audio or visual) into the official PSI report to the court.
- Determining any specific conditions of probation that will ensure the victim's safety and security.
- Soliciting victims' opinions relevant to appropriate community service sanctions for the probationer.

- Determining the amount of appropriate restitution payments, and developing a realistic schedule for the collection and disbursement of restitution to the victim. In some jurisdiction, probation officers are charged with physically collecting restitution payments, and forwarding them to victims.
- Supervising the probationer's involvement in any victim/offender programming, such as victim impact classes or panels, victim/offender mediation or conciliation, or "Impact of Crime on Victims" classes, that victims choose to participate in on a strictly voluntary basis.
- Notifying the victim of any probation violations that result in an offender's incarceration.
- Monitoring probationers to ensure full compliance with all conditions of probation that affect the victim's rights, safety and security, as well as the general orders of probation.
- Providing information and referrals to victims who require assistance.
- Participating in multidisciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

Institutional Corrections

When a convicted offender is sentenced to a term of imprisonment, the state Department of Corrections or Federal Bureau of Prisons assumes responsibility for his or her supervision. The offender's file that contains details from the crime, court case and sentence, victim impact statement (when applicable), recommendations for treatment and services during the period of incarceration and personal information, is utilized as a basis for *offender classification*. The purpose of classification is to place the offender in the most appropriate incarceration setting (minimum, medium, maximum, or super-maximum facility). The Department of Corrections and institutions house the offender for his or her period of incarceration; implement and monitor work, educational and treatment activities available to inmates; and coordinate any release into the community with paroling authorities.

Over half of America's state corrections departments and the federal system now have victim service programs. All the roles and responsibilities enumerated below are generally sponsored and/or implemented by such programs.

Specific Role and Responsibilities of Institutional Corrections to Victims of Crime

Corrections officials' roles and responsibilities to victims should include, but are not limited to:

- Obtaining relevant victim information -- including victim impact statements and protection orders -- from court documentation for inclusion in the offender's file.
- Protecting the confidentiality of victim information through protected automated databases or "flags" on paper files that delineate that this information is *not* available to inmates or their counsel.
- Providing victims and witnesses with information and recourse relevant to inmates who attempt to intimidate, harass, or harm the victim during their period of incarceration.
- Upon request, notifying victims of an offender's status, including but not limited to: current location, classification, potential release date, escape, or death.
- Implementing and monitoring victim/offender programming, such as victim impact panels, victim/offender mediation or conciliation, or "Impact of Crime on Victims" programs.
- In some departments (such as California), monitoring, collecting and disbursing restitution payments to victims and/or fines to state victim compensation programs.
- Ensuring that inmates receive programming that is commensurate with court orders relevant to victims, such as sex offender treatment, alcohol and/or other drug counseling, anger management, etc.
- Coordinating the physical location and logistics of parole release hearings with paroling authorities, victims, and victim service providers.
- Providing information and referrals to victims who require assistance.
- Participating in multidisciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

Parole Agencies

When an inmate is released from prison, his or her reintegration back into the community is accomplished through the parole process (with the exception of the federal system and many states where parole has been abolished). Parole is the early release of prisoners, with conditions attached to that release that are designed to protect the safety of both the victim *and* the public. Parole is considered part of the prison sentence, but is served in the community. Violations of any conditions of parole can result in *revocation*, which means the offender will be returned to an institutional corrections setting. It is important to note that some states provide for sentences of "life without possibility of parole," which equates to incarceration until an inmate's death.

There are two main functions of paroling authorities: parole boards and parole agencies.

Parole Boards

The American Correctional Association lists four primary functions of a state parole board:

- Grant parole to prisoners.
- Supervise control of parolees.
- Discharge individuals from parole.
- Make parole revocation decisions.

In most states, paroling authorities are separate from the Department of Corrections. Parole board members in most states are appointed by and serve at the pleasure of the Governor. In some states -- including California, South Carolina and Virginia -- victims of violent crime serve as parole board members; each state varies in its number of board members.

Parole decisions can be made before a meeting of the full board, or at hearings that have panels of three or more members present. It is important to note that, in most states, decisions by which an inmate is considered for parole are guided by statutory requirements (state law) or by judicial decisions related to prison overcrowding.

Similar to probation, successful candidates for parole must agree to abide by certain rules, which include but are not limited to: not committing any crimes during the period of parole; honoring protective or "stay away" orders that prevent contact with the victim; submitting to random testing for alcohol or other drugs; finding and maintaining employment and housing; paying restitution and other financial obligations, including child support, fines and costs associated with their parole supervision; and/or limited driving privileges.

In most states, victims have the statutory and/or constitutional right to provide parole boards with victim impact information about how the crime affected them. Since many offenders are sentenced for the crimes which they plead to in plea negotiations, it is imperative that parole

boards know the facts of the crime that was actually *committed*. This important input also provides victims with an opportunity to request certain conditions of parole that make them feel safer, such as protective orders or requests that the offender be paroled to a geographic location that is a certain number of miles away from where the victim resides. In most states, victim impact statements are not confidential, offenders can access the statements (with protections afforded to the victim's contact information).

Approximately half of states have victim service programs located in state parole agencies. These programs serve many important purposes, including providing victims with information and notification about a parolee's status, as well as with overviews of how the parole process works (and victims' rights that are inherent in this process). Such programs serve to make a system that has traditionally been "offender directed" also "victim centered."

Parole Agents

Parole agents (also called "parole officers") are responsible for monitoring the supervision of parolees. In most states, parole caseloads are astronomically high, resulting in limited supervision due to the lack of human and financial resources. The parole agent is responsible for ensuring that persons on his or her caseload comply with all requirements of parole. When any requirement is violated, the parolee can be subject to "parole revocation." When parole revocation is recommended by a parole agent, the parolee must submit to a hearing by the parole board (or other independent and neutral entity) to determine his or her status. Crime victims -- of either the original crime for which the parolee was incarcerated, or the crime for which the revocation is being processed -- are *seldom* notified of parole revocation hearings or outcomes.

Parole agents, in many states however, do have frequent contact with victims, especially in interfamilial crimes. It is essential that victims know who their offender's parole agent is, and how the agent can be reached 24-hours-a-day.

Specific Role and Responsibilities of Parole to Victims of Crime

Parole officials' roles and responsibilities to victims should include, but are not limited to:

- Providing victims with an overview of the parole process, including parole board hearings, community supervision, parole revocation, and all related victims' rights and services.
- Providing victims with the opportunity to submit victim impact statements to the parole board, including allocution, written, audio or video statements.
- Asking victims about any specific concerns they have related to their personal safety and security if an inmate is released to parole, and incorporating these reasonable concerns into parole conditions.

- When possible under state law, providing victims with the opportunity to personally present victim impact information to the board without the inmate present, and without providing access to such information by the inmate and/or his or her counsel.
- Continuing restitution orders emanating from judges or, in states where parole has authority, ordering restitution payments (and ensuring that such payments are collected, disbursed to the victim, and enforced).
- Ordering important payments that help victims in interfamilial cases seek financial independence, such as child support, money for legal counsel or mental health counseling, mortgage or rent payments, etc.
- Providing victims with contact information for parole agents and paroling board members.
- Providing information and referrals to victims who require assistance.
- Participating in multidisciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

Allied Professionals

In addition to the core criminal justice system professionals discussed above, various allied professionals have a significant impact on the criminal justice system response to involving victims. These include, but are not limited to:

- Medical personnel
- Mental health service providers
- Child protection professionals

Doctors, nurses and other hospital personnel provide tremendous assistance to victims of crime. In addition to police officers, medical personnel, who are often also available 24 hours a day, seven days a week, are commonly the first ones to come into contact with crime victims who have experienced some form of injury. In their roles, they are uniquely suited to make careful documentation of the condition of the victim and objectively report these findings (much of which can be utilized as evidence in criminal cases).

Of course, the immediate and appropriate treatment of the victim is paramount; however, in the course of treatment, appropriate documentation provides useful information for prosecutors and victims in forwarding various criminal and other legal actions against the perpetrator. Of particular importance is the use of appropriate evidentiary collection kits to gather information in sexual assault and sexual abuse cases for later evidentiary use at trial. This needs to be done sensitively, but competently, so that the trauma of the rape examination is minimized and evidence is accurately collected.

Mental health professionals are often involved in providing testimony at trial regarding the impact of crime on victims. In addition to treating victims, mental health professionals who are expert in the evaluation of the effect of trauma on victims are often used. It is important to note that these allied professionals and experts are heavily relied upon by the courts to make determinations regarding the damages and injuries incurred by the victims. These have important ramifications for the investigation and referral by law enforcement, by the handling of cases in prosecutor's offices, and in sentences handed down by judges.

Child protection officials have a significant role in cases involving child abuse and neglect. Depending on the jurisdiction and the nature of the victimization, these cases may be handled in a criminal court, juvenile court, or family court system. In each of these systems, it is important that the child protection official cooperate in developing the best investigation report possible for presentation at trial.

As almost all victims of crime may require some medical, mental health or other social services intervention, the coordination of these efforts within and complimentary to the criminal justice system is crucial to providing the most victim-centered, victim-oriented criminal justice system response possible.

Victim Impact Statements

One of the most significant rights of crime victims is the right to submit victim impact statements (VIS) that include crucial information about the short- and long-term psychological, financial, physical and emotional effects of a crime on victims. Impact statements provide victims with a voice that should be heard by courts, as well as probation, parole and corrections officials.

VIS not only give victims an important voice in a case that has had a profound impact upon their lives; they also often improve victims' overall opinions of the justice system. In research conducted by Mothers Against Drunk Driving, two-thirds (66%) of victims who were given the opportunity to present written VIS were "satisfied" with the criminal justice system. For those victims who were not allowed to submit VIS, three out of four (75%) were "dissatisfied" with the criminal justice system as a whole (Regina Sobieski, *MADDVOCATE*, 1993).

VIS also provide information to courts and corrections that is valuable in determining appropriate sentences, as well as release-from-incarceration dates for convicted offenders. They are an integral piece of a “case puzzle,” and can shed light on facts that, at the point of sentencing and release decisions, are not know. For instance:

- When offenders plea bargain to lesser crimes, the judge or jury may not know or comprehend the magnitude of the criminal act, and its detrimental impact on victims.
- Often, judges and juries hear myriad details that present the alleged and/or convicted offender’s version of the crime, with less attention paid to the victim’s perspective.
- VIS at parole hearings -- which tend to occur some time after the commission of the crime -- are important to help paroling authorities understand the long-term impact the crime has had on victims and their loved ones, despite the passage of time.

In the landmark publication *Impact Statements: A Victim’s Right to Speak, A Nation’s Responsibility to Listen* (Alexander and Lord, 1994), eight important national recommendations were offered relevant to “sound system-wide policies and procedures that clearly detail and designate the roles and responsibilities of all key players in the criminal justice system for soliciting, processing and applying victim impact information:”

1. The criminal justice system should adopt policies that allow crime victims to play an integral role in the American criminal justice process. Such policies must reflect an attitude that our justice system does not exist despite its victims, but rather, it exists because of its victims.
2. Legislation should be enacted or amended at the federal, state and local levels to provide crime victims with the right to submit VIS by written, oral, video, audio or other electronic means at the time of sentencing and to paroling authorities.
3. Legislation should be drafted and enacted at the federal, state and local levels that provides victims of juvenile crime with the right to submit victim impact information at the time of adjudication.
4. Legislation should be enacted that delegates specific authority, roles and responsibilities at the federal, state and local levels for the distribution, collections and dissemination of VIS. This legislation should also provide specific mandates for accountability and outline specific penalties for noncompliance with the legislation...
5. All criminal justice professionals who influence the victim impact procedure in any way must have a thorough understanding of their state’s statutes and case law regarding the submission and use of VIS.

6. All agencies that interact with crime victims should have VIS instruments and supplementary guides that explain to victims about the importance of VIS; their right to submit one; and the criminal justice system's use of VIS.
7. Statewide victim networks, coalitions and criminal justice agencies should join together to evaluate the effectiveness of their VIS statute(s) and, if it (they) are inadequate, work together to amend it (them).
8. Training and continuing education about the traumatic effects of crime victimization must be made available to all criminal justice professionals who interact with crime victims.

The Current Status of Victims' Rights

Although each type of criminal justice professional can, and often does, assist victims involved in the system, this is typically not his or her primary role. How can victims' rights be recognized and guaranteed? A fundamental component of this is victims' rights legislation (National Victim Center, 1993, 1994). This section will briefly outline the general status of crime victims' rights in the United States today, and will serve as a useful guide to advocates who wish to assess the standing of their state's victim-related legislation. Of course, only a detailed analysis of specific pieces of legislation, and an evaluation of their actual implementation, will give the reader a full sense of how victims' rights are being provided.

Although there are many ways in which various victims' rights can be established and protected through legislation, for the most part they can be understood in four general categories:

1. Provision of specific victims' rights
2. Requirements for victim services or assistance
3. Funding mechanisms for services or rights provision
4. Victim-oriented criminal justice reform measures

In 1982, the *President's Task Force on Victims of Crime* listed 68 recommendations to improve the treatment of victims of crime. The goal of these recommendations was to provide for renewed balance in the criminal justice system by adding victims' rights to considerations weighed in making a determination of what is a just outcome in a case. The purpose was not to diminish the rights of criminal defendants, but to enhance the status of victims within the criminal justice system.

Victims' Bills of Rights and Related Laws

Among the earliest and most prevalent approaches to enacting victims' rights legislation is the passage of Victims' Bills of Rights. An obvious reference to the first ten Amendments to the United States Constitution that comprises the Bill of Rights, typical Victims' Bills of Rights similarly propose providing protections to individuals within the criminal justice system. Whereas the original Bill of Rights focused on defendants' rights to fair and speedy trials, protections from illegal searches and seizures, and other rights, Victims' Bills of Rights address fundamental protections that protect and restore the victim.

Victims' Bills of Rights take on numerous forms, but generally address the following victims' statutory rights:

- Information about victims' rights and referral to services
- Protection from intimidation, harassment and harm
- Notification about case proceedings and delays
- Participatory rights, such as to attend hearings and address concerns to the court, and to present a verbal, written, audio or video victim impact statements at time of sentencing
- Rights to confidentiality (i.e., of name and address)
- Speedy trial provisions to avoid unnecessary delays
- Prompt return of property
- Notoriety-for-profit provisions
- Right to orders of restitution in criminal sentences
- Compensation payments

As stated above, Victims' Bills of Rights vary state-to-state and may include combinations of the above rights. Below is a listing of major types of victims' rights laws and the estimated number of states that have enacted them:

- Approximately 46 states have enacted Bills of Rights.
- 20 states protect victims' rights through constitutional amendments.
- 6 states will vote on constitutional amendments in the 1996 election.

Notification, a basic victim right, is provided in numerous ways:

- 25 states require notice of bail or pretrial release.
- 28 notify victims of plea bargaining/negotiations.
- 34 provide notification of sentencing hearings.
- 37 notify victims of parole hearings.
- 44 inform victims of parole release.
- 29 notify victims of escape.

Victims' participatory rights are essential to giving victims a voice in the system. At various points along the criminal justice continuum, victims have essential input into the system. Victims are given the right to attend and/or be heard at various hearings:

- 21 states provide the right to attend bail hearings.
- 9 provide the right to be heard at pretrial release.
- 14 give the victim the right to attend plea bargaining hearings.
- 10 allow for victims to be heard at plea bargaining.
- 24 states provide for victim attendance at trial.
- 42 provide the right to submit a victim impact statement at sentencing.
- 7 allow for pre-sentence report input only.
- 21 provide the right to attend parole hearings.
- 32 allow for victims to be heard at parole; 30 mandate this right.

Victims' rights to restitution are extremely important. This provides a vehicle for victims to recover their financial losses due to the crime. It is crucial to note whether restitution is *mandatory* or *discretionary* as part of sentencing (listed below). However, there are significant issues with restitution at both award and collection time periods. For example, what factors are primarily used to determine restitution, the victims' loss or the offender's ability to pay? Also, who is responsible for assisting the victim in collecting restitution payments?

Currently restitution laws vary, for example:

- 26 states require mandatory restitution unless the judge offers compelling reasons for not ordering restitution.
- 24 states allow restitution to be discretionary.
- 29 states allow restitution orders to become civil judgments.

In addition, at least 45 states have enacted laws encouraging prompt return of the victim's property. Several of these laws allow photographs to be admissible in court in place of the actual property.

Victims of crime in the federal system also enjoy certain basic rights. The *Victims' Rights and Restitution Act of 1990* provides the following rights to victims of federal crimes:

1. The right to be treated with fairness and with respect for the victim's dignity and privacy.
2. The right to be reasonably protected from the accused offender.
3. The right to be notified of court proceedings.

4. The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.
5. The right to confer with the attorney for the government in the case.
6. The right to restitution.
7. The right to information about the conviction, sentencing, imprisonment, and release of the offender.

Enforcing Victims' Rights Through Constitutional Amendments

Constitutional law is the fundamental law of the land. It provides the foundation upon which the rest of our legal structure is built. Generally described, constitutional law is superior to statutory law, and the Federal Constitution preempts state laws and constitutions, when they come into conflict.

The importance of a constitutional basis for protecting rights can be traced back to the very beginning of the United States when those who opposed adoption of the Constitution were not satisfied with promises of post-enactment legislation to protect what they viewed as fundamental rights. They insisted on ten constitutional amendments they called The Bill of Rights.

Those rights that are most recognizable to the general citizenry as defendants' rights, such as the right to a jury trial, the right to avoid self-incrimination and the right to be free from unreasonable search and seizure, are found, at their roots, in The Bill of Rights. Victims deserve no less than such fundamental, constitutional protections.

Twenty states now protect victim rights through rights provided for in their state constitutions. A few of these were adopted in the mid- to late 1980s. The past couple of years have witnessed a flurry of constitutional amendments, and more will be considered by states in the near future.

On April 22, 1996, during National Crime Victims' Rights Week, history was made when a federal constitutional amendment was introduced in the United States Senate. The Victims' Bill of Rights Constitutional Amendment will amend the U.S. Constitution to guarantee victims' participatory rights throughout the criminal justice process, as well as ensure reasonable protection from the offender, a speedy trial, and restitution.

Victim constitutional amendments are quite varied. This is a result of the particular idiosyncracies of each state's approach to their constitution and the political power of the victim rights' advocates in a particular state. Some of these amendments could be considered relatively

weak, and others considered strong. In most cases, a companion scheme of statutorily provided enabling legislation must provide for the actual programs and funding needed to see to it that victim constitutional rights will become a reality.

Enforcement of Constitutional Rights

In general, when constitutional rights of any sort are not being provided, the aggrieved party must take some action to enforce their rights under the constitution. An important, developing phase in victims' rights advocacy is the enforcement of victim constitutional rights.

There is an adage in the law that "a right without a remedy is no right at all." Obviously, a right that cannot be enforced and does not benefit the intended person is truly not a right. For example, a victim may have a constitutional right to be notified at sentencing of an offender and to be heard by way of providing a victim impact statement to the court. What recourse should a victim have under this arrangement if he or she was not notified of the sentencing of the offender?

If a defendant was not accorded a particular right that affected his or her sentence, he or she could petition that court, or a higher court, to set aside the sentence and provide a new sentencing hearing where all the relevant rights could be provided the defendant. This is the sort of mechanism that victim advocates argue should be available to victims who are not accorded basic, especially constitutional, rights.

Two particular forms of enforcement mechanisms illustrate the ways in which legal rights are enforced, and how victims could be empowered to assure their constitutional rights. The first is petitioning the court for a *writ of mandamus*, and the second is injunctive relief. Although these concepts are not limited to constitutionally protected rights alone, the fundamental basis of constitutional protection would assist the legal arguments for these significant court actions.

Writ of Mandamus

Commencement of a mandamus action means that the party wants the court to force someone, usually a public official in this case, to do something that they are supposed to do but are refusing to comply with. The colonial era case of *Marbury v. Madison*, which established the power of the courts to review the actions of other branches of government, involved a mandamus action compelling a government official to complete a ministerial act that was previously refused. Victims could seek to have the court force public officials to provide them with adequate and reasonable compliance with their constitutional rights.

Injunctive Relief

The party seeking an injunction is seeking to have someone stopped from commencing or completing an act. Victim advocates are familiar with the concept of temporary injunctions, restraining orders or protective orders that compel individuals to stop doing certain things, such as, in domestic violence or stalking cases. This is essentially the same mechanism that could be used by victims to stop public officials from doing what is contrary to the rights they enjoy under a constitutionally protected scheme. Courts could, for example, order that sentencing hearings be delayed until victim impact statement information is available.

Victims' rights protected through constitutional-level authority would allow victims greater legal bases for arguing that their rights should be protected and that they are on the same level as defendant's rights, typically already protected by the Constitution of the United States and state constitutions.

Implementing and Providing Resources

Providing for victims' rights through statutory language is, in itself, sufficient for victims to be assured of receiving these rights, thereby bringing balance back to the criminal justice system. The past decades of struggling for victim legislation, then realizing that new battles need to be fought in implementing and funding arenas, agency politics, and other areas has been instructive to the contrary.

The dynamics of the criminal justice system can be brought back into balance, and victims can become an integral part of this system, but only if we do not stop with legislation alone and follow through with implementation, funding, evaluation, monitoring, enforcement and improvement.

Victims Rights Laws**Understanding Victims' Rights Legislation:
Enactment through Implementation**

This exercise provides an opportunity for you to apply the knowledge you have gained during the lectures and curriculum about the evolution of victims' rights and the elements of effective legislation. Select a Bill of Rights statute from your state or a federal victims' rights statute. Please read it and answer the following questions.

1. Who is responsible for interpreting this law and what do specific words mean?
2. Is there a designated agency in charge?
3. Are individuals given specific responsibilities? If yes, for what?
4. Is funding addressed?
5. Are there time limits for providing these rights?
6. What recourse, if any, do victims have under this law if their rights are not provided?

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ABA Guidelines Acknowledging Victim Issues Include:

Guidelines for Fair Treatment of Victims and Witnesses in the Criminal Justice System.

Suggested Guidelines for Reducing Adverse Effects of Case Continuances on Crime Victims and Witnesses.

Recommendations for Reducing Victim and Witness Intimidation.

Criminal Justice Sentencing Alternatives and Procedural Standards 18-5.9.

Criminal Justice Prosecution Function 3-3.2.

Guidelines Governing Restitution to Victims of Criminal Conduct.

Guidelines for Fair Treatment of Child Witnesses in Cases Where Child Abuse is Alleged.



Chapter 7

The Federal, Indian, and Military Justice Systems: Victims' Rights and Assistance

Abstract: This chapter contains three separate sections that address the federal, tribal, and military justice systems. Each section discusses the relevant laws, guidelines, regulations, directives and assistance available to crime victims throughout each justice system. The systems' interrelationships are also highlighted, as are the significant providers of victim services within each justice system.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The unique aspects of each justice system and the interrelationships among the systems on the national, state and local levels.
2. The major laws, guidelines, regulations and directives governing each justice system with respect to victims' rights and services.
3. The individuals designated to implement victims' rights within each system and examples of effective victim outreach and assistance.
4. The role of federal agencies, including the Office for Victims of Crime, in implementing and supporting victims' rights and assistance within each system.
5. A broad understanding of the comprehensive services now available to crime victims throughout these three systems.

Section I: The Federal Criminal Justice System

Statistical Overview

- In 1993, 63,869 suspects in criminal matters that reached a conclusion were prosecuted in U.S. District Courts. (*Bureau of Justice Statistics, Federal Criminal Case Processing, 1992-93, May 1996 Bulletin*)
- In 1992, federal courts convicted 41,673 persons of violent, property, drug, and other felonies. (*Bureau of Justice Statistics, Felony Sentences in the United States, 1992, May 1996 Bulletin*)
- Between 1990 and 1992, felony convictions increased 14 percent in federal courts, as compared to eight percent in state courts. (*Ibid*)
- In 1992, federal courts sentenced 59 percent of felons to prison; in state courts, 44 percent were sentenced to prison. (*Ibid*)
- In 1992, the average prison sentence was the same in state and federal courts: about six and one-half years. (*Ibid*)

An Introduction to the Federal Criminal Justice System

Federal and non-federal courts co-exist in separate, yet highly related judicial systems. The genesis of this arrangement is found in early notions of federalism as contained in the U.S. Constitution. Essentially, the United States is a Federal Republic of generally autonomous states. Article X of the Constitution specifies that “[T]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Thus, the powers not expressly given to the United States government are retained by the state’s and the people. In terms of the criminal justice system, there are two primary areas where federal jurisdiction is given to federal courts. That is:

- (1) Through the enactment of statutes creating federal criminal law by an act of Congress signed into law by the President. Primarily these are contained in the federal criminal code codified at 18 United States Code; or

(2) When a so called "federal question" arises in a legal case. The most common of these would involve issues deriving from the violation of rights accorded through the Bill of Rights (e.g., freedom of speech, freedom of association, etc.), or other federal civil rights issues.

When these specific federal laws are in question, or when generally conceived federally derived rights are at issue, the federal courts clearly have jurisdiction to hear the matter. In terms of federal criminal violations, the U.S. Attorneys in 94 districts are authorized to represent the interests of the federal government, that is, to prosecute defendants. The same is true for civil cases involving federal matters.

Therefore, the federal courts are of limited jurisdiction and can only handle federal matters. That is why these courts account for only about five percent of all criminal matters in the United States, with about 95 percent of criminal cases handled at the state level. Although federal courts are limited in this way, the power of the federal judiciary should not be doubted. When dealing with federal issues, federal courts can effectively overrule lower court decisions through what is referred to as "federal preemption." Thus, federal courts can impose their will on the state's in legitimate federal matters.

Major Federal Laws Affecting Federal Crime Victims

Four significant laws affecting federal victims of crime have been enacted in the past 14 years:

- *The Victim and Witness Protection Act of 1982*
- *The Victims of Crime Act of 1984*
- *The Crime Control Act of 1990*
- *The Violent Crime Control and Law Enforcement Act of 1994*

The Victim and Witness Protection Act of 1982

The *Victim and Witness Protection Act of 1982* (VWPA) was enacted "to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; to ensure that the federal government does all that is possible within the limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendants; and to provide a model for legislation for state and local governments" (Attorney General Guidelines for Victim and Witness Assistance, 1983).

The VWPA was considered landmark legislation in 1982 because, for the first time, rights for victims of federal crimes were established, including:

- The fair treatment of victims and witnesses in the federal criminal justice system;
- The right to include victim impact statements in presentence investigation reports;
- New criminal penalties to protect victims and witnesses from intimidation, harassment, and retaliation, including provisions for civil restraining orders;
- Restitution for victims; and
- Consideration of victims' interests in bail decisions.

Procedures for responding to the needs of crime victims in the federal criminal justice system, including referral services, information and notification services, consultation services, restitution, and victim impact statements were further delineated in Guidelines for Victim and Witness Assistance issued by the Attorney General in 1984.

The Victims of Crime Act of 1984

Two years following the passage of the VWPA, Congress enacted the *Victims of Crime Act of 1984* (VOCA) to provide funding for victim assistance, victim compensation, and training and technical assistance for victim service providers across the nation. VOCA's innovative funding mechanism relies on fines, penalties and bond forfeitures from convicted federal offenders -- not taxpayers -- to generate an annual Crime Victims Fund. Congress directed the Office for Victims of Crime (OVC) to distribute the funding to states and U.S. Territories, to assist in expanding compensation and assistance to crime victims nationwide.

While the majority of VOCA funding is distributed to states and territories through formula grants, a small portion of the fund is available for federal crime victims, as well as for training and technical assistance in the federal arena and at the national level.

OVC has utilized this funding for significant federal crime victim assistance including:

- The creation of Federal Crime Victim Assistance Fund;
- Assistance to Native American crime victims; and
- Training and technical assistance for all areas of the federal system, including military victim assistance training and U.S. Attorney Victim-Witness Coordinator training.

One very important provision in VOCA is the requirement that in order for state compensation programs to receive federal Crime Victims Fund awards, victims of federal crimes *must* be eligible for state compensation benefits. Following the enactment of VOCA, many state legislatures amended their state laws to include federal crime victims as eligible claimants. Today, victims of federal crimes in 50 states are eligible to file compensation claims to the state compensation program where the crime occurred.

The Crime Control Act of 1990

The *Crime Control Act of 1990* contained a wealth of new legislation and amendments to the existing federal criminal code affecting the treatment of crime victims, including children.

- Title V, the *Victims' Rights and Restitution Act of 1990*, in effect, created a Federal Crime Victims' Bill of Rights and codified services that should be available to victims.
- Title II, the *Victims of Child Abuse Act of 1990*, contained extensive amendments to the federal rules of criminal procedure affecting the treatment of child victims and witnesses in the federal system, e.g. allowing the use of closed-circuit television and videotaped depositions of children.
- Title XXXI, *Bankruptcy and Restitution*, protected victims by preventing drunk driving offenders from discharging debts arising from offenses under Chapter 13 of the bankruptcy code.

Provisions of the *Crime Control Act* created a new framework for comprehensive victim assistance on the federal level by specifying new, or clarifying previous, responsibilities of federal officials with respect to implementing victims' rights. Federal officials covered under the *Crime Control Act* include officials of the U.S. Department of Justice and other federal agencies engaged in the detection, investigation, or prosecution of crime.

Federal Crime Victims' Bill of Rights

The enactment of a Federal Crime Victims' Bill of Rights was historic and paralleled legislative activity in the states. Section 502 of the *Act* mandated that federal officials "*shall make their best efforts* to see that victims of crime are accorded the rights described in subsection (b). . .

- (1) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (2) The right to be reasonably protected from the accused offender.

- (3) The right to be notified of court proceedings.
- (4) The right to be present at all court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.
- (5) The right to confer with the attorney for the Government in the case.
- (6) The right to restitution.
- (7) The right to information about the conviction, sentencing, imprisonment, and release of the offender” (42 U.S.C. Section 10606(b)).

The Attorney General revised the 1983 Guidelines for Victim and Witness Assistance and re-issued them to “provide definitive guidance on implementation of the 1990 *Act* as well as continued guidance on the protection of witnesses under the *VWPA*.” (Guidelines, 1991) In addition, many of the approximately 75 federal law enforcement agencies that operate within federal agencies, (e.g. Inspectors General, Postal Inspectors, Bureau of Indian Affairs law enforcement, etc), took steps to issue guidelines for the treatment of victims and witnesses.

Critical Changes

While many outstanding Victim-Witness Programs had been created in United States Attorneys’ offices across the country by 1990, and some federal agencies had responded to implement the *Victim and Witness Protection Act* (e.g. the Federal Bureau of Prisons’ victim notification and restitution programs), the fact that Congress created strong new language “demonstrates the continuing national concern for the innocent victims of *all* crimes and reflects the view that the needs and interests of victims and witnesses had not received appropriate consideration in the Federal criminal justice system under the *Victim and Witness Protection Act*” (Guidelines, 1991).

The 1983 Attorney General Guidelines, stemming from the passage of the *VWPA*, required that services to victims and witnesses be provided “whenever possible” and “within limits of available resources.” With the passage of the *Crime Control Act in 1990*, victims’ rights and services on the federal level gained new status and it was clearly stated in law, and in the revised 1991 Attorney General Guidelines, that victims’ rights and services “shall be provided.”

The Violent Crime Control and Law Enforcement Act of 1994

Four years later, Congress enacted comprehensive crime legislation entitled the *Violent Crime Control and Law Enforcement Act of 1994 (Crime Act)*. In addition to the establishment of new victims’ rights, and the passage of the historic *Violence Against Women Act* contained within,

the *Crime Act* encouraged the federal government to form partnerships with state and local communities. The specific rights and services contained in the 1994 *Crime Act* include:

- Notice and payment for testing and counseling for sexually transmitted diseases for sexual assault victims;
- The right of a domestic violence victim to be heard at a pre-release hearing of the defendant;
- Allocution at sentencing for victims of crimes of violence and sexual abuse; and
- Mandatory restitution for the following victims:
 - Domestic violence
 - Sexual assault
 - Sexually-exploited and other abused children
 - Telemarketing fraud victims

The 1995 Attorney General Guidelines for Victim and Witness Assistance

As a result of the passage of the 1994 *Crime Act*, the Attorney General revised and re-issued new comprehensive guidelines in 1995 to establish procedures for the federal criminal justice system for implementing victim rights and assistance as enacted under federal law. In issuing the 1995 Attorney General Guidelines for Victim and Witness Assistance, Attorney General Janet Reno stated:

"Crime is a shattering experience that affects the lives of millions of Americans. It can destroy a person's sense of safety and security. Of paramount importance to crime victims and witnesses is their treatment by criminal justice personnel, who should care about their suffering, enforce their rights and protections, offer support to help them heal, and hold the criminal accountable for the harm caused.

For too long, the rights and needs of crime victims and witnesses were overlooked by the criminal justice system. In recent years, however, new laws have been enacted at both the federal and state level to remedy this injustice.

I am pleased to issue these new Guidelines, which incorporate the important rights and protections for federal victims and witnesses contained in the *Violent Crime Control and Law Enforcement Act of 1994*, as well as provisions in prior victims' statutes. They also establish procedures for implementation of these laws by federal investigative, prosecutorial, and correctional personnel.

The Guidelines reflect my strong belief that victims should play a central role in the criminal justice system and my commitment that all components of the United States Department of Justice shall respond to them with compassion, fairness, and respect, in accordance with the letter and spirit of the law."
(Guidelines, 1995, Foreword)

In combining the requirements of the *Victim and Witness Protection Act of 1982*, the *Crime Control Act of 1990*, and the *Violent Crime Control and Law Enforcement Act of 1994*, the Guidelines provide "definitive guidance on implementation of the 1990 and 1994 Acts as well as continued guidance on the protection of witnesses under the VWPA; and shall serve as a primary resource for Department of Justice (investigative, prosecutorial, and correctional) agencies in the treatment and protection of victims and witnesses of federal crimes under these Acts." In addition, the Guidelines supersede previous Attorney General Guidelines, specifically, the 1983 and 1991 Attorney General Guidelines for Victim and Witness Assistance.

Federal Crime Victims' Rights and Services -- Significant Elements of the 1995 Attorney General Guidelines

As in the 1991 Guidelines, the 1995 Guidelines state that under 42 U.S.C. Section 10606(a), officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime *shall make their best efforts* to see that victims of crime are accorded the rights described under federal law. However, the new Guidelines increased the accountability of federal criminal justice officials. In the 1991 Guidelines the Attorney General *recommended* that the annual performance appraisals of federal law enforcement officers, investigators, prosecutors, and corrections officers include compliance with the Guidelines. The 1995 Guidelines *direct* that *performance appraisals* and *reports of best efforts* include information on compliance with the Guidelines.

Officials Responsible for Providing Rights and Services to Victims and Witnesses

The Guidelines provide explicit designations of the individuals responsible for "identifying the victims and performing the services due victims and witnesses under federal law" and require that in each of the investigating field offices, correctional facilities, U.S. Attorney's office and the Justice Department Litigation division that "there must be one individual who shall be designated to specifically carry out victim-witness services."

Individuals charged with providing victims rights and services are defined according to the following stages in the criminal justice process:

- Throughout the investigation, the person responsible is the equivalent of the District Director or Special Agent-in-Charge of the primary division or office conducting the investigation.
- Throughout the prosecution, the litigator, i.e., the U.S. Attorney or the Section Chief of the litigation division, is responsible.
- Following conviction and sentencing, the Director or Warden of each Bureau of Prisons facility where the defendant or convicted offender is incarcerated is responsible.

The sharing of information and cooperation among the various federal agencies, as well as interacting with tribal, state and local agencies providing victim services, are also required by the Guidelines.

Victim and Witness Services

The Guidelines delineate a range of services that should be provided to victims and witnesses at each stage of the federal criminal justice process. Moreover, to further insure implementation, specific responsibility is assigned to federal agencies and officials to carry out these services. The services listed in the Guidelines include the following:

- Information and referral
- Protection from intimidation and harassment
- Consultation and notice
- Secure waiting areas
- Return of property held as evidence
- Payment of forensic rape exam
- Custodial release eligibility information
- Notice and payment for testing and counseling for sexually transmitted diseases
- Allocution and victim impact statements to the court
- Restitution

In addition, the Guidelines address other forms of assistance that shall be extended to all victims and witnesses to the fullest extent feasible, including: victim privacy for child victims and victims of sexual assault, employer creditor intervention, parking, translator services, and related services.

Sentencing in Federal Courts and the Use of Victim Impact Statements

In a landmark report sponsored by the Office for Victims of Crime entitled *A Victim's Right to Speak: A Nation's Responsibility to Listen*, The National Victim Center in 1994 addressed victim impact in the federal system. The Report stated the following:

Selection of an appropriate sentence is one of the most important decisions made in the criminal justice system. The primary vehicle used to assist the sentencing court in fulfilling this responsibility is the presentence investigation report. In November 1987, the Sentencing Reform Act of 1984 became effective and radically changed the philosophical model for sentencing offenders in Federal courts. Congress relinquished an indeterminate model of sentencing and adopted a determinate model based upon national guidelines. Changes in the content and format of the presentence report were necessary to accommodate the new sentencing process.

As part of the Crime Control Act of 1984, Congress created the U.S. Sentencing Commission to serve as an independent body of the judicial branch. The Commission was assigned responsibility for establishing sentencing policies and practices for the Federal criminal justice system in compliance with the Sentencing Reform Act of 1984. The Commission was further directed to produce guidelines that would avoid unwarranted sentencing disparities while retaining enough flexibility to permit individualized sentencing when called for by mitigating or aggravating circumstances.

However, if the court is to accurately determine mitigating or aggravating circumstances of each individual case, it must have access to all information pertinent to the case, and this information must include a careful review of victim impact. Historically, this information has been presented through the use of a presentence investigation report.

In the United States Federal Court system, when a defendant is apprehended and charged and is either found guilty or enters a plea of guilty, a presentence investigation report is ordered by the court prior to imposing a sentence. Under Federal Rule 32(c)(1) of the Federal Rules of Criminal Procedure and 18 U.S.C. Section 3552, the defendant cannot waive the presentence investigation with the exception of violations where penalties include the death penalty. Rule 32(c)(1) also delegates the responsibility of preparing the presentence investigative report to U.S. probation officers.

Traditionally, this report assists the Court to understand the offender's background and to offer explanations as to the circumstances surrounding the offense(s) and the offender's involvement. As required by Rule 32(c)(1), the presentence report shall contain information on the history and characteristics of the defendant, including any prior criminal record; financial condition; educational attainment; family history and marital history; and any circumstances affecting the defendant's behavior (mitigating and aggravating conditions) which may be helpful in imposing

sentence or the correctional treatment of the defendant, and any other information to be collected as directed by the sentencing authority.

The federal criminal justice system took the lead in setting a legal precedent for the inclusion of victim impact information in sentencing with the passage of the *Victim and Witness Protection Act of 1982*. The *Act* allows for the submission of victim impact information at the time of sentencing, amending the Federal Rules of Criminal Procedure (Rule 32(c)(1)) to require U.S. Probation officials to include the following victim impact information in their pre-sentence investigative reports to the court:

- Any harm, including financial, social, psychological and physical harm, done to or loss suffered by, any victim of the offense, and
- Any other information that may aid the court in sentencing, including the restitution needs of any victim of the offense.

This created the right for federal victims to provide information on the impact of the crime in the sentencing phase of the federal justice system -- commonly referred to as victim impact statements. The Attorney General Guidelines address this right further by requiring the following:

- Federal prosecutors apprise victims that the U.S. Probation Officer is required to prepare a victim impact statement, which includes information relevant to restitution and how to communicate directly with the Probation Officer.
- Federal prosecutors shall also advise of, or make available to, the appropriate U.S. Probation Officer the information in the Federal Prosecutor's possession pertinent to the preparation of the victim impact statement so that the report will fully reflect the effects of the crime upon the victims, as well as the appropriateness and amount of restitution.
- With respect to an oral impact statement, federal prosecutors shall also advise victims of violence or sexual abuse, or a designated victim representative, of their rights to address the court at sentencing and of the date, time, and place of the scheduled hearing.

Finally, consistent with available resources and their other responsibilities, federal prosecutors shall advocate the interests of victims, including child victims, at the time of sentencing.

Today, victim impact statements are widely used in criminal cases, including capital cases. Repeated challenges to the constitutionality of the use of victim impact statements in capital cases was resolved when the U.S. Supreme Court upheld the constitutionality of victim impact evidence submitted during the sentencing phase in capital cases *Payne v. Tennessee* in 1991.

Restitution

The *Victims' Rights and Restitution Act of 1990* (part of the *Crime Control Act*) provides that victims of federal crime have a "right to restitution." It also requires that if a court does not order restitution, or orders only partial restitution, the court must state on the record the reasons why restitution was not, or only partially ordered. The 1990 Act also extended the court's ability to order restitution to victims of an offense involving a scheme, conspiracy, or pattern of criminal activity -- i.e. all victims harmed by crimes of fraud. This extends to not only the victims of charged crimes, but to *all* the victims named in the indictment, even when the defendant was not charged on all accounts.

In addition, the 1990 Act extended the right to restitution to all victims in plea agreements:

“The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.”

The Guidelines underscore this right by stating that when plea negotiations occur, prosecutors should attempt to obtain the defendant's consent to an order of restitution for all victims of the offense, not just for the victims involved in the courts to which he or she pleaded guilty.”

Departing from the previous trend to permit the court to have discretion in ordering restitution, the 1994 Crime Act states very clearly that convictions for four types of crimes must include mandatory restitution as part of an offender's punishment:

- Sex crimes
- Sexual exploitation and other abuses of children
- Telemarketing fraud
- Domestic violence

The Act also lists expenses for which victim restitution is required:

- Lost income
- Necessary child care
- Transportation
- Other expenses related to participation in the investigation or prosecution of the offense
- Attendance at proceedings related to the offense

In addition, the 1994 Crime Act extended and strengthened the right to restitution for other federal crime victims by adding requirements for reimbursement of victims, as well for the enforcement of restitution orders against delinquent defendants.

Enforcement of Restitution

To ensure enforcement of restitution orders, the Crime Act and 1995 Attorney General Guidelines specify that U.S. Attorneys must enforce the restitution order "by all available means."

The Crime Act provided several mechanisms to enforce restitution payments including the following:

- To reinforce the payment of restitution, the Crime Act requires that all benefits provided to the defendant by a federal agency must be immediately suspended until the defendant makes a "good faith" effort to pay restitution.
- The order may also be enforced by the victim in the same manner as a civil judgment.
- Compliance with a restitution order was established as a condition of probation or supervised release. The Guidelines specify that compliance with restitution orders *shall* be followed. If an offender fails to comply, the court, upon a hearing, may revoke the probation or term of supervised release, modify the terms and conditions of probation or release, or hold the offender in contempt.

Finally, the Crime Act reinforced restitution payments by amending the federal Bankruptcy Code to prevent defendants who owe restitution from discharging their liability for payments by filing bankruptcy. The Act states that a debt for restitution included as a sentence, on the debtor's conviction of a crime, would not be discharged in a Chapter 13 filing. The Act also added a new provision in the Bankruptcy Code that addresses drunk driving debts, stating that such debts are not dischargeable under Chapter 17, 11 and 12 proceedings.

Again, the 1995 Guidelines underscored restitution rights by stating:

"Federal prosecutors shall advocate fully the rights of victims, including child victims, on the issue of restitution."

New Legislation: The Victims' Justice Act of 1995

Title I of the *Victims' Justice Act of 1995* amends the federal criminal code to require judges to order restitution for victims of the following crimes of violence:

- Property crimes;
- Fraud;

- Consumer product tampering; and
- Drug crimes.

In addition, procedures for issuing and enforcing restitution orders were significantly expanded under the Act. Full implementation of these new provisions will bring new importance to restitution in federal criminal proceedings.

Coordination and Direct Services Role at the Federal Level

One significant result of the *Victim and Witness Protections Act of 1982* was the creation of the position of Victim-Witness Coordinator in United States Attorneys offices to ensure compliance with the VWPA, as well as federal crime victim-related laws enacted since 1982. Today, every office of the United States Attorney across the country is authorized to employ a Victim-Witness Coordinator.

While one of the roles of the Victim-Witness Coordinator is to implement federal law regarding crime victims rights and services, the position can be structured in many different ways, depending on the size and configuration of the federal district and the needs of the United States Attorney. As the title implies, Victim-Witness Coordinators generally oversee and coordinate the victim assistance program and services in the United States Attorneys Offices, and work to establish procedures for victim and witness assistance across the entire office. Coordinators work with federal prosecutors and administrative staff to implement a wide range of victims' rights and services.

Victim-Witness Coordinators have developed and implemented a wide range of programs and services to assist federal victims. While these services vary according to the needs of the District -- such as an innovative program to assist victims of white collar crime now being developed in the Northern District of California, to bank robbery victim outreach programs in the Eastern District of Wisconsin and the District of Oregon -- certain procedures tend to be standard across the nation.

For example, Federal Victim-Witness Coordinators have developed policies and procedures for:

- Consultation with victims prior to plea negotiations
- Courtroom orientation
- Court escort
- Collection of victim impact and restitution information

- The processing of witness fees forms
- Notifying victims/witnesses of continuances and delays
- Referrals to state and local victim assistance and compensation programs
- Coordination of travel and lodging for victims/witnesses

A Nationwide Network of Federal Victim Assistance and Interagency Coordination

Victim-Witness Coordinators, located in the 94 U.S. Attorneys' offices across the nation, have built a nationwide network of support through which they rely on each other for information, advice and assistance. In addition, Victim-Witness Coordinators are linked by computer so that they may better communicate as a true network of service providers. This has proven valuable in providing expertise and experience often necessary for complex cases. Many cases cross jurisdictional lines and require out-of-state resources to assist victims and to effectively prosecute the case. In addition, the networking activities of the Coordinators are helpful in providing services and support to victims who reside in rural-remote locations.

An important aspect of the Victim-Witness Coordinator's job is to coordinate victim and witness service efforts with other federal, as well as state and local law enforcement officials. In most jurisdictions, Coordinators work closely with state-level and local victim service providers and criminal justice officials, which serves to "fill gaps" in the delivery of services. Activities include, but are not limited to: cross-jurisdictional training, participating in statewide victim assistance coalitions, making victims service referrals and participating in commemorative observances, such as National Crime Victims' Rights Week and National Drunk and Drugged Driving Awareness Week. Two examples of the role of Victim-Witness Coordinators are the following:

- Victim-Witness Coordinators routinely ask victims, including the parent or guardian of victims who are minors, whether they want to be notified of parole hearings or a change in offender status and forward this information to the Bureau of Prisons (BOP) for implementation of its Victim-Witness Notification Program.
- Victim-Witness Coordinators can assist child victims and their families as they participate with other federal agencies, such as the U.S. Marshals Service or BO P. The Coordinators also attend and conduct various victim-witness training conferences and with Victim-Witness Subcommittees of a district's Law Enforcement Coordinating Committee (LECC). The LECC brings together representatives from the federal, state

and local criminal justice system for planning, improving communication and coordination, and improving the overall response to crime.

The Office for Victims of Crime Response to Federal Crime Victims

The Federal Crime Victims Division is one of three divisions located within the Office for Victims of Crime. The Federal Crime Victims Division has responsibility for:

- Providing and improving services for federal crime victims;
- Monitoring compliance with the guidelines on "fair treatment of crime victims and witnesses" contained in the *Victim and Witness Protection Act of 1982*, the *Crime Control Act of 1990*, and the *Violent Crime and Law Enforcement Act of 1994*;
- Providing training and technical assistance to federal criminal justice personnel and Native American organizations on victim assistance issues; and
- Implementing the *Children's Justice Act* Program for Native Americans. (*OVC Fact Sheet*, Federal Crimes Division)

Federal Crime Victim Assistance Fund

The Federal Crime Victims Division oversees the Federal Crime Victim Assistance Fund created by OVC and funded by VOCA to meet the immediate needs of federal victims of crime when victim services are otherwise not available. Victim-Witness Coordinators in 93 U.S. Attorney's Offices can contact OVC to receive assistance from the fund. The Emergency assistance funds have helped federal crime victims in a variety of ways, including;

- Securing transportation to assist victims to participate in judicial proceedings.
- Paying medical bills.
- Providing information and emergency training to communities suffering from multiple cases of child sexual abuse.
- Providing crisis intervention and support services or emergency shelter.

In the spring of 1996, OVC provided \$200,000 in funding to assist victims and survivors of the tragic bombing of the federal building in Oklahoma City to cover the costs of transportation and lodging incurred

by the need to travel to Denver because of the change in federal venue for the trial.

Federal Criminal Justice Personnel Training Efforts

The Federal Crime Victims Division supports numerous training programs for federal officials and personnel on victim assistance, support and advocacy. One of the longest-standing interagency agreement in this arena is between OVC and the Federal Law Enforcement Training Center (FLETC). Since 1986, OVC has supported victim assistance training for all federal law enforcement officers attending the Center's training program. OVC also has an interagency agreement with the FBI to provide training on victims' rights and assistance for agents.

In addition, OVC has provided training and technical assistance to over 70 federal agencies regarding the development of victim-witness policy and procedures, training investigators, prosecutors, and Victim-Witness Coordinators.

Section II: The Tribal Justice System and Native American Victims

Statistical Overview

- There are approximately 550 federally-recognized tribes in the United States.
- Approximately 168 federally-recognized tribes jurisdictionally fall within 26 separate federal districts in the United States with a total population in 1993 of 750,000.
- It is estimated that about 10,000 serious offenses occur annually.
- Approximately 2,500 major crimes occur each year.
- Only about 100 - 300 federal prosecutions occur annually.

The above statistics were excerpted from Criminal Justice In Indian Country: A Focus on New Options, United States Department of Justice, Criminal Division, 1994. (Training materials from a conference held in Quantico, VA, November 7-8, 1994.)

Critical Jurisdictional Issues

"It is important to recognize that [tribal authority] flows from the legal premise that Indian tribes retain a certain "nationhood" status, which pre-dates the establishment of the United States, and includes inherent powers of internal self-government." (Homer, 1993)

A complex history of laws, customs, treaties, and traditions has resulted in a potentially confusing array of jurisdictional issues regarding native Americans and the U.S. criminal justice system. As has been discussed in Chapter 5, jurisdiction is a legal concept that provides courts with the lawful authority to exercise their judicial powers over individuals, certain subject matters, and specific geographic areas. Jurisdictional authorizations are statutory or constitutionally based, and may overlap or even conflict. This is particularly true in matters involving native Americans. For example, a significant determinant of jurisdiction involves the Indian or non-Indian status of the victim and the offender, in addition to what crimes were committed and where they occurred.

A key concept in understanding these jurisdictional issues is the notion that Indian tribes are considered "domestic dependent nations" and, therefore, they retain important aspects of self-government. These dependent nations are afforded this respect from the Federal and State governments due to the fact that Indian tribal governance pre-dates the United States itself. Thus, tribes are sovereign nations in their own rights and, despite their domestic dependency, they retain powers of government that cannot be "extinguished" by an act of Congress. Through numerous court cases on the state and federal levels for over 160 years the independence of tribes has been upheld. However, it is a complicated relationship, described as the United States serving as a "fiduciary in a trust relationship with the tribes which, at a minimum, entails the duty to provide those benefits and services specified by treaty, executive order or statute." (See Holmer, 1993.)

These jurisdictional determinations are of great importance to victims and service providers. The court, and relevant body of law, with jurisdictional authority over a particular case will significantly influence the level and types of resources available for assisting victims, determine the victims ability to participate in the case proceedings, and govern the conduct of the trial and sentencing of a convicted defendant. An overview of important jurisdictional issues and relevant federal victim assistance initiatives follows below.

Definition of Tribal Land/Indian Country

One important aspect of jurisdiction involves geographical areas, such as territories where Native Americans reside that are officially recognized as "reservations." Tribal land is generally

referred to as "Indian Country." The definition of Indian Country, provided in 18 U.S.C. Section 1151, is expansive and includes all reservations whether established by treaty, executive order or act of Congress; all "traditional" dependent Indian communities, and all allotments where an Indian title has not been extinguished, including land in the former Indian Territory or elsewhere.

Specifically this includes the following:

- All lands within the limits of any Indian Reservation under the jurisdiction of the government of the United States, notwithstanding the issuance of any patent, and including right-of-way running through the Reservation.
- All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
- All Indian allotments, the Indian titles to which have not been terminated, including right-of-way running through the same.

Federal Jurisdiction

Two federal laws specifically provide for federal criminal jurisdiction over Native American matters. The first is generally known as the *Major Crimes Act* (18 U.S.C. Section 1153). This act enumerates 14 specific, major offenses that may be prosecuted by the federal government when the offender is an Indian. The second is called the *Indian Country Crimes Act* (18 U.S.C. Section 1152), sometimes called the General Crimes Act. This Act provides for jurisdiction over matters where the offender is non-Indian and the victim is Indian, or the reverse, that are not covered in the Major Crimes Act. An exception to this is when the offender is an Indian who has been punished by a tribal court or the offense is subject to other limitations (i.e. treaty restrictions).

Essentially, the criminal laws of the United States generally apply to Indian Country (18 U.S.C. Section 1152), subject to certain limitations. Section 1152 does "not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the laws of the tribe, or...[when] the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively." However, 18 U.S.C. Section 1153, in turn, reserves federal criminal jurisdiction for specific "major" crimes (e.g., murder, manslaughter, kidnaping, incest, etc.) committed by Native Americans.

An additional conditions that allows for the application of federal jurisdiction involves the Assimilative Crimes Act (18 U.S.C. Section 13). Where there is no substantive federal offense available, the relevant law of the state may apply by being "assimilated" into the federal code. The chart that appears below will be of great assistance in understanding this array of jurisdictional issues.

Indian Status Defined

A detailed discussion of who may utilize the status of Indian for jurisdictional purposes is beyond the scope of this chapter. It is important to note that the determination of Indian status, or who may claim to be an Indian, is not defined in 18 U.S.C. However, about 150 years ago the U.S. Supreme Court first attempted to address this very sensitive area concerning the definition of who qualifies as an Indian. In the decision *United States v. Rogers*, 45 U.S. 567 (1846) a two pronged test was established that required:

- Degree of Indian blood; and
- Whether the person is recognized as an Indian by the tribe or the federal government.

This test, called the "Rogers Test" was refined in a 1988 decision in the District Court for the District of South Dakota (*St. Cloud v. V.S.*, 702 F. Supp. 1456 (D.S.D. 1988)) that outlined several additional factors to consider including:

- Enrollment in a Tribe;
- Government recognition formally and informally through providing the personal assistance reserved only to Indians;
- Enjoying the benefits of tribal affiliation; and
- Social recognition as an Indian through living on a reservation and participation in Indian social life.

The importance of this is apparent when one notes that there are instances of defendants' convictions being reversed due to issues regarding Indian status or lacking thereof.

Jurisdictional Chart

The following chart is intended to provide clarification on the complicated federal, state and tribal jurisdictional issues:

<u>Offender</u>	<u>Victim</u>	<u>Federal Jurisdiction</u>
Indian	Indian	Major Crimes Statute (18 U.S.C. Section 1153) only applies. Fourteen specific major offenses may be prosecuted by federal government. (Otherwise Tribal court presides.)
Indian	Non-Indian	Major Crime Statute applies if one of 14 offenses occurs. Other crimes may allow federal prosecution under 18 U.S.C. Section 1152 (Indian Country Crimes Act) or if an other substantive federal offense is involved or action may be brought under 18 U.S.C. Section 13, Assimilative Crimes Act, where a substantive state offense may be incorporated. (State law may apply if no federal offense applies.)
Non-Indian	Indian	Indian Country Crimes Act (18 U.S.C. Section 1152) applies. Again, other substantive federal offenses or assimilated state offenses may be prosecuted federally.
Non-Indian	Non-Indian	State jurisdiction only. No federal jurisdiction.

A Note Regarding State Jurisdiction

Most of the discussion above deals primarily with federal jurisdiction. The issue of state jurisdiction must also be considered briefly and presents different complications. As Homer (1993) notes, “[t]he relationship between tribes and states is difficult to characterize, and varies from region to region.” (p.5.) For example, the federal government has exclusive jurisdiction to oversee the affairs of Indian nations (See Article I, Section 8, Clause 18, U.S. Constitution). However, jurisdiction over criminal matters where the victim and the offender are non-Indians and the crime is committed in Indian Country is exclusively with the state where the reservation is located. Alternatively, the state’s are without jurisdiction over criminal matters committed by Native Americans, absent an act of Congress granting such state jurisdiction. This statutory scheme is further complicated by recent efforts by states to return certain aspects of their jurisdiction to the federal government, and by the fact that this is often handled differently among several tribes within one state. Again, as Homer (1993, p.7) points out, “[because there are so many variables, it is recommended that periodically each district review its jurisdictional analysis of Indian Country on a tribe by tribe basis.”

Tribal Courts and Jurisdiction

Tribal courts have jurisdiction over matters involving Indians who commit crimes in Indian Country. Many times this jurisdiction is concurrent with federal jurisdiction, such as cases of child sexual abuse. Generally, these concurrent jurisdiction offenses may see defendant's being tried in two court systems (tribal and federal) without violating "double jeopardy" prohibitions due to these being two separate sovereigns. Tribal courts do not have authority to handle matters where the offender is not an Indian.

Much of the general jurisdictional discussion above draws from the Criminal Justice In Indian Country: A Focus on New Options, United States Department of Justice, Criminal Division, 1994. (Training materials from a conference held in Quantico, VA, November 7-8, 1994.) training materials, and in particular, the 1993 chapter entitled Jurisdictional Issues Related to Indian Country Crimes: A Brief Introduction prepared by Elizabeth Lohah Homer of the U.S. Department of Justice's Child Exploitation & Obscenity Section. Those interested in a more detailed treatment of this area are referred to this original text. Also, the National Indian Justice Center, 7 Fourth Street, Suite 46, Petaluma, CA 94952 can provide materials on both legal and programmatic issues discussed throughout this section.

Direct Native American Victim Assistance Services

Since 1987, the Office for Victims of Crime has focused VOCA discretionary funds on improving services and outreach for victims of crime in Indian country. OVC has supported a wide range of programs including:

- Building a network of victim assistance programs in Native American Communities.
- Providing training for Native American victim rights and assistance.
- Developing information materials, including videotapes, to assist Native American crime victims to understand Tribal and federal criminal justice systems, victims' rights and services.

Victim Assistance in Indian Country Program (VAIC)

The Office for Victims of Crime (OVC) has provided direct assistance in Indian Country through the VAIC grant program which commenced in 1988. This program provides states with funding to expand or create "on-reservation" victim assistance programs in Indian Country where victim services have been limited or non-existent. As of 1996, OVC has awarded over six million dollars in grants to tribal victim assistance under this program.

In 1995, OVC funded 29 programs in the following states: Arizona, Colorado, Idaho, Iowa, Kansas, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin and Wyoming. The services provided by these programs represent the full range of victim assistance, including: crisis intervention, emergency shelter, mental health counseling, and court advocacy.

In order to respond to tribal victims in federal cases who often feel geographically isolated and have little access to communication with the federal system, OVC encourages cooperation and coordination in working relationships between the victim assistance coordinators in Native American communities and the U.S. Attorneys' Victim-Witness Coordinators. For example, tribal victim assistance providers often accompany victims to federal court proceedings while federal victim-witness coordinators provide information on case progress and status to tribal coordinators. (*OVC Fact Sheet, Project in Indian Country*)

Victim Compensation

Native American crime victims qualify for state victim compensation awards as a result of VOCA requiring that victims of federal crimes are to be treated the same as victims of state criminal violations. However, as late as 1988, few native American crime victims were aware of this potential financial assistance. Thus, OVC worked with the National Association of Crime Victims Compensation Boards to initiate comprehensive public awareness efforts to inform victims on Indian Reservations about this important program within each state. OVC funded the development of a video entitled, *Financial Assistance for Victims of Crime* (see Resource list at the end of this section), to further educate and inform native Americans and tribal justice system professionals about crime victim compensation and the procedures for submitting a claim.

Additionally, in 1990, OVC added a new condition for state eligibility to receive a crime victims compensation grant by requiring states to undertake special efforts to inform on-reservation victims about the State's compensation program and their eligibility to apply.

Improving the Investigation, Prosecution and Handling of Child Abuse Cases: The Children's Justice Act

In 1986, amendments to the *Victims of Crime Act*, the *Children's Justice Act* was created to provide funding for the nationwide improvement of the handling of child abuse cases by the criminal justice system. The *Children's Justice Act* for native Americans has served as an important source of federal funding to assist tribes with the investigation, prosecution and management of child abuse cases.

Over the years, OVC has awarded grants directly to tribes to create systematic improvements for addressing child abuse -- not only improving investigations and prosecutions -- but lessening the trauma associated with children and families involved in these complex cases. Since 1989, OVC has funded 29 tribal programs. The programs have enhanced the following services and procedures:

- Creation, expansion and training for multidisciplinary teams to investigate child abuse.
- Development of child abuse reporting, investigating and prosecuting protocol.
- Revision of Tribal codes and procedures to address child sexual abuse.
- Specialized training for investigators, prosecutors, judges, and other professionals who handle child sexual abuse cases.
- Improved coordination that minimizes the number of child interviews.
- Enhanced case management and treatment services.
- Development of procedures for establishing and managing child-centered interview rooms.
- The development of special prosecution units.

(OVC Fact Sheet, *Children's Justice Act Grant Program for Native Americans*)

Training and Technical Assistance

In addition, OVC has sponsored numerous training forums on Native American victim issues. Each year OVC supports the Indian Nations Conference which brings together victim service providers, law enforcement officials, prosecutors, judges, health and mental health providers to confront issues of victimization and victim services in Indian Country. OVC has also provided funding for "district specific" training, bringing together federal law enforcement and victim assistance personnel with their counterparts in Indian Country to improve communication and case handling. This approach has met with great success. For example, the Northern and Eastern Districts of Oklahoma signed Memoranda of Understanding with 23 Tribal leaders that define federal, Tribal, and state responsibility for investigating reports of child abuse, prosecuting cases, and protecting children. (OVC Fact Sheet, *Projects in Indian Country*)

In addition, OVC provides extensive training each year through its Trainer's Bureau for grantees receiving Children's Justice Act (CJA) for Native Americans funding. The Trainer's Bureau

provides training on all aspects of victimization, while the CJA training program focuses on multidisciplinary approaches to child abuse and increasing advocacy efforts for child abuse victims system wide.

Section III: The Military Justice System and Victims of Crime

At the federal level, there is heightened interest in the rights and needs of crime victims on military installations. Through collaboration with the Office for Victims of Crime, the Department of Defense (DoD) has provided training and technical assistance to improve victims' rights and services when military personnel are involved in crimes. The emergence of the recent DoD Directive and Instruction, Memoranda of Understanding, and model programs have contributed to greatly needed attention focused on the rights and needs of victims throughout the military criminal justice system.

DoD Policy Relevant to Victim and Witness Assistance

In 1994, the DoD responded to victims of crime by issuing two major initiatives:

- Directive, Number 1030.1, issued on November 23, 1994: Victim and Witness Assistance
- Instruction, Number 1030.2, issued December 23, 1994: Victim and Witness Assistance Procedures

Together, the Directive and Instruction provide overall policy guidance and specific procedures to be followed for victim and witness assistance in all sectors of the military.

The 1994 Directive reissued military policies and procedures concerning crime victims and witnesses that had been required since the 1982 enactment of the federal Victim and Witness Protection Act. The new Directive applies to all branches of the United States military. It effectively updated Department of Defense policies and assigned responsibilities for providing assistance to victims and witnesses of crimes committed in violation of the Uniform Code of Military Justice (Chapter 47 of Title 10, U.S. Code). In addition, the Directive formally established a Victim and Witness Assistance Council.

DoD Instruction, 1030.2, added additional components to the military's response to crime victims by providing the procedural guidance for the Directive.

Victim and Witness Assistance Councils

Under Directive 1030.1, it is a responsibility of the Under Secretary of Defense for Personnel and Readiness to, among other responsibilities, create an Interdisciplinary Victim and Witness Assistance Council to provide a forum for the exchange of information and the consideration of victim and witness policies, and provide a liaison with the Department of Justice, Office for Victims of Crime.

Instruction 1030.2, further defines the role of the interdisciplinary council: "to coordinate the development of policy recommendations and the implementation of the Victims' Advocate Program within their respective programs on victims and witness assistance, family advocacy, and equal opportunity."

The DoD's Victim and Witness Assistance Council has helped develop and define its broad mission in the implementation of policies and procedures to respond to crime victims and witnesses. Significantly, a Senior Program Specialist within the U.S. Department of Justice, Office for Victims of Crime joined the Council as the only non-military member. As a result, the Council has had the benefit of access to, and information about, victims rights and services developed on the federal, state and local levels. OVC's input has greatly assisted DoD in defining and expanding services and training and technical assistance opportunities on victims issues. For example, OVC and DoD have entered into an interagency agreement to provide training to multidisciplinary teams in military installations around the world.

In addition, DoD Instruction 1030.2 states that, to the extent practicable, a Victim and Witness Assistance Council should be established at each significant military installation to ensure that an interdisciplinary approach is followed by victim and witness service providers. These providers may include the following:

- Law enforcement personnel
- Criminal investigators
- Chaplains
- Family advocacy personnel
- Emergency room personnel
- Family service center personnel
- Equal opportunity personnel
- Judge advocates
- Unit commanding officers
- Corrections personnel
- Others designated by the Secretaries of the Military Departments

Victims' Rights and Services within the United States Military

The DoD Directive and Instruction on victim and witness assistance cover the entire military justice process -- from investigation through prosecution and confinement. They apply to the Office of the Secretary of Defense and the following military departments:

- The Chairman of the Joint Chiefs of Staff
- The Unified Combatant Commands
- The Inspector General of the Department of Defense
- Defense Agencies
- Department of Defense Field Activities
- Military Services:
 - Army
 - Navy
 - Air Force
 - Marine Corps
 - Coast Guard (when operating as a Service in the Navy)

To increase sensitivity to victims of crime and to provide services for victims, the DoD Directives state the following:

“It is Department of Defense policy that: The necessary role of crime victims and witnesses in the criminal justice process should be enhanced and protected.

The DoD components shall do all that is possible within limits of available resources to assist victims and witnesses of crime, in accordance with the requirements listed in DoD Instruction 1030.2, without infringing on the constitutional rights of an accused. Particular attention should be paid to victims of serious, violent crime, including child abuse, domestic violence, and sexual misconduct.”

The Directives serve as the definitive guidance on standardizing victim and witness assistance services throughout the military. Each of the services -- Army, Navy, Air Force and Marines -- has now developed and issued regulations to implement the DoD directives.

Victims' Rights and Services Within the Military

DoD Directive 1030.1 directs all agencies and services of the military involved in the detection, investigation, or prosecution of crimes that victims are to be accorded the following rights (Note: These rights are essentially the rights articulated for federal crime victims as enacted by federal law, and previously stated):

- Be treated with fairness and respect for the victim's dignity and privacy.
- Be reasonably protected from the accused offender.
- Be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.
- Confer with the attorney for the government in the case.
- Receive available restitution.
- Be provided information about the conviction, sentencing, imprisonment, and release of the offender.

Jurisdictional Conditions

In terms of jurisdictional conditions applicable to Federal lands, there are four commonly used categories of legislative authority:

1. *Exclusive federal jurisdiction:* The federal government has all of the legislative authority within the land area in question. Normally, the state reserves the right to serve civil or criminal process on the federal area.
2. *Concurrent jurisdiction:* In granting to the United States authority otherwise tantamount to exclusive legislative jurisdiction over an area, the state reserves the right to exercise the same authority concurrently with the United States.
3. *Partial jurisdiction:* The federal government has some legislative authority, but the state reserves the right to exercise other authority beyond service of process. Neither the federal government nor the state has complete authority over the land in question.
4. *Proprietary interest:* The federal government has some degree of ownership or right to use of land within the state, but does not have legislative authority except as authorized by the constitution.

In addition, under the terms of the *Federal Assimilative Crimes Act*, state law may become part of the federal code and is then applied in federal prosecutions as it would have been if the case had been tried at the local level. As stated in Section 13 of Title 18 of the United States Code:

"The *Federal Assimilative Crimes Act* is an adoption by Congress of state criminal laws for areas of exclusive or concurrent federal jurisdiction, provided federal criminal law, including the UCMJ, has not defined an applicable offense for the misconduct committed. The Act applies to state laws validly existing at the time of the offense without regard to when these laws were enacted, whether before or after passage of the Act, and whether before or after acquisition of the land where the offense was committed. For example, if a person committed an act on a military installation in the United States at a certain location over which the United States had either exclusive or concurrent jurisdiction, and it was not an offense specifically defined by federal law (including the UCMJ), that person could be punished for that act by a court-martial if it was a violation of a non-capital offense under the law of the state wherein the military installation is located, and applies it as though it were federal law..."

Military Court-martials

Military Services only have the authority to court martial active duty military service members. They do not have the authority to order restitution or to utilize victim impact statements as part of a court-martial. However, the DoD Directive addresses restitution and victim impact statements in the following way:

"Court-martial convening authorities and clemency and parole boards *shall* consider making restitution to the victim a condition of granting pretrial agreements, reduced sentences, clemency, and parole. They *may consider* victim impact statements on the impact of crime." (emphasis added)

Victim Services in the Military

At the DoD level, as well as in each branch of Military Services, there is an office that provides oversight for the implementation of victims' rights and services. Each branch of the military has issued regulations to further implement victim/witness assistance within their services. You may contact the DoD, or the representatives from the individual military services at the following locations:

Department of Defense -- Headquarters

OUSD (P&R) RR/LP
4000 Defense Pentagon
Washington, D.C. 20301-4000
Phone: (703) 697-3387
Fax: (703) 693-6708

Army

HQDA-CL

Pentagon Room 2D423

Washington, D.C. 20301

Phone: (703) 695-2193

Fax: (703) 693-5086

Air Force

AFLSA/JAJM

112 Luke Avenue, Room 343

Bolling Air Force Base

Washington, D.C. 20332-8000

Phone: (202) 767-1539

Fax: (202) 404-8755

Marine Corps

CMC, HQMC Judge Advocate Division (JAM)

2 Navy Annex

Washington, D.C. 20380-0001

Phone: (703) 614-4250

Fax: (703) 695-5111

Navy

Office of Legal Counsel

PERS 0611

Washington, D.C. 20370-5006

Phone: (703) 614-2225

Fax: (703) 693-7265

Family Advocacy Program

In addition, each branch of Services has a Family Advocacy Program. The Program is designed to prevent and treat child and spouse abuse in accordance with DoD Directive 6400.1, *Family Advocacy Program*. Each branch of Service maintains a central registry of reports of alleged child and spouse abuse. Allegations of child sexual abuse that occur in out-of-home care settings, such as in child care centers, family day care homes, schools, or recreation programs, must be reported within 72 hours to the Service Family Advocacy Program for inclusion in the central registry and to the DoD Assistant Secretary (Force Management Policy) or to his or her designee. Criminal prosecution is the goal of intervention in cases involving child sexual abuse in an out-of-home care setting.

If more than one child is a victim of sexual abuse in an out-of-home care setting, the branch of Service may convene a multidisciplinary technical assistance team for the installation at the request of the installation commander, or the DoD Office of Family Policy may convene a multidisciplinary team of specially trained personnel from the four Services to provide technical assistance. Technical assistance may include law enforcement investigations, forensic medical examinations, forensic mental health examinations, and victim assistance to the child and family. The primary recipients of technical assistance are the Family Advocacy Program Manager, the investigators of the installation law enforcement agency, and the physicians and mental health professionals at the military treatment facility or those who provide services under contract.

Services are available to the following:

- Members of the Armed Services who are on active duty and their family members who are eligible for treatment in a military treatment facility, and
- Members of a reserve or National Guard component who are on active duty and their family members who are eligible for treatment in a military treatment facility.

Another example of a military victim service program is the Navy's *Sexual Assault Victim Intervention Program (SAVIP)*. Established in 1994, the program is described by the Navy as unique in the services and as a "comprehensive, standardized, victim-sensitive system response to sexual assault Navy-wide." Specifically, the program provides sexual assault awareness and preventive education programs; victim advocacy and intervention services; and collects accurate data on sexual assault in the Navy. There were 28 SAVIP Coordinators working through 26 Family Service Centers by April of 1994.

Collaborative Efforts Between the Military and Local Victim Services

The Naval Air Station in Jacksonville, Florida and the City of Jacksonville Victim Services Division Adult/Adolescent Sexual Assault Center have created a Sexual Assault Victim Advocacy Program through a Memorandum of Understanding. According to the Memorandum, "this program is intended to provide emotional support and guidance to victims of sexual assault during administrative, medical, investigative and legal procedures, and to ensure that they understand and can anticipate these procedures. In addition, the Victim Advocate Program informs victims on the availability of appropriate follow-up care."

In Jacksonville, the Navy and the Jacksonville Victim Services Division collaborate on training, service provision, information and referral for victims of sexual assault whose cases fall under the jurisdiction of the Navy.

In addition to establishing a position for a sexual assault victim intervention program coordinator, designated by the installation commander, as well as a victim intervention program coordination committee, specific duties relevant to program implementation are detailed in the Memorandum of Understanding. The Naval Installation, in accordance with the Memorandum, will:

- Establish, in conjunction with Adult/Adolescent Sexual Assault Program (AASAP), specific procedures for command personnel to inform AASAP of an incident of sexual assault.
- Establish, in conjunction with AASAP, specific procedures for command personnel to refer sexual assault victims to AASAP for advocacy and/or counseling, guidance, and information on the administrative, medical, investigative and legal processes.
- Train security, medical and watch personnel on procedures to contact AASAP in case of sexual assault.
- Designate a point-of-contact to coordinate with points-of-contact from AASAP on providing program services.
- Publicize program availability and method of access.
- Invite and encourage attendance of the AASAP representative at the command Sexual Assault Prevention Coordination Committee meeting.

The responsibilities of the AASAP, as detailed in the Memorandum of Understanding, are to:

- Respond to incidents of sexual assault which either occur on military property, or involve military personnel or their family members.
- Help victims of sexual assault understand the administrative, medical, investigative and legal processes so that they are prepared to cope with these complex systems.
- Encourage victims to seek professional counseling and advise victims how to access follow-up care.

This Memorandum of Understanding is an excellent example of a collaborative effort between the military and local victim services that can serve to increase reporting of crimes, and access to services, and enhance the quality of assistance available to victims of sexual assault whose cases fall under military jurisdiction.

Conclusion

This chapter has discussed three separate federal systems of victims' rights and services. While there are certain similar aspects of each system (for example, victims whose cases are prosecuted at the federal level, stemming from an offense committed at the tribal or military level, are accorded the same victims' rights under the federal laws discussed in the beginning of this chapter), it should be clear that each justice system is separate and unique.

Where possible, issues of overlapping jurisdiction, or interagency cooperative efforts, funding and support have been highlighted. A common characteristic among the three justice systems is that the 1990s has been the decade of significant progress in each of the systems. New laws, regulations, directives, programs, and personnel have been incorporated in the federal, tribal and military justice systems. Victims of crime falling under each of these systems now truly have an opportunity to exercise their rights, to be informed, and to be treated with dignity and compassion.

Resources for Native American Victims

The Office for Victims of Crime has supported the development of a number of useful publications and videos to assist Native American crime victims. Specifically these resources are:

Note: Contact the Office for Victims of Crime Resource Center (OVCRC) at (800) 627-6872 for information about the availability of these resources.

- B.J. Learns About Federal and Tribal Court videotape
- Bitter Earth -- Child Sexual Abuse in Indian Country videotape
- Financial Assistance for Crime Victims videotape
- Resource Packages for Children Required to Testify in Federal Court -- Published in 1996, the resources offer two camera-ready activity books with age-appropriate explanations and illustrations of the justice system for children.

The Federal, Indian and Military Justice Systems: Victims' Rights and Assistance

- 1) What four major federal laws have been enacted to provide rights, services and funding for federal crime victims?

- 2) Describe the role of the Federal Victim-Witness Coordinator and give an example of the type of interagency assistance Coordinators can provide.

- 3) Jurisdictional issues are extremely complicated when responding to Native American crime victims. Briefly describe the relationship between federal, tribal and state law in this area (use Jurisdictional Chart for this answer.)

- 4) The Military justice system has responded to crime victims through what mechanisms? What branches of Service(s) do victims' rights now apply?

- 5) In your opinion, what has been the most significant development on the national level that has contributed to the comprehensive system of rights and services now available to victims of federal crimes?

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Projects in Indian Country. (1995). OVC Fact Sheet. Washington, DC: Office for Victims of Crime, Federal Crime Victims Division.

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Chapter 8

Civil Lawsuits for Victims of Crime

Abstract: There are two major and distinct components of America's justice system, criminal and civil courts. Criminal courts deal with that aspect of the justice system that determines guilt or innocence in regard to crimes and metes out criminal sanctions. Increasingly, victims are looking to the civil justice system to pursue their own private actions against perpetrators for the recovery of monetary damages.

Learning Objectives: Upon completion of this chapter, the student will understand the following concepts:

1. Be able to describe distinctions between criminal and civil justice systems.
 2. Understand the mechanics of the civil justice system.
 3. Recognize the types of lawsuits typically brought by victims.
 4. Understand the benefits and limitations of victim civil litigation.
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Introduction

A Right Without a Remedy is No Right at All.

Crime victims often suffer great physical and psychological injuries at the hands of their perpetrators. Despite the overall reduction in crime rates during the last decades, the severity of injuries to crime's victims appears to be increasing. Increasingly, victims of crime look to the civil justice system for vindication of their rights and recovery of financial reparations from offenders. The civil justice system may potentially provide victims with the means to find some recovery for, at least in part, the wrongs committed against them.

Civil Versus Criminal Justice

In some ways, the civil justice system is complimentary to the criminal justice system. However, civil justice has numerous distinctions, many of which may be quite beneficial to victims of crime. The discussion below will provide an overview of the civil justice system that is basic to a victim advocate's understanding of this process.

Civil litigation has become increasingly important for victims for various reasons. First, victims often encounter great financial distress due to their victimization. Medical and therapy bills mount up. Often jobs or income -- as well as property and other assets -- are lost. The civil justice system provides a mechanism for victims to seek recovery for losses resulting from their victimization.

Civil Litigation Can Empower Victims

The recovery of financial benefits, although extremely important, is not the only reason victims look to civil litigation. Civil litigation can *empower* victims. Victims whose lives are seemingly spinning out of control as a result of a criminal victimization can use the civil court and their greater control of this process to help put their lives back in balance. Also, going to civil court often allows the victim to publicize the acts of the perpetrator. This is very important to many victims who have previously kept their victimizations secret. Further, the recovery of financial benefits reinforces the notion that the victim did suffer significant injuries that it was the perpetrator who was responsible for injuring the victim and, therefore, made to pay for them.

Civil Litigation as a Deterrent to Crime

Civil litigation often provides a crime prevention method. When perpetrators, or other negligent parties involved in creating the conditions of victimization, are made to pay for their violent acts or negligence, these acts are often not repeated. For example, when hotels are ordered to pay

money damages for their lack of adequate security that causes rapes or assaults to occur, they often respond by improving security to avoid future lawsuits. This is true of many other institutional or third party defendants who have had to pay damages in negligence suits.

Civil Litigation Basics

As stated above, the civil justice system is in many ways similar to the criminal justice system that most victim advocates are more familiar with.

- In a civil suit, the perpetrator is still referred to as the "defendant", but the victim is now called the "plaintiff".
- Essentially, a legal "action" is commenced by the plaintiff (victim) against the defendant (perpetrator or negligent third party) by "serving" lawsuit papers and filing them in court.
- Subsequently, a period of investigation called "discovery" occurs whereby the details of the matter are investigated by both sides in an effort to provide background information to bolster arguments in a way most favorable to their respective position in court.
- At some point in time a trial is possible, although the vast majority of civil legal actions are settled out of court. Ultimately a "verdict" is reached. The verdict is typically returned by a jury that has sat through the trial listening to the facts as presented in evidence.
- If the verdict results in a "judgment" for the victim, then the victim will attempt to collect the amount now owed to him or her. If the verdict is in favor of the defendant, the victim has lost the trial.
- The legal doctrine of *Collateral Estoppel* provides that, in some cases, the criminal conviction of perpetrators will be considered proof of those perpetrator's legal liability in civil actions brought by the perpetrator's victims.

Victimization as a Tort: A Private Action

When a victim brings a lawsuit, it is typically brought under what is referred to as a "tort" action. As Professor Prosser tell us in his learned treatises *The Law of Torts*, the word tort is derived from the Latin "tortus" or "twisted". As Prosser states, the metaphor is apparent: a tort is

conduct which is twisted, or crooked, not straight . . . broadly speaking, a tort is a civil wrong (Keeton, Dobbs, Keeton, and Owen, 1984).

Essentially, the legal definition of a tort is a private or civil wrong or injury which typically involves the violation of a duty one individual owes to another, often based on the relationship they have to each other. For our purposes here, two distinct kinds of torts will be addressed. The first is an "intention tort" where someone intentionally injures another person. The second kind of tort is a "negligent tort" in which one person fails to perform some duty to care for another person and that causes or contributes to the injury of that other person. These will be discussed in greater detail below.

Proving a Tort Case: Liability

At least two elements must be proven to support a tort claim. One is that of "liability". You first must prove that the defendant is liable in the legal sense, that is, that his or her actions harmed the victim and caused the injury in a legal sense. This is sometimes called the proximate cause of the injuries. The facts one uses to demonstrate liability differ depending upon whether the tort is intentional or negligent. The second aspect that must be proven is that of "damages". Damages are a measurement of what harm has occurred, that is, what are the extent of the injuries suffered by the victim?

First Party and Third Party Litigation

The types of legal actions pursued by victims, and potential sources of financial recovery, also depend upon whether they are suing the perpetrator directly or are bringing their action against another (non-offending) party. This other, so called third-party defendant, who contributed so significantly to the victimization through their negligence, should be held accountable for their contribution to the victimization. This is the difference between "first party" and "third party" litigation.

- In *first party* litigation, the victim is suing the defendant who is the perpetrator. In *third party* litigation, the victim is suing another party who is not actually the person who intentionally caused the injuries. First party litigation might be the victim of a sexual assault suing the rapist.
- Examples of third party litigation include cases where the victim suing a landlord or hotel for failing to provide adequate security which created conditions that allowed a rape to occur; or the lawsuit might be against a school for the negligent hiring and poor supervision of an employee who sexually abused children at the school. Other third party lawsuits are brought against government agencies, for example, correction officials or mental health officials for the negligent release

of dangerous individuals, or against other kinds of employers who negligently employ and retain persons who victimize other employees or customers.

- It is important to note that there is a significant burden on the plaintiff/victim to demonstrate that the negligent third party was actually negligent. Frivolous “deep pocket” searches are discouraged by the law and courts.

Collectibility: Making Judgments Real

One significant aspect of first party versus third party litigation is the issue of collectability. Collectability is a general term which refers to the defendant's ability to pay the judgments rendered against him or her. In first party litigation, where the action is brought directly against the perpetrator of the crime, often the victim is limited to collecting their judgment directly from the assets of the offender. This is because insurance policies that might be available to pay certain kinds of judgments often exclude intentionally committed wrongful acts from coverage and, therefore, payment. (However, as you will see in the insurance section below, this is not always the case.)

Most often, the likelihood of recovering damages on behalf of a victim in first party cases is directly related, at least in large part, to the wealth of the perpetrator. Third party litigation, on the other hand, involves cases that are brought against other entities or institutions that may have adequate resources to pay for victim damages; and, due to the non-intentional nature of their negligence, insurance coverage may apply. This opens up two potential avenues for increasing the likelihood of victim financial recovery:

- Third parties involved in victim litigation tend to be institutions of some financial stability and means (for example, the grossly negligent hotel chain mentioned above).
- Also, these parties are not intentionally committing wrongful acts. Their acts typically are categorized under the rubric of negligent acts. Negligence is generally covered under insurance policies. That means that additional avenues for payment of judgments to victims may be made by insurance companies covering negligent actions.

Causes of Action

A number of different types of civil lawsuits can be brought by victims against perpetrators depending on the facts of the case. Many of these have direct linkage to criminal charges and others are distinct from the criminal law. Although a civil tort is not a crime, as such, they often

are closely related and typically may involve the same event. A brief overview of major types of cases potentially available to victims is listed here. It is important to note that each area, like the other topics discussed in this overview, requires a much more detailed understanding than is available in this brief treatment. It is always important for the victim advocate to obtain competent legal counsel for the victim in the jurisdiction where the matter will be litigated, and not to second guess or otherwise judge the merits of a lawsuit.

Wrongful Death

In the case of a homicide on the criminal side, often a *wrongful death* suit may be brought on the civil side. A wrongful death suit is a civil action that is brought when one person has killed another person and there is no excuse or other justification for this killing. For example, the law allows us to defend ourselves against the real threat of being killed. Therefore, the defense of self-defense is often used to term a homicide as a justifiable homicide.

Assault and Battery

Assault and battery are historically two separate torts which, in many jurisdictions, have been merged into one civil action. Traditionally, the civil action of *assault* is when the perpetrator of the crime has intentionally put the victim in fear of being battered. It is important to note that this fear must be a real fear based on the apparent ability of the perpetrator to commit the battery. The companion tort, called *battery*, is an intentional, offensive, non-consensual touching of the victim by the perpetrator. This touching is usually in the form of a severe injury.

Emotional Distress

Claims for *emotional distress* are often brought by victims against their perpetrators. It is important to note that the emotional distress claim is one that is distinct from the underlying claim of, for example, assault and battery. This is important because emotional distress claims often have longer statutes of limitations during which time a lawsuit may be brought. This means that if a victim had an underlying lawsuit based on being battered, but that time frame has passed, he or she may still be able to bring an action for the emotional distress that was the result of that underlying battery. Emotional distress may be either intentional or negligent. Intentional infliction of emotional distress occurs when the perpetrator has intentionally caused psychological harm to the victim. Often, the actions of the perpetrator must be considered extreme or outrageous and sometimes are described as "outside the bounds of common decency in normal society." The negligent infliction of emotional distress occurs under similar facts but there was no actual intention to cause the emotional distress, it was caused out of the negligence of the perpetrator.

Other Causes of Action

There are several other theories of personal injury that are sometimes available to victims of crime. These include theories of *parental liability* where parents may be held civilly responsible for the injuries caused by their children. *Negligent entrustment* is when one person allows another to use some dangerous instrument when he or she should have known that that other person might cause an injury, and injury does befall the victim. Finally, *Civil conspiracy* or *aiding and abetting* are torts that are recognized in some jurisdictions. This is a situation in which persons other than the individual who actually committed the crime so substantially contributed to the perpetrator's ability to commit the crime that they should also be held somehow responsible for assisting the actual perpetrator.

The Mechanics of a Civil Action

There are numerous activities that occur prior to the commencement of a legal action, perhaps the most important of which is engaging the counsel of a competent attorney. This also illustrates the first significant distinction between the civil justice system and criminal justice system for victims, in that *in the civil process victims hire their own attorneys* to pursue their actions. In criminal court, the prosecutor is a government employee who brings an action on behalf of the government entity against the alleged perpetrator. That is the second important distinction between civil and criminal procedures.

In civil matters, the case is brought by the victim directly against the perpetrator and is typically captioned "*Victim v. Perpetrator*" as opposed to the typical criminal action caption of "*State v. Perpetrator*". This describes what happens in actuality, in that the victim is much more in control of the civil legal action as opposed to being a secondary party, at best, to a criminal prosecution. However, as explained below, this has both costs and benefits for the victim.

- A document called the *Complaint* is prepared by the victim's attorney in consultation with the victim. This document outlines the various aspects of the victimization for which the victim seeks to bring the defendant into court to address.
- This paperwork is *served* on the defendant and returned to court, that commences the formal legal action.
- There are numerous other *Motions*, *Requests* and other legal paperwork which can be filed by the defendant at this time, and throughout the pendency of the law suit.

- The complaint is typically formally responded to by the filing of an *Answer*. In the answer, the defendant puts forward his or her responses and defenses to the victim's complaint. Typically, the defendant can admit or deny facts in the complaint, or leave it to the victim to prove his or her case. Also, the defendant can make counter allegations against the victim, a tactic more often used by defendants.

Discovery: Obtaining Litigation Information

Between the initial filing of paperwork and the ultimate settlement or trial of a civil action, a very important period called *Discovery* occurs. This is a time when both victim and defendant exercise their rights to obtain information from their opposing party.

- For the victim, this often means that they must reveal personal information to the defendant regarding the effect the victimization has had on them.
- Most often, this includes information regarding treatment and therapy, including the records of mental health service providers.
- Perpetrators and defense counsel often abuse Discovery in an effort to intimidate and harass victims. Courts typically offer little protection to victims from these attempts to discourage legitimate litigation.

Although there are methods for maintaining some confidentiality, for the most part victims must reveal this information. In particular, mental health evaluations are used to prove the damages that victims seek to recover compensation for against the perpetrator. These damages must be proven through mental health reports and evaluations.

Several methods are employed by both sides of a lawsuit to obtain information from the other side during Discovery:

- *Interrogatories* are written questions that must be answered by the victim or the defendant within a certain period of time. These questions will range from very basic information regarding where the individual lives up to very complex questions regarding what the result of the injuries have been.
- *Requests for production* might require the provision of copies of medical reports, therapy notes, photographs, and other information. It is important to note that victims are often required to provide information about similar prior injuries that the defendant will attempt to use to either explain away or minimize the current injuries suffered by the victim.

- *Depositions* are often the most unsettling aspect to the discovery period for victims. This is an opportunity for the defendant's attorney to take the transcribed statement of the victim under oath. It is essentially equivalent to testimony at a trial with direct and cross examination by attorneys. However, it typically occurs in the lawyer's conference room and not in court. Of course, the victim has similar rights to obtain information from the defendant and often the deposition of the defendant, is an equally unsettling experience for the perpetrator.

Standing: Who Can Sue?

Standing is a legal concept that basically refers to the ability of an individual to address his or her complaints to the court. In order to have standing, one must generally be able to demonstrate that an injury has been suffered, are otherwise able to prove a sufficient personal interest in a cause of action or controversy, or be a necessary party in that his or her involvement is necessary to a fair and just determination of the outcome of the case. Those most central to a case are referred to as the parties to an action. In order to be a party to an action, one typically must have an interest that is so central to the case that they are necessary to the determination of all the relevant issues involved in a particular action.

In civil litigation there is often a particular order in which a priority is established among those individuals who have standing to bring an action. Typically such a priority of order, for example in a wrongful death suit, might be:

- Surviving spouse
- Children
- Parents of the deceased
- Siblings of the victim
- Other relatives

Unjust Enrichment: Who Can Recover?

It is important to make brief mention here of one particularly important legal doctrine called that of *unjust enrichment*. Unjust enrichment dictates that someone should not be allowed to benefit from their own wrongdoing. For example, someone who commits a murder should not be permitted to receive the proceeds of the insurance policy if he or she was named as the beneficiary of the decedent.

Many times unjust enrichment, which is a common law doctrine, is also provided through statutory schemes sometimes referred to as *slayers statutes*. Slayers statutes, similar to their common law counterpart *slayers rules*, would prevent someone from profiting from their crimes by making it impossible for them to inherit the proceeds of an estate of someone who they have killed. Courts have occasionally used extremely creative methods to assure that unjust enrichment does not occur.

Also, many states have rules that provide immunity between married individuals which prevents them from suing each other, for example, in cases of assault. However, courts are often viewing so-called "interspousal immunity," which is a doctrine created with the purpose of saving and supporting the institution of marriage, not being allowed to be used as a defense for domestic violence or similar crimes.

Burden of Proof

One very important aspect of litigation is the notion of how high a threshold one has to cross to prove a case. This provides a major distinction between criminal and civil litigation. In criminal courts, the *beyond a reasonable doubt* burden of proof is a very high burden, which is often described as having to prove your case to a "very high degree of moral certainty." If a member of the jury has any "reasonable doubt," which essentially means doubt that is formulated well enough that it can be expressed and supported by reason, they should vote for acquittal of the defendant.

However, the burden of proof is much lower in a civil trial. The civil justice system uses the *mere preponderance the evidence burden*, which is sometimes expressed as 51% level of proof. Civil jury instructions, those instructions given to jurors by the judge prior to their deliberations on a case, often describe this as the "scales of justice tipping ever so slightly in the direction of one party versus another," meaning that the jury must find for the party who is supported by the weight of the evidence, even if this is only slightly so. This difference in burden of proof many times results in a situation where a defendant is acquitted (found not guilty) on the criminal side, yet that a perpetrator has a judgment rendered against him or her in civil court.

Statute of Limitations

It is very important to keep in mind that although the victim may have a valid case to bring against a perpetrator, these must be brought within strict time limits set down by law. Although each state is very different in which time limitations are allowed, it is important to keep in mind that these strict limitations do exist in most instances. Once a statute of limitations has run, it is virtually impossible -- unless there are exceptions recognized under the law -- to bring the lawsuit that otherwise might have been brought within the statutory time limit.

- Most statutes of limitations are expressed in absolute years. For example, it is typical for personal injury actions to have two or three year statutes of limitations.
- Statutes of limitations typically begin to run from the point in time when the act occurs.
- Certain events can delay or extend a statute of limitations, called “tolling” the statute.
- The underlying purpose of statutes of limitations is to prevent "stale" cases from being brought to court and thereby denying a defendant, either criminal or civil, from being able to defend himself/herself due to the lack of exculpatory evidence or the fading memory of witnesses and similar reasons.
- However, defendants are not allowed to deliberately conceal their actions and thereby avoid prosecution of a case due to statute of limitations. That is why most statutes of limitations schemes allow for the tolling of the statute during periods where the defendant, for example, has perpetrated a fraud against the plaintiff or committed some other acts to conceal the crime.

Extending Time for Adult Survivors of Childhood Abuse

One particular area where there has been much recent action extending statutes of limitations is child sexual abuse. Many states now extend statutes for bringing civil actions against abusers until many years after the child has reached the age of majority. For example, Connecticut enjoys one of the lengthier statutes which was established at 17 years past the age of majority, or age 35 years. These actions are allowed regardless of the victim’s reason for not bringing the action earlier.

Extensions and Delayed Discovery Approaches

Although these issues are very complex, simply stated, there are generally two types of cases where the bringing of the action has been delayed by the victim:

- One action is that the victim has lost or repressed his or her memory of the abusive events. At a later point, these memories may be recovered in therapy or spontaneously.
- The other major type of delayed action is one where the victim always had his or her memory of the events, but did not begin the action for any number of other reasons.

Reasons for not bringing an action during a period when the memory of the abuse is recalled might include: continued threats or intimidation perpetrated by the offender; the victim did not understand the connection between the abusive acts and the difficulties they may be experiencing in their current lives. Regardless of the reasons, these victims always had access to all or most of their memories of the events. Therefore, the absolute extension of time allows for an date certain within which victims may bring their cases regardless of reasoning for the delay. Victims do not need to prove any particular issue, such as a lost and recovered memory, to begin a suit. However, at that certain age you are forever barred from bringing your action in a state like this.

In the case of repressed and recovered memory, the second form of statute of limitation approach is found. This is when a particular period of time after the recovery of memory is allowed. For example, a few states allow for victims bringing statutes at a certain number of years, usually two or three, after they have recovered their memory. This action is allowed within this time period regardless of what point in life these memories are recovered. In a "delayed discovery" jurisdiction, there is typically no absolute age limitation as the tolling of the statute relates to the period of memory loss or repression. Therefore, someone who is 70 years old and recovers a memory of past abuse presumably would be allowed the two or three year period within which to bring a suit if all other requirements were met.

Lawsuits Involving Children and Women

More recently, due to the increased attention paid to particular forms of victimization, lawsuits particularly tailored for special victim populations have emerged. For the purposes of this discussion, particular crimes against children and women will be briefly discussed. It is important to note that, as Carrington and Rapp point out, "victimization" itself is not a new tort, as such (See generally five articles cited in *References*).

- The civil cases being brought on behalf of victims and, in particular, women victims, are typically based on a number of well recognized civil legal causes of action.
- Crimes against children and, particularly, sexual abuse, are now regularly pursued within the civil justice system. This is particularly true with statutory extensions in the limitations on time that are allowed in these lawsuits.

Examples of how traditional tort concepts can be applied to special victim population cases are evident with child victims. When sexual abuse has occurred, a civil complaint may be prepared that alleges numerous personal injuries. These may include the underlying assaults and batteries, false imprisonments, wantonness or recklessness, and other torts. Also, as emotional and psychological damages are typically evident in child abuse cases, it is very common for emotional distress claims to be brought.

Crucial aspects of a child's emotional distress claim involve the presumption of the severity of the event that is typically recognized by the court, and the fact that most courts will not give much credence to typical defenses such as consent or assumption of the risk. Moreover, due to the young age of the child and the long life span anticipated for a young person, economic damages can be very high.

In addition, issues surrounding the loss of enjoyment of life -- such as the lack of the ability to trust, lack of the ability to form meaningful relationships, lack of the enjoyment of childhood and other similar somewhat more intangible claims -- can be added to more easily economically determined claims such as the loss of employability or the results of lack of academic success. As in crimes against women that are described below, it is not that the underlying legal action itself is different from other civil lawsuits, but that the new territories now being explored by civil courts in establishing damages, judgments and awards for child victims are stretching the traditional views of courts to new boundaries.

Crimes against women are also increasingly handled through the civil courts. As the public recognition of domestic violence, sexual assault, and sexual harassment become better understood and recognized, victims are finding courtrooms more favorable to a just outcome. Also, courts have become more familiar with the psychological impact of crime, and look to psychiatric diagnoses such as Post-traumatic Stress Disorder, and other recognized syndromes such as rape trauma syndrome or battered women syndrome, to articulate the injuries suffered by victims of these crimes.

Defenses

As briefly stated above, in every instance where a victim brings a legal action claiming one of the injuries described here, the defendant will be able to respond and often provides a defense or an excuse for critical actions. Some common defenses include, as discussed above, that the *statute of limitations* has passed. This is what is referred to as a "complete defense." It is often possible to stop victims from pursuing their cases any further if the statute of limitations has run.

Another defense is that of *provocation* or that defendants claim that their actions should be excused because they were somehow provoked by the victim. Defendants may claim that they were involved in *self-defense* or the *defense of others* by saying their actions were justified in that they were only reacting to a threat against themselves or someone else. Victims may also be accused of having *consented* to the act or having enough knowledge that they *assumed the risks* that were apparent by consenting to the act. This basically means that the victim is being accused of knowingly exposing themselves to the harm that ultimately injured them. Although one cannot consent to everything, e.g., you cannot consent to be murdered, other consent -- if proven -- can help the defendant defeat the victim's case.

Finally, victims may be accused of contributing to their own injuries. This defense in some jurisdictions is used to completely defeat the victim's case (*contributory negligence*) and in other jurisdictions it may be used to reduce the amount of money that the victim may be able to recover (*comparative negligence*).

Proving Damages

In addition to demonstrating the liability of one or more defendants, the victim must also prove his or her extent of harm or injury to support an award of damages. Various theories of damages are typically brought in victim litigation cases.

- The most basic of these are physical injuries that require medical intervention. It is often easy for *medical bills* to be produced and to have these included in a judgment for damages.
- In addition, when there is physical injury, often a physician can indicate a specific *permanent partial disability*, or narrow range of disability, such that a jury or court may estimate more accurately what effect this will have on the person's life, thereby allowing a particular damage award. Often issues such as the potential for future medical treatment and the costs of these treatments are figured into such damage awards.
- In other victim cases, however, some less tangible damage theories may be applied. Similar to the costs of past and future medical treatment, the costs of past and future *mental health therapy* may be estimated relatively easily. However, it is often extremely difficult to state with any specificity what the percentage of partial disability for emotional or psychological damage should be. A competent and experienced expert must be engaged to testify on these matters.

Critical Role of Victim Services and Mental Health in Proving Damages

How does one determine issues such as the loss of childhood or adolescence? How are these issues quantified in any way that will make sense in the objective view of the court. The issue is how one can determine whether a loss of academic, professional, or personal potential has occurred. How can you prove that there was a potential there when it was never realized? These are all issues that place the victim service provider, and particularly the allied mental health professionals, in a critical role within the civil justice system. Often, courts look to mental health service providers for treatment recommendations and evaluations of disability to provide

guidance in determining a value that can be placed on the victim's injuries for the purposes of awarding damages.

Judgments

At the conclusion of a civil lawsuit, a *verdict* or *decision* is reached by the jury.

- If that decision is a "verdict of the defendant", then the victim has lost his or her case and is not allowed to recover for injuries against this defendant.
- If the result is a "verdict for the plaintiff", then the victim has won the lawsuit.
- Juries are then requested to move to the next decision: The awarding of a particular sum to compensate the victim for his or her injuries. This is typically referred to as a "judgment."

Collection of Damages Awarded

It is important to note that in a typical victim case, reaching the conclusion of trial and having a judgment rendered for the victim/plaintiff is often only the beginning of the struggle in recovering damages. First, although this is beyond the discussion in this chapter, verdicts and judgments may be appealed. Briefly, a defendant who has lost can seek to have a judgment overturned, lowered, or set aside because the jury or the court failed to follow some legal procedure, or the result of the lawsuit is inconsistent with the prevailing law in a particular state. Therefore, the decision of this trial-level court may be brought up before an appellate court to render a decision as to the validity of the underlying decision, and even if the verdict itself is not attacked, the amount of the judgment may be appealed. Often, defendants seek to lower the amounts of money awarded by juries who they feel were overly zealous in awarding damages to the victim.

However, assuming the judgment withstands any appeals or other challenges, then a collection of that judgment must commence. In the case of insurance coverage, discussed below, insurance companies will usually ultimately pay judgments in accordance with their insurance policies.

Searching for Assets

If a defendant is sufficiently monied so as to be able to pay a judgment and chooses to do so, the collection of that judgment may be similarly swift. However, this is typically not the case in victim cases. Potential assets include, but are not limited to:

- Real property (e.g., a home).

- Other property (such as jewelry, motor vehicles, art work, or other valuable holdings).
- Other assets such as financial holdings, interests in real estate, corporations, or partnerships.
- Other income earned by or owed to the perpetrator.

Additionally, most states allow some method by which income earned or expected by the perpetrator can be garnished. Many times a victim will wait until the perpetrator has accumulated some assets to attempt to execute the judgment. Defendants may win lotteries, receive inheritances, or come into other windfalls which can open them to judgment execution. However, attorneys representing victims know that these are the exception -- and *not* the rule -- and typically the collections process can be a somewhat complex endeavor. This is particularly true with defendants who may attempt to fraudulently transfer their property or other interests to individuals who help them shield their assets from collection actions brought by victims. Nevertheless, a diligent collections process often results in obtaining money to fulfill some, most, or all of the judgment rendered by the court.

Insurance Issues in Brief

It is very useful for attorneys to look to the possibility of insurance coverage in victims' cases. In some instances, the perpetrator may be insured in some way that the result of the direct, first party action against the perpetrator *may* yield some coverage. It is important to note, however, that the likelihood of recovery in first party lawsuits is significantly tempered by underlying public policy regarding insurance. Essentially, insurance policies do *not* cover intentional wrongdoing. This is primarily based on long-standing public policy.

- It is fundamental to our society's well-being that wrongdoing not be encouraged by having the judgments of intentional wrongdoers paid by insurance.

If insurance companies were available to pay for the deliberate wrongful acts of perpetrators, then they might continue to perform critical acts unabated knowing that someone else will be there to pay for their actions.

Exclusions and Exceptions: Catching Coverage

Insurance policies, which can best be understood as contracts between the insurance company and the insured individual, contain exclusions of various sorts. One of the most basic is the

exclusion of intentional, criminal, willful, or expected wrongful acts and damages discussed above.

Counterbalancing these exclusions are various exceptions that are found in insurance contracts or are being carved out by creative attorneys. The types of exceptions to the intentional acts exclusions that are being developed by courts include those where the perpetrator was unable to or otherwise did not form the intent to commit the act.

- For example, if someone of diminished mental capacity were to commit an act, and it was determined that he or she was unable to truly form the intent to commit these wrongs, then coverage might be allowed.

Negligence is Insurable

Third party suits brought against negligent defendants, who are not the actual perpetrators, allow for a much greater possibility for coverage by insurance policies. In the case of negligence, no intentional acts are committed by these third party defendants. As stated above, the hotel chain did not actually commit the assault; however, its knowledge of the high potential of assaults due to past criminal activities, and its failure to increase security to prevent these acts while assuring guests that protection was available to them, results in the determination of negligence.

Three types of insurance are most commonly involved in crime victim cases. These are:

- Automobile insurance.
- Commercial insurance.
- Homeowner's insurance policies.

Automobile Insurance

Automobile insurance policies that cover acts that "arise out of the use, operation, or maintenance of the motor vehicle." An obvious example would be a case where a drunk driver crashes into the victim, causing death or serious injury. These acts are considered within the scope of coverage of an automobile insurance policy.

Some difficult determinations involving automobile policies are implicated when the wrongful act is one that is not normally considered to be out of a typical use, operation, or maintenance of a car. For example, if a drive-by shooting were to occur, should the automobile insurance policy be implicated? Courts differ on their interpretation of this, most finding that the motor vehicle is not actually an instrument of the drive-by shooting, and that the automobile policy will not be implicated.

Premises and General Liability Policies

Commercial insurance policies, similar to homeowner's (or renter's) insurance policies, provide liability coverage for events that occur on particular premises. These insurance policies tend to be broad and cover a number of different types of injuries or accidents. Moreover, coverage may not be limited to events that occur only at these locations. For example, commercial policies may provide coverage for acts that are committed by employees not on the business premises. Similarly, acts that are committed by the homeowner under certain circumstances may be covered, even when the homeowner is not actually on his or her property.

Retribution Against Victims

A disturbing trend in victim's civil litigation cases involves legal retributions brought against the victim by the perpetrator.

- These may be brought in the form of separate lawsuits or counterclaims within the victim's own lawsuit.

Typical counterclaims against the victim include:

- Defamation, libel and slander.
- Invasion of the defendant's privacy.
- Conspiracy or fraud against the defendant.
- Extortion claims against the defendant.
- Claim that the victim's action has caused emotional distress to the defendant.

One additional avenue always available to defendants is to claim that the lawsuit was merely brought for vexatious purposes. A *vexatious lawsuit* is one that the defendant alleges was otherwise groundless and brought only to needlessly harm the defendant in an unwarranted or improper way. This is an area that deserves considerable attention from victims and their advocates. Also, a trend is developing in which those who provide mental health services and evaluations to victims are often the subject of lawsuits brought against them. This is most evident in later discovered repressed memory cases in adult survivors of child abuse litigation, where mental health professionals are sometimes sued for allegedly implanting memories in victims' minds.

Other Cautions for Victims

Although victim litigation often provides excellent opportunities for victims to find remedies to their complaints against perpetrators, it is not often an easy road. Civil litigation is a complex and often difficult process:

- Victims can often be victimized once again in the civil process, despite the fact that they possess more control.
- Victim cases can often be very expensive to pursue.

Victims must be aware of the fact that they are ultimately responsible for the costs of litigation under most legal ethics rules and, if their cases are lost, they can be held responsible for these bills. As noted above, the discovery period is often the most difficult for victims. Victims must, once again, reveal very personal information about themselves and allow themselves to be probed and cross examined by the perpetrator's attorney. This can be a very disturbing proposition for victims who have, in many cases, recently or simultaneously endured the indignities of the criminal justice system. All this is not to say that victims should be overly cautious of litigation. However, victims and advocates must have a realistic view of the civil justice system provided to them prior to commencing such actions.

Conclusion

The civil justice system offers many potential benefits to victims of crime. Victims are in greater control of their lawsuits, as opposed to a criminal trial; this can help provide them with a greater sense of restoration of the control that they may have lost during the criminal victimization. Moreover, the victim often has that sense of empowerment that comes from hauling the perpetrator into court, with the victim having his or her "day in court".

Glossary

Aiding and Abetting. Similar to Civil Conspiracy, is when someone, not the actual perpetrator, so significantly contributes to the criminal operation as to be considered liable for their actions.

Abscond. To go in a secretive manner out of the jurisdiction of the courts, or to lie concealed, in order to avoid their process.

Answer. Formal written responses to the defendants / perpetrators file in response to plaintiff's complaints. These pleading may deny some or all of the allegations; they may raise defenses such as self defense or assumption of risk, or they may allege that even if all of the plaintiff's allegations are true, there is no liability. These pleadings are usually accompanied by legal memoranda and briefs. The names of the pleading vary from jurisdiction. "Demurrers", "motions for summary judgment", motions to dismiss" and "answers" are all descriptions of responsive pleading.

Assault. A cause of action for intentionally putting the victim in fear of a battery, coupled with the apparent ability to commit the battery.

Assumption of Risk. A legal doctrine that may relieve perpetrators of liability for injuries to victims if the victim voluntarily entered into a situation knowing that there was a risk of foreseeable injury (see also: Defenses; Rescue Doctrine).

Automobile Insurance. Insurance policies that cover injuries "arising out of the use, operation, or maintenance" of the vehicle.

Battery. The intentional, offensive, unpermitted touching of the victim by the perpetrator.

Burden of Proof. The threshold of evidence that one party must present in order to prevail in his or her case. In criminal cases, the burden of proof is very high: "beyond a reasonable doubt", or generally 99% of the evidence. In civil cases, however, the burden of proof on the victim / plaintiff is "a mere preponderance", or more than 50% of the evidence.

Causes of Action. The legal basis for a civil lawsuit.

Civil Actions. Lawsuits filed by victims to recover from injuries sustained and damages incurred as a result of the perpetrator's crime.

Civil Conspiracy. See Aiding and Abetting.

Collateral Estoppel. A legal doctrine which provides that, in some cases, the criminal conviction of perpetrators will be considered proof of those perpetrator's legal liability in civil actions brought by the perpetrator's victims.

Collectability. A general term meaning the extend to which defendants / perpetrators have the financial means to pay judgments from assets on hand, assets reasonably to be expected in the future, or financial assistance from such sources as insurance coverage.

Comparative Negligence. The more prevalent approach to reducing amounts paid to plaintiffs / victims allowing partially negligent plaintiffs / victims to recover damages from defendants / perpetrators, however, reducing the amounts of the award by the applicable percentage of the plaintiff's / victim's own negligence. (See also: Contributory Negligence).

Complaints. The formal written pleading filed in Civil Courts alleging that the defendant(s) injured the plaintiff(s), and that they should be liable for damages caused.

Compensation. Monetary reparations made to crime victims by a state or a governmental entity to recover "out-of-pocket" expenses incurred as a result of the crime.

Compensatory Damages. Damages paid to compensate victims for losses caused by the torts of the perpetrator. Such losses include: out-of-pocket expenses, loss of income, expenses such as medical bills, therapy, funeral costs, etc.; loss of present and future earning capacity; conscious pain and suffering; financial support; and, "consortium", the loss of the affection and society of lived ones.

Contributory Negligence. A legal doctrine, now modified in most jurisdictions, that any negligence on the part of the plaintiff / victim will bar civil lawsuits against defendant / perpetrators. (See also: Defenses; Comparative Negligence).

Criminal Action. Cases in which the state prosecutes perpetrators of criminal acts, committed in violation of the state's laws.

Damages. Amounts of money awarded to winning parties in civil suits expressed in a judgment.

Defendants. Parties against whom civil actions are brought.

Defenses. Legal doctrines that relieve defendant / perpetrator of liability for having committed a tort.

Delayed Discovery Rule. A legal doctrine that suspends the running of statutes of limitations during periods of time in which the victims did not discover, or by the exercise of reasonable diligence, could not have discovered, the injuries that would lead to their causes of action against the defendant / perpetrator.

Depositions. Pretrial proceedings in which attorneys for parties in a civil case have the opportunity to examine, under oath, the opposing parties and potential witnesses in the case. Depositions are sworn and reduced to writing. The transcripts may be admissible in evidence at trials if the witnesses are no longer available, or for the purposes of impeachment.

Emotional Distress. Emotional distress, or psychological injuries, can be caused by intentional, reckless, or negligent acts. Intentional infliction of emotional distress occurs when the perpetrator, by extreme and outrageous conduct, intentionally or recklessly causes someone emotional distress. Reckless infliction of emotional distress arises when the perpetrator causes emotional distress willfully and with a callous disregard of the consequences. Negligent infliction of emotional distress arises when the perpetrator acts negligently, causing emotional distress.

First Party Action. Lawsuits brought by victims directly against their perpetrators.

General Liability Insurance. Insurance policies covering whatever losses are enumerated in the policy.

Homeowner's Insurance. Broad based insurance policy which contracts to protect the insured from enumerated caused of accidental injuries to others. The accidents usually are not only confined to acts which happen on the insured's "home" premises, but also covers accidents that happen elsewhere. Renters of premises can obtain Renter's Insurance.

Insured. He or she who has contracted to receive insurance coverage from the Insurer whose actions are otherwise covered by an insurance policy.

Insurer. The business entity which has contracted to provide insurance coverage to the insured.

Judgments. The formal recitations of the outcomes of civil cases. They are almost always reduced to writing, and recorded as a part of the file.

Negligence. A legal doctrine providing that one may be liable to another if he or she: 1) owes a legal duty to the other; 2) materially breaches that duty; 3) the breach is the proximate cause of the other's injury; and 4) the other person suffers damages.

Negligent Entrustment. A tort in which one or more persons give, lend, or allow someone to use, or should have anticipated that that person would use a dangerous instrumentality to injure another.

Parental Liability. A legal doctrine that holds parents civilly liable for the torts and crimes of their children.

Perpetrators. Persons who have criminally injured victims.

Plaintiff. Party bringing civil actions. In the case of victim civil remedies, the victim is the plaintiff.

Professional Liability Insurance. Insurance coverage issued to "professional" persons: doctors, dentists, lawyers, architects, etc., to cover any losses caused by "malpractice" in the course of their professional services.

Provocation. A legal doctrine that may excuse defendant / perpetrator from the consequences of his / her crime / tort if the plaintiff / victim instigated a confrontation, or otherwise caused or provoked the defendant's actions. (See also: Defenses).

Proximate Cause. The "cause in fact" of injury to victims; a "cause" without which the victim's injuries would not have occurred.

Punitive Damages. Damages awarded to victims against perpetrators, over and above compensatory damages, in order to "punish" or "make an example of perpetrators".

Relevance. A rule of evidence. For purposes of this Manual, it simply means any evidence that might tend to prove the truth of the matter.

Renters Insurance. See Homeowner's Insurance.

Rescue Doctrine. A legal doctrine which allows one to recover for injuries suffered in coming to the rescue or assistance of others in peril. It is used as a counter to the defense of Assumption of Risk. (See also: Defenses; Assumption of Risk).

Restitution. Court action that requires perpetrators to make financial payments to their victims, usually as a condition of probation or leniency in sentencing.

Self Defense. The legal doctrine which relieved defendants / perpetrators of liability for torts if they acted in the reasonable belief that they had to use force to defend themselves, or others (loved ones, etc.), from death or great bodily harm.

Settlements. Agreements among the parties to lawsuits to end the suits without trial; usually the plaintiff agrees to drop the lawsuit for a fixed sum of monetary damages paid by the defendants.

Statute of Limitations. Periods of time, set by law after which civil actions cannot be brought. (See also: Defenses).

Third Party Actions. Lawsuits brought against persons whose negligence or gross negligence has facilitated the commission of a tort by a defendant.

Tolling of Statutes of Limitations. The running of statutes of limitations is suspended. (See also: Statutes of Limitations).

Torts. Civil or private wrongs (as opposed to criminal offenses) committed by perpetrators against victims.

Trier of Law. See Trier of Fact.

Trier of Fact. In civil cases, evidence is heard as to the facts, and the facts must be applied in the context of the applicable law. The entity that decides which facts are true is called the "Trier of Fact". This usually is the jury but, in non-jury cases, the trier of fact will be the judge sitting without a jury." Trier of Law, always the judge, who applies the relevant law to the facts as determined by the trier of fact.

Uninsured or Underinsured Motorists. State law usually makes it compulsory that drivers have enough insurance to cover damages if they, or others defined in the policies, injured by motorists who have no insurance, or not enough insurance, to cover injuries that they have caused.

Victims. Persons who have been injured by the criminal acts of perpetrators.

Wrongful Death. The civil action for the killing of one human by another, without justification or excuse.

Civil Lawsuits for Victims of Crime

- 1) Identify and describe three major differences between civil litigation and criminal prosecution from the victim's perspective.

- 2) Name and define three major causes of actions used by victims.

- 3) What are civil statutes of limitations? Discuss statute of limitations innovations applied to adult survivor of childhood abuse cases.

- 4) Discuss the pros and cons of victim litigation.

- 5) What are the two general approaches for victims to collect judgments?

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Civil Remedies**Comparing Justice Systems: Key Elements of a Civil Case**

The following questions address the differences between criminal and civil cases, as well as critical aspects of a civil case. This exercise is designed to help you draw from the information provided in the preceding lectures on *The Dynamics of the Criminal Justice System* and *An Overview of the Civil Justice System*. After reading the case scenario, please complete the following table. A class discussion will follow. This exercise is designed to last 15 to 20 minutes.

Hypothetical Case

Two boys, aged 16 and 19 years old, live with their mother. Their father is deceased and their mother is divorced from their step-father, who lived with them for 3 years. The step-father left home for the last time when the boys were 9 and 12 years old. While he was in the home, his father (the boys' step-grandfather) visited frequently and took the boys on numerous outings to baseball games, the circus, and hiking. The boys have both had trouble in school and with problem behavior. In the course of family counseling, they revealed that the step-grandfather had regularly engaged in sex acts with them and had photographed them performing oral sex acts. The acts took place at a number of places, including his home, and camper. The step-grandfather is retired after building a successful manufacturing business. He lives in the state, in a different town. The mother decides to take action.

Applied Hypothetical: Identify Differences Between Systems

	Criminal Justice System	Civil Justice System
Criminal Charge/s or Causes of Action	1) 2)	1) 2)
Burden of Proof		
Who Controls Case?		
Time Limitations		
Discovery Issues		
Pre-trial Resolutions		
Case Disposition		
Reparations		

Chapter 9

Crime Victim Compensation

Abstract: Crime victim compensation provides greatly needed financial assistance for crime victims in the aftermath of victimization. The first compensation program in the United States was created in California in 1965. Today, all 50 states, plus the District of Columbia and the Virgin Islands, have compensation programs. This chapter will discuss compensable costs, eligibility requirements, the size and structure of compensation programs, and the impact of the *Victims of Crime Act* on state programs.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The definition and purpose of crime victim compensation.
 2. “Core” offenses that are generally considered compensable crimes.
 3. Primary compensation costs covered by all victim compensation programs.
 4. Requirements established by compensation programs that determine a victim’s eligibility to receive benefits.
 5. How victims can receive compensation through application procedures.
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Statistical Overview

- In 1995 state crime victim compensation programs paid \$247,605,531 to 119,113 victims of violent crimes, a decrease of \$9,203,656 in payments and 7,794 victims from the previous year.
- In 1996, state crime victim compensation programs received \$83,843,000 in federal matching funds from the VOCA Crime Victims Fund; this represents 35% of the total amount deposited in the Fund in 1995, \$233,907,256.
- 42,939 victims of assault received 47% (\$118,169,444) of the total amount of crime victim compensation paid to victims and 26,111 victims of child sexual abuse received 12% (\$31,873,317) of the compensation funds paid to victims in 1995.
- Of the expenses for which crime victims received state compensation in 1995, nearly half (\$119,878,335) were for medical related expenses, including medical treatment, dental, and sexual assault in 1995. In addition, \$49,748,382 was paid to victims for lost wages or loss of support; \$46,349,954 was paid to victims for mental health treatment; and \$22,776,342 was paid to victims for reimbursement of funeral expenses.
- Compensation programs now operate in all 50 states, the District of Columbia, and the Virgin Islands.
- Maximum benefits available to victims from the state programs generally range between \$10,000 and \$25,000, though a few states have higher or lower maximums.
- Nationally, the average amount paid to each victim applying for compensation is about \$2,000.
- The median annual payout per state is just under \$2 million. The range of total payments among states is considerable, with 12 states paying less than \$500,000 annually and about the same number paying more than \$3 million.
- While there is no federal crime victim compensation program per se, each state treats federal crime victims in the same manner as victims of state and local crimes.

The above information was provided by the National Association of Crime Victim Compensation Boards and reflect information provided by the U.S. Department of Justice, Office for Victims of Crime, 1996.

History of Compensation

Compensation for victims of crime is one of the earliest forms of victim assistance. Ancient history traces the idea of victim compensation to the Babylonian civilization before 2380 B.C. In the 1950s, Margery Fry, a member of parliament in England, initiated legislation to establish the first compensation program in modern society.

In this country, the first compensation program was established in California in 1965. By 1980, 28 additional states had created programs. By 1995, all 50 states, plus the District of Columbia and the Virgin Islands, have established compensation programs.

The state compensation programs are represented by the National Association of Crime Victim Compensation Boards (NACVCB), a national organization that provides advocacy, training, technical assistance, and communication among state programs. The NACVCB provides a strong national voice on all matters affecting state compensation programs before Congress and the Office for Victims of Crime. In addition, it provides extensive training to its members on a wide range of issues facing programs today -- from administration and funding matters to coverage of emerging areas of victimization.

Overview of Compensation

Crime victim compensation is one of the pillars of victim assistance. For thousands of crime victims each year, it serves as the primary means of financial aid in the aftermath of victimization. While restitution laws requiring reparations to crime victims date back to the 1800s, there is one important distinction between these two sources of financial relief for crime victims: crime victim compensation does *not* require the apprehension and conviction of the offender to provide financial relief to the victim.

Victim compensation is defined as:

“Money paid through a public fund to allow victims to receive out-of-pocket expenses incurred as a result of a violent crime perpetrated against them.”
(National Victim Center, 1992)

This chapter will provide an overview of the types of crimes, the compensable losses, and the eligibility requirements for victims in order to qualify for compensation. Each state program has been created under individual state laws; thus, the programs vary somewhat from state to state. Throughout this chapter, attempts will be made to summarize characteristics common among most state programs.

The information in this chapter has been excerpted largely from various publications produced by the NACVCB including: *Crime Victim Compensation: A Fact Sheet* and *Crime Victim Compensation: An Overview*.

The NACVCB provides this information with the following caveat:

“While there are many characteristics of state programs that are common to all states, it is important to emphasize that each compensation program offers additional and unique benefits and has other requirements. You need to check with the compensation program in your state to gain a full understanding of the eligibility requirements and the benefits for victims, as well as information on how crime victims can apply for compensation.”

Total Benefits Paid by Compensation Programs Nationwide

- According to the NACVCB, approximately \$250 million is paid annually to more than 125,000 victims nationwide.
- California operates the nation’s largest program, paying nearly one third of all compensation benefits nationwide (approximately \$75-80 million annually).
- Only Texas, which pays out approximately \$20-30 million to victims each year, comes close in benefit payout.

Nationwide, the amount of compensation payments is the following:

- The median annual payout per state is just under \$2 million (half the states pay a total less than that, and half pay more).
- The range is considerable, with 12 states paying less than \$500,000 annually and about the same number paying more than \$3 million.

Size of Compensation Programs

The size of state compensation programs is relatively small for state agencies:

- 10 states operate with three or fewer people
- 34 states employ fewer than 15 people
- Seven states operate with more than 20 employees
- California is the largest with over 250 employees

Location of Compensation Programs

Compensation programs, with the exception of Arizona and Colorado, are administered in central state offices. According to the NACVCB, the largest number of state programs are affiliated with criminal-justice related executive branch agencies (one-third), within Offices of Attorneys General (one-fifth), and independent state agencies (one-fifth). Workers' compensation bureaus house five programs, and other programs are affiliated with corrections departments, social services agencies, and finance and management departments. Four states operate their programs within court systems.

While governed by state law, Colorado and Arizona operate compensation programs at the local level through prosecutors' offices. Each of 22 judicial districts in Colorado has a compensation board, and each of Arizona's 15 counties operates a program.

Compensable Crimes

While the extent and types of crimes that are eligible for state compensation benefits differ slightly from state to state, most programs include a basic "core" of offenses. According to research conducted by an NIJ-sponsored study entitled *Compensating Crime Victims: A Summary of Policies and Practices* (Parent, Auerbach, and Carlson, 1992), about three fourths of the state statutes define compensable crimes in the following language:

Criminally injurious conduct that occurs, or is attempted in a state, and poses a substantial threat of personal injury or death, and is punishable by a fine, imprisonment, or death.

In general, victims of personal violence, sexual assault or abuse qualify for compensation, while victims of most property crimes do not qualify. A further explanation of these distinctions is presented below.

Collateral Resources

It is important to emphasize that compensation programs are considered "payers of last resort," meaning that the victim must exhaust all other sources of insurance or public benefits that could pay for medical care, funeral benefits, counseling, etc. Historically, this principle has been incorporated into each state's program because compensation was thought to supplement existing resources of the victim, not to serve as an automatic "payment" in response to victimization.

Compensation programs are “subrogated” to the victim for any expenses the victim recovers from the offender or a third party. NACVCB explains:

“If the victim recovers any money from the offender or any other party liable for the victim's expenses, the compensation program must be paid back for that portion of the expenses for which the program has paid. Generally, if the victim's losses are greater than the amount paid for by the compensation program, the program will expect repayment only after those other losses are fully reimbursed. In other words, if the victim's total losses are \$100,000, and the compensation program awards \$10,000, the amounts recovered otherwise by the victim by other recoveries can go to pay for the remaining \$90,000 in losses before the compensation program needs to be repaid.”

Coverage of Domestic Violence and Drunk Driving Victims

For many years, domestic violence and drunk driving victims were excluded from receiving compensation in most states. The domestic violence exclusion emanated because of concerns that compensation awards to battered women would benefit the battering spouse by not holding *him* financially accountable for *his* crime. There also was the chance that the offender could benefit from a compensation award if the offender and victim continued to live together. Victims of drunk driving crashes were excluded because drunk driving was not considered a violent crime and because of fears of overtaxing the financial resources of state compensation programs.

Amendments to the *Victims of Crime Act*, which provides about 20% of the funding for state programs, required that states cover domestic violence and drunk driving as compensable crimes by 1991.

Compensation Benefits

According to the NACVCB, all compensation programs cover the same major types of expenses, although their specific limits may vary. The primary compensable costs covered by all states are as follows:

- Medical expenses
- Mental health counseling
- Lost wages for victims unable to work because of crime-related injury
- Lost support for defendants of homicide victims
- Funeral expenses

The majority of compensation payments statewide are paid to victims for the above expenses. For example:

- Medical fees comprise well *over half* of the amount of all compensation awards nationwide.
- Lost wage and support payments comprise the next largest payment category for most states.
- Awards for counseling are growing rapidly -- in a few states, 20% to 40% of their awards are now paid for counseling.

In addition, a number of other expenses are paid for by some, but not all, programs, including:

- Moving or relocation expenses, often limited only to instances where the victim is in imminent physical danger, or if medically necessary (such as severe emotional trauma from sexual assault).
- Transportation to medical providers, usually limited to occasions when the provider is located in a place distant from the victim's residence, or when other special circumstances exist.
- Replacement services for work the victim is unable to perform because of crime-related injury (child care, housekeeping), usually limited to payment to non-family members.
- Essential personal property lost or damaged during the crime (all states will cover medically necessary equipment, such as eyeglasses or hearing aids, but only a few can cover anything else).
- Crime-scene cleanup, or the cost of securing a home or restoring it to its pre-crime condition.
- Rehabilitation, which may include physical therapy and/or job therapy; ramps, wheelchairs, and modification of homes or vehicles for paralyzed victims; and driving lessons.

Eligibility Requirements

In order to qualify for crime victim compensation, certain eligibility requirements must be met by the individual filing the claim. Again, eligibility requirements vary from state-to-state.

However, every state requires that victims follow certain critical criminal justice-related provisions or application filing procedures in order to qualify.

According to NACVCB, all programs require that the victim must:

- Report the crime promptly to law enforcement (72 hours is the general standard, although a few programs have shorter or longer periods, and nearly all have "good cause" exceptions applied liberally to children and incapacitated victims, and others with special circumstances).
- Cooperate with police and prosecutors in the investigation and prosecution of the case. The apprehension and/or conviction of a perpetrator is not a prerequisite to receiving compensation.
- Submit a timely application to the compensation program (generally one year from the date of the crime, although a few states have shorter or longer time frames, and most can waive these requirements for exceptional circumstances) and provide other information as requested by the program.
- Be innocent of criminal activity or significant misconduct that caused or contributed to the victim's injury or death.
- In addition, since collateral sources need to be utilized first (before compensation can be paid), eligibility depends on whether the expenses for which reimbursement is sought have not been or cannot be paid from some other collateral source (medical insurance, other public assistance programs, etc.). If the collateral source is just a potential source of payment, like offender restitution, the compensation program generally will pay anyway and expect to be repaid if the victim ever receives the collateral resource.

Secondary Victims

An important aspect of compensation is the eligibility of a victim's dependents or other secondary victims. Generally eligibility for these victims depends on the eligibility of the "direct" victim -- the one who suffered the injury or death. If a homicide victim was engaged in criminal activity, for example, the family generally would *not* be eligible for any benefits.

Emergency Awards

Many, but not all compensation programs have established emergency award provisions allowing the program to make an emergency award to a victim within a few days or weeks. However, there is a trend away from granting emergency awards due to the difficulty of

verifying the claims under such expedited situations. Most programs now limit emergency awards to cases of extreme hardship, and because of the delays in processing other claims when staff must attend to emergency requests. Emergency awards are also limited to relatively small amounts.

Jurisdiction and Filing Claims

Victims must apply for compensation in the state where the crime occurs. Until the passage of the *Victims of Crime Act* (VOCA) in 1984, state programs had set up a complicated nationwide system of reciprocity agreements between states for covering out-of-state victims that became crime victims while visiting their state. In order to qualify for federal VOCA payments, states have been required for the last decade to cover residents and nonresident, including victims of federal crimes. Of course, victims have to meet the eligibility requirements of the state statutes.

The NACVCB states:

- Victims of crime are eligible for compensation in the state where the crime takes place, and should make an application to that state program.
- All states, with the exception of Nevada, will accept applications from nonresidents who are injured within their borders (a very few states restrict eligibility to U.S. citizens).
- If the crime occurs in Nevada to a nonresident, the victim should apply in his or her state of residency. All of the states will honor such applications as if the crime had taken place within their own borders.
- A few states extend coverage to their residents who are injured in other states with compensation programs, as well as other countries, but awards are usually conditioned upon the victim first applying in that other state or country (a number of countries, including Canada, Great Britain, Germany, France, Sweden, and Australia, have compensation programs).

Maximums and Limits

Every state program has established a limit on the maximum benefits available to victims. Nationwide the following maximum benefits apply:

- Currently, maximum awards range between \$10,000 and \$25,000, although a few states have higher or lower maximums.

- Nationally, the average amount paid to each victim applying for compensation is about \$2,000.
- In addition, many states have lower limits on specific compensable expenses, like funerals and mental health counseling.
- Each state can provide information on the specific benefits that are available to victims within its jurisdiction.

The Application Process

Victims typically learn about crime victim compensation programs from local victim assistance providers, police, prosecutors, and public awareness activities (posters, billboards, and/or public service announcements) conducted by the state program. For many crime victims, missing the application filing deadline is one of the most painful “second injuries” in the aftermath of victimization. State programs generally have very strict policies on application deadlines, and do not accept late applications -- usually one year after the crime. However, exceptions are made in almost all states for crimes involving child sexual abuse cases -- extending the filing deadline for “just cause.”

While compensation programs have instituted many policies and programs for “getting information out statewide” about their programs, this is an area that needs greater improvement on the part of compensation programs. However, with many programs facing limited resources to make payouts, it presents a “double edged sword” when public awareness campaigns increase demands on existing programs.

According to NACVCB:

- The victim is responsible for completing the application form and providing all requested documentation. The victim must return the form to the compensation program or some designated intermediary.
- Most programs process claims through a staff centralized in one office in the state capital, but a few states have branch or regional offices, and a few (other than Colorado and Arizona) make use of locally-based individuals in other entities or agencies to perform preliminary work on applications (document gathering and verification) prior to final decision making in the central office.

Decision-making authority varies from state to state:

- About half the states use part-time boards or commissions to determine eligibility and awards.

- About half authorize full-time administrative staff (usually program directors) to make determinations.
- In court-based programs, judges or court-appointed officials decide claims.

Funding of Compensation Programs

State compensation programs receive funding from a variety of sources. However, there are two primary sources on the state level that fund programs:

- Funding from fees or charges that offenders pay.
- Funding from general-revenue appropriations from legislatures.

According to NACVCB, more than four-fifths of the states are in the first category, gaining most of their income from offenders. In fact, in a large majority of states, no tax dollars are involved at all in either the administration of the program or in the awards given to victims.

An additional funding issue facing compensation programs today is recovering restitution from convicted offenders in order to help offset the cost of providing compensation benefits to their victims. This is described as “fund recovery” measures -- holding offenders and others liable for injury to victims, and making them pay for the consequences of their crimes. Some state programs are making special efforts to seek restitution from offenders and are working with prosecutors and judges to ensure restitution is ordered and collected, as well as monitoring restitution payments. However, fund recovery remains a small source of total program income thus far, with only a few programs beginning to recover more than 10% of their awards.

Recent Trends in Compensation

In some states, claims doubled, tripled, and even quadrupled in the period from 1985-1992. The greater visibility of the programs, the growth in other victim services, and new laws mandating that rights, services and information be provided to victims have resulted in more and more victims applying for help.

- While compensation programs have strived to meet this rising demand, stresses on program resources and administration are inevitable, particularly as many state government budgets have declined, and specific sources of revenue for compensation programs have failed to keep pace.
- For many programs, there continues to be concern about whether there will be enough money to pay claims, and enough staff to process them, in the near future.

- Compensation programs everywhere are working hard to process claims promptly and, at the same time, are seeking necessary legislative changes to boost revenue and control costs.
- The healthy growth in claims is an extremely positive sign; it shows that more victims are receiving the financial help they need. Programs will continue to work to ensure that the resources are there when they are needed by victims, by exploring new funding options and increases, and maintaining controls over costs to the extent reasonable and necessary.

Victims of Crime Act

With the enactment of the *Victims of Crime Act* of 1984, (amended), state compensation programs can receive federal VOCA funds that equal 40% of the previous year's compensation award amounts paid by the state funds.

- Federal funds provide about 20% of the monies available to states for making awards to victims.

The funding formula for compensation programs works in the following way:

For every 100 state dollars spent, the program will receive 40 federal dollars through a grant process that will make the funds available a little over a year after the end of the fiscal year upon which the calculation is based. This theoretically results in a 72%/28% state-to-federal mix of money (out of every \$140 dollars available, \$100 will be state, and \$40 will be federal), but since most programs are paying more in awards each year, the federal funds will be proportionately less of the total by the time they are available. States also must bear the entire burden of their administrative budgets, since none of the VOCA funds can be used for administration. (NACVCB)

To qualify for federal funding, states must meet the following VOCA requirements:

- Programs must cover medical expenses, mental health counseling, and lost wages, as well as funeral expenses and lost support for families of homicide victims.
- They must also consider drunk driving and domestic violence as compensable crimes.
- They must not categorically exclude domestic violence victims on the basis of their being related to or living with the offender. (Programs may deny claims when an award to the victim would “unjustly enrich” the offender.)

- Programs also must comply with statistical reporting requirements.
- All states currently meet the standards, except Nevada, which does not cover nonresident criminally injured within its borders.

The VOCA grant program is administered by the Office for Victims of Crime within the U.S. Justice Department, which also provides valuable technical assistance to state compensation programs.

Federal Victims

With the passage of VOCA, as stated previously, victims of crimes that occur under federal jurisdiction, such as on Indian reservations, military installations, national parks, or other federal lands, are eligible for compensation in the state in which the crime occurred.

NACVCB states:

Since there is no federal crime victim compensation program, each state treats federal crime victims as fully eligible for all the benefits available for victims of state and local crimes. Compensation programs depend on the help of federal victim/witness coordinators in informing federal victims of their opportunity to apply for benefits.

Crime Victim Compensation

- 1) Generally, what is the range of maximum benefits available to victims from compensation programs?

- 2) Which states do not have victim compensation programs?

- 3) What are the five primary compensable costs covered by all states?

- 4) What is “unjust enrichment?”

- 5) What are the two principal state sources and one federal source of funding for victim compensation programs?

What is Crime Victim Compensation?

Crime victim compensation programs can pay for the otherwise-unreimbursed expenses victims of violent crime incur as a direct result of their personal injuries. These programs, which operate through state and local governments, pay for medical expenses, mental health counseling, lost wages, and funeral expenses, and for loss of support for a victim's dependents.

Property loss (damaged or stolen property) is usually not covered, with the exception of eyeglasses, hearing aids and other medical devices. Compensation is awarded only when other sources of payment, such as medical or auto insurance, other public benefits, or restitution, are not readily available to the victim. Maximum benefits generally range between \$10,000 and \$25,000, although a few states have higher or lower maximums. (Nationally, the average amount paid to each victim applying for compensation is about \$2,000.) About \$250 million is being paid to more than 125,000 victims nationwide each year.

Why is it so Important?

While no amount of money can erase the trauma and grief suffered by crime victims, financial assistance can be crucial in helping many people through the recovery process. For some victims, these funds can help preserve the stability and dignity of their lives.

How Many States have Crime Victim Compensation?

How Many Countries?

All 50 states, the District of Columbia, and the Virgin Islands have active victim compensation programs. (There is no federal compensation program, but federal funds supplement the states' funds, and victims of federal crimes are fully eligible in the states where the crimes occur.) Each state conducts its program according to its own law, but most of the programs are similar in scope and operation. A number of other countries operate compensation programs, including Britain, Germany, Japan, Canada, Australia, and New Zealand.

What are the Eligibility Requirements for Victims and their Families?

In general, the victim must be innocent of criminal activity and "contributory misconduct," report the crime promptly to the police, cooperate with the criminal justice system, and submit

a timely application. A conviction of the offender is not required. Victims are eligible regardless of whether the crime is under federal, state or military jurisdiction. The victim is eligible in the state where the crime took place, regardless of whether the victim is a resident of that state.

How Does the Application Process Work?

Typically, a victim may receive a compensation application from a prosecutor's office or police department, or by contacting the compensation program itself. The help of victim advocates in providing applications and assistance in filing is vital to the process, since most compensation programs operate with very small staffs. Once completed, the application is submitted to the compensation program in the state where the crime occurred. The program staff verifies the information, obtains police reports to confirm the circumstances of the crime, and notifies the victim concerning the victim's eligibility and what expenses can be paid. The victim may appeal the decision.

Where Does the Money Come from to Pay the Claims?

In two-thirds of the states, no tax dollars are involved. All the money for compensation to victims comes from fines, penalties, court costs, or other assessments against convicted criminals. For example, a state might require each convicted felon to pay \$25 into the compensation fund, or might assess a \$3 surcharge on all moving traffic violations. About a third of states use general appropriations and criminal fees. In addition, the federal Crime Victims Fund - financed entirely from federal criminal fines and fees - provides supplemental funds to each state.

What about Victims Injured in Crimes in Foreign Countries?

Some states will cover their own residents when injured outside the United States, but many cannot, since their laws limit their coverage only to crimes occurring within their own borders. While a number of foreign countries operate compensation programs, benefits may be limited and difficult to access.

Where can I get More Information?

Contact the program in your state or call the National Association of Crime Victim Compensation Boards at (703) 370-2996.

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Chapter 10

The Mental Health Impact of Crime: Fundamentals in Counseling and Advocacy

Abstract: The President's Task Force on Victims of Crime in 1982 called on the mental health community to study crime-related psychological trauma, to develop psychological treatment programs for crime victims, and to work with victim services to insure that crime victims have access to competent psychological treatment. Considerable progress has been made since 1982. This chapter discusses the types of trauma likely to be experienced by crime victims, the factors that influence victim recovery from crime-related trauma, what crime victims expect from the criminal justice system, and how criminal justice professionals can respond to the mental health needs of crime victims.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. Identification of the major types of immediate and short-term trauma associated with crime victimization.
2. Identification of long-term crime-related psychological trauma.
3. Why the criminal justice system should concern itself with crime-related psychological trauma of crime victims.
4. Previctimization and postvictimization that are important to consider in victim recovery.
5. How the criminal justice system can address the needs of traumatized crime victims.

Introduction

In 1982, The President's Task Force on Victims of Crime (President's Task Force, 1982) concluded that the criminal justice system's treatment of crime victims was a national disgrace and specifically noted that violent crime produces psychological as well as physical injuries. The President's Task Force also called on the mental health community to:

- Develop immediate- and long-term psychological treatment programs for crime victims and their families.
- Work with victim services to insure that crime victims have access to competent psychological treatment.
- Study crime-related psychological trauma.
- Establish training programs for practitioners who work with crime victims.

Major Types of Short and Long-term/Crime-related Psychological Trauma

Short-term Crime-related Psychological Trauma

- Short-term trauma is defined as that which occurs during and immediately after the crime until about three months post-crime.
- This time frame for short- versus long-term trauma is based on several studies showing that most crime victims achieve some significant recovery sometime between one and three months after the crime (Kilpatrick, Veronen & Resick, 1979; Norris & Kaniasty, 1994; Rothbaum, Foa, Riggs, Murdock & Walsch, 1992).
- Few crime victims are anticipating a violent assault at the time it occurs, so most are shocked, surprised, and terrified when it happens.
- They often have feelings of unreality, thinking, "this can't be happening to me."

Many violent crime victims also describe experiencing extremely high levels of physiological anxiety:

- Rapid heart rate.
- Hyperventilation.

Cognitive symptoms of anxiety include:

- Feeling terrified or helpless (Veronen, Kilpatrick & Resick, 1979; Kilpatrick, Resnick, Freedy et al., 1994).

Such physiological and emotional reactions are normal "flight or fight" responses that occur in dangerous situations.

In the days, weeks, and first two or three months after the crime, most violent crime victims continue to have high levels of fear, anxiety, and generalized distress (Kilpatrick, Veronen & Resick, 1979; Kilpatrick, Resick & Veronen, 1981; Norris & Kaniasty, 1994).

- This distress disrupts their ability to concentrate and to perform simple mental activities that require concentration.
- They are preoccupied with the crime (e.g., they think about it a great deal of the time; they talk about it, they have flashbacks and bad dreams about it).
- They are often concerned about their safety from attack and about the safety of their family members.
- They are concerned that other people will not believe them or will think that they were to blame for what happened.

Many victims also experience negative changes in their pre-crime beliefs that the world is a safe place where you can trust other people, and where people get the things they deserve out of life (e.g., Janoff-Bulman & Frieze, 1983; McCann & Pearlman, 1990).

Long-term Crime-related Psychological Trauma

Crime-related psychological trauma is not limited to a few days, weeks, or months after a violent crime. Nor is the psychological trauma experienced only by the crime victim. The scientific literature concerning long-term psychological trauma has grown enormously since the publication of the President's Task Force Report in 1982, so it is only possible to provide a brief review of the major types of long-term crime-related psychological trauma.

Post-traumatic Stress Disorder (PTSD)

The DSM-IV diagnosis of PTSD refers to a characteristic set of symptoms that develop after exposure to an extreme stressor (APA, 1994).

Sexual assault, physical attack, robbery, mugging, being kidnaped, child sexual assault, observing the serious injury or death of another person due to violent assault, and learning about the violent personal assault or death of a family member or close friend are specifically mentioned in the DSM-IV as types of stressors that are capable of producing PTSD. When exposed to these stressor events, the person's response must (according to the DSM-IV) involve intense fear, helplessness, or horror. Characteristic symptoms after the traumatic event include:

1. *Persistent reexperiencing of the event* (i.e., distressing dreams, distressing recollections, flashbacks, or emotional and/or physiological reactions when exposed to something that resembles the traumatic event.)
2. *Persistent avoidance* of things associated with the traumatic event or reduced ability to be close to other people and have loving feelings
3. *Persistent symptoms of increased arousal* (i.e., sleep difficulties, outbursts of anger, difficulty concentrating, constantly being on guard, extreme startle response).
4. *Duration of at least one month* of symptoms.
5. *Disturbance produces clinically significant distress or impairment* in social, occupational or other important areas of functioning.

There are substantial research data from adults indicating that crime-related PTSD is a common reaction to violent crime (e.g., Kilpatrick, Saunders, Veronen, Best & Von, 1987; Kilpatrick & Resnick, 1993; Kendall-Tackett, Williams & Finkelhor, 1993; Breslau, Davis & Andreski, 1991; Resnick & Kilpatrick, 1994; Freedy et al., 1994). This research has found:

- Rates of PTSD are much higher among those who have been victims of violent crime than among those who have been victims of other types of traumatic events.
- For example, Resnick et al. (1993) found that the lifetime prevalence of PTSD was significantly higher among crime victims than victims of other traumatic events (25.8% vs 9.4%).

- The same study found that crime victims whose crimes resulted in physical injuries and who thought they might have been killed or seriously injured during the crime were much more likely to suffer from PTSD than victims whose crimes did not involve life threat or physical injury (45.2% vs 19%).
- Rates of PTSD appear to be higher among victims who report crimes to the criminal justice system than among nonreporting victims (Kilpatrick & Resnick, 1991; Freedy et al., 1994).
- Importantly, there is also evidence that many crime victims with PTSD do not spontaneously recover without treatment, and that some crime victims have PTSD years after they were victimized (Kilpatrick et al., 1987; Resnick et al., 1993; Hanson et al., in press).
- Long-term, crime-related psychological trauma is not limited to PTSD. Compared to people without a history of criminal victimization, people with criminal victimization have been found to have significantly higher rates of *major depression*.

These findings have been identified in a number of studies including: (Sorenson et al., 1987; Atkeson et al., 1982; Ellis, Calhoun & Atkeson, 1980; Kilpatrick, Edmunds & Seymour, 1992; Frank & Stewart, 1984; Saunders et al., 1992), *thoughts of suicide* (Kilpatrick et al., 1992; Saunders et al., 1992; Kilpatrick et al., 1985), *attempting suicide* (Kilpatrick et al., 1985; Kilpatrick et al., 1992; Saunders et al., 1992), *developing alcohol or other drug abuse problems* (Burnam et al., 1988; Cottler et al., 1992; George & Winfield-Laird, 1986; Kilpatrick et al., 1994; Sorenson et al., 1987), and *anxiety disorders* such as panic disorder (Burnam et al., 1988; Saunders et al., 1992), *agoraphobia* (Burnam et al., 1988; Saunders et al., 1992), and *obsessive compulsive disorder* (Burnam et al., 1988; Saunders et al., 1992).

In addition to these mental disorders and mental health problems, violent crime often results in profound changes in other aspects of the victims' life. Many victims experience problems *in their relationships with family and friends*.

Among the relationship problems they can experience is difficulty in sexual relations with their partner (Becker, Skinner, Abel & Tracy, 1982; Becker et al., 1986; Resick, 1986; Saunders et al., 1992). Often because of their high levels of crime-related fear, many victims *change their lifestyles substantially and restrict their usual activities*.

The *negative changes in pre-crime beliefs and attributions about the world* that are short-term problems often become long-term problems (e.g., Kilpatrick & Otto, 1987; Resick, 1993; Resick & Schnicke, 1993). Compared to non-victims, crime victims also experience *increased risk of future victimization*.

Crime Victims' Expectations Regarding Mental Health Counseling for Crime-related Psychological Trauma

Most crime victims think that the criminal justice system should be responsible for providing them with counseling for crime-related psychological trauma (Freedy, Resnick, Kilpatrick, Dansky, & Tidwell, 1994; Amick-McMullan et al., 1991; Kilpatrick, Amick & Resnick, 1990).

A national probability household sample of surviving family members of homicide victims (Kilpatrick et al., 1990) and a sample of South Carolina crime victims whose cases were recently adjudicated by the criminal justice system (Freedy et al., 1994) were asked if they thought the criminal justice system should be responsible for seeing that crime victims and their families receive access to psychological counseling and several other services.

- Almost three out of four surviving family members of homicide victims (74%) and more than four out of five crime victims (83%) said the criminal justice system *should* provide access to counseling.
- In contrast to their expectations that access to counseling should *be provided*, a majority of surviving family members of homicide victims (50%) and crime victims (63%) said that they and their families *did not have* adequate access to psychological counseling.
- In the South Carolina crime victim study, only 27% of crime victims received psychological counseling (Freedy et al., 1994).
- Even among those crime victims who developed crime-related PTSD, only slightly more than a third (36.7%) ever received any counseling.

This is particularly noteworthy because *virtually all of these crime victims would have been eligible for crime victim compensation coverage for their mental health counseling*. Clearly, a problem exists because most crime victims expect the criminal justice system to provide them with access to counseling, but most victims -- including those with crime related PTSD -- say they don't get the counseling they need.

Helping Victims Who May Need Mental Health Counseling

Criminal justice system professionals and other victim advocates encounter crime victims with crime-related psychological trauma every day. Few criminal justice system professionals and other victim advocates are trained mental health professionals, so they often have questions

about how they can best deal with victims to reduce their psychological trauma. Because they are not mental health professionals, criminal justice system professionals or other victim advocates are not expected to provide specialized mental health treatment to victims with crime-related psychological trauma.

However, criminal justice system professionals and victim advocates do need to know about state-of-the-art specialized counseling procedures for crime-related psychological trauma. They also need to know how to help victims obtain access to adequate counseling. In order to appropriately refer crime victims to mental health counselors, criminal justice professionals must be familiar with the training and credentials of the various professionals who may be available.

Major Types of Mental Health Professionals and Their Training

Mental health professionals differ with respect to the amount and type of training they received prior to getting their professional degree. Here is a brief description of the major types of "mainstream" mental health professionals and their training.

- *Psychiatrists* are medical doctors who receive an M.D. degree after completing four years of medical school. They also complete a one year internship and at least two additional years of specialized psychiatric residency training. In addition to providing psychotherapy, psychiatrists can prescribe medications.
- *Clinical psychologists* receive at least four years of graduate training that includes supervised experience in the assessment and treatment of clients. They also complete a one year internship prior to receiving a Ph.D. or Psy.D. degree. In most states, clinical psychologists must also complete at least one year's additional supervised experience after they receive their doctoral degree.
- *Clinical social workers* receive an M.S.W. degree after two years of graduate training including classes and field work. Some of this training involves supervised assessment and treatment of clients. Additional years of postgraduate training are often required to become a licensed clinical social worker, L.C.S.W.
- *Marriage and family therapists* must have at least a masters degree in some behavioral science field and two years of additional supervised clinical practice with couples and families.
- *Masters degree clinical mental health counselors* usually have two years of training that includes some type of supervised internship. These mental health counselors can be certified by the National Academy of Certified Clinical Mental

Health Counselors. Additionally, many states provide an L.P.C. license, Licensed Professional Counselor.

In addition to these "mainstream" mental health providers, certain other groups also provide counseling services to victims. These include pastoral counselors from the clergy and some nurses with special mental health training. Traditional healers from Native American cultures may not fit into these traditional mental health professional categories, but have specific expertise and training based on the knowledge and mores of their culture.

Another important issue in evaluating the credentials of mental health professionals is whether they are licensed, certified, or registered in the state where services are being provided. These usually require passing an oral and written exam.

A final consideration in evaluating the credentials of mental health professionals is the extent of their specific knowledge and experience in working with crime victims. Unfortunately, there is no requirement that graduate training for any type of mental health professional include information about assessment and treatment of crime-related psychological trauma. Nor does the licensure process require possession of this knowledge and expertise. Thus, there is no guarantee that any given mental health professional will be knowledgeable about assessment and treatment of crime-related psychological trauma. Therefore, it is necessary to inquire about the extent of a mental health professional's expertise in this area.

Therapy for Crime-Related Psychological Trauma

There are literally hundreds of different psychotherapies, but relatively few are designed specifically for use with crime victims and have had their efficacy evaluated. Most of the research on efficacy of treatment for crime-related psychological trauma has been conducted with adult victims of rape rather than with child victims or with adult victims of other types of crimes. However, much of what has been learned from research on treatment of rape victims is probably applicable to treatment of other crime victims.

As was previously noted, many mental health professionals who treat crime victims have no specific training or expertise in crime-related psychological trauma. Therefore, they tend to use generic treatment procedures rather than treatment specifically targeted to crime-related trauma. However, there are specialized treatments that have received some type of evaluation as to their effectiveness. Most work has been done developing and evaluating treatments for rape-related psychological trauma and/or for victims of various types of traumatic events who developed PTSD. Readers interested in learning more about specialized treatment procedures should consult the following references (Briere, 1992; Calhoun & Atkeson, 1991; Falsetti & Resnick, in press; Foa, Rothbaum, Riggs, & Murdock, 1991; Foa, Rothbaum & Steketee, 1993; Kilpatrick, Veronen, & Resick, 1982; McCann & Pearlman, 1990; Resick & Schnicke, 1993).

Length and Timing of Treatment

How long treatment should be depends on a number of factors including the extent of the victim's crime-related psychological trauma and the amount of external social support the victim has. Most treatment should be relatively short term in nature, however. Crime-related psychological trauma does not end with the trial, so victims may need brief booster sessions at other stressful times in their lives including during parole hearings or release of offenders.

Types of Crime Victims Most Likely to Need Mental Health Counseling

Not all crime victims need or can benefit from specialized mental health counseling. Research has contributed to our understanding of which victims who are most likely to develop crime-related psychological trauma and who are most likely to require consultation with a trained mental health professional.

Of course, these are general guidelines. Not *all* victims with these characteristics need mental health counseling, and some victims without these characteristics do need counseling. A more detailed treatment of this topic is contained in the following references: (Hanson et al., 1995); Lurigio and Resick, 1990; Resnick and Kilpatrick, 1994; Weaver and Clum, 1995).

Previctimization Characteristics of Victims

Before a crime occurs, victims differ in respect to their demographic characteristics, whether they have ever been a crime victim before, and how well adjusted they were before the crime. It is reasonable to assume that some of these previctimization characteristics might influence the traumatic impact of a new violent crime experience.

Although there are some exceptions, most studies show that victims' demographic characteristics such as gender, race, and age have little (if any) impact on crime-related psychological trauma (Lurigio and Davis, 1989; Calhoun and Atkeson, 1982; Kilpatrick and Resnick, 1993).

Prior victimization history has been consistently found to increase the likelihood of psychological trauma following a new crime (Burnam et al., 1988; Kilpatrick, Resnick, Saunders and Best, in press; Resnick, 1987). Specifically, victims with a prior victimization history suffer more crime-related psychological trauma after experiencing a new crime than victims without prior victimization. *This highlights the importance of inquiring about prior victimizations.*

The prior mental health history of the victim appears to be related to the extent of crime-related psychological trauma a victim experiences (see Lurigio and Resick, 1990, review; Kilpatrick, Resnick, Saunders and Best, in press; Resnick and Kilpatrick, 1990). Kilpatrick et al (in press) found that women who had PTSD in the past were substantially more likely to get PTSD after experiencing a new crime than women who had *not* had PTSD previously.

Resnick, Kilpatrick, Best and Kramer (1992) found that prior history of most mental disorders did not increase risk of developing PTSD after experiencing a stressful, violent crime. However, a history of major depression did increase the risk that PTSD would develop, but only if the crime was highly stressful. This suggests that victims with PTSD or depression may be particularly vulnerable to crime-related psychological trauma, but also confirms the important role played by the stressful nature of the crime itself.

Seriousness of the crimes has consistently been found to be related to the degree of crime-related psychological trauma (Kilpatrick et al., 1989; Lurigio and Resick, 1990; Kilpatrick et al, in press; Kilpatrick and Resnick, 1993; Weaver and Clum, 1995; Resnick et al., 1993).

In general, violent crime such as rape, aggravated assault, homicide and alcohol-related vehicular homicide produce more crime-related psychological distress than property crimes like burglary. Also, victims' appraisals of how dangerous the crime was are related to crime related psychological trauma. (See Weaver and Crum's review, 1995). In particular, a belief that one might have been seriously injured or killed in a crime is a more powerful predictor of distress than objective factors such as physical injury, force and use of a weapon. Research evidence is clear that how serious and dangerous the crime is constitutes the most important factor in determining crime-related psychological trauma.

Postvictimization Factors

Two major postvictimization factors are thought to play an important role in victim recovery from crime-related psychological trauma. The first is social support. In general, most studies find that good relationships and support from family members and friends assist victims' recovery (e.g. Hanson et al., 1995); Lurigio and Resick, 1990; Kaniasty and Norris, 1992). Consequently, it is important to determine the extent and supportiveness of a crime victim's potential social support network. Victims with little social support are probably more likely to need professional counseling.

The second major postvictimization factor is the degree and nature of exposure to the criminal justice system. Although participation in the criminal justice system is generally regarded as a negative factor in victims' recovery (e.g., Kelly, 1990; President's Task Force on Victims' of Crime, 1982; Symonds, 1980), there are some data suggesting that involvement with the criminal justice system need not always have a negative effect (Kilpatrick and Otto, 1987; Lurigio and

Resick, 1990; Resick, 1988). A positive experience, however, is largely reliant on treatment of victims that is comprehensive, sensitive and inclusive.

There is no question that the criminal justice system is stressful for victims. The whole point of making the criminal justice system more "victim friendly" is the assumption that doing so may actually reduce the trauma to the victims. It is also reasonable to assume that being believed and treated well by the criminal justice system could make things better for victims, notwithstanding the inherently stressful nature of the criminal justice system.

How Can the Criminal Justice System Address the Needs of Traumatized Crime Victims?

Kilpatrick (1986) provided the following list of suggestions about how criminal justice system personnel can avoid producing additional trauma to crime victims:

- Treat victims as human beings, not as evidence.
- Always provide victims with information about case status and prepare them for what will happen at trial.
- Pay close attention to any psychological trauma the victim may be experiencing.
- Arrange for someone to be present at the trial whom the victim can count on for emotional support.
- Inquire about any specific fears or concerns the victims may have about trial and testimony.
- Inform and consult with victims about potential plea-bargain procedures.
- Give victims opportunity for input into proceedings when possible, including the opportunity to make a victim impact statement.
- Refer victims who need help with stress management to mental health professionals specifically trained to provide it.
- Tell victims you are sorry that the crime happened and ask how you can help.

The Mental Health Impact of Crime: Fundamentals in Counseling and Advocacy

- 1) Identify three possible victim reactions that constitute *short-term* crime related trauma.

- 2) What are the five characteristic symptoms of post-traumatic stress disorder?

- 3) Are there any previctimization characteristics that might affect how a victim reacts following a crime? If you, please describe.

- 4) Name 3 factors related to the crime or postvictimization factors that influence victim recovery from crime related psychological trauma.

- 5) How can the criminal justice system address the mental health needs of crime victims?

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Chapter 11

Crisis Intervention

Abstract: One of the most pressing needs for many victims in the aftermath of crime is providing emotional first-aid through crisis intervention. As a result of the trauma they have suffered, victims often need immediate, comprehensive support and assistance to deal with new and often troubling emotions and reactions. Victim service providers who possess a knowledge of basic crisis intervention skills can provide valuable services and support to victims in what is often their greatest time of need.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. Stress and crisis theories as they apply to crisis intervention techniques.
 2. How to better communicate with victims/survivors at the crisis stage of their victimization.
 3. A crisis intervention model that can be applied to victims with acute psychological crisis, acute situational crisis, and acute stress disorders.
 4. Basic techniques for crisis intervention.
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Introduction

Victim service providers may be called upon, on a regular basis, to provide victims and survivors with crisis intervention support and assistance. Knowledge about stress and crisis theory and practical applications for helping victims/survivors is a crucial component of victim advocacy skills.

Stress Theory

It is important for victim advocates to possess a basic understanding of stress theory, which was developed by Dr. Hans Selye and others. *Routine stressors* are present in the physical and social environment. Generally, people cope with the anxiety that stress creates in adaptive and maladaptive ways. Adaptive methods of reducing anxiety include exercise, relaxation techniques, expressing feelings, engaging in task-oriented behavior, etc. These behaviors help an individual to “maintain emotional and functional equilibrium.” Maladaptive behaviors that people may use to reduce the effects of stress include “chemical substance abuse, denial, aggression, suicide attempts, psychosomatic complaints, an social withdrawal.” (Andrews, 1990)

In addition to routine stressors, people may also experience *extraordinary stressors* that, in combination with routine stressors can cause intense stress. Extraordinary stressors may include loss of a loved one, loss of a job, moving to a community, etc. (Andrews, 1990) *Developmental stressors*, related to transitions in life, such as adolescence, marriage, parenthood, and retirement, are experienced by most people and can cause intense stress for a prolonged period of time. *Chronic stressors* occur repeatedly, can produce high levels of anxiety, and disrupt a person’s equilibrium. These might include abusive relationships or particularly stressful job situations. Depending upon the coping abilities of the individual involved and the combination of multiple stressors, an individual may experience a temporary state of psychological crisis.

Catastrophic stressors are described by Figley (1985) as “sudden, overwhelming, and often dangerous, either to one’s self or significant other(s).” Catastrophic stressors often cause trauma, “an emotional state of discomfort and stress resulting from memories of an extraordinary catastrophic experience which shattered the survivor’s sense of invulnerability to harm.” Examples of such powerful stressors include violent crime victimization, airplane crashes and other life threatening events.

As described in the “Staff Victimization and Critical Incidents” chapter of “Crime Victims and Corrections: Implementing the Agenda for the 1990s” (published by the National Victim Center in 1993 [second edition] with support from OVC), stress theory contains the following premises:

- Individuals exist in normal states of equilibrium, where they establish their own personal boundaries, usually based upon a certain order and understanding of the world.
- Occasional stressors will move the individual out of the state of the equilibrium, but most of the time people stay within a familiar emotional range.
- Trauma throws people so far out of their range of equilibrium that it is difficult for them to restore a sense of balance in life. When they do establish a new sense of balance, it will often be different than that prior to the trauma, with new boundaries and new definition.

Crisis Theory

Crisis theory can trace its roots back to antiquity. For example, in ancient Greece, the word crisis came from two root words -- decision and turning point. In the Chinese language, two symbols represent the word crisis -- danger and opportunity.

According to Roberts, the term crisis is defined “as a temporary state of upset and disequilibrium, characterized chiefly by an individual’s inability to cope with a particular situation using customary methods of problem solving and by the potential for positive or negative outcome.” (Roberts, 1995) In earlier research by Burgess and Baldwin (1981), it was stated that when “an individual experiences an emotionally hazardous situation and is unable to effectively utilize previously learned coping behaviors, then emotional crisis may ensue.”

Roberts (1990a) summarizes the history of the development of present-day crisis theory. In general it can be said that numerous mental health practitioners have contributed to our current understanding of crisis. Work with soldiers experiencing “combat neuroses” in World War II, veterans who served in combat in Viet Nam, survivors of catastrophic events such as a fire in Boston in which 500 people were killed, have helped to shape the view that “crisis is not, in itself, a pathological state, but a struggle for adjustment and adaptation in the face of problems that are, for a time, unsolvable.”

Butcher and Maudal (1976) also provide an overview of the assumptions of crisis theory:

- Crisis is a state characterized by high levels of subjective distress and inability to modify the source of stress that produced the crisis;
- Crisis can be produced by a variety of stressful life situations;
- Situations that are appraised as dangerous or harmful are those that are most likely to provoke a crisis reaction;

- Some events, such as the death of a spouse or natural disasters, have a high probability of provoking a crisis reaction in most people;
- Crisis reactions are time-limited and are resolved in six to eight weeks; and
- Crisis intervention is most appropriately used with individuals responding to environmental stress in which they are temporarily unable to cope, rather for individuals suffering from chronic, longer term psychological problems.

Crisis Intervention

To address the immediate characteristics of an individual experiencing crisis -- a theory and practice evolved that is today known as crisis intervention. This technique was designed to facilitate crisis resolution through adaptive rather than maladaptive means. When used with survivors of violent crime, it is understood that no intervention can erase the pain of the victimization itself, however the survivor may be helped "to avert residual damage and promote new strengths for coping with the memories and future similar challenges." (Andrews, 1990)

Crisis intervention with victims of crime often addresses the specific characteristics of the crisis producing event, the immediate reactions of shock, denial and disbelief, and the subsequent by confusing emotional reactions such as guilt, self-blame, anger, and fear, with the goal of reconstruction of an individual's equilibrium.

By definition, crisis intervention is to be used for crisis specific traumas -- not as an intervention for long-term mental health problems. Typically, crisis intervention is also time limited. As a short-term, immediate intervention for crime victims, its goal is to help the victim identify and cope with the sense of 'disequilibrium' in the aftermath of a trauma.

Developing an Awareness of Crisis

Andrews (1990) describes people in a crisis state as follows:

"People in crisis may have uncontrolled emotional expressions, disorganized thoughts, anxiety, and fatigue. They may have difficulty completing routine tasks and may withdraw from or cling to social contacts. The person in crisis is highly vulnerable to influence by others, acts helpless, and may appear to be psychopathological or suffering from chronic stress. In fact, the symptoms are temporary, typically resolved within a few weeks. The return to normalcy may be misleading, as serious residual psychological damage may have occurred."

The victim service provider who is aware of a victim's crisis state can accomplish two important first steps with the initial contact with the individual in crisis. The advocate can administer "emotional first-aid", which can be described as verbal or non-verbal communications that are supportive and attempt to relieve the victim of extreme emotional distress. The goal is to help the victim feel heard, understood, and accepted. The victim can also be guided or assisted to begin participating in problem-solving to address the crisis. The advocate should understand that in a crisis situation issues previously contained or managed by the defenses of the victim may be triggered.

Auerbach and Kilmann (1977) describe the general factors in crisis intervention approaches as follows:

- Resolving immediate problems instead of trying to restructure basic personality;
- A minimal number of brief contacts;
- A high level of therapist activity that marshals human and agency resources facilitating client readjustment;
- Helping the person in crisis identify coping strategies and engage in problem-solving behavior; and
- Avoiding fostering dependency on the therapist.

Roberts' Seven-Stage Crisis Intervention Model

Professionals working in private practices, at community mental health centers, or in hospital settings are often charged with responding to a wide array of mass emergencies, disasters, and victims of violent crimes and other traumatic events. Various practice models have been developed to work with persons in crisis.

Roberts' seven-stage crisis intervention model can be applied to victims experiencing acute crises to facilitate early identification of crisis precipitants, problem solving, and effective crisis resolution.

The seven stages of the crisis intervention model are as follows:

1. *Plan and conduct a thorough assessment* (including lethality and dangerousness and immediate psychosocial needs).

Effective intervention and brief treatment with persons in crisis (e.g., adolescent suicidal patients, survivors of incest, alcohol clients, parents of abducted children, etc.), should always begin with a thorough intake assessment or collection of background information by the therapist. Subsequent crisis interventions should be based on this initial assessment.

A critical part of any assessment with depressed, suicidal, sexually assaulted, or battered women survivors is a lethality or level of danger assessment; published lethality scales may be used, but determining if the patient is currently in danger is of critical importance (e.g., battered women who recently received death threats from their batterers or child victims of sexual abuse or exploitation who are currently residing with the identified abuser.)

2. *Establish rapport and rapidly establish the relationship* (conveying genuine respect for and acceptance of the client, while also offering reassurance and reinforcement that the client, like hundreds of previous clients, can be helped by the therapist). Reactivating the problem-solving ability of the victim can also be initiated at this stage.

When working with many victims of crime, e.g. bank robbery victims, stranger assaults or robberies, stage one and two may be interchangeable, as many victims are not in danger of further harm or injury following the crime. Thus, establishing rapport becomes the initial focus of the intervention. However, with certain types of victims, e.g. battered women, stalking victims, victims of gang violence, assessment of danger and development of a safety plan is the appropriate initial focus.

3. *Identify major problem(s)*. This step includes identifying the “last straw” or precipitating event that led the client to rank order and prioritize several problems and the harmful or potentially threatening aspect of the number one problem. It is important and most productive to help the client to ventilate about the precipitating event or events; this will lead to problem identification. Sometimes clients are in a state of denial. Other times clients have an all-consuming need to ventilate, and ventilation of feelings is important as long as the therapist gradually returns to the central focus: the crisis precipitant or actual crisis event.
4. *Deal with feelings and emotions*. This stage involves active listening, communicating with warmth and reassurance, nonjudgmental statements and validation, and accurate empathetic statements. The person in crisis may well have multiple mood swings throughout the crisis intervention. As a result, nonverbal gestures such as smiling and nodding might be distracting and annoying to the person in acute crisis. Therefore, the author suggests the use of verbal counseling skills when helping the client to explore his or her emotions. These verbal responses include reflecting feelings,

restating content, using open-ended questions, summarizing, giving advice, reassurance, interpreting statements, confronting, and using silence.

5. *Generate and explore alternatives.* Many clients, especially college graduates, have personal insights and problem-solving skills as well as the ability to anticipate the outcomes of certain deliberate actions. However, the client is emotionally distressed and consumed by the aftermath of the crisis episode. It is therefore very useful to have an objective and trained clinician to assist the client in conceptualizing and discussing adaptive coping responses to the crisis. "In cases where the client has little or no introspection or personal insights, the clinician needs to take the initiative and suggest more adaptive coping methods" (Roberts, 1990, p.13). During this potentially highly productive stage, the therapist/crisis intervenor and client collaboratively agree upon appropriate alternative coping methods.
6. *Develop and formulate an action plan.* Developing and implementing an action plan will ultimately restore cognitive functioning for the client. This active stage may involve the client agreeing to search for an apartment in a low-crime suburban area, for example, or it may involve the client making an appointment with an attorney who specializes in divorce mediation, or agreeing to go to a support group for widows or persons with sexually transmitted diseases (STDs). Many clients have great difficulty mobilizing themselves and following through on an action plan. Clients in crisis need to hear that you have had other clients who have failed and have been lethargic, yet have made an all-out effort to overcome the obstacle and were successful in resolving the crisis.
7. *Follow up.* Stage seven in crisis intervention should involve an informal agreement or formal agreement or formal appointment between the therapist and client to have another meeting at a designated time, either in person or on the phone, to gauge the client's success in crisis resolution and daily functioning one week, two weeks, or one month later.

(Excerpted from: "Epidemiology and Definitions of Acute Crisis in American Society" in *Crisis Management and Brief Treatment: Theory, Technique, and Applications*, A. R. Roberts, Editor, Nelson-Hall Publications, Chicago, IL, 1996)

Additional Considerations in Communicating with Crime Victims

Dealing with angry, frustrating or manipulative victims is an area that is particularly difficult for professionals who provide assistance to crime victims. In addition, the trauma of victimization may create or exacerbate a substance abuse problem for a victim.

Victim assistance providers should be aware that the victim will be assessing them as closely as they will be assessing the victim. There are a number of precautionary points the victim assistance provider should be aware of:

- If it is believed or confirmed that the victim has developed additional problems, such as substance abuse, suicidal tendencies, or other self-destructive behaviors, referrals should be made immediately to appropriate mental health and substance abuse intervention services.
- Victims may “test the limits” with the victim assistance provider by providing fabricated or exaggerated information.
- If the victim assistance provider uncritically accepts fabricated or exaggerated information, he or she runs the risk of reinforcing this pattern of manipulative behavior.
- Setting limits at the onset of the initial session may lessen the extent to which the victim will engage in manipulative behavior.
- If a victim engages in manipulative behavior, he or she should be confronted by the victim assistance provider.
- Victim assistance providers should be cautioned against showing signs of anger or frustration with the victim; this further results in secondary injuries for the victim.

Crises as “Triggers”

A crisis situation may serve to reawaken (trigger) unresolved problems or previous traumas in an individual. The victim service provider should be attuned to such cues and use this opportunity to support and assist the victim:

- It has been theorized that the resolution of the immediate crisis situation may also serve to resolve some older, unresolved problems.
- The goal of crisis theory is not to precipitate crisis, but to maximize the use of those crises that naturally occur.

Communicating with Withdrawn or Silent Victims

Special problems may arise when communicating with the withdrawn or silent victim, who will not usually initiate interaction. These problems may include:

- Active questioning by the victim assistance provider will be required.
- Spontaneous conversation is not a characteristic of the silent or withdrawn victim.
- The use of pressure to speak is not beneficial with the withdrawn or silent victim. In the event that the victim does not respond to any of the questions asked, the victim assistance provider must remain patient.
- The victim who is unwilling to communicate verbally with the victim assistance provider should be reassured that the supporting professional will be available whenever the victim does not want to respond.
- At the end of the session, the victim should be informed when he or she will be seen again by the victim assistance provider.

Even if no communication on the part of the victim occurs, if the above procedures are followed, the victim assistance provider is, at the very least, establishing rapport with the victim.

Basic Techniques for Crisis Intervention

Three basic techniques for crisis intervention have become an accepted standard in providing immediate intervention to crime victims and survivors in the aftermath of trauma. As described by Dr. Marlene Young, Executive Director of the National Organization for Victim Assistance, these three techniques are:

1. Safety and security.
2. Ventilation and validation.
3. Prediction and preparation.

Safety and Security

The first concern of any crisis intervenor should be for the physical safety of the victim. Until it is clear that the victim is not physically in danger or in need of emergency medical aid, other issues should be put aside. This is not always immediately obvious. Victims who are in physical shock may be unaware of the injuries they have already sustained or the dangers they still face.

For the crisis intervenor who is responding to a telephone crisis call, the question should be immediately posed, "Are you safe now?" Intervenors who are doing on-scene or face-to-face

intervention should ask victims if they are physically harmed. This question alone may cause the victim to become aware of a previously undiscovered injury.

A parallel concern should be whether the victim *feels* safe. The victim may not feel safe in the following circumstances:

- The victim can see and/or hear the assailant being interviewed by law enforcement.
- The victim is being interviewed in the same area where an attack took place.
- The victim is not given time to replace torn or lost clothing.
- The victim is cold and uncomfortable.
- The assailant has not been apprehended and has threatened to return.

Any of these situations may make the victim feel unsafe even if there are law enforcement officers present.

A priority for some victims and survivors is the safety of others as well. If a couple has been robbed in a street crime, each may be more worried for the other person than for himself or herself. Parents are often more concerned about the safety of their children than themselves.

Survivors of victims of homicide may not focus on safety, but rather seek a sense of security through the provision of privacy and nurturing. Their anguish and grief can be made more painful if there are unfamiliar and unwanted witnesses to their sorrow.

They, too, will suffer feelings of helplessness and powerlessness. The shock of the arbitrary death of a loved one is usually not immediately assimilated, and survivors may not understand questions or directives addressed to them.

All victims and survivors need to know that their reactions, comments and pain will be kept confidential. If confidentiality is limited by law or policy, these limits should be clearly explained.

Security is also promoted when victims and survivors are given opportunities to regain control of events. They cannot undo the crime or the death of loved ones, but there may be opportunities for them to take charge of things that will happen in the immediate aftermath.

Suggestions for Helping

1. Make sure the victims/survivors feel safe and/or secure.
 - Sit down to talk.

- Ask the victims/survivors where they would feel safest when you talk to them, and move to that location.
 - If the victim feels safe, provide reassurance.
 - Identify yourself and your agency, and explain your standards of confidentiality.
 - If possible, keep media away from victims/survivors or help them in responding to media questions (see Chapter 21).
 - If they have loved ones about whom they are concerned, try to find out as much information as possible about the safety of the loved ones.
 - If victims are to be interviewed by law enforcement officers or others, try to make sure they understand the questions they are asked by having them repeat the question back to the interviewer.
 - Provide victims with information that may help to assure them of their safety. For instance, if they are survivors of a massacre, it may help if they are assured that the gunman is dead, or that he has been apprehended.
 - If they are not safe, keep them informed about the extent of additional threat, i.e. the perceived whereabouts of the alleged perpetrator and related law enforcement efforts to capture him or her.
 - Give victims permission to express any reactions and respond in a non-judgmental manner. Say: "You have a right to be upset over this tragedy, so don't be afraid to tell me what you are thinking."
2. Respond to the victim's need for nurturing, but be wary of becoming a "rescuer" on whom the victim becomes dependent. The "rescuer" who ends up months later making decision for the victim has subverted the primary goal of crisis intervention, i.e. to help the victim restore control over his or her life. The following tips suggest appropriate ways in which the crisis intervenor can step in on a temporary basis:
- Initially taking care of practical things that need to be done, but are temporarily beyond the victim's ability to accomplish.
 - Offers to provide child care, help with transportation, make telephone calls, etc. Be specific in making such offers so that the victim can simply respond "yes" or "no."

3. Assist survivors in re-establishing a sense of control over the small things in his or her life, then move on to larger ones.
 - While it is important to assist survivors with practical activities, it is also important to allow them to make decisions for themselves and to take an active role in planning their future.
 - The crisis intervenor initially can offer survivors a sense of control by asking them simple questions involving choices that are easily made. For instance, “What name would you like me to use in speaking with you?” “Where would you like to sit while we talk”?...
 - Often the recovery of a physical object that is important to the survivor helps him or her to re-establish a sense of control.

Ventilation and Validation

Ventilation refers to the process of allowing survivors to “tell their story.” While this seems to be a simple concept, the process is not easy. Victims need to tell their story over and over again. The repetitive process is a way of putting the pieces together and cognitively organizing the event so that it can be integrated into their lives. The first memory of the event is likely to be narrowly focused on, say, a particular sensory perception or a particular activity that occurred during the event. Victims usually see the criminal attack with tunnel vision. They know intuitively that other things are happening around them, but they may focus on an assailant’s knife, their struggle to get away, etc.

As time goes by, memory will reveal other parts of the event. These bits of memory will come back in dreams, intrusive thoughts, and simply in the story-telling process. The victimization story will probably change over time as they learn new things and use the information to reorganize their memories.

From a law enforcement perspective, the problem with this process of reconstructing a story is that it sometimes results in inconsistent or contradictory stories, which undermine an investigation or prosecution. However, from a crisis intervention perspective, it is perfectly normal for the process of ventilation to reveal a more complete story over time. Realistically, a victim will tell his or her story over and over again, with or without a crisis intervenor, in order to reconstruct the event, so the story will change anyway. The difference is that the crisis intervenor will provide a “sounding board” for the victim’s distress as the review process unfolds.

For victims, the replaying of the story helps them gain control of the real story. For the “real” story is not only the recitation of the event itself, but usually includes the story of various incidents in the immediate aftermath. Each of these stories must be integrated into the victim’s final mental recording of the event.

Ventilation is a process of finding words or other ways that will give expression to experiences and reactions. In this aspect, ventilation is often culturally specific. The power found in putting words to feelings and facts is tremendous. There is often a depth of emotion in telling another person that a loved one has died, even in saying the name of the loved one.

The exact words to describe events and experiences are often very important, I., calling drunk driving crimes “crashes” instead of accidents.

Validation is a process through which the crisis intervenor makes it clear that most reactions to horrific events are “normal.”

- Validation should be content-specific. For example, rather than saying, “I can’t imagine how upset you must be,” it is preferable to say, “I can’t imagine how upset you must be about your son’s death in the car crash.”
- Care should be taken in the words that are used to validate. For instance, many survivors do not want to hear that their reactions are “normal reactions to an abnormal situation” -- a common summation of what trauma and crisis produce -- because survivors want to have their experience validated as unique. Telling survivors that their reactions are “not uncommon” seems to be more effective.
- Where possible, repetition of the actual phrases that the survivors use to describe experiences can be useful.

The focus of validation should be that most reactions of anger, fear, frustration, guilt, and grief do not mean that the victim is abnormal, immoral, or a bad person. They merely reflect a pattern of human distress in reaction to a unique criminal attack.

- While most reactions are normal, there are some people with pre-existing mental health problems who have harmful reactions. There are also some who react to personal disasters in a dangerous way -- to themselves or to others. In the aftermath of crisis, the intervenor should always be alert to any words or other signs of suicidal thoughts or threatening behavior toward specific individuals. If these arise, provide and/or seek immediate professional help and referrals.

- While most reactions are normal, most people will not have experienced such intense feelings, so they may think they are “going crazy.” Survivors should be reassured that while this crisis has thrown their lives into chaos, they are not, as a consequence, “crazy.”

Suggestions for Helping

1. Ask the victim to describe the event. Ask the victim to describe where he or she was at the time of the crime, who he or she was with, and what was seen, heard, touched, said, or done. These two questions will help the victim focus on the crime in an objective way. It will help the victim impose some order on the event and begin to take control of the story. It may help to ask the victim to recall that day from the beginning, so that the “normal” parts become part of the crisis story.
2. Ask the victim to describe his or her reaction and responses. As the victim begins the description, remember to validate the reactions and responses.
3. Ask the victim to describe what has happened since the crime, including contact with family members, friends, the criminal justice system, and so on. Responses to this question will help reveal whether the victim has suffered additional indignities as a result of the crime, or whether the victim has been treated with dignity and compassion.
4. Ask the victim to describe other reactions he or she has experienced up to now. Again, validate reactions.
5. Let the victim talk for as long as he or she would like and as your time allows for you to listen.
6. Don't assume anything, even if the apparent pattern of the crisis reaction is suspect. For example, the victim's controlled calm of the moment may yield to tears in a few minutes.
7. Don't say things like:
 - “I understand.”
 - “It sounds like...”
 - “I'm glad you can share those feelings.”
 - “You're lucky that....”
 - “Don't worry, it's going to be alright.”

Do say things like:

- “You are safe now” (if true).

- "I am sorry it happened."
- "I'm glad you're talking with me now."

Prediction and Preparation

One of the most potent needs that many victims have is for information about the crime and what will happen next in their lives. Their lives have typically been thrown into chaos and they feel out of control. A way to regain control is to know what has happened and what will happen -- when, where and how.

The information that is most important to victims is practical information. The following examples may raise possibilities that the victim has not even considered; the intervenor may tactfully touch on such issues or defer them:

- Will the victim have to relocate?
- Does the victim have adequate financial resources to pay for any immediate needs caused by crime?
- What legal issues confront the victim? What do the criminal and/or civil justice system(s) hold in store?
- What immediate medical concerns face the victim?
- What will be expected of the survivors of a homicide victim, i.e. body identification, funeral issues, etc.?
- What does the victim need to know about the media, especially in high profile cases?

The second priority for information is the possible or likely emotional reactions that the victim might face over the next day or two, and over the next six months or so -- emphasizing that there is no particular timetable when victims can expect to experience crisis reactions, or which of the intense emotions may surface. Some of the possible emotional concerns that should be outlined are the following:

- Immediate physical and mental reactions to crisis.
- Long-term physical and mental reactions.
- Reactions of significant others.

Victims should expect that everyday events may trigger crisis reactions similar to the ones they suffered when the crime occurred.

In addition to needing predictable information, victims need assistance in preparing for ways in which they can deal with the practical and emotional future.

Suggestions for Helping

- Take one day at a time. Suggest that the victim plan each day's activities around necessary practical tasks.
- Problem solving. Show the victim how to use problem solving techniques to address the overwhelming problems that he or she might face.
- Talk and write about the event. Suggest to victims that they use audiotapes or write a journal to tell their unfolding stories.
- Plan time for memories and memorials.
- Encourage victims to identify a friend or family member on whom they can rely for support during times when they must confront practical problems.
- Good nutrition, adequate sleep, and moderate exercise can significantly help victims survive times of crisis.

(Excerpted from "Mapping Strategies for Victim Services," National Organization for Victim Assistance and National Victim Center, 1991)

Crisis Intervention

- 1) Cite three elements of crisis theory.

- 2) List three types of stressors, describe them, and how they might affect an individual.

- 3) Name three safety concerns of survivors of crime.

- 4) Briefly describe the process of “validating” victims.

- 5) What are the first two stages of Roberts’ crisis intervention model and why might they be interchangeable with some victims?

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Chapter 12

Multi-Cultural Issues

Abstract: The racial and ethnic diversity of the United States has changed considerably in the last few decades. An increasing proportion of Latino, Asian and African Americans have been interwoven with the European American population. With this transition, victim assistance professionals are faced with new challenges. Recognizing and respecting individual cultural differences are important to sensitive and effective work with victims. In addition, differences in concepts of suffering and healing can influence how a victim may experience the effects of victimization and the process of recovery.

Learning Objectives: Upon completion of this chapter, students will understand the following:

1. The vast array of cultural differences among the people of the United States.
2. Basic principles of culturally-competent and culturally-sensitive interaction with crime victims.
3. Specific practices that will enable victim assistance professionals to provide appropriate services to crime victims of various cultures.

Introduction

The term "culture" can be reasonably applied to various population categories. There are cultures or subcultures, for example, that reflect differences of age, gender, sexual orientation, religion, and geographic region. Each of these groups employ particular ways of viewing and meeting the challenges, traumas, and triumphs of life. For this discussion, however, culture represents race and ethnicity. It is this diversity that both enriches and obstructs much of our involvement and interaction with others.

Across America, racial and ethnic heritages are being dramatically interwoven. An array of languages, religions, customs, and traditions is infusing our nation with both vibrancy and challenge. Molefi Asante, chair of African American Studies at Temple University has stated:

"Once America was a microcosm of European nationalities,
today America is a microcosm of the world."

Such an occurrence is not necessarily the harbinger of chaos. Inevitably and even enthusiastically, this emergence must be accepted and endorsed.

The criminal justice system is not exempt from the consequences of these demographic changes that are generating a new definition of "American." As the European American population continues to decrease in relative percentage, there is a corresponding and accelerating increase of Latino, Asian, and African Americans. This raises the following concerns or questions for victim service providers:

- How does the criminal justice system adhere to equal justice for this diversity of people?
- How can victim assistance programs fashion priorities and ensure competence in order to serve the widening spectrum, rather than exclusive number, of people?

Diversity Within Diversity

There are two eternal truths about human beings:

- People differ from one another.
- People are similar to one another.

When the distinctiveness of others is considered, there can be a tendency to over-generalize in order to highlight the commonalties within cultural identities. The variety within cultural

groups, however, may be obscured by the emphasis placed in distinguish-ing between them. Any aggregate labeling of people is, in other words, part logic and part insult.

The term "Indian," for example, was a misnomer foisted upon the Arawak tribe of the southeastern United States by an errant Italian navigator who had set sail for India. It is now (mistakenly) used to describe all the native populations of the Western Hemisphere.

- "American Indians," perhaps preferably called "Native Americans," are now acknowledged by the Bureau of the Census to be over 500 separate nations and tribes with 187 different languages.

The term "Hispanic" refers to those who share a common language, i.e. Spanish. But not everyone who is from Mexico speaks Spanish, e.g. the native peoples from the central mountains.

- There are also noticeable class differences between destitute Guatemalan refugees who have fled violent political upheaval in their homeland and relatively prosperous Costa Ricans who enjoyed some measure of social and economic stability.

Just as it is presumptuous to consider a Bostonian Irishman, an Anglo-California yuppie, a Jewish Greenwich Village artist, a Texas rodeo star, and a New Age Santa Fe vegetarian as all the same because they are coincidentally "white," it is just as unwise to render all "Latinos" (or Asians or African Americans) as inherently alike. As Ross, Millen, and Martinez have pointed out, "There are some ways in which any particular Chicano is like all other Chicanos, and there are some ways in which a particular Chicano is like no other Chicano."

Points to Reflect Upon in Providing Services

- No one is just what we label or classify them.
- Who we are is inseparable from our racial and ethnic backgrounds but not strictly determined by them.
- All crime victims deserve to be treated as individuals even as the nuances of race and culture (and the degrees of acculturation) are recognized.
- Victim counselors must be aware of the cultural context of the victims with whom they are working, continually assess the adequacy of their communication styles and counseling methods, and be flexible enough to make adjustments on a case-by-case basis.

What “Culturally-Sensitive Service” is Not

Color Blindness

I haven't noticed that you are different. We are all humans. We all have the same feelings. I don't care if you are pink, green or purple.

Presumably with good intentions to treat everyone equally, such overtures are sometimes made by victim counselors. There is, however, no universal response to suffering. The role of racial experience and cultural history cannot be readily dissolved into some melting pot of generic humanity. As Tello states:

“What it (color blindness) does demonstrate is the service provider's inability to understand and articulate these differences. When this occurs, the service provider may attempt to justify his or her own position by mini-mizing the role of culture.”

Individual experiences in culture, language and identity serve to filter and shape how a person perceives events and reacts to both small and life-altering events. As Parsons writes:

“Ethnic identification is an irreducible entity, central to how persons organize experience.”

Memorizing Cultural Idiosyncrasies

Service to culturally diverse crime victims is not primarily a command of every minute custom or memorization of an encyclopedia of rigid “do's and don'ts.” This would be an impossible task.

- A stereotypic approach to any victim is obviously simplistic and harmful.
- An attempt should instead be made to learn the significance behind several major cultural forms, for example, the meaning to the persons practicing those traditions.

This will help one gain a personal feel for the culture, and to know people from the perspective they see themselves rather than focus upon their isolated behaviors and “unusual thinking.”

Case Example of Multi-cultural Healing in the Aftermath of Victimization:

In the aftermath of Patrick Purdy's deadly rifle assault on the schoolchildren of Cleveland Elementary School in Stockton, California in 1989, for example, there was an outpouring of concern and support from across the nation. Five children had been killed and 29 children and one teacher wounded. Two of the central events in the healing process for the Cambodian and Vietnamese surviving family members were the Buddhist funeral service and a subsequent ceremonial purification of the school grounds for the purpose of "releasing" the children's spirits.

These rituals were strange for the local district attorney's victim assistance staff, but their involvement in facilitating and participating in these events, their willingness to depend upon the Buddhist monks for leadership, and their efforts to quickly learn (only) the most important Southeast Asian mourning customs were keys to being helpful.

Diversity of Victim Service Providers

Race is not the same as culture. There are, for example, "Black Portuguese" residing in the United States. These persons are racially black African but culturally Portuguese as the result of colonization and slavery on the islands off the coast of Africa. Same ethnicity, moreover, does not itself mean biculturally competent. A particular counselor's favorable cross-cultural experiences predict effectiveness with diverse victims more than simply identical race or ethnicity.

- There is undoubtedly a need for more minority victim service providers who know their own ethnic histories, people, culture, and language.
- Victim programs should demonstrate diversity in their staffs relative to the composition of their client populations.
- If there is justification for the absence of such representation, however, there are other avenues that can be developed to meet the needs of diverse peoples.
- These include the use of minority volunteers and organizations, an appropriate referral list, culturally-sensitive protocols, and on-call translators.

Basic Qualifications of Culturally-Competent Service

Compassion and Sincerity

Most minorities have developed a sharp sense for detecting condescension, manipulation, and insincerity. There is no substitute for compassion as the foundation and sincerity as its expression for carrying out victim services equally and fairly. Although it is not possible to feel the same compassion for all victims, it is the responsibility of providers to provide the same compassionate service for every victim. Compassionate and sincere advocacy knows no borders.

The plight of undocumented residents or illegal aliens, for example, involves complex issues of personal prejudices and international politics. Sentiments among Americans regarding the clandestine migration of those who seek a better life here, mostly from Mexico and Central America, range from compassion for the safety and dignity of those fleeing poverty and war to border vigilante hunts and savage beatings.

- Once in the United States, the undocumented become easy prey for employment exploitation, consumer fraud, housing discrimination, and criminal victimization because assistance from government authorities is attached to the fear of deportation.
- There is an epidemic of sexual assaults, for example, committed upon undocumented Latinas. Their immigration status, however, does not mean that they should receive less protection under America's criminal laws or less right to victim services.

Respect

Respect is withholding ethnocentric judgements about the cultural practices of others. A place of remembrance for a deceased person, for example, is often found in an Asian home.

“After my father died, my mother placed his photograph on the hutch in the dining area of her home. She offers the best of the fruit she buys at the market and the first plate of anything she cooks is placed next to the photograph. It is her way of honoring the over 55 years of married life they shared. This custom may be strange to most Westerners, but it is a Japanese and Buddhist tradition to have an ancestral altar” (Dr. Brian Ogawa, Author).

Respect also means not minimizing the experience of others. In the inner city of Los Angeles, gang and drug-related homicides are common. When one particular slaying occurred, the

newspaper headline routinely announced, "Just Another Day in South Central." The familiar scenario of young black males seeking reprisal for a cocaine buy gone awry was present. The alarming difference in this case was that the victims were two mistakenly killed teenage girls. For their parents, loved ones, and friends, this was not just another day.

As one of the girl's mothers stated to me, gang violence and the fear it brought to her neighborhood were never acceptable. There was never a "tolerance of crime" merely because it was an everyday occurrence. The day her daughter died was not and can never be ordinary. It is the deepest tragedy which will repeatedly pierce her heart through many years.

Delivery of Services

Translating Standard Materials

A frequent method of outreach to non-English speaking victims is to provide translated materials with portrayals of racially diverse people. When the translation explains how to seek a restraining order, to locate the courthouse and prosecutor's office, to apply for criminal injuries compensation, or to complete forms, such multi-lingual brochures and handbooks improve accessibility to the criminal justice system. Key words in English should also be included to enhance recognition and familiarity. However, several points are important to consider:

- When counseling on the effects of victimization or self-help suggestions are being provided, these must be evaluated as to whether or not these actually give needed assistance or merely bestow readable materials upon those literate in a language.
- All crisis intervention methods and counseling modalities are based upon specific philosophies of suffering and healing. Approaches that are derived from conventional Western theories are most prevalent in victim services.
- Approaches and methods that incorporate the perceptions, beliefs, values, and experience of diverse cultures must also be made available to crime victims.

Victim counseling materials that are developed from within a culture and then translated into English so that an understanding can be gained for what is relevant for that culture would be helpful. However, few such materials exist today. This remains an area for further work and development.

Agency Organization and Outreach

The manner in which we organize our agencies may unknowingly deny or hinder entry to various groups. The responsibility for delivery of services rests with the providers and not with (potential) recipients.

- It is simplistic to bemoan the scarcity of certain groups utilizing services by attributing this primarily to their lack of education or awareness.
- Minorities, in fact, often view prevailing services as unresponsive to their needs and uninformed of their preferred practices and beliefs.
- The methods for reaching culturally diverse victims must therefore include traditional resources within the various communities as well as the inauguration of victim-specific ones.
- The historical role of African American churches, the reliance upon Mexican curanderas and Native American shamans, and the social constructs of Asian life must be understood and incorporated.
- Establishing some type of presence in ethnic neighborhoods, whether store-front offices, mobile crisis units, outreach to homes, or coordination with community-based organizations, is essential.

Initial Contact

The first contact minorities have with the criminal justice system will either confirm or dispel suspicion as to how they will be treated.

- Proper pronunciation of a person's surname is an excellent place to start! Surnames also have histories and meaning that allow conversation beyond introduction.

In working with immigrant, refugee, or native populations, it is also helpful to learn a few words of greeting from that culture.

- Be careful, however, of your intonation and loudness.

The Native Hawaiian word "aloha," for example, has been frequently corrupted. The root "ha" refers to the "breath of life," the giving (exhaling) and receiving (inhaling) of life itself. As a greeting, it means

the imparting of life to others and the acknowledgment of accepting life from others. When the "ha" is crudely enunciated, it collapses the spiritual essence of this meaning.

- The willingness to go beyond what is comfortable and usual conveys your intent to communicate.
- Victim service providers who properly leave their shoes at the doorstep of Asian families, for example, are seen by these residents as entering to understand and not impose.

The Asian home is a sanctuary wherein various rules and proprieties are followed. Knowing this, a victim service provider should be observant and alert to cues as to appropriate words and actions, rather than be consumed by anxiety about committing mistakes.

Appraise Your Prejudices

Darnell Hawkins, a sociologist in the Black Studies Department at the University of Illinois-Chicago, states:

“Black victims of crime in general are not treated seriously, particularly if the offender is also black.”

Attitudes toward black women especially are rooted in the long period of legalized slavery in America and profligated by current prejudices. Black women were the sexual property of white slave masters. Since they had no rights to resist or protest, there was no definition of rape to protect them and thus no legal recourse.

Today, many black women assume they will be treated unfairly by police and prosecutors when they do report rape. Any rape case where there is little corroborating evidence, such as eyewitnesses or physical injuries to substantiate the charges against a defendant, presents obstacles. When the woman is black, there appears to be greater reluctance by legal authorities to proceed beyond preliminary investigation.

Black women, in other words, may be burdened with stereotypes about being sex objects and solicitors. As Evelyn White recites,

“We are considered evil but self-sacrificing . . . sexually inhibited yet promiscuous. Covered by what is considered our seductively rich but repulsive brown

skin . . . society finds it difficult to believe that we really need physical and emotional support just like everybody else.”

When racism invades criminal proceedings, it subverts the very concept of justice being blind. In a California prosecutor's office, for example, an assistant district attorney was heard to have made this comment about a young white woman who had been beaten by her African American husband: "She deserves it because she married a nigger." In the mind of this prosecutor, any white woman who is in an intimate relationship with a black male (and perhaps any minority male) has somehow abrogated her rights to ordinary sympathy and legal protection. His attitude universally degrades women and marks any black male as a dangerous partner.

Responding to Hate Crimes

Resistance to rapid ethnographic changes due to large-scale immigration has amassed with long-standing racial bigotry, to produce a climate of racial tension. Whether or not this constitutes an adjustment period to form a more pluralistic society or the brewing of polarization is unknown. With the incidents of ethnoviolence spreading, the signs are not encouraging.

Key questions to consider in responding to hate or bias crimes include:

- How seriously do we regard bias crimes and respond to hate violence?
- Do we understand how being targeted because of race and ethnicity affects these victims?

The ironic effect of any personal prejudice jeopardizing the quality of services to victims of hate crimes is that these victims have been found to suffer more symptoms of post-traumatic stress than other violent crime victims. According to a National Institute Against Prejudice and Violence survey of such victims:

“The substantive character of these responses is quite serious, ranging from psychophysiological problems indicative of great stress (higher levels of depression and withdrawal, increased sleep difficulties, anxiety and loss of confidence) to an extraordinary percentage reporting serious interpersonal difficulties with friends and significant others.” (Forum, 5:1, p.6)

Developing a Cross-Cultural Style

Avoid Misuse and Distortion of Cultural Values

On April 14, 1989 Ramon Salcido, a Mexican vineyard worker in California, murdered his daughters, his wife, his mother-in-law, his sister-in-law, and an employer. Alcohol and jealousy fueled Salcido's "journey of destruction," which resulted in the worst mass homicide in the history of Sonoma County. The media accounts portrayed Salcido as a "hot-blooded Latin who gloried in machismo." This implied that his gruesome acts were somehow culturally-based in the characteristic way Latino men treat their wives.

- Although some Latino abusers claim a "cultural birthright" to (brutally) dominate their spouses, their argument is not legally acceptable nor true to the proper meaning of machismo.
- Insensitive representations by the American media and negative stereotypes of the Mexican culture in general have contributed to a distortion of traditional male/female roles governed by machismo.
- Accordingly, the term "macho" often is assigned to the male who is over-aggressive, controlling, temperamental, and boastful.
- The essence of machismo, notwithstanding, is, in the words of Rodriquez and Casaus, "a man who meets his family responsibilities by providing food, shelter, and protection for his wife, children and, in some cases, other relatives living with the family."
- Mexican family life is based upon mutual respect and interdependence. Husbands are reminded not to disrupt the well-being of the family by selfish and outrageous acts.

Mexican culture, in other words, is not pathological as has been assumed by those who have regarded machismo as promoting wife-battering. Indeed, it is the balance of relationships in Latino families which provides the safeguards preventing domestic strife. Ramon Salcido is an aberration of his cultural heritage, as any criminal is of any culture. His savage act was a failure to fulfill machismo, *not* a fated demonstration of it.

- The lesson for victim service providers is that misinterpreting and exaggerating elements of a culture may be detrimental to understanding the dynamics of victimization experienced by a person of that culture.

- Condemning or disparaging cultural patterns stemming from false summaries also denies victims the ability and right to draw natural strength from their cultures.

Case Example of Cultural Meanings of Mental Health Terms

The therapist told Kim that she needed to "heal the child within her." Kim, a Southeast Asian refugee, listened in astonishment and became very nervous and agitated. She wondered how this Caucasian woman could know that she was pregnant when Kim herself was unaware of this. More so, she did not want another child by her abusive husband! Noticing the look of anguish in her client's face, the therapist hurriedly explained that the term "child within" was not to be taken literally. It was merely an expression from a popular Western therapy that meant the "spirit" of a child within someone. Hearing this explanation, Kim fled the room.

Upon returning to the shelter where she was staying, Kim tearfully announced to a staff member that the spirit of the child she had lost through miscarriage several months earlier was distressed and trapped inside of her! It was many hours before Kim could be assured that her fears were needless.

Evaluate Mental Health Concepts

- For Southeast Asians, the notion of mental health or psychological well-being is novel.
- Individual insight to benefit the "self" is incomprehensible to cultures that assign identity and worth to harmonious relationships.

A critical need for Kim and other battered Asian immigrant or refugee women is therefore to regain a sense of belonging. Without her traditional family ties through her husband, Kim became an oddity in the Southeast Asian community. Her isolation needed to be ameliorated by a strong base of support provided by other women in the shelter.

- Rather than individual therapy, Kim needed to learn how to maintain and broaden her linkages to others, including gaining sufficient proficiency in English to secure employment and networking with other single parents.
- Western views of normality should also be carefully applied.

Case Example of Native American Self-Treatment

The Sioux, for example, practice a form of self-treatment called wacinko. This is a sort of "time-out" by which the person intentionally sets aside active and non-productive involvement in a stressful situation.

This practice has been frequently misdiagnosed by Western psychiatrists as a reactive depressive illness marked by withdrawal.

Wacinko is in fact a solution to a problem, a trust that a resolution will naturally occur. This is a cultural form of healing in which passivity is not hopelessness but hopefulness.

Culturally-Appropriate Listening

Listening is fundamental to human relationships and counseling. The principles and manner of listening, however, differ across cultures.

- Asians and Pacific Islanders, for example, deflect direct eye contact in conversation as a sign of patient listening and deference.
- Words are believed lost through the force of personalities when attention is drawn to physical presence and posturing.
- Staring is therefore considered impolite and confrontational.

Many Western cultures, on the other hand, value direct eye contact as a sign of sympathy or respect. Looking elsewhere is seen as disinterest, evasiveness, or rudeness. Misunderstanding can accordingly occur if some allowance is not made for these differences.

Learning From Diversity

Serving diverse crime victims is not just learning *about* other races and cultures, a collection of information and facts. It is learning *from* them. Unless we covet the wisdom and experience of other people and allow these to have a personal effect upon our lives, we will fail to appreciate the tremendous contributions they can make to our comprehending suffering and the process of healing.

A key principle in Eastern psychotherapies, for example, is that "life is attention." Life is only that which occupies our attention. Where attention goes, in other words, life energy follows. It is therefore crucial to be practical and purposeful to what and to whom we give our attention.

- This is transculturalism, a sharing of some truth across cultures.
- Victim service providers can serve a diversity of people only as well as we engage in such sharing.

Promising Practices

Multi-Cultural Victim Services

1. Acknowledgement of the different and valid cultural definitions of personal well-being and recovery from traumatic events.
2. Support of the sophisticated and varied cultural pathways to "mental health" and incorporate these into appropriate victim services and referrals.
3. Extensive cultural awareness training and competency testing to enable victim assistance staff to have the capacity to understand persons whose thinking, behavior, and expressive modes are culturally different.
4. Multiethnic and multilingual teamwork as a resource to implement and monitor effective victim services.
5. Cross-cultural perspective to benefit from the principles and methods of other cultures.

(Brian K. Ogawa, D.Min., Director, National Academy for Victim Studies, Department of Criminal Justice, University of North Texas, Denton, TX. Excerpted from *Focus on the Future: A Prosecutor's Guide to Victim Assistance*, National Victim Center, sponsored by the Office for Victims of Crime, 1994.)

Multi-Cultural Issues

- 1) Define the term “culture.” Describe the array of cultures that are present in your community.

- 2) In what way might two people of a particular race or ethnicity be similar, and in what ways might they be different?

- 3) List three principles that should form the foundation of your interaction with crime victims from any culture.

- 4) Describe three practices that would be beneficial in your work with crime victims of different cultural backgrounds.

- 5) Identify at least two different philosophies of life and healing that may influence the way a victim views victimization and recovery.

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Chapter 13

Domestic Violence

Abstract: This chapter provides a comprehensive overview of domestic violence, details numerous research studies, and findings from state and local domestic violence intervention programs, and review case experiences of working with victims and batterers, as well as protocols and policies for criminal justice system and legal interventions. All aspects of the physical, psychological and financial impacts of domestic violence on its victims, as well as on children who witness violence, are addressed, along with in-depth offender typologies.

Learning Objectives: Upon completion of this section, students will understand the following concepts:

1. The dynamics and forms of domestic violence.
2. Characteristics of batterers and domestic violence victims.
3. Theories relevant to the cycle of violence and learned helplessness.
4. The criminal justice continuum for domestic violence cases.
5. Strategies for advocacy for victims of domestic violence.

Statistical Overview

- Every 15 seconds, a woman is battered. (*American Medical Association. 1991. "Five Issues in American Health." Chicago, IL.*)
- Two to four million women are beaten by their partners each year (*Council on Scientific Affairs, 1992, "Violence Against Women: Relevance for Medical Practitioners." Journal of the American Medical Society 267(23): pp.3184-3189.*)
- Thirty-four percent of Americans say they have witnessed an incident of domestic violence, compared with only 19 percent who report witnessing a robbery or mugging. (*Family Violence Prevention Fund and EDK Associates, 1993, "National Survey on Domestic Violence," San Francisco, CA*)
- Studies on the prevalence of domestic violence suggest that from one-fifth to one-third of all women will be physically assaulted by a partner or ex-partner during their lifetime. (*Council on Scientific Affairs, American Medical Association. 1991. "Violence Against Women: Relevance for Medical Practitioners." Journal of the American Medical Association 267(23): 1992.*)
- Battering is the greatest single cause of injury among U.S. women, accounting for more emergency room visits than auto accidents, muggings and rapes combined. (*Stark, Evan D. and Anne Flitcraft. 1989. "Violence Among Intimates: An Epidemiological Review." In Handbook of Family Violence. Van Hasselt, ed. pp. 293-318. New York: Plenum Publishing Corp.*)
- Twenty-two to 35 percent of women who visit emergency departments in the United States are there for symptoms related to on-going abuse. (*Randall, T. 1992. "Domestic Violence Intervention Calls for More than Treating Injuries." Journal of the American Medical Association 264(8): p. 939.*)
- Every year, domestic violence results in almost 100,000 days of hospitalizations, almost 30,000 emergency department visits, and almost 40,000 visits to a physician. (*American Medical Association. 1991. "Five Issues in American Health." Chicago, IL.*)
- In a prospective study of 691 White, Hispanic, and African-American pregnant women sponsored by the Centers for Disease Control, one in six reported physical abuse during their present pregnancy. One in four reported physical abuse in the last calendar year. (*McFarlane, Judith, et. al. 1991. "Assessing for Abuse During Pregnancy: Severity and Frequency of Injuries and Associated Entry into Prenatal Care." Journal of the American Medical Association 267(23): pp. 3176-3178.*)
- In the United States, nine out of ten women murdered are killed by men, half at the hands of a male partner. (*"Crime in the United States: Uniform Crime Reports 1986." 1987. Washington, D.C.: Federal Bureau of Investigation.*)

- In 1991, 28 percent of all female murder victims were slain by their husbands or partners (*Federal Bureau of Investigation. 1991. "Crime in the United States, 1991." Washington, D.C.*)
- According to the Bureau of Justice Statistics, the average prison sentence for men who killed their wives was 17.5 years; the average sentence for women convicted of killing their husbands was 6.2 years. (*Bureau of Justice Statistics, November 1994, "Violence Between Intimates", USDOJ, Washington, D.C.*)
- In 1992, abuse by husbands and partners was ranked by the U.S. Surgeon General as the leading cause of injuries to women aged 15 to 44. (*Novello, Antonia, as reported in "Newsweek", July 4, 1994.*)
- Women are more likely to be victims of homicide when they are estranged from their husbands than when they live with their husbands. The risk of homicide is higher in the first two months after separation. (*Wilson, M., and Daly, M., 1993, Violence and Victims, "Spousal Homicide Risk and Estrangement," 8:3-16*)
- Approximately 1,155,600 married adult women in America have been victims of one or more forcible rapes (*Kilpatrick, Dean, Christine Edmunds and Anne Seymour, 1992. "Rape in America: A Report to the Nation." National Crime Victims Research and Treatment Center and National Victim Center, Charleston, SC.*)
- Being abused or neglected as a child increased the likelihood of arrest as a juvenile by 53 percent, as an adult by 38 percent. (*Widom, Cathy Spatz 1992. "The Cycle of Violence." National Institute of Justice, Washington, D.C.*)

Defining Domestic Violence

There are various definitions of domestic violence utilized nationwide, reflecting both legal definitions under law, as well as descriptions relevant to specific disciplines of caregivers, including victim advocates, medical professionals, and criminal justice practitioners. It is essential that victim service providers determine the legal definition of domestic violence in both civil and criminal law in their respective states.

A general definition of domestic violence is as follows:

Domestic violence is any assault, battery, sexual assault, sexual battery, or any criminal offense resulting in personal injury or death of one family or household member by another, who is or was residing in the same single dwelling unit. "Family or household member" means spouse, former spouse, persons related by blood or by marriage, persons who are presently residing together, as if a family, or who have resided together in the

past, as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time (Office of the Attorney General, Florida, 1993).

Forms of Abuse

Domestic violence is an ongoing, debilitating experience of physical, psychological, and/or sexual abuse in the home, associated with increased isolation from the outside world and limited personal freedom and accessibility to resources. Whenever a woman is placed in physical danger or controlled by the threat or use of physical force, she has been abused. The risk for abuse is greatest when a woman is separated from supportive networks.

Physical abuse is usually recurrent and escalates both in frequency and severity. It may include the following:

- Pushing, shoving, slapping, punching, kicking or choking.
- Assault with a weapon.
- Holding, tying down or restraining her.
- Leaving her in a dangerous place.
- Refusing to help when she is sick or injured.

Emotional or psychological abuse may precede or accompany physical violence as a means of controlling through fear and degradation. It may include the following:

- Threats of harm.
- Physical and social isolation.
- Extreme jealousy and possessiveness.
- Deprivation.
- Intimidation.
- Degradation and humiliation.
- Name calling and constantly criticizing, insulting and belittling the victim.
- False accusations, blaming the victim for everything.
- Ignoring, dismissing or ridiculing the victim's needs.
- Lying, breaking promises, and destroying trust.
- Driving fast and recklessly to frighten and intimidate the victim.

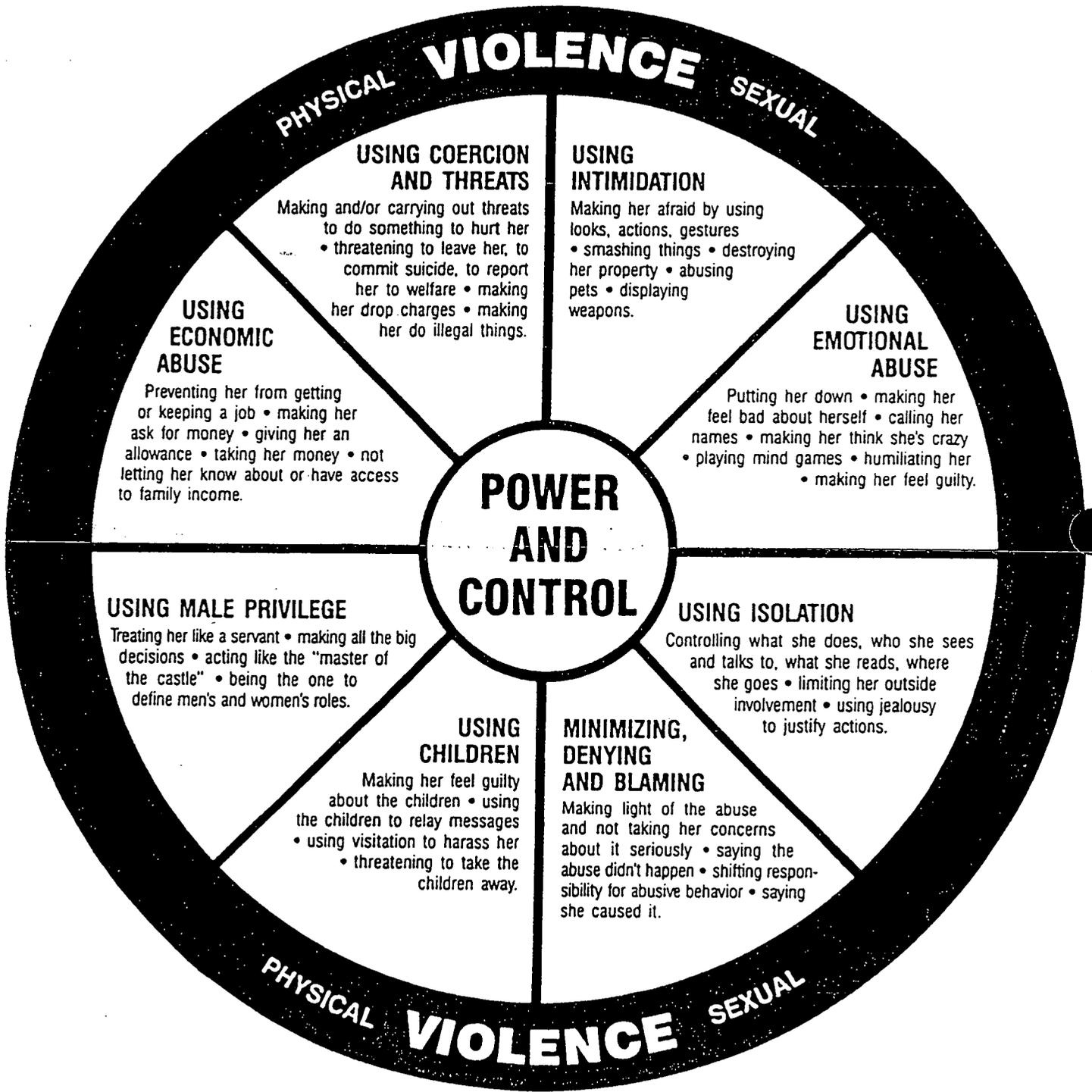
Sexual abuse in violent relationships is often the most difficult aspect of abuse for women to discuss. It may include any form of forced sex or sexual degradation, such as:

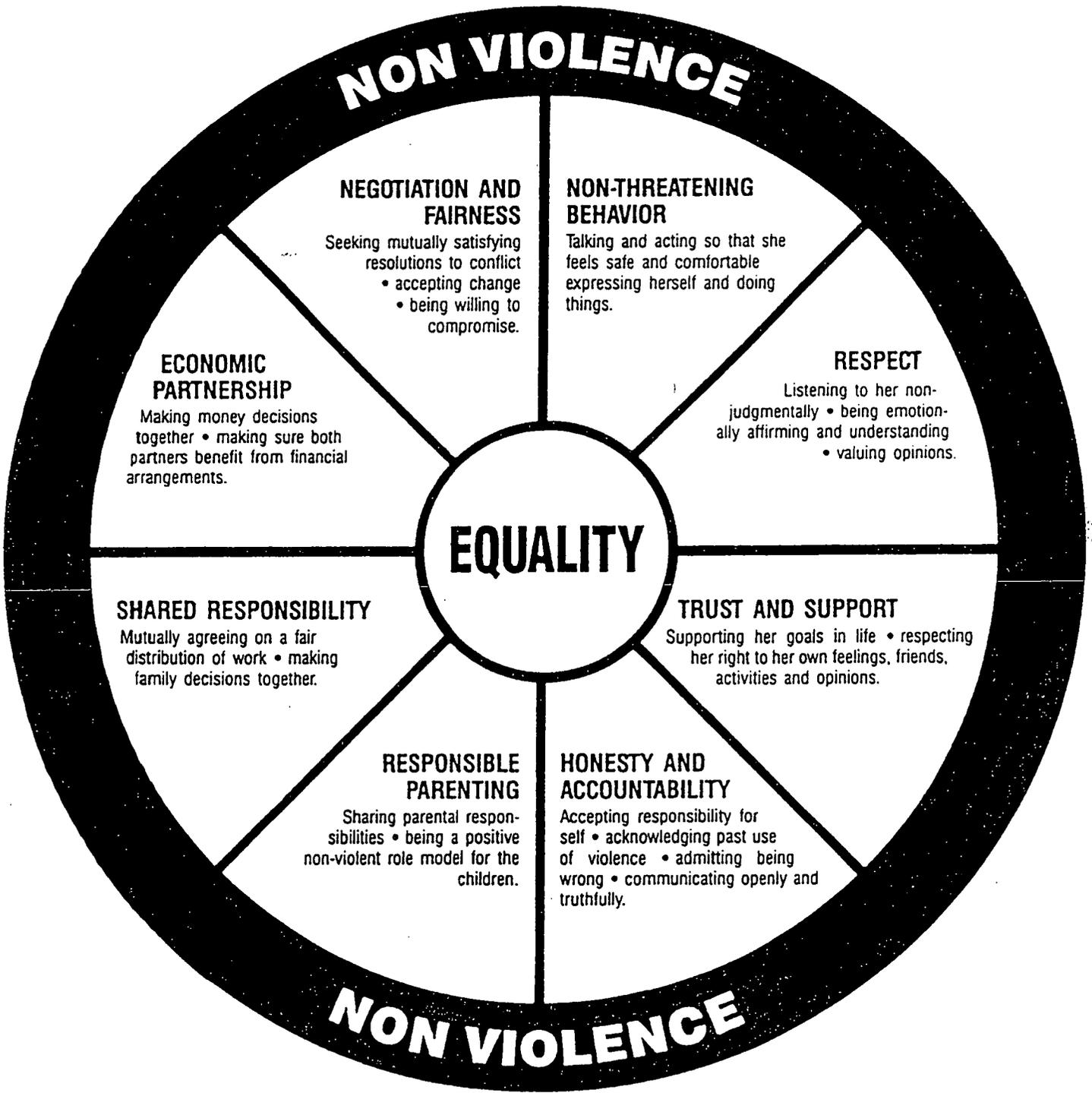
- Trying to make her perform sexual acts against her will.
- Pursuing sexual activity when she is not fully conscious, or is not asked, or is afraid to say no.
- Hurting her physically during sex or assaulting her genitals, including use of objects or weapons intravaginally, orally, or anally.
- Coercing her to have sex without protection against pregnancy or sexually transmittable diseases.
- Criticizing her and calling her sexually degrading names (American Medical Association, 1992, pp. 40-41).

In addition, children are often incorporated into patterns of abuse. Batterers may:

- Also physically or sexually abuse their children.
- Neglect children emotionally or financially.
- Threaten to harm the children.
- Use the children as “pawns” in episodes involving partner neglect or abuse.
- Attempt to get children to “take sides” in partner disputes.
- Degrade and humiliate their partners in front of the children.
- Threaten to or actually cut off financial support for children in the event that the partner leaves the battering environment.

The “Power and Control Wheel” developed by the Domestic Violence Intervention Project of Duluth, Minnesota further elaborates on forms that domestic violence takes, while the “Equality Wheel” depicts male/female interactions in a healthy relationship:





Characteristics of Men Who Batter

Men who batter share many characteristics. However, it is important to note that not *all* batterers possess *all* the following characteristics:

- Abuse of alcohol and other drugs.
- Experienced or witnessed violence in his family of origin.
- Often has a criminal record.
- Low self esteem.
- Overly dependent on the victim.
- Extremely jealous and possessive.
- Has learned to express many or most emotions through anger.
- Scores normal on psychological tests, except has a greater tendency toward violence.
- Blames others for his action, and is unwilling to accept responsibility for his violence (which is reinforced when the criminal justice system fails to hold him accountable through appropriate sanctions).
- Attempts to manipulate and/or control others.
- Denies or minimizes the effects of his violence on his victims and witnesses.
- Lacks good parenting skills.

In *Spousal/Partner Assault: A Protocol for the Sentencing and Supervision of Offenders*, Quincy, Massachusetts Chief Probation Office Andrew Klein (1994) identifies a number of characteristics of batterers based upon extensive research of convicted batterers:

Batterers present a very different posture in public than they do in the privacy of their own homes.

- Project image of a caring, concerned partner or father.
- Minimize the effects of their behavior on others -- ironically, as do their victims.
- Blame others, especially their victims.
- Manipulate their children.

The fact is, they often share the same characteristics of the most dangerous offenders currently on probation and parole across the country. Many, if not most, of these men have been in criminal courts before, repeatedly, for offenses that span the entire criminal spectrum.

Extensive Criminal History

Studies of prior records of batterers:

- Florida, Vermont, Ohio and North Carolina: 50 percent of the men had prior records (Fagan, Stewart & Hansen, 1983).
- Charlotte, NC: 79 percent with criminal records (Hirschel, Hutchinson & Dean, 1992).
- Minneapolis, MN: 60 percent with previous offenses (Sherman & Berk, 1984).
- Quincy, MA study of men brought in for restraining orders in 1990 (Klein, 1994):
 1. Seventy-eight percent had prior criminal record in the state.
 2. Average number of prior complaints was 13.
 3. Average male abuser had been in court for more than six separate sets of crimes.
 4. One defendant had been the subject of 113 complaints.
 5. Offenses charged ranged from murder to minor possession of alcohol.
 6. The vast majority were for misdemeanor charges.
 7. Almost a quarter of the men had been on formal probation with or without a suspended license or jailed for prior offenses.

Prevalent Substance Abuse

In 23 studies conducted between 1980 and 1988, the proportion of batterers who had prior histories of drug and/or alcohol abuse ranged from 24 percent to 86 percent. Most were in the mid-60s (Tolman & Bennett, 1990).

Quincy, MA defendants:

- 54 percent had prior records for alcohol and/or other drug charges.
- Majority of offenses were for drunk driving.
- One-third arrested for drunk driving were *also* arrested for various other drug offenses.
- Another 35 percent of those with alcohol and/or drug records had records for drug offenses only, and the remaining had them for public order complaints.

Generalized Pattern of Violence

Quincy, MA defendants:

- Forty-three percent had prior records for crimes against persons.
- Almost two-thirds had prior crimes against male, as well as female victims.
- The average number of prior crimes against persons complaints was 4.5.
- More than one-third also had prior civil restraining orders against them.
- Not only do these men have a history of prior criminal activity, but their abuse of their spouses/partners is repetitive, ingrained behavior.

Relatively Youthful

A number of studies reveal that the average abuser brought to court for restraining orders or to police attention for domestic disturbance calls is 32-years-old, with two-thirds being between their mid-20s and early 40s.

Separated or Unmarried, With Children

- An increasing majority of abusers are younger and unmarried.
- One-third to a majority of abusers have children by their victims.

Other Risk Characteristics

- Rationalize their crimes.
- Have poor family ties.
- Lack a stable home.
- Many either are unemployed or marginally employed.
- Either deny their spousal/partner abuse or feel entitled to exercise control over their spouse/partner.
- Many feel very supported in engaging in spousal/partner abuse (i.e. reinforcement for patriarchy, general violence of modern culture, approving peers).
- Many who reach court have vacated or are ordered to vacate their residences.
 1. A large percentage of their wives/girlfriends have already divorced and/or physically separated from them.
 2. As a result, family support is minimal if not negative.
 3. It is usual for these men to have had at least one recent residence change as a result of the abuse.

There is a large correlation between unemployment and underemployment and spousal/partner abuse. (Gelles & Cornell, 1990; Hotaling & Sugarman, 1986; Martin & Walker, 1985).

Only *two* characteristics consistently and significantly correlated with spousal/partner abuse:

1. Substance abuse.
2. Having experienced violence in their family of origin, either having witnessed fathers beating up mothers or have been abused themselves.

However, not *all* children from such families or males suffering alcoholism and drug addiction are destined to become spousal/partner abusers. (Finkelhor, Hotaling & Yilo, 1988; Hotaling & Sugarman, 1986; Tolman & Bennett; 1990; Stordeur & Stille, 1989).

Summary of Offender Risk Characteristics

Batterers brought to court typically share the risk characteristics of the most hard core, dangerous offenders.

- First, they have extensive prior records. Their criminal behavior is ingrained.
- Second, they do not share the justice system's view that what they did was wrong, much less criminal. They rationalize or minimize their behavior.
- Third, they are alcohol and/or drug abusers.
- Fourth, they lack strong ties to family, employment or the community, as measured by family disruption, high unemployment, and frequency of residency changes.
- Fifth, on an environmental level, they are also high risk because they have easy access to their victims. Depending upon local laws, they may also have easy access to weapons.

Characteristics of Domestic Violence Victims

Domestic violence cuts across all lines related to the victim's socio-economic status, race, culture, age, marital status, and geographical location. Victims of battering share a number of traits, many of which contribute to their inability to leave the violent environment:

- Blames herself for the violence.
- Exhibits low self esteem (which is magnified by the batterer's confirmation that she is "worthless").
- Fears leaving or staying.
- Minimizes or denies that a problem exists.
- Is often isolated from family, friends, and any support systems.
- Exhibits unpredictable behavior (stemming from the unpredictable behavior of her batterer).
- Feels shame and guilt.
- Characterizes herself as a traditionalist in the home
- Accepts responsibility for the batterer's actions, and believe she deserves the punishment she receives.
- Uses sexual relations as a way to establish intimacy.
- Often believes she can change the batterer's behavior.
- Often believes she can help herself without outside intervention.

The Effects of Domestic Violence on Children

It is significant that seven out of ten persons who enter into domestic violence shelters are children. The effects on children who witness family violence or who, in some cases, are themselves victims, were summarized in *Family Violence: An Overview* published by the National Center on Child Abuse and Neglect (n.d.):

The ramifications of family violence have almost no boundaries. In addition to the obvious physical injuries and deaths that result, family violence is often cited in research and clinical case studies as contributing to numerous other individual, family and societal problems. For example:

- According to Pagelow (1984), "Victims of all types of family violence share a common experience of denigration of self that results in diminished self-esteem. The shame and feeling of worthlessness so often expressed by battered women are shared by maltreated children, as well as maltreated elderly parents" (p. 81).
- In their review of research on the effects of family violence on children, Crites and Coker (1988) report:
 1. Children learn from an important role model (the parent) that violence toward a loved one is acceptable.
 2. Children exhibit fear, emotional symptoms such as psychosomatic complaints (physical complaints created by psychological stress), school phobias, enuresis (bed wetting), and insomnia. Young children may

either try to stop the violence, thus putting themselves at risk for unintended harm, or respond with immobilized shocked staring, running away and hiding, or bed wetting and nightmares.

3. After age five or six, children show strong indications of identifying with the aggressor and losing respect for the victim (National Center for Child Abuse and Neglect, n.d., pp. 18-19).
- Many children suffer low self-esteem, sadness, depression, stress disorders, poor impulse control, and feelings of powerlessness, and they are at high risk for alcohol and drug use, sexual acting out, running away, isolation, loneliness, fear and suicide (Jaffe, Wolfe, and Wilson, 1990, pp. 28-29).
 - Sons become aggressive, “act out, become disobedient and behave defiantly and destructively,” whereas daughters become “withdrawn, clingy, dependent” (Jaffe et al., 1990, p. 35).
 - Some adolescent boys assault their mothers and siblings. Older children, especially girls, take on the burden of protecting their younger siblings during the father’s beatings. They feel constrained from leaving home (Jaffe et al., 1990, pp. 30-31).
 - Abusers who are extremely domineering and controlling frequently keep or destroy documentation (like birth certificates and immunization records) as part of their control of the family, thus preventing or seriously delaying the family from receiving welfare benefits or housing assistance (Jaffe et al., 1990, pp. 28-29).
 - There is a direct correlation between family violence and homelessness. Women who leave abusive relationships too often realize their worst fears of having no financial resources and no place to go, with the streets or homeless shelters offering what appears to be their sole alternative. Similarly, children who are desperate to leave violent home environments run away from home, living on the streets or seeking temporary shelter relief.

The Cycle of Violence

In 1978, Dr. Lenore Walker -- in the landmark book *The Battered Woman* -- identified three distinct phases that comprise the theory of the “cycle of violence.” Dr. Walker determined that the phases vary in duration and intensity; as such, it is difficult to predict how long a batterer and victim will remain in any one phase or in the length of individual cycles.

Phase One: The Tension Building Phase

The batterer becomes more and more prone to react negatively to frustration. Little episodes of violence escalate to the level of minor assault, but are minimized and rationalized by both partners. The victim may become nurturing and compliant or stay out of the abuser's way -- whatever she thinks will prevent the violence from escalating. In order for her to maintain this role, she must not show anger. The abuser, spurred by this passive acceptance, does not try to control himself.

Women who have been battered over a period of time know that these lesser battering incidents will get worse. However, to help themselves cope, they reason that perhaps they did deserve the abuse and resolve to "try harder" in hopes that their behavior has some effect on the batterer's behavior. They do have some control in the initial stages of phase one; however, as the tension builds, they rapidly lose this control. When the abuser explodes, the victim often assumes the guilt by blaming herself for loss of control of the situation. Her anger steadily increases even though she may not recognize or express it.

In this phase, the abuser becomes fearful that the victim may leave him, which is reinforced as she avoids him in the hope of not triggering the impending explosion. He becomes more oppressive, jealous, threatening and possessive. As the abuser and the battered woman sense the escalating tension during the first phase, it becomes more difficult for their coping techniques to work. Each becomes more frantic.

Minor battering incidents become more frequent. The abuser increases his possessive smothering and brutality. The battered woman is now unable to restore equilibrium as she could earlier in this phase. Exhausted from the constant stress, she may begin to withdraw even further. The abuser looks for signs of anger, sensing it even though she may continue to try to deny it. Every move she makes is subject to misinterpretation. He hovers around her, barely giving her room to breathe. The tension between them becomes unbearable. Somewhere at the end of phase one, the process ceases to respond to any controls. As the point of inevitability is reached, the couple moves rapidly into phase two, the acute battering incident.

Phase Two: The Acute Battering Incident

Phase two is the uncontrolled discharge of tensions built up in phase one. The lack of control and the major destructiveness of the incident distinguish it from the lesser physical assaults of the first phase. Phase two is the shortest phase, usually lasting from minutes to a few hours. During this phase, both the abuser and victim accept that the abuser's rage is out of control. While the batterer may start out intending to "teach her a lesson" and stops when he feels she has been appropriately "disciplined," he often finds that he has severely injured the victim. He ends

up not understanding what has happened. The trigger for a phase two attack is rarely the victim's behavior; rather, it is usually an external event or the internal state of the abuser.

When the acute attack is over, it is usually followed by initial shock, denial and disbelief that it really happened. Both the batterer and the victim find ways of rationalizing the seriousness of such attacks. Many victims report reactions similar to those of disaster victims. Victims of catastrophe usually suffer emotional collapse 24-48 hours after the disaster. Symptoms include listlessness, depression, and feelings of helplessness. Similarly, battered women do not seek help until 24-48 hours after the acute attack has occurred.

Phase Three: Calm, Loving Respite

Just as phase two is characterized by brutality, phase three is characterized by the extremely kind, loving and contrite behavior of the abuser. He knows he has gone too far, and tries to make it up to his victim. It is a phase welcomed by both parties, but ironically it is the phase during which the woman's victimization becomes complete.

In this phase, the batterer constantly behaves in a charming and loving manner. He is usually sorry for his actions in the previous phase. He conveys his remorse to the victim, promises that he will never do it again, and begs her forgiveness. He is like a child caught with his hand in the cookie jar. The batterer truly believes that he will never again hurt the woman he loves, and that he will be able to control himself from now on. He also believes that he has taught his partner such a lesson that she will never again behave in a way that tempts him to physically assault her. He is quite sincere, and can easily convince anyone involved that his behavior will change.

The batterer frequently begins an intense campaign to win forgiveness and to prevent his victim from separating herself from him permanently. It is common for an abuser in phase three to shower his victim with elaborate gifts, and to attempt to "romance" her into forgiveness. He may enlist the aid of significant others -- family, friends, clergy, even counselors -- to persuade her that breaking up the relationship is a bad decision. Often everyone involved believes the rationalizations -- that he is sorry and will change, that his workload or his drinking is to blame, that the children need a father, that the abuser needs the help of the victim -- and somehow the victim begins to assume responsibility for any punishment the batterer may receive. She sees herself as the one who must stand by her man while he gets the help he needs so desperately. In reality, it is very unlikely that the abuser will ever seriously seek professional help to change his violent behavior as long as the victim stays with him. Most often, the abuser will seek help only after his victim has left him, and if he thinks seeking counseling will convince her to return.

The battered woman wants to believe that she will no longer have to suffer abuse. The abuser's contrite, reasonable behavior in phase three supports her belief that he really can change. It is during this phase that the victim gets a glimpse of her original dream of how wonderful love is.

The battered woman chooses to believe that the behavior she sees during phase three is what her spouse/partner is really like. She chooses to believe that the contrite behavior is more indicative of the real person than the battering behavior. She may also see at this time how frail and vulnerable he really is. If he can only get help, he'll be warm and loving all the time. She perceives herself as the bridge to his emotional well-being.

Since almost all the rewards of being married or coupled occur in phase three, it is extremely difficult for the victim to make a decision to protect herself legally or to separate during this phase. Yet, this is the time during which counselors and other helpers usually see her. When she resists leaving, she bases her reference on the phase three loving behavior, rather than on the phase one and phase two abusive behavior. However, if she has been through several cycles already, she often unconsciously knows that she is trading her emotional and physical well-being for a brief period of phase three loving behavior. That knowledge further lowers her self-esteem and adds to her shame and self hatred.

The length of time that phase three lasts is difficult to determine. Many women report that before they know it, small phase-one incidents begin to occur. In some cases, phase three may last only brief moments. Recent research indicates that in some long-standing battering relationships, phase three disappears completely.

The Psychosocial Theory of Learned Helplessness

Learned helplessness, as applied by Walker (1979), has three basic components:

- Information about what will happen;
- Thinking or cognitive representation about what will happen (learning, expectation, belief and perception); and
- Behavior toward what does happen.

As detailed in *Domestic Violence: A Guide for Health Care Providers*, published by the Colorado Domestic Violence Coalition and Department of Health in 1992, learned helplessness is a psychological theory that describes what happens when a person loses the ability to predict what actions will produce a particular outcome. In psychology, this is called non-contingency between response and outcome. Because the battered woman tries to protect herself and her family as best she can, those with learned helplessness choose only those actions that have a high probability of being successful.

The perpetrator also feels helpless. He does not understand why he can't control the victim/survivor. One time she obeys him and the next she seems to do things to throw him into a rage. He is often shocked by his level of anger and violence and does not know how to control it or stop it. As he becomes increasingly concerned with his behavior, he focuses more and more

on the victim/survivor as the source of his uncontrollable violence. For the victim/survivor learned helplessness, therefore, is a “survival-focuses” (as opposed to an “escape-focuses”) adaptation to repeated, intermittent abuse such as domestic violence. This theory proposes that when a battered woman believes that sometimes her behavior can have an effect on the batterer and other times the same behavior does not have that effect, she learns that

. . . she is unable to predict the effect her behavior will have . . . People suffering from learned helplessness are more likely to choose behavioral responses that will have the highest predictability of an effect within the known, or familiar, situation; they avoid responses -- like escape, for instance -- that launch them into the unknown . . . she believes the demons she knows well are probably preferable to the demons she does not know at all (Walker, 1989).

As the battering and isolation increase, a shift in the survivor’s comprehension of the situation occurs. She increasingly perceives escape as impossible. While she may continue to work at her paid job, eat, clean house, take care of the children, laugh with co-workers and appear self-confident and independent, *surviving* the battering relationship becomes the focus of her life at home.

In the survivor’s eyes, the batterer becomes more and more powerful. She sees police and other agencies as less and less able too help (Browne, 1987; Kelly, 1989; Selligman, 1975; Walker, 1979, 1989). She feels trapped and alone. She will likely develop a variety of coping mechanisms may include withdrawal, asking permission to do even trivial thing, compulsiveness, manipulation, substance abuse and asking that criminal charges be dropped.

Group Discussion

Why Don’t Women Leave?

Audio/visual Aids: Overhead Projector, Transparency and Marker

See Worksheet # 1

There are many reasons why women don’t leave violent relationships. Think for a moment about the power and control issues surrounding domestic violence relationships. Then, let’s list reasons why women stay in battering environments.

Domestic Violence and the Criminal Justice System

In general, there are eight junctures throughout the criminal justice system about which service providers should possess knowledge that can be easily shared with victims:

1. Initial contact.
2. Police response/arrest.
3. Pretrial release.
4. Prosecution and the courts.
5. Availability and enforcement of protection orders.
6. Docketing.
7. Dispositions.
8. Monitoring of offenders.

Initial Contact

Domestic violence calls should receive priority from law enforcement agencies. Dispatchers should be specially trained in how to handle such calls, including victim sensitivity and having non-judgmental attitudes in cases of repeat calls. Information dispatchers should obtain that is essential to police response includes, but is not limited to:

- Who is calling.
- Address of complainant.
- Telephone number (usually automatically provided by computer in 911 systems).
- Location of caller if not at the scene of the crime.
- Who is present (including children).
- What is happening (is the victim and/or others in household safe?).
- Are there weapons present?
- Any injuries to victim and/or witnesses.
- Location of assailant.
- Prior history of abuse by assailant.
- Any court orders or protective conditions in effect.
- Status of the offender within the criminal justice system (when applicable).

Often, police dispatchers remain on the line to maintain contact with a victim in crisis, as well as to be able to relay important information to the responding law enforcement officer(s).

Police Response/Arrest

Many law enforcement agencies have developed and implemented protocols and policies for responding to domestic violence. As crisis responders, both victim sensitivity and extreme caution are vital to the safety and security of all involved. In addition, responding officers can

provide a valuable service to victims of domestic violence by providing them with information and referrals to direct assistance and support available from victim service providers.

A law enforcement protocol for responding to domestic violence can include, but not be limited to, the following objectives:

- Obtain as much information as possible from the dispatcher.
- Approach scene with caution and with a partner.
- When the alleged assailant is present, immediately separate him from the victim.
- When the alleged assailant is *not* present, immediately attempt to ascertain his location.
- Secure the scene and check for weapons. Make mental notes about the condition of the scene.
- Immediately detect signs of injury to the victim(s) and seek emergency medical treatment, as needed.
- Interview victim and any witnesses.
 1. Separate from the offender.
 2. Victim sensitivity is crucial.
 3. Statements can be considered as evidence.
 4. “Excited utterances” (excited statements made by victims or witnesses at the critical stage immediately following the arrival of law enforcement) may be allowed into court as exceptions to the rule against hearsay.
 5. Determine history of violence.
- Collect evidence.
 1. Statements from victim(s), witnesses(es), and alleged assailant.
 2. Observe demeanor of victim and alleged assailant.
 3. Photograph victim and crime scene.
 4. Take notes and sketches that describe the crime scene.
 5. Emergency response or dispatcher audiotapes.
 6. Medical and emergency room records.
- Determine “probable cause” for arrest.
- Determine violation of any court order or injunction.
- Provide information about domestic violence to the victim.
- Provide an immediate referral to a shelter, domestic violence program, or victim services.
- Follow-up with the victim after the initial contact to determine her current status.

Pre-trial Release

The safety of the victim and any children must be paramount in any decisions made concerning pre-trial release. Victim service providers should advocate to the court for measures that can help ensure victim security, including:

- Pre-trial incarceration.
- Higher bail/bond or denial of bail.
- Victim notification of defendant's release.
- Protective or restraining orders.
- Securing alternative safe housing for the victim and any children.

In some jurisdictions, post-charge diversion programs are used to suspend case processing while the abuser undergoes treatment. Victim service providers must be aware of these programs and able to explain them to victims, including: program guidelines; treatment modalities; and whether or not the defendant will be prosecuted upon "successful" completion of the program.

Prosecution and the Courts

Prosecutors play a key role in holding domestic violence offenders accountable and assisting victims and witnesses in such cases. In 1992, the National Council of Juvenile and Family Court Judges published two recommendations for prosecutors relevant to domestic violence:

- Prosecutors should initiate, manage and pursue prosecution in all family violence cases where a criminal case can be proved, including proceeding without the active involvement of the victim, if necessary.
- Prosecutors should have specialized family violence personnel and written procedures for prompt screening and charging in family violence cases.

These recommendations serve to place responsibility for prosecuting batterers on the criminal justice system, rather than on the victim; to provide specialized services for victims and witnesses; and to expedite criminal justice processes in domestic violence cases.

Many prosecutors' offices today offer specialized units for domestic violence cases and victims, with personnel trained in the dynamics of domestic violence, legal issues specific to such cases, and victim sensitivity. Furthermore, vertical prosecution units include prosecutors whose caseloads contain solely domestic violence cases. Some prosecutors have adopted "no drop" policies, in which cases proceed whether or not the victim chooses to cooperate.

Prosecutors are often faced with victims who do not wish to testify due to a variety of factors, among them fear of retaliation. Offices with “no drop” policies rely on a number of measures to continue with cases, including:

- Subpoenaing the victim.
- Use of photographic and other visual depictions of injury to victims.
- Use of “excited utterances” from the crime scene, i.e. (excited statements made by victims or witnesses at the critical stage immediately following the arrival of law enforcement).
- Testimony from family members or witnesses.
- Use of 911 audio tapes.
- Use of sworn statements of victims.
- Use of testimony from victim advocates.
- Use of videotapes of victims from initial interviews.
- Use of expert witnesses.

Many prosecutors have victim support programs within their agencies, or rely upon services available from community-based victim service organizations. Services for victims of domestic violence may include, but are not limited to:

- Completing the intake process for a criminal case, which includes histories of the victim and any children; case history; court orders (when applicable); victim/defendant description; information about the current incident, as well as about the history of violence; defendant information; and referrals (see example from the King County [Washington] Prosecuting Attorney Domestic Violence Project in Appendix A).
- Referral to appropriate victim and social service agencies.
- Court preparation.
- Court accompaniment.
- Providing information about civil and criminal remedies.
- Providing counseling and support groups.

One of the most promising innovations in the legal system is the unified family court. Judge Robert W. Page describes the unified family court as “a court for families.” A genuine unified family court has authority over child abuse and neglect; divorce, child custody and visitation; partner abuse; elder abuse; juvenile delinquency; termination of parental rights; and other family law matters. The National Council of Juvenile and Family Court Judges recommends that the family court should have “criminal jurisdiction over adults for crimes committed against family and household members.”

In a paper delivered at the National Conference on Family Violence: Health and Justice in 1994, Judge Page’s description of the advantages of a unified family court was offered:

“The primary advantage claimed for a family court system is the unification of all complaints, petitions, and case types within one case processing and management system in order to provide a more efficient, less costly and damaging, consistent and longer lasting resolution of the problems presented. By directing that all complaints or petitions must be resolved in one unified court, the opportunities for inconsistency and errors based upon inaccurate or incomplete information are greatly reduced.”

Unified family courts are operational in nine states, and are being considered in several others (Myers, 1994, p. 3).

Orders of Protection

Orders of protection -- also called “restraining orders” -- are court orders that forbid the abuser from doing certain things to victims, having contact with victims, and/or compelling abusers to comply with certain requirements.

While orders of protection can be issued at any time, it is helpful for victims to seek restraining orders as soon as possible after a domestic violence crime has occurred.

Each jurisdiction has different policies and procedures for issuing and monitoring orders of protection. In order to best assist victims, service providers should be aware of the following considerations:

- Is there a definition of “domestic violence victim” that precedes the issuance of an order?
- Which entity issues orders of protection, i.e. family court, municipal court, police department, or a combination depending on the circumstances?
- Domestic violence complaints filed in conjunction with requests for protection are considered to be sworn testimony from the victim that can be utilized in court.
- Can the victim receive a copy of either the complaint or the order of protection?
- Are victims entitled to “ex parte” proceedings, i.e. only one party is heard, with the defendant not required to be present?
- What is the difference between temporary restraining orders (TROs) and final restraining orders (FROs) in your jurisdiction?
- What evidence should victims bring (i.e. photographs documenting injuries, documentation of medical records and/or expenses, etc.)?
- What happens at the hearing (i.e. victim testimony, defendant testimony, presentation of evidence, request for relief by the victim, etc.)?
- What types of relief are available (including no contact from defendant; prohibition of future acts of violence, intimidation or harassment; the defendant must physically leave the home; pay child support, restitution, and/or rent or

mortgage payments; carry insurance for the victim and any children and pay all medical expenses; pay a fine to the state victim compensation fund; cannot have a weapon; must undergo counseling; must refrain from using alcohol or other drugs; and visitation conditions [when applicable] are determined)?

- Consent orders (whereby both parties agree that domestic violence has occurred, and agree to abide by all terms of a restraining order) are strictly voluntary on the part of the victim, and cannot be coerced.
- Victims should receive information about what to do if any order of protection is violated.

Docketing

More and more courts today are giving priority to domestic violence cases. In some jurisdictions, all domestic violence cases are heard on the same day, with the same judge, prosecutor and victim advocate present throughout all proceedings. The use of vertical prosecution units noted above also contributes to the expediting of domestic violence cases. To reduce the potential for further violence, domestic violence cases should be given priority on court dockets.

Dispositions

Victims of domestic violence should have specific rights relevant to disposition, which include but are not limited to:

- Notification of the disposition.
- Opportunity to provide a victim impact statement to the court, and to have any children also submit impact statements in measures that are commensurate with their age and cognitive development.
- Opportunity to request specific measures of relief.
- Securing a permanent restraining order that does not have to be reissued on a monthly or quarterly basis.
- Information and assistance regarding civil remedies.
- Information regarding restitution orders and enforcement.
- Notification of a convicted offender's release from incarceration (when applicable).

Monitoring Offenders

In *Spousal/Partner Assault: A Protocol for the Sentencing and Supervision of Offenders*, Chief Probation Officer Andrew Klein of Quincy, Massachusetts, offers four key components of strict supervision conditions (1994):

1. Punishment.

- Punitive conditions.
- Financial assessments.
- Apology to victim.
- Community service.
- Non-jail loss-of-liberty confinement (in cases not involving incarceration).
- Electronic monitoring.
- Intensive supervision.

2. Rehabilitation.

- Mandatory treatment that is “batterer-specific” provided by professionals who are specialists.
- Model regulations for abuser treatment that bar any approach that “blames or intimidates the victim, or places the victim in a position of danger that is not appropriate.”
- No couples counseling.
- Mandatory alcohol and other drug treatment, with a mandate of abstinence.

3. Retribution/restoration.

- Restitution (including but not limited to direct and indirect for replacement costs of damaged property, medical and counseling bills, and attorney costs).
- Ongoing child support.
- Mortgage or rent payments.
- All payments should be made through the court or correctional institution.

4. Protection.

- The offender should obey all outstanding civil protective or restraining orders.
- Forfeiture of weapons, particularly guns and rifles.
- Ordered to submit to warrantless searches of their persons or homes.
- Supervised at maximum intensity.
- Special protective obligations when children are involved, i.e. custody, visitation, etc.

Advocacy for Victims of Domestic Violence

There are thousands of staff and volunteers in communities across America who assist, support and serve victims of domestic violence. Often, these professionals provide a lifeline to women

and children who desperately need assistance and direction, but are confused by the dynamics of their victimization, as well as by the very thought of leaving a violent environment and, in some cases, entering into the criminal justice system.

The goals of advocacy for victims of domestic violence are generally to:

- Empower women with the ability to make significant changes and solve problems.
- Increase a victim's ability to make a successful transition from a battering environment to independence.
- Connect the victim -- both in the short- and long-term -- with community resources that provide support, encouragement, and assistance.
- Provide information and support throughout the criminal justice system and beyond.

There are myriad responsibilities associated with assisting victims of domestic violence, including but not limited to:

- Responding to crisis calls from victims through 24-hour hotlines.
- Accompanying or following law enforcement officials who respond to domestic violence incidents.
- Providing safety and shelter to battered women and their children.
- Providing follow-on services to increase the number of victims who file charges or seek protection through the civil or criminal courts.
- Advising victims about their legal rights throughout the criminal justice system (see "Domestic Violence and the Criminal Justice System" in this chapter).
- Advising victims about information and resources relevant to protection and security, divorce, custody, and visitation.
- Helping victims develop "safety plans."
- Providing information and assistance to victims who leave battering environments, including temporary and long-term housing, employment training (or re-training) and placement, and child care.
- Providing assistance in financial matters, including child support, restitution, victim compensation, and financial planning.
- Upon request, acting as liaison between the victim and the criminal justice system.
- Providing peer counseling.
- Providing support groups.
- Providing information and referrals to community resource agencies, including public assistance, child protective agencies, public and mental health agencies, social services, and schools.

- Providing training to law enforcement, criminal justice, social service, mental health, and other allied professionals about the dynamics of domestic violence, as well as the specific rights and needs of domestic violence victims.
- Working to establish or strengthen a coordinated community response to domestic violence and its victims.
- Generating greatly needed public awareness about domestic violence and its effects on victims, witnesses, communities, and society in general.
- Working to affect changes in laws, agency policies, protocols and programs that enhance rights and services for victims of domestic violence.

Victim Validation

One of the most crucial skills a victim advocate must possess is the ability to validate the victim's feelings, experiences, and fears. Many domestic violence victims don't view themselves as victims, and fail to realize that domestic violence is a crime perpetuated against many other women, in addition to themselves.

Some guidelines for domestic violence victim validation include the following:

- Learn and practice effective communication skills, including nonverbal and verbal techniques.
- When interviewing the battered woman, do not ask for verification of her story from second parties.
- Assess the complete history of violence, including the current battering incident, as well as the first and worst incidents.
- When conducting this assessment, ask the woman directly to describe the violent acts and how she felt when and after they occurred, as well as how she feels now. Do *not* avoid speaking directly about the violence. Provide encouragement and support to the victim for sharing her feelings and experiences.
- Empathize with the victim and validate her feelings, stressing the criminal nature of the violence, as well as the fact that the victim is *not* to blame.
- Universalize the crime of domestic violence, pointing out the scope and prevalence of such crimes that cut across socioeconomic, racial, cultural and geographic lines.
- Provide information and referrals for continued support and assistance, including local, state and national resources.
- Develop a plan for follow-up contact, support and assistance from you, your agency, or allied community service or criminal justice agencies.
- Affirm the fact that the victim is *not* alone, and that there are people and programs available to assist and support her.

Developing a Safety Plan

If and when a victim is able to leave her battering environment, it is essential that she has a “safety plan” to increase her opportunity for a successful departure. Advanced planning is crucial. Concerns and actions to be addressed include the following:

- Does she have family and friends with whom she can stay?
- Would she find a protective or restraining order helpful?
- Can a victim advocate safely contact her at home? What should the advocate do if the batterer answers the phone?
- Does she know how to contact emergency assistance (i.e. 911)?
- If she believes the violence might begin or escalate, can she leave for a few days?
- Does she know how to contact the shelter (if she doesn't, provide her with information for future use)?
- Does she have a neighbor she can contact, or work out a signal for assistance, when violence erupts or appears inevitable?
- If she has a car, can she hide a set of keys?
- Can she pack an extra set of clothes for herself and the children, and store them -- along with an extra set of house and car keys -- with a neighbor or friend?
- Can she leave extra cash, checkbook or savings account book hidden or with a friend for emergency access?
- Can she collect and store originals or copies of important records such as birth certificates, social security cards, her drivers' license, financial records (such as banking and other financial accounts, mortgage or rent receipts, the title to the car, etc.) and medical records (for her children and herself)?
- Does she have a concrete plan for exactly where she should go and how she can get there, at any time regardless of when she leaves?
- Does she have a disability that requires assistance or a specialized safety plan?
- Does she want access to counseling for her children or herself?

Developing a Coordinated Response to Domestic Violence

Neither victim advocates, criminal justice professionals, social service providers, nor allied professionals operates in a vacuum when it comes to providing quality services to victims of domestic violence.

There are many professionals who have responsibilities to domestic violence victims. Worksheet # 2 will be used to brainstorm and list professionals who can contribute to a coordinated community response to domestic violence.

In a lecture to the American Probation and Parole Association's Annual Conference in Phoenix, Arizona in 1994, Prosecuting Attorney Sarah Buel identified 17 key components of a model domestic violence response:

- Development and implementation of a coordinated response with strong advocates from criminal justice, victim services, children's services, and allied professions.
- Establishment of a Family Violence Coordinating Council with monthly meetings to set an agenda and action plans for the community, and to determine and clarify roles and responsibilities of individuals and entities.
- Use vision to overcome obstacles, and don't make excuses!
- Do not allow mediation between domestic violence victims and perpetrators, as it creates a structure of "power versus powerless," and poses danger for the victim. All interviews of victims and offenders should be conducted separately.
- Do not allow joint custody under any circumstances.
- Do not allow mutual restraining orders unless there are supporting findings. Utilize a checklist for probable cause; determine the history of abuse (through both criminal and civil proceedings); utilize evidence such as 911 tapes; and determine if the victim has a prior history of abuse.
- Do not allow couple's counseling.
- Implement visitation centers (such as those in Arizona) that provide supervision, with drop off/pick up times staggered to avoid any contact between the victim and perpetrator.
- Implement parenting classes in every junior high school.
- Implement a massive community education program, designed to be proactive and offer information and resources *before* women and children are victimized.
- Implement court appointed special advocates (CASAs) and guardian ad litem (GAL) programs to provide advocacy, support and representation to children in domestic violence cases.
- Offer 24-hour response to victims, as well as 24-hour access to services.

- Implement mechanisms to enforce child support and hold fathers financially accountable (there would be a 46% reduction in child poverty if all child support was paid in the United States).
- Conduct mandatory and frequent training of all professionals whose work involves domestic violence prevention, advocacy and/or intervention, including: orientation training; continuing education; and multicultural awareness.
- Allow for permanent restraining orders and orders of protection, eliminating the need for regular renewals.
- Implement consistent briefings on cases and issues affecting victims and the community.
- “Fast track” domestic violence cases through priority docketing, specialized domestic violence courts, and vertical prosecution.

Why Don't Women Leave?

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**Potential Participants in a Coordinated
Community Response to Domestic Violence**

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Domestic Violence

- 1) What are the three forms of abuse that are prevalent in domestic violence?
- 2) What are the two characteristics that are consistently and significantly correlated with batterers?
- 3) What are the three phases in the “cycle of violence?”
- 4) Cite five reasons why women don’t leave battering environments.
- 5) List five criminal justice interventions for battered women.
- 6) Briefly describe the components of your proposed, ideal domestic violence crime victim assistance system.

Why Don't Women Leave? *Worksheet Number One*

- 1) Lack of money.
- 2) Fear.
- 3) "Love."
- 4) No or low self esteem.
- 5) No job skills.
- 6) No place to go.
- 7) Loss of stability and/or security.
- 8) Pressure from family and/or friends to stay.
- 9) Religious beliefs or pressures.
- 10) Cultural beliefs or pressures.
- 11) Denial of abuse.
- 12) Saw or experienced abuse as a child and believe it is "normal."
- 13) Belief that the abuse "is my fault."
- 14) Belief that "I deserve it" (the abuse).
- 15) Belief that "he will change."
- 16) Isolation.
- 17) Belief that there is no other option.
- 18) Fear of the unknown -- afraid to change.
- 19) He has threatened to kill me.
- 20) He has threatened to kill himself.
- 21) He has threatened to take my children.
- 22) He has threatened to harm my children or other loved ones.
- 23) He has threatened to cut me off financially.
- 24) Fear that nobody else would have me.
- 25) Alcohol or other drug dependency (on behalf of the batterer and, when mutual, often coerced).
- 26) Belief that despite the abuse, he is otherwise a good provider.
- 27) Shame.
- 28) Fear of public disclosure of the abuse.
- 29) Lack of knowledge and/or fear of law enforcement and CJS response.
- 30) Leaving the relationship equates to "failure."
- 31) Psychological attachment to abuser (the "Stockholm Syndrome").
- 32) I tried to leave before and failed.
- 33) Feelings of hopelessness and helplessness.

Potential Participants in a Coordinated Community Response to Domestic Violence *Worksheet Number Two*

- 1) Victim service providers.
- 2) Emergency assistance dispatchers.
- 3) Law enforcement.
- 4) Prosecutors.
- 5) Prosecutor-based victim/witness professionals.
- 6) Judges.
- 7) Court administrators.
- 8) Probation.
- 9) Parole.
- 10) Corrections.
- 11) Juvenile justice officials.
- 12) Child protective services.
- 13) Social services.
- 14) Mental health practitioners.
- 15) Medical practitioners.
- 16) Legal professionals.
- 17) Clergy.
- 18) Academia (both higher and lower education).
- 19) Child protective services.
- 20) Public assistance.
- 21) Child support enforcement.
- 22) State victim compensation.
- 23) State victim assistance.
- 24) News media.
- 25) Civic organizations.
- 26) Public policy makers (local, state and national).
- 27) Researchers.

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Chapter 14

Sexual Assault

Abstract: Rape is the most underreported crime in America. Significant changes to improve the treatment of sexual assault victims have occurred in the last two decades. The impact of reforms, led by the women's movement, can be seen in the legal, mental health, medical, and victim services arenas. During the 1970s, the first rape crisis center was established. The treatment of victims in the criminal justice system was questioned, and hundreds of laws were passed to protect rape victims in the courts. Medical protocols have been developed and widely accepted. Although the treatment of rape victims today is vastly different from three decades ago, many victims still do not receive the assistance and treatment they need. The mental health impact of rape is now well documented in the literature, and the practices of mental health professionals have improved.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The definitions and characteristics of rape cases.
2. The psychological trauma of rape, including Rape-related Post-traumatic Stress Disorder.
3. Roles and responsibilities of criminal justice professionals in dealing with rape victims and cases.
4. Key concerns of rape victims of which service providers should be aware.

Statistical Overview

- Women annually reported about 500,000 rapes and sexual assaults (for 1992 and 1993), with friends or acquaintances committing over half of these crimes, and strangers responsible for about one in five rapes and sexual assaults. (*Ronet Bachman, and Linda E. Saltzman, 1995, "Violence Against Women: Estimates from the Redesigned Survey," National Crime Victimization Survey, U.S. Department of Justice, Washington, D.C.*)
- Women were about six times more likely than men to experience violence committed by an intimate. (*Ibid.*)
- Half of the women who reported they had been raped during 1992 were juveniles under 18 years old, and 16 percent were younger than 12, according to a U.S. Department of Justice study of 11 states and Washington, D.C. (*Langan, Patrick and Caroline Wolf Harlow, 1994, "Child Rape Victims, 1992," p. 1, Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C.*)
- Most child victims under 12 (94 percent), as reported by imprisoned rapists, were family members (70 percent) or an acquaintance or friend (24 percent); only six percent were strangers. For child rape victims ages 12 to 17, 36 percent were family members of the rapist, 45 percent were an acquaintance or friend, and 19 percent were strangers. (*Ibid., p.2*)
- Every single minute in America, there are 1.3 forcible rapes of adult women; 78 women are forcibly raped each hour. Every day in America, 1,871 women are forcibly raped, equating to 56,916 forcible rapes each month. Every year in our country, 683,000 American women are forcibly raped. (*Kilpatrick, Dean, Christine Edmunds, and Anne Seymour, April 1992, "Rape in America: A Report to the Nation," from "The National Women's Study" sponsored by the National Institute of Drug Abuse, National Victim Center and National Crime Victims Research and Treatment Center at the Medical University of South Carolina, Washington, D.C.*)
- Only 16 percent of rapes are ever reported to police. Most cases were reported within 24 hours after the rape. However, a substantial minority (25 percent) was reported more than 24 hours after the rape. (*Ibid*)
- Rape has a devastating impact on the mental health of victims, nearly one-third of all rape victims (31 percent) develop Rape-related Post-traumatic Stress Disorder (RR-PTSD). Based on U.S. Census estimates of the number of adult women in the United States, approximately 3.8 million women currently have RR-PTSD, 3.8 million have previously had RR-PTSD in their lifetimes, and 211,000 women will develop RR-PTSD each year. (*Ibid*)
- Women who were raped by a stranger sustained more serious injuries than women raped by someone they knew. (*"Violence Against Women: A National Crime Victimization Survey Report," U.S. Department of Justice, Office of Justice Programs, 1994.*)

- Rape was more likely to be committed against women by someone known to them (55%) than by a stranger (44%). (*Ibid*)
- Rape involving known offenders were almost twice as likely to occur at or near the victim's home (52%) compared to rapes by strangers, which were more likely to occur in an open area or public place (43%). Almost a quarter of rapes by strangers did occur at or near the victim's home. (*Ibid*)
- The average sentence for criminals convicted of rape in the United States (and released in 1992) is 117 months. The average time served is 65 months, which equates to 56 percent of the actual sentence served. For crimes of sexual assault, the average sentence is 72 months, and the average time served is 35 months, equating to 49 percent of time served. (*Greenfeld, Lawrence A., 1995, "Prison Sentences and Time Served for Violence," page 1, Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C.*)
- As of the end of 1994, 40 states provide for the registration of sex offenders. Most states impose the registration requirement on an offender at the time he or she is released on parole or probation, and the requirement usually continues for the duration of the parole or probation period, or for an average of 10 years. (*National Victim Center, 1995, "Community Notification of the Release of Sex Offenders," page 1, Arlington, VA*)

Introduction

While the crime of rape has occurred for centuries, it wasn't until the 1970s that rape was identified in psychiatric literature. Advocacy and treatment programs for rape victims began then, with the first rape crisis center established in 1972. Since that time, literally hundreds of research studies in the area of mental health, criminal justice, health, clinical psychology and academia have been conducted. With the advent of the 1970s, society's long silence about rape was broken. The women's movement inspired early leaders in the sexual assault movement to form grass-roots organizations to help rape victims and public attention focus on this problem. Over the next two decades, significant legislative changes addressing the treatment of, and protections for, rape victims participating in the criminal justice process have been enacted.

In addition to rape reform legislation in the late 1970s and mid 1980s, medical protocols were developed and even greater emphasis was placed on the mental health impact of sexual assault. In spite of these changes, rape remains one of the most under-reported crimes in America. According to Santa Monica Rape Treatment Director Gail Abarbanel, in her study "The Rape Victim," "between 1970 and 1980, the rate at which rapes were reported to police departments across the country increased by 100 percent" (Abarbanel and Richman, 1990). Still, recent data

show that only 16 percent of rape victims report to the police (Kilpatrick, Edmunds, and Seymour, 1992).

Dean Kilpatrick, a nationally recognized researcher in the area of sexual assault and rape, noted (1993): “Rape and other forms of sexual assault are controversial topics that have a long history and that have been much in the news recently due to Congressional Hearings (i.e. regarding sexual assaults in the military and the *Violence Against Women Act*). There are several unresolved questions surrounding sexual assault and rape that need to be resolved.” Many of these questions concern important issues that will be addressed in this chapter, including:

- How should rape and other forms of sexual assault be defined?
- What is the scope of the sexual assault problem in America?
- The myths about sexual assault.
- What is the psychological impact of sexual assault?
- What are the best methods for responding to sexual assault victims?

All of these are important questions, the answers to which provide valuable information to those in the criminal justice system and victim assistance professions who work with sexual assault victims.

Evolution of the Definition of Sexual Assault and Rape

Several authors have observed (e.g. Bourque, 1989; Estrich, 1987; Koss, 1993), many people still believe that rape only occurs when a total stranger attacks an adult woman using overwhelming force. Using this definition, boys or men cannot be raped; girls and adolescents cannot be raped; no one can be raped by someone they know well; and forced oral or anal sex does not constitute rape. Thus, attempts to discuss the topic are often frustrating because many people define rape differently.

Before the 1960s, the legal definition of rape was generally a common law definition used throughout the United States that defined rape as “*carnal knowledge* of a woman not one’s wife by force or against her will.” In 1962, the United States Model Penal Code (MPC) was established, thus updating the definition of rape. The MPC defined rape as: “A man who has sexual intercourse with a female not his wife is guilty of rape if . . . he compels her to submit by force or threat of force or threat of imminent death, serious bodily injury, extreme pain, or Kidnapping” (Epstein and Langenbahn, 1994, p. 7). In addition to *limiting* the definition of rape to a crime against a *woman*, this code was also very narrow because:

- It retained a marital-rape exemption (not acknowledging rape within marriage or co-habiting couples).
- It focused on the victim's *consent* rather than the perpetrator's forcible conduct.
- Moreover, the MPC established a "grading system" for the crime of rape and rape offenses. For example, it stated that "rape by a voluntary social companion" was less of a serious offense than "rape by a stranger." In addition, it treated the rape of men as a lower felony offense than the rape of women.

In the 1970s and 1980s, extensive rape reform legislation was enacted throughout the states. Importantly, the legal definition of rape dramatically changed. Michigan's Criminal Sexual Conduct Statute, enacted in 1975, became the national model for an expanded definition of rape. Today, Illinois' Criminal Sexual Assault Statute is considered the national model (Epstein and Langenbahn, 1994, p. 8). Both statutes have the following characteristics that broadly define rape:

- Rape is defined as "gender neutral," which broadens the earlier definitions of rape to include men as well as women.
- They include acts of sexual penetration other than vaginal penetration by a penis.
- They distinguish types of sexual abuse on the basis of the degree of force or threat of force used similar to the "aggravated" versus "simple" assault distinction with physical assaults.
- Threats as well as overt force are recognized as means to overpower the victim.
- In addition, a new category of rape victim, "taking advantage of an incapacitated victim" is included. This category can include mental illness, victims under the influence of drugs, and alcohol intoxication. (Some states require that the perpetrator give the victims the intoxicant in order to obtain sexual access.)

The Federal Definition of Rape

In spite of these legislative changes, much of the current debate that exists today about what constitutes sexual assault and rape stems from how rape should be defined.

For purposes of this chapter, rape and other forms of sexual assault are defined using the Federal Criminal Code (Title 18, Chapter 109A, Sections 2241-2233) as a guide. Although criminal statutes differ somewhat across states in their definitions, the Federal Code is national in scope.

For example, in addition to incorporating the reform provisions discussed above -- gender neutrality and incorporation of a broad definition of acts of sexual abuse -- the Federal Criminal Code definition:

- Distinguishes between types of sexual abuse on the basis of the degree of force or threat of force used similar to the aggravated versus simple assault distinction with physical assaults.
- Does not use the term rape, and does not require the victim to label the act as rape in order to meet the elements of the crime.

The 1986 federal statute defines two types sexual assault:

- Sexual abuse
- Aggravated sexual abuse

Aggravated Sexual Abuse

Aggravated Sexual Abuse by Force or Threat of Force: When a person “knowingly causes another person to engage in a sexual act”.. “or attempts to do so by using forces against that person, or by threatening or placing that person in fear that person will be subjected to death, serious bodily injury, or kidnapping.”

Aggravated Sexual Abuse by Other Means: When a person “knowingly renders another person unconscious and thereby engages in a sexual act with that other person; or administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby:

- a) Substantially impairs the ability of that person to appraise or control conduct
- b) Engages in a sexual act with that person

Aggravated Sexual Abuse with a Child: When a person “knowingly engages in a sexual act with another person who has not attained the age of twelve years, or attempts to do so.”

Clearly the definition for aggravated sexual abuse by force or threat of force is analogous to what is usually called *forcible rape*. Aggravated sexual abuse with children is a serious form of what is generally called *statutory rape*. However, aggravated sexual abuse by other means is a type of non forcible rape whose perpetrator “shall be fined . . . imprisoned for any term of years or life, or both.”

Sexual Abuse

The Federal Criminal Code definition of sexual abuse includes two types of acts:

- Causing another person to engage in a sexual activity by threatening or placing that person in fear.
- Engaging in a sexual act if that person is incapable of declining participation in, or communicating unwillingness to engage in that sexual act.

Abusive Sexual Contact is defined as when no sexual penetration actually occurred but when “the intentional touching..of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person” occurs.

Sexual Abuse of a Minor or Ward is defined as knowingly engaging in a sexual act with a person between the ages of 12 and 15 years. (For additional information on sexual crimes against children, see the chapter on child victims.)

Implications of Definitions

While great reforms have been made, a clear implication of these criminal code-based definitions of violent crimes addressing sexual assault, abuse and rape is that information is needed about:

- The victim’s state of mind at the time of the crime, such as fear of death or serious bodily harm and the victim’s crime-related physical and psychological injuries to assist in better classification of crimes.
- That proper measurement of rape and sexual abuse, which cannot be assessed without information about the types of unwanted sexual acts that are involved, the types of force or the coercion used by the perpetrator, and the ages of the victim and the perpetrator.

Before discussing the incidence rate and impact of rape and sexual assault on the victim, it is important to examine another global issue: the perception of rape by society, the misinformation that has circulated about the crime, and attitudes about rape that inflict “second injuries” on the victim.

Myths and Facts about Rape and Sexual Assault

Myths about rape and sexual assault are deeply rooted in our society. Some myths are remnants of the legal definitions of rape and sexual assault that existed in this country until the 1970s and 1980s. Regardless of their origin, they have led to the development of insensitive treatment of rape and sexual assault victims, and have discouraged victims from coming forward to report the crime.

Many of these myths spring from the “stigma” associated with being a victim of rape or sexual assault, where the “sexual nature” of the crime has been emphasized rather than perpetrator’s act of control, degradation, physical violence and emotional trauma. It is important to discuss some of the more common myths surrounding rape and sexual assault in order to put the treatment of rape victims in perspective.

In the publication *Helping a Friend Who Has Been Raped or Sexually Assaulted* (1989) the following myths were discussed:

Men are never victims of sexual assault. While women are by far the most frequent victims of rape and sexual assault, both men and women may be victims or perpetrators of sexual assault. Unfortunately, male victims tend to seek help less often than women due to embarrassment and fear that they will not be taken seriously.

Sexual violence does not occur between lesbians or between gay men. Sexual violence does occur in same-sex relationships. Fear of homophobic responses from law enforcement and service providers may prevent victims from seeking help.

If the victim was drunk or drugged, she or he was "asking for it." Inability to give consent is not "asking for it." In all states, forcing sexual contact on a woman or man is against the law.

Rape is an expression of sexual desire. Rape is an expression of hostility and aggression with sex as a vehicle. Rape is a violent abuse of power in which one person acts without regard for the pain and trauma inflicted on another.

Victims are to blame in some way for the assault (e.g. provocative dress, walking alone at night, partying). The rapist is always responsible for having committed the rape. Regardless of the victim's appearance, behavior, judgement, or previous actions, the victim is not responsible for the rape.

Men can't stop themselves when they are sexually aroused. Men are capable of, and responsible for, controlling both their minds and their bodies, just as women are.

Child sexual abuse is a rare occurrence. Some studies have found up to 62% of females and up to 31% of males report having been sexually abused as children.

Rape, sexual assault and child sexual abuse are usually committed by strangers. Studies show acts of rape, sexual assault, and child sexual abuse are most often committed by family members or friends or acquaintances of victims. Some studies show over 80% of adult women reporting sexual assault know their assailants, and up to 49% of child victims of extra-familial sexual abuse are acquainted with the perpetrator.

- It's no big deal if a woman is forced to have sex with someone she knows (for example, a friend, date, boyfriend or spouse) -- and it isn't really rape.

Sexual intercourse forced by an acquaintance or date is rape, and by a spouse is marital rape. It is especially traumatic because the victim's trust in others, as well as her own judgment, can be seriously damaged.

In addition, the National Organization for Victim Assistance has identified "social myths" regarding rape and sexual assault. Many of these myths are common beliefs shared by the American public today, and continue to *cause second injuries* rape victims and for society as a whole to minimize the devastating impact of rape. Among the more egregious are the following:

Attitudes toward dress: Suggestions that a woman shouldn't dress a certain way, go to certain areas of a city, or hitchhike, are commonly used to suggest that a rape victim has "asked for it."

Just five years ago a jury in Florida did not convict a defendant who had abducted his victim at knife point, drove her around for several hours, repeatedly raping her, because she was wearing a tank top and short skirt, and had on no underwear. When questioned after the trial, several jury members cited her dress as conveying that she was "looking for sex."

Only pretty young women are assaulted: Older women, obese women, women with severe physical disabilities -- all are examples of women who may not be believed because they don't live up to certain standards of attractiveness.

Sexual assault as an act of sexual gratification: This myth leads people to believe that rape is a consequence of a male's sexual arousal. Hence, the excuse in acquaintance rape is often "I couldn't stop myself." Rape is an act of power and control.

Women are fickle, manipulating, and vengeful: This accusation is used to explain away sexual harassment or acquaintance rape charges on the grounds that the victim is "just trying to get even," especially in cases of date rape.

Cultural/socio-economic misperceptions: "Rape, sexual abuse, or incest is just a way of life for women in some environments and cultures." The myth is that some women don't care as much about being victimized as others; that other cultures allow rape because of tradition, or that rape is a minor problem for prostitutes, the poor, alcoholics, drug addicts, and others. For every victim, rape causes trauma.

You can't be raped if you don't want to be: No one can really be sexually assaulted if they don't want to be. An outgrowth of the issue of consent, this myth is fostered by the idea that struggle and force are necessary elements of rape. It also is reflected in statements such as "if she had just kept moving, he couldn't have penetrated her," or that it isn't physiologically possible to penetrate someone against his or her will.

Women's obligation: Women owe their intimate partner sex in exchange for money/dates/care. A common expectation is that if a male spends money generously on a woman over two or three outings, he should have some reward.

Degrading humor: Sexual assaults are intrinsically funny or exciting, such as the old adage comparing rape to bad weather: "If you can't stop it, you might as well sit back and enjoy it."

(Portions of the preceding section excerpted from NOVA's Training Outline on Sexual Assault, 1989)

National Research on Rape

Due to the many myths, misconceptions and social attitudes about rape and sexual assault, the National Victim Center, in partnership with the National Crime Victims Research and Treatment Center of the Medical University of South Carolina, published *Rape in America: A Report to the Nation in 1992*. The report was based on *The National Women's Study* -- funded by the National Institute of Drug Abuse -- a three-year longitudinal study of a national probability sample of 4,008 adult women, (age 18 or older), 2,008 of whom represent a cross section of all adult women and 2,000 of whom are an over sample of younger women between the ages of 18 and 34.

The study provided the first national empirical data about forcible rape of women in America. For example, the study found:

- Seven-tenths of one percent of all women surveyed had experienced a completed forcible rape in the past year. This equates to an estimated 683,000 adult American women who were raped during a twelve-month period.
- Thirteen percent of women have been victims of at least one completed rape in their lifetimes.
- Based on U.S. Census estimates of the number of adult women in American, one out of every eight adult women, or at least, 12.1 million American women, has been the victim of forcible rape sometime in her lifetime.

- While 56%, or an estimated 6.8 million women experienced only one rape, 39%, or an estimated 4.7 million women were raped more than once, and five percent were unsure as to the number of times they were raped.

Prior to this study, national information about rape was limited to data on reported rapes from the *FBI Uniform Crime Reports* or data from the Bureau of Justice Statistics, National Crime Survey (NCS) on reported and non-reported rapes occurring in the past year. The number of rapes per year in *Rape in America* were approximately five times higher than either the Uniform Crime Reports or the NCS. Recently, the NCS has been redesigned due to concerns that it failed to detect a substantial proportion of rape cases.

Age of Rape Victims

The *National Women's Study* found that "rape in America is a tragedy of youth," with the majority of rape cases occurring during childhood and adolescence. Specifically:

- *Twenty-nine percent of all forcible rapes* occurred when the victim was less than 11 years old.
- *Another 32%* occurred when the victim was between the ages of 11 and 17.
- *Slightly more than one in five rapes (22%)* occurred between the ages of 18 and 24.
- *Seven percent of rapes* occurred between the ages of 25 and 29.
- *Only six percent of rapes* occurred when the victim was older than 29 years old.

Relationship of the Victim to the Offender

The *National Women's Study* dispelled the common myth that most women are raped by strangers. For example:

- Only 22% of rape victims were assaulted by someone they had never seen before or did not know well.
- Nine percent of victims were raped by husbands or ex-husbands.
- Eleven percent by their fathers or step-father.
- Ten percent by boyfriends or ex-boyfriends.
- Sixteen percent by other relatives.
- Twenty-nine percent by other non-relatives, such as friends and neighbors.

Degree of Physical Injury

Another common misconception about rape is that most victims sustain serious physical injuries. The statistics show:

- Over two-thirds (70%) of rape victims reported no physical injuries.
- Only four percent sustained serious physical injuries.
- Twenty-four percent received minor physical injuries.
- Of considerable importance is the fact that many victims who did not sustain physical injuries nonetheless feared being seriously injured or killed during the rape.
- Almost half of all rape victims (49%) described being fearful of serious injury or death during the rape.

The Mental Health Impact of Rape

The *National Women's Study* produced dramatic confirmation of the mental health impact of rape by determining comparative rates of several mental health problems among rape victims and women who had never been victims of rape. The study ascertained whether rape victims were more likely than women who had never been crime victims to experience these devastating mental health problems.

Post-traumatic Stress Disorder

The first mental health problem examined was post-traumatic stress disorder (PTSD), an extremely debilitating mental health disorder occurring after a highly disturbing traumatic event, such as military combat or violent crime.

- Almost one-third (31%) of all rape victims developed PTSD sometime during their lifetimes and more than one in ten rape victims (11%) still has PTSD at the present time.
- Rape victims were 6.2 times more likely to develop PTSD than women who had never been victims of crime (31% vs 5%).
- Rape victims were also 5.5 times more likely to have current PTSD than their counterparts who had never been victims of crime (11% vs 2%).

The U.S. Census Bureau estimates that there are approximately 96.3 million adult women in the United States age 18 or older. If 13% of American women have been raped and 31% of rape victims have developed PTSD, then 3.8 million adult American women have had rape-related PTSD (RR-PTSD):

- Moreover, if 11% of all rape victims have current PTSD, then an estimated 1.3 million American women currently have RR-PTSD.
- If 683,000 women are raped each year, then approximately 211,000 will develop RR-PTSD each year.

Other Mental Health Problems

Major depression is a mental health problem affecting many women, not just rape victims. However, 30% of rape victims had experienced at least one major depressive episode in their lifetimes, and 11% of all rape victims were experiencing a major depressive episode at the time of assessment:

- In contrast, only 10% of women never victimized by violent crime had ever had a major depressive episode and only six percent had a major depressive episode when assessed.
- Thus, rape victims were three times more likely than non-victims of crime to have ever had a major depressive episode (30% vs 10%), and were 3.5 times more likely to be currently experiencing a major depressive episode (21% vs 6%).

Some mental health problems are life-threatening in nature. When asked if they ever thought seriously about committing suicide:

- One-third (33%) of the rape victims and 8% of the non-victims of crime stated that they had seriously considered suicide.
- Thus, rape victims were 4.1 times more likely than non-crime victims to have contemplated suicide.
- Rape victims were also 13 times more likely than non-crime victims to have actually made a suicide attempt (13% vs 1%).

The fact that 13% of all rape victims had actually attempted suicide confirms the devastating and potentially life-threatening mental health impact of rape.

Finally, there was substantial evidence that rape victims had higher rates of drug and alcohol consumption and a greater likelihood of having drug and alcohol-related problems than non-victims of crime.

Compared to women who had never been crime victims, rape victims with RR-PTSD were:

- 13.4 times more likely to have two or more major alcohol problems (20.1% vs 1.5%).
- 26 times more likely to have two or more major serious drug abuse problems (7.8% vs 0.3%).

The *National Women's Study* findings provide compelling evidence about the extent to which rape poses a danger to American women's mental health -- and even their continued survival -- because of the increased suicide risk. Thus, rape is a problem for America's mental health and public health systems as well as for the criminal justice system.

The Overall Impact of Rape

The threat of injury, injury itself and/or psychological trauma that the victim suffers can change his or her life for a long time. Consider the following statements from rape victims:

- "Rape doesn't end with rape. It lives on in the victim's heart."
- "My life is divided into two parts: before the rape and after the rape."
- "He killed part of my soul."
- "I had to keep part of myself away from what was happening."

The impact of rape on the victim has been identified in research as *rape trauma syndrome*. Researchers Southerland, Fox, Scherl (1972) and Burgess and Holstrom (1974) reported on the effects of rape victimization, and identified victims' reactions in the aftermath of the trauma. While there are individual differences in the duration and intensity of rape trauma symptoms, certain stages have been identified (Abarbanel and Richman, 1990).

Shock and Disbelief

The victim may appear stunned or dazed, or outwardly calm and subdued. According to researchers, one of the most unique characteristics of rape trauma is that the emotional impact may initially appear invisible -- the victim seems to be calm, in spite of the significant psychological wounds that have been inflicted.

However, rape victims experience an inner emotional turmoil characterized by expressions of disbelief, and other feelings including anxiety, helplessness, panic, withdrawal, alienation, resentment and acute fear.

Denial

Because thinking about the sexual assault is overwhelming, victims often try to block out the experience, as evidenced by direct statements such as "I don't want to deal with it or think about that it ever happened." Rape victims may repeatedly bathe or douche in an attempt to "wash away" the traumatic experience.

Denial can result in the victim *not* seeking medical assistance; *not* reporting to the police; and/or *not* telling friends or family. In addition, extreme amounts of self-blame may be present, as well as guilt or rejection of sexuality and feelings of incompetence and fighting for control of one's life.

An overall sense of shame is also present in many victims. Society's beliefs and attitudes towards rape reinforce these victims' beliefs. The range in intensity of the rape trauma symptoms varies from fear and avoidance of sex to avoiding daily activities of living, including relationships with friends and family.

Coming to Terms with the Traumatic Event

Rape victims need to regain a sense of control and meaning in life. However, victims may respond to the trauma in ways that are dysfunctional. For example, by fixating on the trauma, repressing or compartmentalizing it. As discussed in the findings of *The National Women's Study*, some rape victims develop experience dysfunctional emotional reactions that include depression, apathy, bitterness, self-deprecation, acute fear, and transference of the fear to other events. For some (but not *all*) rape victims, resolution means incorporating and integrating the traumatic experience into the victim's life -- resulting in finding new-found inner strength.

Key Concerns of Rape Victims

In order to effectively respond to rape victims, service providers and criminal justice officials need to understand the major concerns of rape victims. Without accurate information about victims' concerns after rape, it is difficult to create and implement policies and programs to meet their most critical needs.

The National Women's Study identified several critical concerns of rape victims. In order to determine if rape victims' concerns have changed over time, the study divided these concerns into those of all rape victims, and those of victims that have been raped within the past five years (1987-91). These changes can be illustrated as follows:

Her family knowing she had been sexually assaulted. This concern has not changed dramatically over time. Seventy-one percent of *all* victims and 66 percent of victims within past five years are concerned about their family finding out about the rape.

People thinking it was her fault or that she was responsible. Rape victims are still very concerned about being blamed for the rape and this concern has not changed over time with 69% of *all* victims and 66% of recent rape victims saying they are concerned about this.

People outside her family knowing she had been sexually assaulted. Again, there is no significant difference. Sixty-eight percent of *all* victims and 61% of rape victims within the past five years are concerned about this.

Her name being made public by the news media. Women that have been raped within the last five years are more likely to be concerned about the possibility of their names being made public than all rape victims (60% vs. 50%).

Becoming pregnant. Sixty-one percent of recent rape victims, as opposed to 34% of *all* rape victims, are concerned about getting pregnant.

Contracting a sexually transmitted disease (not including HIV/AIDS). More than twice as many recent rape victims were concerned about the development of sexually transmitted diseases than *all* rape victims (43% vs 19%).

Getting HIV/AIDS. Recent rape victims were four times more likely to be concerned about getting HIV/AIDS as a result of the rape than *all* rape victims, regardless of the recency of the rape (40% vs 10%).

The stigma still associated with rape is reflected in such a high percentage of rape victims being concerned about people finding out, such as family members and friends. Thus, from a victim service provider perspective, this means maintaining confidentiality, and respecting the privacy needs of rape victims as important goals of service and assistance.

Rape Victims' Reporting to Law Enforcement

One of the most critical decisions a rape victim has to make almost immediately is whether or not to report the rape. As stated earlier, rape remains the most under-reported violent crime in America. *The National Women's Study* found:

- Eighty-four percent of rape victims never file a report.
- Of the 16% who do report, twenty-five percent wait more than 24-hours before reporting.
- Seventy-five percent report within 24-hours after the rape.

Rape crisis agencies surveyed as part of *Rape in America* (interviews with staff of 370 rape crisis programs were conducted in the spring of 1992) were asked what percentage of rape victims they served were unwilling to report the crime to police.

- Forty-two percent of the agencies said that *more than half* of all their sexually assaulted clients were unwilling to report to the police.

When asked what could be done to improve rape victims' willingness to report the crime to the police, agencies felt the following changes would increase the victims' willingness to report:

- Public education about acquaintance rape (99%).
- Laws protecting sexual assault victims' confidentiality and prohibiting disclosure of their names and addresses by the news media (97%).
- Expanding counseling and advocacy services for sexual assault victims and their family members (97%).
- Availability of free pregnancy counseling and abortion for rape victims who get pregnant (77%).
- Mandatory HIV testing of persons indicted on sexual assault charges (80%).
- Providing confidential free testing for HIV/AIDS or sexually transmitted diseases to victims (57%).

When asked what else can be done to increase victims' willingness to report sexual assaults to the police, agencies also identified several other critical measures including:

- Increasing and improving training for police to increase sensitivity and reduce victim blaming.
- Greater sensitivity from prosecutors.
- Better treatment and better laws to protect victims in court.
- Public education to increase awareness that rape is a *crime*, and it is *not* the victim's fault.

In light of these important concerns, it is critical to review the “best practices” for a comprehensive response to sexual assault and rape victims.

Comprehensive Response Protocol for Rape and Sexual Assault Victims

Developing a comprehensive, community response to sexual assault and rape needs to begin at the point of victimization and should include a number of individuals and agencies that provide services and assistance to the victim:

- Victim services
- Medical
- Mental health
- Law enforcement
- Prosecution
- Courts
- Corrections

The combined functions that each of these agencies provides to rape victims would create a model response to rape victims that accomplishes the following:

- Recognizes and supports the need of sexual assault victims to assume control over their own lives.
- Addresses the immediate short- and long-term mental health impacts of the trauma.
- Provides accompaniment/transportation to emergency medical treatment and pays for all forensic rape examinations.
- Vigorously investigates all cases.
- Apprehends offenders and aggressively prosecutes cases in a timely fashion.
- Informs victims at each stage of the proceedings.
- Vertically prosecutes cases within prosecutors’ offices.
- Gives victims the opportunity to express a preference for what they would like to see happen to the offender.

Specific Rights and Services for Victims From the Criminal Justice Continuum and Allied Agencies

The system for services and support for victims of rape and sexual assault should include emergency or crisis services, support throughout the criminal justice system, as well as medical, mental health, financial, legal or other types of support as needed.

In many communities across America, a system of responses takes place for rape victims who choose to report the crime to law enforcement. In 1992, the Office for Victims of Crime provided support for a national-scope project to evaluate the system of multi disciplinary services in that have been developed at the community-level. Entitled *Looking Back, Moving Forward: A Guidebook for Communities Responding to Sexual Assault* (National Victim Center, 1993), the Project developed a "victim-centered" model for responding to rape victims.

Rather than looking at the response to rape victims in the traditional way (i.e., what each agency and/or individual should do for a rape victim), the "victim-centered" approach looks at the needs of the victim at each stage, and recommends that various agencies could provide the needed service or support.

Role of the First Responder to Rape Victims

The first responder can be a hotline operator, a rape crisis center advocate, a police officer -- all of whom must be trained in victim sensitivity and crisis response techniques, with a special focus on telephone communication skills. The basic victim assistance needs at this initial stage include:

- Determining if the victim needs any emergency medical care.
- Responding to the safety and security needs of rape victims -- determining if the assailant is still nearby and if the victim needs protection.
- Assisting with or providing transportation for the victim to the hospital.
- Advising the victim of the need to preserve evidence (by not bathing, showering, washing garments, etc.).
- Providing crisis intervention counseling, in person or over a hotline.
- If the victim requests a supportive person, obtaining a personal friend or professional to immediately join in.
- If the victim requests, staying on the phone or at the physical location at which she is currently.

Medical Care Following Rape

Emergency medical care, especially the collection of evidence through a forensic examination, is critical for both the victim and the protection of evidence for prosecution. The following statement from the National Institute of Justice study on the *Criminal Justice and Community Response to Rape* summarizes the dual role of medical responders to rape victims:

Medical staff who treat rape victims in a hospital emergency room have dual roles that sometimes conflict: They must attend to the medical and emotional needs of their patients, and they must collect evidence from those patients for the legal system. (p. 53)

Hospitals have responded by establishing protocol for the treatment of rape victims. Comprehensive medical protocol in the aftermath of rape includes the following components:

- Collecting forensic evidence (rape exam) in a sensitive manner.

As of July 1995, all states now pay for the cost of the exam. This exam includes an internal examination, pubic hair combings, nail scrapings, saliva samples, swabs for foreign materials on the victims body, and an overall examination for bruises and lacerations and other physical trauma. It is one of the greatest sources for “secondary injury” in the aftermath of rape. It is very important to provide rape victims with a supportive person, a trained social worker at the hospital or a rape crisis intervenor from a local rape crisis program to accompany the victim.
- Conducting interviews on the victims complete medical history including date of last period, contraceptive use, sexually-transmitted disease information (STD), etc.
- Treating the immediate physical injuries of the victim.
- Diagnosing and treating sexually transmitted diseases.
- Conducting pregnancy tests, providing counseling, and providing drugs for terminating a potential pregnancy, if the patient wishes.
- Providing information about HIV/AIDS. A baseline HIV test immediately after the assault should be conducted, followed by repeated tests every three months for up to two years.

Many hospitals across the country have established protocol on treating sexual assault and rape victims. However, *The National Women Study* asked victims if they had a medical examination following the assault. The study found:

- In only 17% of all rape cases did such an exam occur.
- Of these, 60% of rape victims who did receive a medical examination had it within 24-hours of the assault.
- However, in 40% of the cases, the exam occurred more than 24-hours after the assault.
- Victims told their doctors in only two-thirds of rape cases that they had been sexually assaulted; the doctor was never told about the rape in one-third of such cases.

In addition, many recommended practices and protocol did not occur in all rape examinations:

- Six out of ten rape victims (60%) were *not* advised about pregnancy testing or how to prevent pregnancy.
- More than seven out of ten (73%) were *not* given information about testing for exposure to HIV/AIDS.
- Almost four out of ten (39%) were *not* given information about testing for exposure to sexually transmitted diseases.

There have been slight improvements in the dissemination of information about testing for pregnancy, HIV/AIDS and sexually transmitted diseases to rape victims; however:

- Non-provision of information about pregnancy prevention to recent rape victims was similar to the rate reported overall (55% vs 60%).
- One third (33%) of recent rape victims were not given information about testing for exposure to sexually transmitted diseases as opposed to 40% of all rape victims.
- Five out of ten (50%) of recent rape victims were still not being given information about testing for HIV/AIDS, despite the fact that rape clearly constitutes an unprotected exposure to bodily fluids of assailants with unknown HIV/AIDS status.

Rape Victims and the Criminal Justice Continuum

As noted earlier in this chapter, a cohesive, multidisciplinary response to victims of rape by criminal justice agencies and officials can minimize the “secondary victimization” that has historically characterized rape cases.

There are six critical junctures in the criminal justice system that comprise that path rape victims must follow in their pursuit of justice. These include:

- Law enforcement.
- Prosecution.
- Judiciary.
- Probation.
- Corrections.
- Parole.

Each agency has specific duties that can either compound or reduce trauma to victims of rape. Each entity also has the responsibility to continually coordinate its respective efforts with allied justice agencies and victim service professionals, in order to help the victim through what can be a highly traumatic experience, as well as to pursue justice. Included in these efforts are the responsibility to provide victims with information and referrals to programs and services that can provide appropriate medical, mental health and financial assistance and support.

Law Enforcement

Innovations in Law Enforcement-based Victim Assistance

The past decade has been marked by two significant advances in law enforcement’s response to rape cases:

1. The creation of specialized sex crime units to enhance the agencies’ efficiency, or to send a message to the community that the department is deeply committed to solving sex crime.
2. The development of in-house victim/witness assistance units that review all reports, sort out the felonies, and contact each victim of a felony crime, usually by phone. Victim assistance officers make referrals to rape crisis centers, contact victims who have delayed reporting, and provide community education in rape awareness and prevention.

Reporting Rapes to Law Enforcement

New methods for reporting rape and for guarding victims' privacy have been developed over the last decade in an attempt to increase victims' willingness to report the crime and to cooperate throughout the investigation.

In deciding whether to report the assault, a victim confronts the following options:

- To immediately file a report of the rape with law enforcement.
- To report the rape to hospital emergency room personnel (who may or may not be required by law to report the incident to law enforcement).
- To defer filing a report while further considering the issue.
- To tell a friend, relative, therapist, or rape crisis center counselor, requesting that the person not report the assault.
- To not report the crime to anyone.

(The preceding recommendations for law enforcement are derived from *The Criminal Justice and Community Response to Rape*, an excellent publication written by Joel Epstein, Esq., and Stacia Langenbaum in 1994 and published by the U.S. Department of Justice , pp. 17-25).

Interviewing Rape Victims

Victims are now interviewed at different stages and with new techniques. In *The Criminal Justice and Community Response to Rape*, a checklist for law enforcement officers who are conducting initial interviews with rape victims, developed by the King County (Washington) Prosecuting Attorney's Office, was offered:

- Approach the victim in a gentle, supportive manner, bearing in mind the physical and psychological damage she has endured. Be patient and non-judgmental.
- Assure the victim that she is safe now, and that you are there to help her.
- Avoid any forceful or aggressive behavior [that] might be threatening to the victim.
- Minimize unwarranted attention and publicity. Protect the victim's anonymity.
- Protect the victim from unnecessary questioning by other police officers and afford her whatever privacy is available.

- Request that the victim . . . not wash or douche and explain the rationale for this instruction (it may destroy physical evidence).
- Avoid in-depth questioning of the victim unless you will be assigned to conduct the entire investigation. However, do obtain a physical description (of the suspect), clothing . . . vehicle, if any, direction of flight, and type of weapon if the suspect is armed.
- Transmit a radio alarm for the suspect based on this description.
- Include in the supplement to the initial report a specific description of the victim's physical and emotional condition (recorded non-judgmentally and without editorial comment), any injuries, damage to clothing, and any information (that) will be of value in establishing proof of forcible compulsion.
- Accompany the victim to (a) hospital or personal doctor of her choice. Explain procedures in order to demystify the medical procedures and put her more at ease.
- If necessary, inform hospital emergency personnel or doctors of the importance of an internal and external examination and of what police evidentiary needs are: semen slide from site of penetration as proof of penetration, and documentation of any bruises or injuries and overall physical and emotional condition as proof of forcible compulsion.
- Insure that the victim is treated for possible pregnancy and venereal disease.
- If the victim has visible scars, marks or bruises, take photos. If marks or bruises are in (the) genital area, have them taken by (a) nurse or female police officer.
- Obtain a rape kit from (the) doctor and deliver to (the) lab for analysis.
- Take the victim's garments and other stained or torn objects for (a) semen and blood analysis, and as proof of force and penetration. Make sure all the garments worn during and after the assault are accounted for. If the assault occurred on a bed, take the bedclothes. Place garments and other items in clean paper sacks to avoid contamination during transport and storage.
- If (an) arrest is made soon after the crime, examine the defendant's clothing and underwear for rips, (and) blood or semen stains and note his general condition. Take pictures of him if possible.
- Carefully note any statements or admissions by (the) defendant.
- Advise the victim of available counseling groups and other victim services. Make sure a victim/witness advocate has been contacted.

- Remember that the actions of the first officer on the scene may have a vital impact on the future psychological well-being of the victim. Every effort should be made to relieve feelings of shame or guilt, and to treat the victim with a sense of dignity and professionalism (that) will aid her on the road to recovery and . . . help her to regain her self-esteem.

In addition, extensive experience of victim advocacy from the law enforcement perspective points out the need for the following:

- Advising victims of the state compensation program, and providing forms for completion (as well as referrals to advocates who can assist with securing compensation).
- Implementing a strong policy that protects the identities of rape victims from the media, coordinating such privacy protection efforts with the police public information department, rape advocacy organizations, and the news media.
- Coordinating rape victim support efforts with rape crisis centers, ensuring that the victim is advised of the availability of immediate support and advocacy and, upon request, contacting a rape counselor or advocate to go the crime scene or hospital.
- Coordinating the prompt return of property that is used as evidence with the prosecutor's office is extremely important.

For example, a rape victim who was sexually assaulted in her bedroom wanted to know when she could get her bedspread back from the police. Both the law enforcement agency and victim advocate in the case wrongfully made the assumption that she would not be interested in ever seeing the quilt again. However, since the bedspread matched the decor of her room that she had taken great pride in decorating, the victim was eager to have this evidence returned.

The information obtained by law enforcement in its initial and ongoing investigation is critical to the district attorney's decision whether or not to prosecute. As such, the collection and monitoring of law enforcement information should be closely coordinated with prosecutors' offices.

Prosecution

Many district attorneys utilize a vertical prosecution approach to rape cases, with prosecutors who are specially trained in sexual assault case management. The same prosecutor handles a case from the investigation through the decision to prosecute to the verdict and sentencing, when applicable. In many jurisdictions, specialized units -- which include investigators, prosecutors, and victim advocates -- serve to further streamline the prosecutorial process, and ease the trauma of the victim in rape cases.

Roles and Responsibilities of Prosecutors Relevant to Rape Victims

Upon initial contact with a rape victim, prosecutors should explain their specific roles and responsibilities in the criminal justice continuum. These include, but are not limited to, the following:

- Prosecutors should coordinate with law enforcement and medical professionals to limit the number of times a rape victim must be interviewed for a case.
- Victims should be notified of all relevant criminal justice proceedings and, when allowable under law, be allowed to attend such proceedings.
- The availability of “no-contact” orders should be explained to victims and, upon request, prosecutors should help victims who want such protection to secure protective orders from law enforcement and/or the court.
- Prior to any plea agreements, prosecutors should receive input from the victim.
- In cases of plea agreements, victim impact statements are particularly important. If a defendant pleads to a lesser assault charge, it is very important for the court to know the extent of the physical, psychological and financial damages the victim endured, regardless of the plea bargain.
- Prosecutors should always request that court cases involving rape be closed to media coverage, and that appropriate protective measures are taken to protect the victim’s identity from the media and the public.
- Allowing a supportive person -- such as a relative, friend or victim advocate -- to accompany the victim to all court proceedings is helpful.
- Rape shield laws available in all 50 states -- which prevent the defense from delving into the past personal and/or sexual history of the victim -- should be enforced at all costs. Any motion to admit such evidence must be vigorously opposed by prosecutors.
- Prosecutors can seek expert testimony of medical professionals to explain physical trauma, as well as mental health professionals to explain Rape Trauma Syndrome, Post-traumatic Stress Disorder (PTSD), and Rape-related PTSD to the court.
- In cases of trials, rape victims should have the opportunity to submit victim impact statements to the court prior to sentencing, either by addressing the court in person (allocution) or in writing, by audio tape, or by video tape. Victim service providers, prosecutors and often probation officers are the key professionals in coordinating the use of the victim impact statement.

- Any special conditions of sentencing requested by the victim -- such as protective orders, testing for HIV (with the results provided to victims in states that allow this by statute), and sex offender treatment -- should be presented to the court at sentencing.
- In cases that result in prison sentences, prosecutors should provide victims with information about how to register to be notified of an offender's status, potential release, or release from state institutional corrections or parole agencies.

Judiciary

In the past decade, substantial progress has been made to provide judges with training and resources that can help them handle rape cases in the most sensitive manner possible. Through efforts sponsored by the Office for Victims of Crime, Violence Against Women Office, National Coalition Against Sexual Assault, National Judicial College and others, many curricula have been developed and taught to the judiciary to heighten their awareness of the special needs of rape victims.

Roles and Responsibilities of Judges Relevant to Rape Victims

- Upon request, judges should issue "no-contact" orders or other measure of protection requested by the victim.
- In voir dire, judges must take extreme caution and allow prosecutors to assess any attitudes among potential jurors that might tend to "blame the victim," or contribute to misunderstandings about the nature and extent of sexual assault crimes.
- Judges should close all court proceedings involving rape cases to the media, as well as to the general public.
- Persons supportive of the victim should be allowed to be present with him or her in the courtroom.
- Expert witnesses called by the prosecution can be utilized to better explain psychological and medical traumas experienced by rape victims.
- Victim impact information should always be solicited, in cases involving either plea agreements or jury/judge verdicts. The use of victim impact statements can be enhanced by close coordination among prosecutors, probation and the judiciary. Any victim impact information should be included in the offender's file (in a confidential section that prevents access by the offender and/or his or her counsel) that goes to probation, corrections, and/or parole.

- Any special conditions of sentencing requested by the victim -- such as HIV testing, protective orders, or specific offender treatment -- should be given serious consideration by judges.
- The imposition of restitution and fines should be mandatory in all rape cases, with judges considering the long-term financial impact of the crime on victims who may have future expenses related to medical needs, counseling, relocation, time lost from work, etc.

Probation

Cases involving plea bargains, or court sentences to probation or diversion, are handled by probation departments. Victim sensitivity of the part of probation officials, as well as consideration of victims' rights and needs, are essential components of probation-based victim services.

Roles and Responsibilities of Probation Relevant to Rape Victims

- Victim impact information should be incorporated as a component of pre-sentence investigative reports (PSIs) in all sentences that result in probation.
- Any special conditions requested by the victim should be considered and implemented in accordance with law. These might include: protective orders; sex offender treatment; alcohol or other drug abuse treatment; and HIV testing or testing for sexually transmittable diseases (with the results provided to victims in jurisdictions where this a statutory right).
- Restitution to rape victims should be given priority over other fines levied against probationers. Probation officials should assess the long-term financial losses that victims might incur, make appropriate recommendations, and coordinate operational systems with the court that collect and disburse restitution payments to rape victims.
- If victims request to be notified of probation violations, they should be contacted when/if such infractions occur. In jurisdictions that allow victim input at violation hearings, victims should be notified of this right, and be allowed to testify if they wish.

Corrections

According to the Bureau of Justice Statistics (*Felony Sentences in the United States, 1992*), the average sentence for rape in America is 15 years, three months. The expected time a rapist will serve a sentence is three years, two months.

Over half of America's state correctional agencies and the Federal Bureau of Prisons have victim service programs that provide information, notification and referrals to victims and witnesses. Victim service providers should be aware of the specific rights and services that are mandated by law and/or by correctional agency policy to be able to best inform and serve victims of rape.

Roles and Responsibilities of Corrections Relevant to Rape Victims

- In classifying offenders (to determine their location, level of security and program assignments), corrections should review all victim impact information contained in the offender's file.
- All victim information in offender's files should be confidential, with "flags" for privacy on paper files, and security screens in automated databases.
- In cases where HIV testing of convicted offenders is a component of the court order, corrections agencies should coordinate the testing and release of test results (where allowable by law) to victims.
- Although sex offender treatment programs are available on a very limited basis, they should be mandatory to the extent possible for convicted rapists.
- Correctional agencies that collect restitution from inmates (such as California) should coordinate the prompt disbursement of monies to rape victims.
- Upon request, victims should be notified about changes in the offender's status, such as movement to a lower-level security institution, pending release, release, escape, or death.
- In instances where correctional employees are sexually assaulted by inmates, Departments of Corrections should have protocols, policies and programs in place that provide for immediate and long-term support and services for the victim.

Parole

Sensitivity to rape victims' needs -- from both paroling authorities, parole boards, and parole agents -- is essential to avoid compounding victim trauma. The potential release of a rapist is a terrifying prospect to most victims. Paroling authorities and personnel should be knowledgeable about the long-term effects of rape, especially responses that might be "triggered" by parole or parole release hearings (such as rape-related PTSD). It is interesting to note that in one state, a rape victim serves as a member of the parole board.

The Role and Responsibilities of Parole Relevant to Rape Victims

- When allowed by statute, victims should be notified of parole hearings, and any rights they have relevant to such hearings (such as participation, attendance, and providing victim impact information).
- Victim impact information from sentencing should be included in offender's files that are reviewed by paroling authorities.
- Victim impact statements at parole should be allowed in four forms: allocution, written, audio tape or video tape. Victim impact statements provided at the time of any parole or release hearings should be compared to the initial victim impact statement provided at the time of sentencing. When permitted by law and upon request from the victim, the delivery of impact information should be confidential.
- Parole boards should consider any reasonable requests from rape victims relevant to the offender's release or supervision, including but not limited to: protective orders; commitment to a geographical area that is not in the victim's community; when allowed by statute, HIV testing (with the result provided to victims upon request); sex offender treatment; abstinence from alcohol and/or other drugs; special monitoring (such as electronic ankle bracelets); and restitution.
- Upon request, rape victims should be notified if the offender in any way violates the conditions of parole, and should be allowed to submit victim impact information at parole revocation hearings.
- Contact information for the convicted rapist's parole agent should be provided to the victim, including how someone in the paroling authority can be reached 24-hours-a-day.

Clearly, the criminal justice continuum for rape victims requires concerted, ongoing multidisciplinary efforts that focus on reducing the amount of trauma a victim will have to endure throughout the system. Education for all system professionals about the psychological, physical and financial effects of rape -- as well as how these effects can be compounded by participation in the criminal justice process -- should be incorporated into orientation and continuing education programs for all professionals. Involvement with and reliance on the many valuable services offered by victim service providers are essential to guaranteeing a continuum that is sensitive.

Victim Services

Today, approximately 2,000 organizations have been established to provide support and services to rape victims. The *State of Services for Victims of Rape* (responses from staff at 370 agencies that provide crisis counseling to rape victims), which is research conducted in conjunction with *The National Women's Study*, found that:

- At many agencies, reporting to police is *not* a prerequisite to victims receiving support and services.
- Almost two-thirds (63%) either strongly or somewhat encourage victims to report; over one-third of the agencies (36%) neither encourage nor discourage victims to report their rapes to police.
- Furthermore, no agencies surveyed said they discourage victims from reporting their rapes to police.
- However, support for protecting the privacy of person indicted for rape decreased significantly, with 40% of respondents strongly or somewhat favoring laws prohibiting media disclosure of indicted defendants' names.

The *State of Services for Victims of Rape* rated service providers' working relationships with criminal justice professionals. A majority of rape service agencies said they had "excellent" or "good" relationships with the following agencies:

■	Police	86%
■	Prosecutors	79%
■	Judges	68%
■	Probation	61%
■	Prisons	27%
■	Parole boards	18%

Based on their experience and what they heard from victims, rape agencies' ratings of how well the criminal justice system agencies were accomplishing their part of the mission were as follows:

- 68% had excellent or good ratings of police.
- 59% rated prosecutors as excellent or good.
- 46% rated judges as excellent or good.
- 40% rated probation departments as excellent or good.

In stark contrast, only 17% rated prisons as excellent or good, and only 18% rated the performance of parole boards as excellent or good.

Who Commits Rape?

Most researchers agree that there is clear evidence that rapists repeat their crime. A respected study of un-incarcerated sex offenders provides dramatic evidence of the extent of recidivism and why it is so important for rape victims to report. Dr. Gene Abel and his colleagues studied 561 un-incarcerated sex offenders, of whom 126 admitted to having committed rape (Abarbanel and Richman, 1990, p. 13). His study found:

- The 126 rapists had committed a total of 907 rapes involving 882 different victims.
- The average number of different victims per rapist was seven.

Rapists cannot be apprehended, indicted, prosecuted, and incarcerated if the criminal justice system does not know that a rape has occurred. Encouraging victims to report, and making all systems more sensitive to the needs and concerns of victims if they choose to report, is crucial.

Responding to Rape in the 1990s

Many statutory changes have been enacted across the states to address all forms of sexual assault and rape. Two significant reform measures that pertain to victim service providers include:

1. Marital rape
2. Privileged communication for victim counseling

Marital Rape

Prior to the passage of these laws “rape” within a marriage or co-habituating relationship was not considered rape. In the 1980s, a California legislator shocked many citizens when he asked, “If you can’t rape your wife, who can you rape?” Today, most states have reformed this exemption, making marital rape a specific offense. However, still today only a few states have totally abolished this provision -- most states still define marital rape as a lesser offense than other forms of rape.

An important part of the marital rape problem is that not enough husbands recognize that what they are doing is wrong, and too many wives believe they have little legal right to resist and object. (Finkelhor and Yllo)

Privileged Communication for Victim Counseling

For many rape crisis advocates and interveners, the issue of confidential communications with rape victims has been one of their most frustrating and ongoing challenges. Without the protection of client/professional confidentiality granted to licensed mental health professionals such as psychologists or social workers, many rape crisis workers have faced subpoenas, and have even been jailed on contempt charges, for refusing to divulge the substance of their conversations with rape victims.

As early as 1982 the President's Task Force on Victims of Crime selected privileged communication between rape and domestic violence advocates and victims as a top priority for legislative change.

In the mid-1980s, the American Bar Association developed a model counselor confidentiality statute with support from the Office for Victims of Crime. The model statute addressed counselor confidentiality in the following manner:

- Counselors must receive testimonial privilege.
- Their records should be immune from discovery or the legal process.

It is important to note that rape crisis advocates working in criminal justice-based agencies (law enforcement/prosecution) are *not* covered by this confidentiality protection due to discovery rules (their communications may contain information that is helpful to the defense.)

Other Significant Federal Laws of the 1990s

Within the last five years, significant federal laws have been enacted that address rights for sexual assault victims, new classifications of sexual crimes, and funding and support for the criminal justice response to sexual assault. The major federal legislation includes the following:

The Violence Against Women Act of 1994

The recently enacted *Violence Against Women Act* offers an important source of new funding for programs that address the needs of victimized women. While this new law has been described in other chapters, it is important to point out that for victims of sexual assault, certain provisions of the act are pertinent.

- Under this Act, to qualify for the funding available, states have to pay for forensic rape exams.
- Female victims of violence can now sue in federal court for damages resulting from violent attacks.

- Federal funding is providing for coordination, investigation and prosecution of crimes against women.

Appropriated and authorized funds to implement provisions of the *Violence Against Women Act* for domestic violence and rape prevention and intervention programs represent a significant increase in federal support. The impact of this new legislation will be seen for years to come.

The Campus Crime Sexual Assault Bill of Rights of 1992

Because of a nationwide problem of sexual assault on college campuses -- which were traditionally handled by campus security, rather than through outside law enforcement (and as a criminal justice matter) -- and because very often there was pressure on the student-victim not to report to outside authorities, a Bill of Rights became necessary for college rape and sexual assault victims. In addition to requiring that campus authorities treat rape victims with respect, give them information about their criminal and civil justice options, and establish procedures for assisting victims, rape prevention education is required.

The Student Right-to-Know and Campus Security Act of 1990

Due to a long tradition of handling crime on campus internally, and not reporting crimes to local law enforcement, the extent of campus crime across the country was underreported for many years. Rape is among several on-campus crimes that now must report to local law enforcement under this law. Equally important, the law requires colleges and universities to provide information on safety-related procedures for the student.

The Hate Crime Statistics Act of 1990

This law requires the reporting of crimes that are motivated upon prejudice, race, religion, sexual orientation, and ethnicity. Women are not considered a "protected class" under the law; however, information is collected about crimes against women within protected categories. For the first time on a nationwide basis, sexual assault and rape statistics covering many types of overlooked crimes are being collected. This information will help target services and funding for previously undocumented and often unrecognized crimes against women.

Rights of Rape Victims

Every victim of sexual assault should have the right to:

- Be treated with dignity and respect by institutional and legal personnel.
- Have as much credibility as a victim of any other crime.
- Be considered a victim of rape when any unwanted act of sex is forced, through any type of coercion, violent or otherwise.
- Be asked only those questions that are relevant to a court case or to medical treatment.
- Choose whether or not to report the rape to law enforcement.
- Receive medical and mental health treatment or participate in legal procedures only after giving informed consent.
- Receive medical and mental health services whether or not the rape is reported to law enforcement, and at no cost.
- Receive information about possible civil remedies.
- To informed of all relevant victim's rights, including participation, information, and input.
- Not be exposed to prejudice against race, class, age, gender, sexual orientation or occupation.
- Not be asked questions about prior sexual experiences.
- To have access to support persons, such as advocates and, peer counselors.
- Be provided with information about all possible options related to legal and medical procedures.
- Have the victim's name kept out of the media.
- Be considered a victim of rape regardless of the assailant's relationship to the victim, such as the victim's spouse or intimate partner.

(Excerpted from: *Victim Services Professional Development Program*, Victim Services Practitioner Designation Training, Division of Victim Services, Office of Attorney General, Florida, 1995.)

Sexual Assault

- 1) Describe three major differences between the early legal definitions of sexual assault/rape and the reform definitions of the 1980s.

- 2) Describe some of the symptoms of rape-related post-traumatic stress disorder.

- 3) Select an agency within the criminal justice continuum, and list five procedures and/or services that assist victims of rape.

- 4) Cite one of the most significant federal laws that has been passed to promote rape victim' rights and/or improve services.

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Chapter 15

Child Victimization

Abstract: This chapter will provide an overview of child victimization, its effects, and the need for services and program strategies critical to help the child and his or her family in recovery. This chapter is presented in two sections. Section One addresses the broad scope of child victimization and its effects; emotional and communicative levels of children based upon age; and appropriate responses for general support services. Section Two focuses on providing support and services to child victims and witnesses if they are required to participate in the criminal justice process.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The types of child abuse and neglect most commonly reported.
 2. The emotional consequences of children who witness or experience victimization.
 3. The need for specialized communication skills when working with child victims.
 4. Appropriate curricula, materials and resources to better prepare child victims/witnesses for court.
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Statistical Overview

- In 1994, an estimated 1,271 children died as a result of abuse or neglect. (*Wiese, David and Deborah Daro, 1995, "Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1994 Annual Fifty State Survey," National Committee to Prevent Child Abuse, Chicago, IL*)
- Approximately 3,140,000 cases of child maltreatment were reported to child protective services in 1994. Of these cases, 45 percent involved neglect; 26 percent involved physical abuse; 11 percent involved sexual abuse, three percent involved emotional maltreatment, and 15 percent involved "other." Each state averaged a 4.5 percent increase over 1993 figures. (*Ibid.*)
- Twelve percent of adult Americans report that they were physically abused during their childhood, which includes 13 percent of males and 10 percent of females. (*Bureau of Justice Statistics, 1995, Sourcebook of Criminal Justice Statistics 1994, page 239, U.S. Department of Justice, Washington, D.C.*)
- More than six out of ten rape victims were sexually assaulted prior to adulthood; 32.3 percent were raped between the ages of 11 and 17, with 29.3 percent raped when they were less than 11 years old (*Kilpatrick, Edmunds, and Seymour, 1992*).
- Half of the women who reported they had been raped during 1992 were juveniles under 18 years old, and 16 percent were younger than 12, according to a U.S. Department of Justice study of 11 states and Washington, D.C. (*Langan, Ph.D., Patrick and Caroline Wolf Harlow, Ph.D., 1994, "Child Rape Victims, 1992," p.1, Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C.*)
- Most child victims under 12 (94 percent), as reported by imprisoned rapists, were family members (70 percent) or an acquaintance or friend (24 percent); only six percent were strangers. For child rape victims ages 12 to 17, 36 percent were family members of the rapist, 45 percent were an acquaintance or friend, and 19 percent were strangers. (*Ibid., p.2*)
- In a survey of 2,000 children aged 10 to 16, three times as many respondents were concerned about the likelihood of being beaten up by peers as were concerned about being sexually abused. (*Finkelhor, David and Jennifer Dzuiba-Leatherman, "Victimization Prevention Programs: A National Survey of Children's Exposure and Reactions," Child Abuse and Neglect, as reported in American Psychologist Victimization of Children, March 1994*)
- In 1992, there were nearly 1.9 million reports received and referred for investigation on approximately 2.9 million children who were alleged victims of abuse and neglect. The maltreatment of nearly one million children was substantiated (*U.S. Department of Health and Human Services [HHS], 1994, pp.9-10*).

- Of substantiated cases of child abuse, nearly half of the victims suffered neglect, 23 percent suffered physical abuse, 14 percent were victims of sexual abuse, five percent were victims of emotional maltreatment, and three percent suffered medical neglect. Nine percent were victims of other types of maltreatment (*HHS, 1994*).
- The rate of child abuse has increased 331 percent since 1976 (*HHS, 1994*).
- Homicide is one of the five leading causes of child mortality in the United States (*Goetting, 1990*).

Section One: General Overview of Child Victimization

“So long as little children are allowed to suffer,
there is no true love in the world” (Isadora Duncan).

Introduction

Every day in America, children are victimized. They are beaten, sexually abused, murdered, and neglected by strangers, friends and family members. Children not targeted for physical acts of victimization are often victimized by emotional neglect or abuse, or by witnessing the murder, rape or robbery of family members and friends. Their childhoods are seemingly stolen from them as they are forced to deal with emotions, fears and losses that adults often find hard to face. In working with child victims, either as victims or witnesses, it is important to remember that:

- Children experience emotional reactions the same as adults and experience post-traumatic stress disorder.
- Children are often more traumatized than adults when a casual acquaintance is victimized.
- Trauma in children can take years to manifest.
- Children's traumatic reactions cannot be prevented but can be minimized when assistance is provided as soon as possible.
- Delay should not occur because the caregiver, service provider or support person feels the child is "too young" to understand.

Professionals must educate and arm themselves with an understanding of the problem; training to implement “cutting-edge” programs and strategies; and information and resources designed to meet the emerging needs of child victims and their families.

Historical Overview Of Child Maltreatment and Enactment Of Laws Protecting Children

Maltreatment of children is deeply entwined with historical values and perspectives. The concept of child maltreatment has been defined and redefined throughout history. Society has slowly evolved from viewing children as property, subject to the whims of the family and society, to at least recognizing that children may have rights of their own (Tower, 1993).

Throughout history, children have been seen as the property of their parents. They have been abused, maimed or killed by their parents with no legal consequences. They have been sold or loaned into a life of indentured labor and abandoned on doorsteps with no guarantee for care. For centuries, infanticide was an accepted means for ridding the mother or the family of an unwanted burden. Parents were not held legally responsible to provide food, clothing or shelter for children.

Many children were forced through cultural or economic factors to assume adult roles while they were still very young. Physical punishment of children has long been encouraged through religious and societal forces.

Reforms for child protection have been slow. Long lasting reforms were not seen in America until the end of the 1800s. Settlement houses ensuring food and shelter for children were opened, tentative labor laws protecting children were enacted, social service agencies began to emerge and in 1875, the Society for the Prevention of Cruelty to Children (SPCC) was formed.

It was through the direct efforts of the SPCC that issues surrounding children and their right to protection began to take hold. In 1912, the White House formed the Children's Bureau to oversee the welfare of the nation's children. The Children's Welfare League was established in 1915 and, in 1930, the *Social Security Act* was amended to mandate child welfare and protective services.

The late 1950s and early 1960s served as a pivotal point in child physical safety when the issue of child physical abuse surfaced. Until this time, it was generally accepted that a parent had the right to discipline a child as he or she saw fit. In 1972, the National Center for the Prevention of Child Abuse was established and in 1973, the federal government saw a need to become involved in the issue. In 1974, *The Child Abuse Prevention and Treatment Act* was enacted by Congress to provide government funding of the National Center on Child Abuse and Neglect. For the first time, federal assistance was given to studying and identifying the problem of child abuse and neglect.

Oversight for the Center was placed with the Department of Health, Education and Welfare. Since the *Act's* passage, numerous other legislative packages have been enacted by all states in the detection, reporting and treatment of child abuse including *Victims of Crime Act* funding, through the *Children's Justice Act Amendments of 1986*. Funding has also become more readily available for the continued study of child abuse and neglect. Many national, state and local organizations have been established to aid in the education of protective services professionals and detection and the delivery of services to America's child victims.

Types Of Child Victimization

There are five categories of child abuse and neglect. These categories are:

1. Physical abuse
2. Emotional abuse and neglect
3. Neglect
4. Sexual abuse
5. Exploitation

In some cases, all five forms of abuse occur, while in some instances only one form of abuse occurs. Abuse of children knows no bias. It is found in rich families as well as poor. It is practiced by both educated and uneducated citizens. It knows no race, cultural or religious boundaries. It is found in all cities, communities and rural environments. Child abuse is committed by family members, community leaders, acquaintances and strangers. And unfortunately, it does not discriminate against its victims. Victims of child abuse can be of either gender and of any age. It is an insidious crime that affects the entire nation but, most importantly, it often destroys the lives of its victims.

(Portions of the following five sections concerning forms of child abuse excerpted from For kids sake: A child abuse prevention and reporting kit. Oklahoma State Department of Health, Office of Child Abuse Prevention, Guidance Services.)

Physical Abuse

Physical abuse is most often classified as the non-accidental injury of a child under the age of 18 by a parent or caretaker. Non-accidental injuries may include beatings, shaking, burning, immersion in scathing water, broken bones, internal injuries, human bites, cuts, and bruising or other injuries inflicted on children. Physical abuse occurs when the parent or caregiver willfully injures, causes or allows the child to be injured, tortured, or maimed, or when unreasonable force is used upon a child. Abuse may also result from over discipline or from punishments that are

too severe. Physical abuse of children is rarely a singular incident but an action that is repeated over and over. Physical abuse can result in the permanent damage, scarring or death of children.

In many states, parents and care givers do not have to physically abuse the child to be guilty of physical child abuse. In these states, statutes permit parents to be charged with child physical abuse if they have knowledge of, but fail to protect the child from physical abuse from others, i.e., grandparents, boyfriends, spouses, etc.

Indicators of Physical Abuse

Physical indicators of physical abuse may include:

- Unexplained bruises and welts, in areas deemed to be atypical in location of "normal" childhood bumps and bangs. These areas often include the face, torso, buttocks, back or thighs.
- Reflect the shape of the object used to inflict injury: hand imprints, electrical cord markings, belt buckle, iron or cigarette marks, etc.
- Bruises/cuts/lacerations in various stages of healing.
- Unexplained fractures/dislocations in various states of healing and explanations that do not correspond to the location or severity of the injury. These injuries may be to the facial structure, skull and/or bones around joints.
- Unexplained burns on the palms, soles of feet, buttocks and/or back.

Behavioral indicators displayed by children may include:

- Requests for or feels deserving of punishment.
- Fear of going home. Frequently requests to remain at a friend's house, day care, and/or school long after it is appropriate.
- Fear of a specific individual. Displays inappropriate behavior when in the presence of abusing individual(s) such as unwarranted crying, temper tantrums, begging to leave or not to be left alone with individual(s).
- Suggests other children be punished in a harsh manner.
- Demonstrates overly aggressive behavior with peers such as striking, pushing or shoving. Behavior to the other extreme may include excessive withdrawal from peers and/or family members.
- Reports injury by parent.
- Gives unbelievable explanations for injuries.

Child Trauma Reaction to Physical Abuse

The abusing parent will often cast blame for the abuse at the child. The child may feel that he or she is bad and deserves the abuse. Some children only know family interactions through

violence. To these children, they may feel that the physical abuse equates with love from the adult role model. Many children of physical abuse tend to project an air of timidness or shyness. He or she may physically cower at any sign of confrontation, or may become overly aggressive with friends, siblings or peers.

Child Neglect

Neglect is defined as the chronic failure of a parent or caretaker to provide a child under the age of 18 with basic needs such as food, clothing, shelter, medical care, educational opportunity, protection and supervision. It is estimated that the incidence of child neglect in the United States may be as much as five times greater than that of physical abuse. Reasons for neglect, in addition to the most obvious of a determined, willful act on the part of a parent or care giver, can include: poverty, lack of education, cultural beliefs and customs, mental or emotional illness, and/or a lack of socialization skills on the part of the parent.

Indications of Neglect

Physical indicators may include:

- Height and weight significantly below age level average.
- Inappropriate clothing for weather conditions.
- Poor hygiene and/or untreated illnesses or dental needs.
- Inadequate supervision.
- Lack of a safe, warm sanitary shelter.

Behavioral indicators of neglect may manifest as:

- Begging or stealing food.
- Lethargic, chronic fatigue.
- Poor school attendance, frequent tardiness and unprepared with homework assignments or school supplies.
- Chronic hunger.
- Dull, apathetic appearance.
- Running away from home or school.
- Assumes primary adult responsibilities such as in the care of younger children and reports no adult oversight in the home.
- Emergence of juvenile acts of vandalism or shoplifting, especially of items such as food, shampoo, soap, underwear and other hygienic or basic needs.

Child Trauma Reaction to Neglect

Children may mimic inappropriate behavioral characteristics of older children in the neighborhood due to lack of supervision; have poor self-esteem due to lack of parental support; have inappropriate societal values due to lack of parental involvement; and harbor deep embarrassment of his/or her family's financial circumstances and/or lifestyle around peers.

Emotional Abuse

There are two forms of child emotional maltreatment recognized by mental health professionals -- *emotional abuse* and *emotional neglect*. Emotional neglect is the consistent failure of a parent or caretaker to provide a child with appropriate support, attention and affection. Emotional abuse is a chronic pattern of behaviors in which the child is belittled, humiliated or ridiculed. Both forms of maltreatment will most often result in the impaired psychological growth and the development of the child. It is estimated that about one million cases of emotional abuse occur each year. Typically, emotional abuse will be coupled with other forms of abuse, but can and does occur as the only form.

Examples of emotional abuse may include:

- Using the child as a scapegoat when things go wrong.
- Blaming the child for things in which he or she has little or no control.
- Constantly telling the child he or she is worthless, stupid or an embarrassment to the family.
- Criticizing the child for behaviors that are developmentally normal;
- Withholding love or affection to achieve a desired behavior.
- Engages in bizarre acts of torture or torment, such as locking the child in a closet.
- Imposing extreme forms of punishments.
- Treating the child differently from other children in the household.

Emotional abuse may be suspected when a child exhibits a combination of impaired development, destructive behavior or chronic complaints that cannot be explained medically or circumstantially. It should be noted, however, that careful elimination of medical, genetic or learning disorders should be made prior to acting upon suspicions or taking action for emotional abuse. The indicators for emotional abuse can mimic many medical or emotional conditions other than emotional abuse; therefore, confirming identification is extremely difficult.

Indicators of Emotional Abuse

Physical indicators for emotional abuse may include:

- Eating disorders.
- Sleep disturbances and/or chronic nightmares.

- Wetting or soiling of bed clothing or clothing by school-aged children.
- Speech disorders such as *stuttering*.
- Failure to thrive in infants.
- Physical illnesses such as asthma, ulcers or severe allergies.
- Developmental lags such as delayed verbal or motor skills.

Behavioral indicators may include:

- Rocking, head banging or thumb sucking in older children.
- Poor peer or familial relationships.
- Self-destructive behavior.
- Chronic academic underachievement.
- Irrational and persistent fears, dreads or hatreds, demanding or overly aggressive behavioral extremes.

Child Reactions to Emotional Abuse

Children who are subjected to emotional abuse may feel unworthy. Children may:

- Feel unloved or unlovable;
- Present symptoms of severe depression and withdrawal;
- Be a loner with peers or in family settings; and/or
- Feel that they make no significant contributions to the family and life in general.

On the opposite extreme, emotionally neglected children may act out in socially unacceptable behavior -- "If I'm going to be punished, I might as well be guilty of the crime."

Sexual Abuse

Child sexual abuse is the exploitation of a child or adolescent for the sexual and control gratification of another person. It includes acts such as vaginal and/or anal digital or penile penetration, oral-genital stimulation, fondling, exhibitionism, voyeurism, verbal stimulation, and/or the involvement of a child in prostitution or the production of pornography. Sexual abuse of children is perpetrated by family members, trusted family friends and acquaintances, child-related, community program personnel, day care workers and other paid caregivers, and strangers. Child sexual abuse is practiced across all ages, races, religious, cultural and socio-economic classes of people.

The real tragedy of child sexual abuse is that children often tend not to disclose it when it first happens, and the abuse can continue over and over, sometimes for many years.

- It is estimated that 150,000 confirmed cases of child sexual abuse were reported in 1993 (Finkelhor, 1994).

As shocking as these figures are, research points to the sad conclusion that only a small fraction of sexual abuse cases are reported.

- Disclosure of sexual abuse occurs several ways: the child simply tells; a crisis happens paving the way for disclosure such as the disclosure of other children concerning sexual abuse; statements made by children about themselves such as "I hate myself" or "I am very, very bad;" or disclosure is made in times of anger. However, disclosure will most often be made by less obvious means -- known as "unmasking."

"Unmasking" is the accidental discovery of sexual abuse by physical or emotional indicators. These indicators may include finding bloodstains in underwear, physical exams unrelated to the abuse but in which indications of abuse are found, and by emotional counseling. For example, older male victims of sexual abuse will tend to not disclose sexual abuse out of a sense of deep embarrassment and shame. Most often, cases will be identified by "masked" sources such as medical care. Male victims will most often have been sexually abused by oral-genital (reciprocal or individually directed), anal penetration (digital, penile or foreign object) and masturbation (reciprocal or individually directed).

Fabrication of Sexual Abuse

Fabricated reports of sexual abuse do occur and some highly publicized cases that resulted in acquittals have given rise to questioning the credibility of child reporting of sexual abuse. It is estimated that reports that are knowingly false occur in less than 10% of reported cases (Besharov, 1988). In addition, some number of cases appear to involve mistakenly false allegations due to incorrect memories of events and, it seems issues regarding "implanted memories" of abuse. At this time, there are no good estimates regarding this additional proportion of false allegations.

While most children don't fabricate tales of sexual abuse, it must be noted that some have and will continue to do so. The child protective service professional should not allow the possibility of a false allegation or false memory to prevent a thorough investigation of the report. Each case must be considered on its own merits, with a fair determination based upon an unbiased evaluation of the evidence gathered without a predetermined conclusion.

Sexual Abuse -- the Perpetrator

Sexual abuse perpetrators can be classified in three categories:

- Family
- Acquaintances
- Strangers

Intrafamilial Sexual Abuse

Sexual abuse is committed most often by individuals known to the child. In cases involving incest, the abuser is a blood relative who is part of the nuclear family. It may also include a surrogate parent, i.e. live-in boyfriend, step-parent or older sibling. Female perpetrators are known to exist but reporting of such abuse has been rare -- most probably resulting in an underestimation of its frequency.

In cases of intrafamilial abuse, the family is most likely to be dysfunctional in other areas as well. The mother may play a very weak role in the family structure, therefore allowing the abuse to happen through ignorance, apathy or jealousy. The abuser may feel the mother has failed in her obligations as a wife, sexual partner and friend. The abuse of the child may be one way to punish the mother. The family may be plagued by alcohol or other substance abuse as well.

Acquaintance Perpetrators

Acquaintance perpetrators include such persons as family friends, neighbors, teachers, coaches, religious leaders, peers and others. Acquaintance perpetrators normally will win the confidence of the child through his or her affiliation with the family or community. These acquaintances may command positions of respect due to positions in community affairs, i.e., church, civic and business affiliations. Acquaintance perpetrators are more often likely to use threats of intimidation and/or fear against the child once sexual abuse has occurred. Male child victims comprise a high percentage of sexual abuse by acquaintance perpetrators, although it is believed that actual cases are severely underestimated.

Acquaintance perpetrators may use gifts or financial incentives to "win" the child over. They tend to prey on children they know are experiencing home, school or personal problems, or children with low self-esteem or confidence. They also prey on children they know to be unsupervised or neglected.

There is a marked increase in the number of juvenile perpetrators committing sexual abuse. In recent years, attention has focused on the identification and treatment of juvenile sex offenders. According to the National Task Force on Juvenile Sexual Offending, in 1993 approximately 20-

25% of the sexual abuse of girls and 50% of the sexual abuse of boys are perpetrated by adolescents (Besharov, 1988).

Stranger Sexual Abuse

Stranger sexual abuse is by far the most publicized form of child sexual abuse, but is also committed less than sexual abuse by family members or acquaintances. Stranger sexual abuse comprises only 10% of all reported cases of sexual abuse. Some perpetrators of stranger abuse are labeled as pedophiles (although pedophiles are found in all three classifications). The term pedophilia is used to describe individuals who have a sexual preference for children. Pedophiles may display obsessive-compulsive behavior patterns, and assume increased risks to sexually assault children (Finkelhor, 1994).

Stranger perpetrators are almost always male and often prey on male child victims. Most stranger perpetrators deny homosexual tendencies. There is no evidence that perpetrators choose child victims based on race, but there is a correlation to increased victimization of children of lower socio-economic groups. Some pedophiles specifically marry women with children so that the risks of sex with children are minimized and protected under the veil of "normalcy;" therefore, cases of incest may include factors of pedophilia (Tower, 1992).

Indicators of Sexual Abuse

Physical indicators of sexual abuse may include:

- Physical complaints of pain or irritation of the genital area.
- Appearance of sexually transmitted disease(s).
- Pregnancy in young adolescents.
- Frequent, unexplained sore throats, yeast or urinary tract infections.

Behavioral indicators may include:

- Excessive masturbation in young children.
- Inappropriate physical or verbal displays of sexually terms or acts in young children.
- Depression, suicidal gestures.
- Frequent psychosomatic complaints, such as headaches, backaches, stomach aches.
- Withdrawal from friends, family members and/or normal activities.
- Avoidance of undressing or wearing of extra layers of clothing.
- Avoidance of normal physical interaction with family member such as hugs or kisses.

- Avoidance of certain familiar adults or places.
- Decline in school grades or participation in after school activities.
- Inappropriate "acting out" of sexual behavior or dress.
- Chronic runaways.

There are a number of reasons that children may not report sexual abuse:

- Shame or guilt. Often by the time the child realizes something is wrong, the abuse may have occurred many times over and children unknowingly or wrongfully take ownership of allowing it to happen.
- The offender is often known and loved by the child -- parent, sibling, other family, or a trusted family friend. There may be a loyalty to the offender.
- Children may be too young to verbally or physically articulate facts surrounding the abuse; lack knowledge of terms to describe event(s); or may be embarrassed of the terminology used in describing sexual acts.
- Offender will often threaten the child that no one will believe him or her, or may threaten to hurt or kill other family members.
- Perhaps most important, societal norms often keep children from disclosing sexual abuse. Society has silenced the discussion of sexual behavior, thus, making it almost taboo to discuss with certain age groups of children.

Child Trauma Reactions to Sexual Abuse

Children who are sexually abused experience physiological and emotional reactions. Older children may be overcome with feelings of shame or guilt. The abuser may have, over a period of time, convinced the child that he or she is to blame. The child may not feel that he or she will be believed and, if believed, fear the withdrawal of family affection. Some children may feel that if friends find out about the abuse, they will be held accountable and the friendship will end. The child may experience low or no self esteem in not being able to stop the abuse. The child may also fear that disclosure will cause harm to other family members.

Once disclosure is made, the child may retreat from family members and school friends. He or she may consider suicide because of feelings of no self-worth -- feeling soiled or defiled. On the opposite extreme, the child may experience intense anger and physical and emotional acting out. The child may blame the non-offending parent, in cases of interfamilial abuse, or parents, in cases of non-interfamilial abuse, for failing to protect them. Older children may reenact sexual abuse by engaging in inappropriate sexual behavior, sexually abusing other children, becoming sexual active, and/or using vulgar language.

Younger children may become distrustful and overly fearful of strangers or family members. They may regress in development, i.e, quit talking, feeding or dressing themselves. Nightmares, sleep and appetite disturbances are common. Male victims of sexual abuse are more likely to aggressively act out. They will have more concerns about sexual identity and fear of sexual orientation. Males tend to be more "embarrassed" than girls by the abuse, thereby causing them to suffer silently (Besharov, 1988; Finkelhor, 1994)

Missing and Exploited Children

There is a fifth, and much underserved, form of child victimization -- exploitation of missing, run-away, "throw-away" or abducted children. In 1990, the U.S. Department of Justice released the following figures highlighting the seriousness of the problem.

- 114,600 attempted abductions by non-family members were reported.
- 4,600 abductions by non-family members were reported.
- 300 abductions by non-family members where the child(ren) were found murdered.
- 354,000 children abducted by family members.
- 450,700 children who ran away.
- 127,100 children who were "thrown-away" or ordered to leave by family members.
- 438,200 children who were lost, injured or otherwise missing (Finkelhor, Hotaling and Selak, 1990).

Children, who for whatever reasons live on America's streets, are prime targets for criminal victimization and exploitation. They are often targeted by sex offenders due to their age, lack of maturity and lack of financial security. Boys and girls alike are targeted. Many children become dependent on those who prey on them for survival. They may be indentured to act as prostitutes, participate in child pornography rings, and/or commit crimes such as selling or distributing controlled substances. Some victims fall prey to serial molesters and child killers.

Societal views of runaway youth have not been overly sympathetic. Many persons feel that if a child runs away from home, he or she deserves the victimization. What is not often recognized is that many of these children run to escape physical, sexual, and emotional abuse at home. They are forced out of the home when they refuse to continue to participate in interfamilial sexual abuse. For many children, life can "only be better" on the street. Regardless of the reasons that children find themselves on the street, they are deserving of support and services. In response to this philosophy, the federal government has enacted numerous pieces of legislation to protect our nation's missing and exploited youth.

Parents commit crimes against their children when they kidnap them from custodial parents. Although some claim they are taking the child to protect him or her from further abuse, many take their children out of anger at custodial arrangements (often ordered by courts). These children are placed at great risk for harm, both physically and emotionally. A lack of finances to fund abduction living circumstances and a constant change in living conditions can and do leave children emotionally scarred. Many children are further abused emotionally by their parental abductors by being told that the custodial parent is dead or does not want the child. Abduction by strangers is somewhat rare; however, when it occurs, the child's chance for survival is significantly lowered. Of these children, many are taken by pedophiles or serial child molesters to satisfy their sexual needs. Once the need is satisfied, the child may be killed to ensure the anonymity of the abductor. Many of these children are often tortured prior to death.

(Portions of the preceding section excerpted from a National Victim Center grant project, funded by the Office for Juvenile Justice Delinquency and Prevention Programs, 1992-1994.)

Reporting Requirements for Child Abuse and Neglect

Most states and the federal government have enacted laws, and specified professionals who are mandated to report child abuse and neglect. These *mandated reporters* are individuals who, in their professional relationship with the child and family, may encounter child maltreatment. Some states are more specific in delineating those mandated to report abuse, but most states do include: physicians, other medical professionals, counselors, social workers and school personnel. In addition to delineating who must report, most states provide language that addresses the following:

- *To whom the report should be made:* Departments of social services, child welfare, family service or agencies of public welfare are usually designated to receive such reports. Some states indicate a report to the law enforcement community is necessary as well.
- *Under what conditions a mandated reporter must report:* States normally mandate the reporting of child abuse or neglect when there is a suspicion of, reasonable cause to believe or reasonable cause to suspect abuse or neglect.
- *Time period in which the report must be investigated by social services or another designated agency:* States vary in their time requirements to investigate suspected cases, but time periods normally range from two hours to 30 days.
- *Type of action to be taken if mandated reporters fail to report:* All states, with the exception of one, include some form of penalty for non-reporting of

suspected cases of child abuse or neglect. Such disciplinary actions may include a fine and/or imprisonment or the reporter can be charged with a misdemeanor. These penalties do not include agency or licensing sanctions, which are determined on a state-by-state basis.

- *Type of immunity provided mandated reporters who make a report:* All states allow some form of immunity from civil or criminal actions for good faith efforts.

Not all cases of abuse or neglect are detected by those mandated to report them. In fact, the largest numbers of reporting come from private citizens who witness, hear or suspect abuse or neglect. These interested parties may include other family members, neighbors, parents of childhood friends and other concerned citizens. However, several factors may curtail the reporting of abuse or neglect by private citizens:

- Lack of knowledge of who to call.
- Lack of knowledge of confidentiality laws of anonymous reporters.
- A desire to not become involved in the “personal matters” of others.

Despite the risks of accepting reports of abuse from non-professionals and anonymous reporters, i.e., false reports, refusal to serve as recognized witnesses if the case is proven to be criminal in nature; lack of full disclosure could put the alleged abused child in greater risk, most agencies take such reports seriously and do investigate such reports. (Many agencies and most states do not have specific mandates or policies regarding the investigation of child abuse/neglect reports through an anonymous tip.) (Tower, 1993, p. 234)

Creating a Multidisciplinary Approach to Child Abuse and Neglect

Verifying reports and determining appropriate actions and case management plans in cases of suspected physical, neglect, emotional and sexual abuse or neglect will normally involve several community, state or criminal justice agencies. While the ultimate goal of each agency is to protect the child, each agency operates with different policies, procedures and goals.

With so many agencies involved, there is a high probability of duplication or overlapping of protocol, services and procedures. To reduce the possibility of such duplication, many states have incorporated a multi-disciplinary team approach to:

- Share information, expertise, and experiences.
- Determine the need for intervention and to coordinate the best approach for action.

- Assess risk factors for child.
- Determine service needs.
- Determine the child's ability to participate in the process.
- Ease the trauma of the child's participation in the process through the reduction of multiple interviews, exams and the number of protective and criminal justice personnel the child and/or family members must interact with.

Most multi-disciplinary teams include representatives from social services, law enforcement, victim/witness assistance, child protective services, prosecution, physicians and/or nurses, and mental health services. Some jurisdictions also include guardian ad litem, teachers, community-based service organizations or other advocates appropriate to the individual case.

To determine if allegations or reports of child abuse or neglect are founded, the following formal procedures are normally conducted:

- *Investigations*(conducted either jointly or individually through law enforcement or child protective service agency) that include: record checks of previous criminal offenses or previous child protective services reports involving charges or allegations of alleged child abuse, familial, or spousal abuse, substance abuse, or other behaviors increasing the likelihood of child abuse and neglect; interviews with the alleged offender(s), and where appropriate, other family members, neighbors, school teachers, medical personnel and where appropriate, the alleged victim either in or out of the presence of the parent/caretaker. Home visits are often conducted to determine if conditions of neglect exist such as in unsanitary conditions, lack of food or electrical service, heat, etc. Physical inspection of the child or other children in the home may be performed to determine additional signs of abuse or neglect; observing family dynamics and interactions may provide an additional indicator of abuse and neglect.
- *Medical assessment to determine*: evidence of child physical or sexual abuse or neglect (as previously highlighted in this chapter).
- *Mental health assessment to determine*: evidence of emotional abuse or neglect as previously highlighted in this chapter.
- *Criminal justice intervention to determine*: the need for emergency removal of the child to foster or other forms of temporary placement to ensure the child's immediate safety, long-term placement options for child placement and custody; possible criminal or civil actions and/or the appointment legal representation (guardian ad litem) to protect the child's legal interest. Key players include prosecutors, judges and, if not included in the initial investigation, law enforcement personnel. Some judicial jurisdictions now include Court Appointed Special Advocates (CASAs) in the investigation and monitoring of child abuse

and neglect cases. They most often assist the Family or Juvenile Court judge in collecting information specifically surrounding the child and advocate solely in the best interest of the child. More and more, these highly-trained volunteers are being incorporated on multi-disciplinary teams.

It must be noted that while the information within this chapter most often deals with child abuse and neglect perpetrated by family members, other individuals can and do commit these same acts against children. These individuals may include: teachers, clergy, institutional or paid caregivers, etc. They, however, are not the focus of this chapter but are mentioned to alert the reader that cases such as these exist. Because specific laws have been enacted to address maltreatment of children by these professionals, these individuals will often be charged with criminal or civil violations. The primary investigator will normally be a law enforcement agency and not child protective services.

Promising Practices

Establishing Child Abuse and Neglect Multi-disciplinary Teams

- Include a representative of all key agencies interacting with children in reported cases of abuse or neglect. At a minimum, this panel should include: a physician and representatives from child protective services, law enforcement, mental health, and criminal justice -- to include a prosecutor and victim advocate. At best, the panel will also include a guardian ad litem, and a child service community-based program representative. Consider having an alternating panel with expertise specific to the type of abuse, i.e, physical, emotional, sexual or neglect.
- The development of specialized, “vertical” investigative and prosecutorial units that deal only with child abuse and neglect cases.
- The development of a specialized victim assistance unit to work with children and families who experience abuse and neglect.
- The development of explicit interagency agreements delineating agency roles and responsibilities to include the referral and “hand-off” of cases to agencies within the agreement.
- The identification of allied professionals in specialized fields and disciplines relating to highly sensitive child abuse, neglect or criminal actions and, where appropriate, the involvement of these professionals on the team. An example would include a mental

health professional or investigative specialist in the area of the formation of child pornographic rings.

(See generally Tower, 1993, for the above section.)

Methods of Working with Founded Cases of Neglect and Abuse

Many of the reported cases of child abuse and neglect are determined to be unfounded. The files are normally closed and no other action is taken. Sometimes an investigation will not find concrete findings of abuse, but a suspicion of abuse still lingers. These cases are normally "pending" for additional follow-up and, if no other reports are filed within a specified time period, the case is generally closed.

Founded cases of abuse or neglect can be handled either by child protective service agency intervention or criminal justice intervention. Not all cases of child abuse or neglect are criminal in nature, nor do all founded cases of abuse or neglect require the removal of the child from the home. Financially strapped parents and caretakers are quite capable of loving a child while being unable to properly provide adequate food, shelter or heat for them. The same applies for many parents who are mentally, emotionally or physically unable to meet all of their child's needs. Although these conditions of neglect are more understandable, they are *not* excuses to allow a child to remain at risk of harm.

- Child protective services and family courts work to keep these families together by providing a number of services, such as: financial assistance for food, housing and medical care; the services of a paid child protective services "homemaker" to train parents on how to clean their homes and children's clothes and cook healthy meals; and how to practice good physical hygiene.

Additionally, homemakers often provide transportation to children and/or other family to and from medical or mental health appointments. In cases where there is a finding of willful abuse but the child is not in immediate danger, child protective agencies will work with family members to resolve problems and reduce stress that might have precipitated the abuse or neglect. Most often, these agencies incorporate the use of "contracts" between the agency and the abuser. These contracts specify strict requirements that the parent or caretaker must meet or maintain if he, she or they wish to retain custody of the child. Conditions contained in "contracts" might include:

- Anger management classes.
- Substance abuse treatment programs.
- Mental health counseling.
- Employment or employment training.

Parents may also be required to attend parenting classes to learn the proper care and feeding of the child, his or her needs, and to learn of the stressors that may lead to child physical abuse or neglect and techniques to reduce these stressors.

The child protection agency often will conduct follow up home and office visits for a specified length of time to ensure that the conditions of the contract are met. The contract will normally outline specific policies and procedures if "conditions" are not met or if another report of abuse or neglect is filed. These actions may include:

- The removal of the child.
- The extension of an agency monitor.
- Increases in conditions.

Foster Care Placement

The removal of a child from his or her home may result in a significant emotional toll on the child. It is the accepted philosophy of the court system, child protective service agencies and mental health professionals that a child should remain in the home unless his or her life is threatened, and that services should be geared at reuniting the family. A number of cases of abuse and neglect result in the temporary removal of the child from his or her home, and in some cases permanent removal. Placement can be either in foster care or in some other family member's care.

Most often the parent(s) or the care giver must meet certain conditions, as outlined above, prior to the placement of the child back into the home. To remove a child from the home and place him or her in foster care requires the intervention of the family or juvenile court. Only in cases where emergency removal of the child is warranted can child protective officers act without the direct permission of a judge in removing the child. Even then, the court must be notified and must hold what is referred to as a "shelter care" hearing within 72 hours to determine the child's placement. (Most states recognize a 72-hour deadline but policy can vary from state to state.)

Children who are removed from their home may experience a range of emotions and reactions. They may:

- Act out in physically threatening ways, hoping they will be removed from the foster setting and returned home.
- Withdraw from the foster caretaker and refuse to participate in planned activities.
- Cry excessively.
- Experience betrayal either with the abuser or the reporter.

As a result, they may lose their ability to "trust" the system designed to protect them, leading to the non-reporting of future abuse. Some children will recant prior statements concerning the

abuse so they can return home. Children placed in foster care should receive mental health counseling or have access to other family members to share their emotions and to learn of future plans for their housing to aid them in accepting their current (and hopefully) temporary situation.

When the findings of the child abuse or neglect investigation uncovers acts criminal in nature, criminal charges are often filed against the offender. These acts normally include severe or life-threatening cases of child physical abuse and cases of child sexual abuse (Tower, 1993; Besharov, 1988; Finkelhor, 1994).

Factors That May Influence Children To Not Report Victimization

- Age and developmental skills may preclude an ability to do so.
- Lack of knowledge of whom to or how to report abuse.
- Fear of retaliation from the offender or other family members.
- Fear of not being believed.
- Unaware that the situation is not “normal.”
- Feels shame or blame for abuse.
- Fears threats made by the offender against self and/or other family members.
- Perhaps most importantly, feels love for the abuser.

Communicating with Child Victims: A Brief Overview

During the investigative phase and in some cases, criminal phase, children will come in contact with a number of adult child protection professionals. The ability to talk with and put children at ease is important because child victims are *not* small adults. There is a substantial difference between children and adults in the comprehension of concepts, development of verbal skills, reactions to stress and anxiety, and adaptation to new and unfamiliar situations and people. Even among children, there is a vast difference in their ability to process and retrieve information, to become comfortable with new surroundings, and to take concepts and words from literal to general application. All are based upon developmental factors such as age and social maturation.

The types of abuse listed above do not have to occur at home. While it is true that the majority of physical, emotional and sexual abuse and neglect of children occurs in home settings, one or all of the above forms of abuse and/or neglect can occur in institutional, day care, school or other settings that children would attend. Additionally, physical abuse and sexual exploitation can be found in street settings as well.

Prior to working with child victims, it is important to have a general, basic understanding of the emotional and communicative developmental stages of children so that expectations, general communication, questions and desired responses and services are more in line with what the child can realistically supply, and what he or she needs in the way of support and services.

The following communication overview illustrates the communicative abilities of children, as well as developmental information that will provide a brief examination of the emotional and communicative levels of children as they grow. General information on the developmental stages for children from birth to four years is included; however, the child's communicative skills are limited and, as such, professionals will want to consider other communicative techniques as well. These techniques may involve the use of play or art therapy, and/or the use of anatomical dolls. The combination of these two resources should provide the victim service provider with a better understanding of children -- what they say, how they say it and how it can affect the services provided.

Prior to talking with a child, the adult communicator should consider:

- The child's developmental level.
- The child's frame of reference.
- Where appropriate, giving an explanation for the conversation in terms the child can understand to reduce anxiety.
- Adapting to the child's level by sitting in a chair comparable to the child's, sitting on the floor, going for a walk or employing other means to put the child most at ease.
- When possible, talking with a child in an environment that is familiar to the child.

According to Susan Samuel of the Kentucky Cabinet for Human Resources, "Attempts to communicate without consideration of the child's developmental level and frame of reference produces responses that appear to be incomplete and inconsistent. Such responses undermine the credibility of the child." To help reduce such risks, she suggest that the adult communicator realize:

- Children develop language skills in "layers." Fully developed language concepts do not emerge until the teen years. Miscommunication most often occurs when "adults" assume a child has mastered a particular skill when, in fact, the child has not.
- Many young children are not able to follow complex sequences but can answer simple sequences or questions.
- Children possess a strong need to impress adults. Asking younger children open-ended questions may result in the child giving any information they have on the topic even if it is unrelated to the particular event. Additionally, coupled with a need to impress, many

children will not want to admit they do not possess knowledge of a particular event or topic. As such, some children make up information as to not be seen as unknowledgeable.

- Young children tend to repeat the end of a prior sentence if they are unsure of an answer. This is often taken as confirmation of a positive response when, in fact, it represents no response at all.
- The use of pronouns can be confusing to children. They best respond to specific names, places or things.
- Children most often measure time relative to events that are meaningful to them, rather than by abstract concepts of time. Time to them time may be better understood as points of reference: Thanksgiving, when it snowed, when "Barney" comes on T.V., etc.
- General terms used by adults to describe physical characteristics do not necessarily mean the same thing to a child. Be specific of the information that is being sought.
- Age is a difficult concept for children. "Old" to one child may be 16, while "old" to another may mean the tallest person in the room.
- Adults often assume children possess skills they may not have. The child should be asked to demonstrate his or her knowledge before continuing a specific line of communication.
- Children usually pick the literal interpretation of a phrase or a word. In the following example, it would appear that the child is confused about his age and when his birthday is. But when one looks at the questions and the answers, it is evident the child has answered correctly. The adult failed to go back to the fifth birthday; therefore, the child thought he was being asked about his sixth birthday, which was not the case.

Q: Do you know what your birth date is? I bet you do!

A: No.

Q: When were you 5 years old?

A: I am 5.

Q: You are 5?

A: Yeah.

Q: When will you be 6?

A: On my birthday.

Q: Okay, silly question. How long ago did you have your birthday?

A: I didn't have my birthday.

Communication Development and Reactions to Trauma

Birth to Two Years

Language capability of the infant and early toddler is pre-verbal. There is little ability to communicate through spoken word. The most common form of communicating is through physical activity; children of this age are dependent on physical human contact for reassurance. Normal reactions to trauma can be seen by crying, biting, throwing things, and/or agitated behavior. Memory of the traumatic event may best be seen in physical reactions, not in the form of mental memory. For example, a child who has been repeatedly physically abused may pull or shy away, or begin crying when in the presence of the abuser.

Two Years to Six Years

At this age, the child is beginning to develop language/verbal expression skills. He or she will continue to communicate primarily through play, but play is now interspersed with words. The child in the mid-age range is beginning to draw and may communicate through pictures. Additionally, the child is beginning to engage in pre-conceptual thinking but possesses a minimal concept of space and time. At this age, the attention span of the child is extremely limited to concentration of only a few minutes on any given subject. The child is learning to be more physically independent through activities such as toilet training, dressing, feeding and cleaning self. The child's immediate family still comprises his or her primary relationship. Reaction to trauma at this age may include: re-enactment of the traumatic event over and over; parental or caretaker separation anxiety; withdrawal from normal activities or interaction with family members; depression; regression in skills already learned such as toilet training, feeding or washing self, wetting the bed; sleep disturbances with nightmares common; loss of appetite; physical withdrawal when in the presence of abuser; and acting out of inappropriate behavior such as hitting or biting.

Six Years to Ten Years

Language skills at this age are becoming well developed. Play activities are equally interspersed with verbal communication. The child learns to tell time, days of the week, months of the year, etc. The child begins to learn the concept of past and future, but is more centered in the here and now. He or she may be beginning to learn problem-solving techniques. The child at this age is learning to go outside of home or caretaker boundaries. There is an increase in forming non-familial relationships through peers, teachers and other adult role models. At this age, reactions to trauma may include a sense of loss; inability to concentrate; and increase in imaginative skills that may lead to the embellishment of traumatic events. The child may suffer physical symptoms of stress such as headaches, stomach aches, and dizziness; difficulty in controlling behavior;

regression to previously mastered developmental stages; mood swings; sleep and/or appetite disturbances. Distinct episodes of depression may become more obvious to the parent/caretaker.

10 Years to 14 Years

Language skills at this age are approaching those of adult ability; however, knowledge of words does not mean understanding of words -- language may be more advanced than concepts. The child will still prefer to communicate verbally over written forms. Children at this age may communicate through emotional outbursts or temper tantrums as opposed to employing learned reasoning concepts mode: "acting out" is common form of expression. Increased knowledge of the world may make the child more judgmental of life in general; they begin to apply their own beliefs, values, biases and prejudices against those learned through family interaction. A child in this age group is becoming both physically and emotionally independent from family structure; however, is not uncommon for the child to move forward and backward in childlike and adult-like concepts, behaviors and feelings. Puberty and hormonal fluctuations can cause emotional mood swings and confusion of impending sexuality. Physiological maturation occurs faster than emotional maturation. Peer influence and acceptance are becoming a primary focus, although family acceptance is still important. Reactions to trauma may include: regression towards child-like behavior; anger; extreme euphoria or depression; theatrical portrayal of traumatic events; judgmental about own behavior; emergence of psychosomatic illnesses; withdrawal from family or school activities; sense of unfairness over what has happened; and/or minimization of the traumatic event.

12/14 to 18 Years

At this age, language skills now incorporate an advanced capacity to communicate through written and verbal means. Poetry and story-writing are major avenues of identifying and communicating fears and concerns. The child is now able to fully understand cause and effect and abstract concepts. While the child can consider consequences of action, he or she still is not able to fully rationalize and foresee full future implications of such actions. At this age, the child is most often judgmental about everything, including parental or adult figures. The child is beginning to move away from family structure and support in favor of peer interaction; tends to depend on family members only for guidance when troubled; feels a need for privacy; and may start spending more time in his or her room listening to music and may begin to lock the bedroom door. He or she is becoming more comfortable with body image and may begin to explore more "active" forms of sexual behavior through books, music, film, or actual sexual participation. Reaction to trauma will include many of the same reactions as those experienced in adult post-traumatic stress disorder: anger at the world or parents for failing to protect him or her; shame of behavior or lack of skills to protect oneself; eating and sleep disorders; depression; psychosomatic illnesses; act out inappropriate behavior, especially sexual in nature; judgmental about own behavior and behavior of others; sullen, moody, quiet; ingestion of drugs or alcohol;

running away from home; fits of rage; attempt to move into adult world as soon as possible; and/or use of foul language for shock value.

(For the above section, see generally *Mapping strategies for services*, National Organization for Victim Assistance; *Focus on the future: A system's approach to prosecution and victim assistance*, National Victim Center, 1990.)

Section II: Child Victims/Witnesses in the Criminal Justice System

Historically, America's justice system has treated child victims and witnesses shamefully. Following the old adage, "children should be seen and not heard," the American court system for many years effectively excluded the testimony of child victims and/or witnesses. Their age, lack of societal sophistication and inability to follow abstract concepts led our judicial forefathers to believe that children were not competent to come before the court and repeat what they saw or heard or had happen to them. Although crimes were perpetrated against them or they witnessed other crimes being committed, the judicial system did not believe their words were credible.

However, the judicial system has begun to accept that children do not need to be familiar with complex concepts or need to understand legal terminology or procedures -- that they are capable of repeating what they saw or heard about a crime. This wise intervention has not, however, paved the way for children to be seen as children and allowances to be made because they were in fact children. Rather, barriers have been and are still placed in their way.

In the past, most states required children to undergo a competency hearing in court prior to testifying. Most required or still require child victims or witnesses to face the adult offender in court. No programs or services were mandated to reduce the trauma of crime victimization or to alleviate court-related stresses. Quite unfairly, children were placed in the same category as adult witnesses.

In 1982, the President's Task Force on Victims of Crime addressed the need to treat child victims and witnesses differently than their adult counterparts. Simultaneous to the issuance of the *President's Task Force's Final Report* recommendations, the first comprehensive piece of crime victims' legislation was enacted on the federal level. For the first time, fair treatment standards for victims and witnesses were mandated, including child victims and witnesses, through the passage of *The Federal Victim and Witness Protection Act of 1982*. Since the enactment of this landmark *Act*, more than a decade of federal and state legislation has followed. Most notably is the *Victims of Child Abuse Act of 1990*. With its passage, children in the federal justice process have been afforded rights never granted before. Specific to prosecution, the *Act* mandates:

- Consultation with multi-disciplinary teams to receive information on medical evaluations, psychological and psychiatric diagnosis and evaluations, expert medical, psychological and related professional testimony.
- Allowing children to testify via two-way closed circuit television if the child is unable to testify in open court due to fear; the likelihood the child will suffer undue emotional trauma from testifying; physical, mental or other infirmities; and if conduct by the defense or the defendant causes the child to be unable to continue with his or her testimony.
- Limiting the competency examinations of children except when the court determines, on the record, compelling reasons for doing so.
- Ensuring privacy protection for child victims/witnesses and confidentiality of information concerning the child's identity.
- Allowing the child to be accompanied during the court process by an adult attendant.
- Mandating a speedy trial in order to minimize the length the child must endure the stress of involvement with the criminal process. Although only a small percentage of child victimization cases are criminally prosecuted in any court system, the need to support the child during the disclosure and healing process is critical.

Today many states have adopted similar legislation and enacted programs and services to meet the specific needs of child victims/witnesses. Many communities have established very detailed and extensive protocols, policies, procedures and interagency agreements for implementing multi-disciplinary approaches to child victimization. Some courts have lowered their competency requirements and some courts have begun to allow children to testify via two-way cameras, video cameras and other electronic means. Training opportunities now exist nationwide for criminal justice and victim assistance personnel who work with children.

Children who report, witness or suffer crimes not only suffer emotional ramifications of the abuse in and of itself, but are often called upon to participate in an adversarial, formal and adult-oriented system. Without properly trained criminal justice professionals, i.e., law enforcement, victim advocates, prosecutors, probation officers, judges, and parole officials and without specialized programs and services for child victims/witnesses, children participating in the justice process can experience a "second" form of victimization. Services for child victims and witnesses should not be dictated on the strength of a criminal case; rather, the criminal process should be seen as only one element in the handling of child victims and witnesses. There is no doubt that prosecutions are improved with victim/witness support and assistance from criminal justice personnel to child victims/witnesses and their parents/guardians. Child victims/witnesses that possess an understanding of the legal system are:

- More at ease with the role they are to play in the prosecution of the defendant.
- More cooperative with the justice process.
- Better able to cope with the intimidating and often traumatic experience of testifying.

Parents and guardians of child victims and witnesses who are familiar with the justice process, their child's rights in the criminal justice system, and the role their child will have are better able to:

- Support their child's participation in the justice system.
- Identify and meet their child's emotional needs.
- Understand their own emotional needs and concerns.

Children and the Court

Court preparation programs that include non-offending families, guardians, and siblings are important to reduce the child victims'/witnesses' anxiety and their own concerns for the child's emotional and physical safety. Sometimes, parents/guardians and siblings often feel more anxious than the actual child victim/witness about court participation. It is important to keep their needs in mind as well. If a parent/guardian is supportive of victim services, he or she is more likely to allow the child victim/witness to fully participate in all phases of the justice process.

The testimony of child victims/witnesses plays a substantial role in the successful prosecution of a criminal case. However, the involvement of children in the justice process brings many unique challenges to victim assistance personnel charged with supporting and aiding these children as they travel throughout the process.

It should be noted that children bring with them many preconceived notions about the court process that can induce intense fears and anxiety. Many children have watched television programs in which court trials have been portrayed in less than flattering means. Although criminal justice professionals are aware that these portrayals do not accurately represent real court trials, children are not aware of this. It is important that the child realizes that his or her version of court is not always correct or properly represented on television. This can be done by asking the child what he or she knows about court and if he or she has watched any television shows depicting a trial. If the child answers affirmatively, and the images of the process do not replicate real life, alleviate the child victims'/witnesses' fears.

Children who are required to testify against family members face additional burdens of guilt, shame and confusion. Criminal justice professionals should make an extra effort to determine if the child has been subjected to any inter-familial pressure to change his or her testimony, or

subjected to taunts and remarks about "destroying the family." Additionally, the criminal justice professional must *never* make the child feel that his or her testimony will be the deciding factor in establishing guilt. Rather, children must be reassured that their testimony is only a small part of a criminal case (See generally Office of Juvenile Justice and Delinquency Prevention, 1994; Selkin, 1991).

Child Victims of Juvenile Offenders: An Underserved Victim Population

In the growing wake of juvenile crime, the juvenile justice system is seeing an increase in the numbers of child victims and witnesses of these crimes. However, few programs exist that prepare the child victim or witness for participation in juvenile court proceedings.

Historically, these services have been reserved for child victims of sexual or extreme physical abuse. This is unfortunate because child victims and witnesses of juvenile offenders most often suffer the severest forms of intimidation, harassment and reprisal from juvenile offenders or their representatives. Victim assistance personnel should provide support and referral services for these victims and witnesses just as they do for child sexual assault victims and families, and be aware of the growing number of victims' rights within the juvenile justice system (see Juvenile Justice chapter for additional information on these topics).

Children Who Witness the Victimization of Others

Additionally, children are frequently called into adult court to serve as witnesses to crime. Just as many child victims of juvenile offenders receive little or no formalized program assistance, often child witnesses to adult crimes are not provided support and services. Everyday in this country, children witness murder, rape, domestic violence, robberies and assaults. Although they may not personally suffer physical injury, the emotional consequences of witnessing such acts of violence are terrifying.

Child witnesses experience many of the same emotional symptoms as child victims. They may not be able to sleep or eat; develop psychosomatic complaints; or experience depression or unexplained mood swings. They have been injured by the crime and deserve the criminal justice system's support and services as though they were the victims. Additionally, child witnesses are just as likely to be intimidated and fearful of formal court hearings as are child victims who are required to testify as witnesses. It is critical that these "secondary" victims be prepared for court as well.

Recent Federal Initiatives

The *Violent Crime Control and Law Enforcement Act of 1994* created several new federal initiatives for crimes dealing with children. These provisions address the following areas:

- Registration of sexually violent offenders
- Repeat sex offenders
- Child sex tourism

In addition, federal law now provides for community notification of the release of predatory sex offenders.

Registration of Sexually Violent Offenders

The Attorney General of the United States is directed under the Act to establish guidelines for state programs that require persons convicted of certain crimes against children -- kidnapping, and sexual misconduct -- to register their addresses with an appropriate state law enforcement agency upon their release from prison.

- This registration requirement continues for 10 years after the offender is released from imprisonment or placed on probation.

In cases where the crime committed was "sexually violent," the registration requirement applies to persons committing an offense against an adult or a child.

- In such cases, "sexually violent" predators must remain registered until a court determines that they no longer suffer from a mental abnormality that would make a predatory sexually violent offense likely.

"Megan's Law"

Recent amendments to the federal sex offender registration statute provide for the notification of a community regarding the presence of a registered sex offender. Patterned after New Jersey's "Megan's Law," this will allow parents to better protect their children from *known* sex offenders.

Local, State and Federal Coordination

The Act also requires a sharing of information between local, state and federal law enforcement agencies. For example, the Act requires that state law enforcement agencies must transmit a copy of the conviction data and fingerprints to the Federal Bureau of Investigation.

- In addition, the Act establishes that the failure of a state to implement the registration program subjects the state to a 10 percent reduction in funds allocated under the Department of Justice's Byrne Grant program.

Repeat Sexual Offenders

The 1994 Act doubled the maximum prison term applicable to repeat sexual offenders. Specifically, if an offender commits a sexual abuse or sexual contact offense under federal law after one or more prior convictions for a federal or state sexual abuse or sexual contact offense, the maximum term of imprisonment is doubled.

Child Sex Tourism

A new "child sex tourism" offense was created under the 1994 *Violent Crime Control and Law Enforcement Act* that makes it illegal for a U.S. citizen or permanent resident to travel in interstate or foreign commerce with the intent to engage in sexual acts with a minor that are prohibited under federal law in the United States. This provision applies regardless if these acts are legal in the destination country.

Promising Practices

For Child Victims and Witnesses

The following practices, effective as a whole or in part, have proven to be highly successful in assisting victimized children and their families:

- Referrals for mental health counseling and/or other appropriate community-based service programs.
- Assistance in meeting emergency financial outlays for medical or mental health treatment.
- Assistance in meeting all other emergency financial needs such as shelter, food and transportation.
- Intervention with school or neighborhood officials if the child victim or witness experiences threats, intimidation or other forms of harassment by a child offender and his or her friends. This may include helping the child to transfer to another school.

- Reporting threats or acts of intimidation or harassment against child victims/witnesses to proper authorities for intervention.
- Informing the child victim's parents of their rights under the victim compensation laws of their state.
- Providing information on the criminal justice system and the child's role and rights in the process.
- Providing court accompaniment of child victims/witnesses to the courtroom. If allowed, remain in the courtroom during the child's testimony.
- Relaying information to the prosecutor so he or she can make decisions for speedy trial motions, request for video or two-way camera taping of the child victim's/witness' testimony, closing of the courtroom to the public, etc.
- Apprising the prosecutor of the child's normal schedule so that he or she can request the judge's accommodation of that schedule.
- Providing a secure, separate waiting room stocked with toys, books or television when the child victim/witness is required to wait to testify.
- If appropriate, assisting the child and parent/guardian with the preparation of a victim impact statement and explaining its use. Many states and the federal government accept victim impact statements in formats that are commensurate with a child victim's age and cognitive development, i.e. drawing pictures, writing stories, etc.
- Incorporating the child witness into a formal court orientation program or establishing an individualized victim/witness orientation program.
- Providing a secure waiting area for child victims/witnesses and family members away from the offender and his or her family.
- Providing information on the outcome of criminal justice proceedings as allowed under the state's confidently statutes.
- Providing multi-lingual services that are dialect-specific to children and their family members where appropriate, including translators and written materials and services adapted to meet the needs of physically or mentally impaired child victims/witnesses.

Additional Promising Practices

- Keep multi-disciplinary team and/or mental health professionals apprised of any new changes or concerns that may affect the child's physical or emotional well-being. As a collective group, evaluate and take action where appropriate.
- Allow the child to disclose facts of the case only if he or she wishes. Do not stop the child from talking, but do not attempt to interview the child on the facts of the case unless it is your job.
- Determine the child's fears of court participation and provide services to alleviate them if possible.
- Support the parents'/guardian's emotional needs where appropriate.

Court School for Children

Development of Programs and Curricula

Today, many victim assistance programs across the nation utilize *court schools* and *court orientation sessions* to prepare children for their roles in court. Child-friendly activities allow children to learn about court and familiarize themselves with the courtroom and its personnel by using fun and non-threatening activities. In states that still require competency exams for children, the court orientation program can serve as a preliminary measure to the child's ability to adapt and perform new surroundings during a stressful period.

The response of the child victim/witness while performing these activities can also provide criminal justice personnel with a more realistic view of how the child will react to testifying and his or her ability in doing so. If it is noted the child cannot participate even during the play activities without becoming hysterical or totally withdrawing, it might be best to consider other methods for eliciting the child's testimony such as by two-way close-circuit television or other electronic means.

Prior to developing the court school curriculum and activities, the following issues will need to be decided: (Portions of this section excerpted from Alexander, 1994.)

Before You Begin

- Is there a practical need for the development of a court school or does a one-on-one court orientation session best meet the needs of an individual jurisdiction? Will the client population support such an endeavor?

- How often should court school or orientation programs be held? In larger metropolitan areas, it is possible that a court school needs to be held bi-weekly or monthly while, in smaller communities, once a quarter or twice a year may be sufficient to meet the demand. The cultural make-up of the jurisdiction will also determine how court schools must be held. For example, if a jurisdiction has a client mix of predominately Spanish and English speaking victims, separate court school programs might be planned so that the information is presented in the child's native language. This question also applies to meeting the needs of cultural or religious differences of victims. Additionally, if the age mix of court school students varies considerably, one should consider holding separate court school programs according to age. For example, one might develop individualized curriculum for children under eight years of age and another curriculum for those eight and above.

- At what time will court school be conducted? How many sessions will be held? Most programs hold court school in the late afternoon so that children are not required to miss classes and to better accommodate parents' work schedules. Younger children do not have long attention spans; one should consider increasing the number of court sessions but decreasing the time for each session. For example, four sessions of one hour may be held for younger children, with two sessions of two hours for older children.

- Which staff will be included? Is there sufficient personnel to conduct the court school and, if not, is there an adequate pool of volunteers to help? Will a child psychologist, a prosecutor, judge or other court personnel be included?

- Where will the court school be held? If not within the courtroom, can court school be held in close proximity to an actual courtroom?

- What is the program's budget? Is there money to professionally print court school activities or will the materials be reproduced "in-house?" Who will cover the cost of crayons, scissors, markers, stuffed animals or other materials need to conduct the court school sessions? Will the program be allowed to seek donations from the business and/or civic communities?

- At what point will a child be invited to attend court school? Some jurisdictions wait until a trial date has been set, while others conduct court school once the grand jury has indicted the defendant.

Additional Issues to Consider

- Will concurrent court preparation sessions be planned for non-offending parents/guardians and child witnesses? There is a growing trend to offer the parents/guardians of child victims/witnesses with services at the same time the child is

participating in court school. This serves two purposes: It increases the likelihood that the parent or guardian will allow the child to participate in the court orientation session; and it provides an opportunity for parents/guardians to receive information or services and to share feelings and concerns with other parents/guardians.

- Is there a need to provide specialized services or to specially tailor informational resources to meet the needs of child victims with hearing, sight, physical, mental or emotional disabilities? Some victim assistance programs have developed court orientation videos for hearing-impaired children, and audio tapes or large print resources for sight-impaired children.
- Will child care services be provided during the court orientation session(s)? If yes, the determination of childcare workers must be made well in advance, as well as what screening process will be used to ensure child(ren) safety.
- Will transportation be available to those families and children who could not otherwise attend? Thought must be given to liability issues surrounding automobile liability insurance.

With the advent of court orientation programs and court schools, there is an increase to claims by the defense that children have been told what to say when they are in court. Often, court school programs have been called into question when a child testifies. It is critical that court school and court orientation staff be prohibited from discussing with the child any factual information concerning his or her case. Court school should provide *only* general information about the criminal justice system, those who work there and the role of the child in the process. Gifts of any kind for the successful completion of court school should be prohibited. A gift of a poster or a teddy bear to hold can be used against the child by the defense and can garner unfavorable support for the program with the judiciary. It may be in the program's best interest to have written policies and procedures, copies of all resources given to the children and, if possible, a sample video tape of an actual court school session. Several jurisdictions have successfully thwarted any defense claims of coaching or influencing child testimony by having these materials on hand for examination by the judge or the jury.

Developing Activities

Court school activities should be developed that can be used either during court school or taken home to be completed with parents/guardians and/or siblings. A program does not have to have a large budget to develop and reproduce fun and informative activities. If funds are not available to purchase already developed coloring books, board games, etc., consider developing activities that can be photocopied in the office. Advocates may want to visit a local college art department

and find a student willing to volunteer his or her time to draw pictures and activities for court school resources. The activities may include:

- Games, cross word puzzles or mazes featuring a courthouse theme and courthouse personnel.
- Multiple choice questions to review the child's knowledge of the justice process;
- Word match games to match illustrations with definitions.
- Pictures to color that depict illustrations of the courtroom, courthouse or items found in the courtroom.
- Blank pages to draw or respond to open-ended questions or commands such as: "Draw a picture of a witness chair" or "draw a picture of your face showing how you feel about coming to court."

Each child should be provided with a folder so he or she can take the court school activities home. Consider providing extra copies of the activities for the child victims/witnesses brothers or sisters. When completed together, siblings can better understand what the child victim/witness may be going through. Advocates may also wish to consider developing a small brochure for the parent/guardian that contains information on:

- The criminal justice process and the role their child will play in simple layman's terms.
- The child's rights within the justice process.
- Court accompaniment and court orientation or court school programs.
- Community-based support services.
- The state crime victim compensation program.
- Typical concerns of parents/guardians of child victims/witnesses.

Sample Informal Court Orientation Session

If a jurisdiction does not have the need for a formal court school program, there are several activities that can be provided "individually" to child victims/witness that will help prepare them for court. They may include:

- A courtroom tour and where possible, introduction to key courtroom personnel and a description of their job(s).
- A tour of the victim/witness waiting room if there is one.
- A tour of the courthouse to see where cafeterias and bathrooms are located.
- Distribution of the court orientation activity book.
- Talking about the child's feelings, concerns or fears about coming to court.
- Providing the child with an explanation of "courtroom etiquette" and the "rules of court."

Sample Court School Session (Ages Six and Up)

Preparing children for court can easily be achieved in two "court school sessions." While the two sessions below offer some structure, advocates should be prepared to vary from the outline if children indicate they need additional information or time to absorb the activities.

Session I (Held in Courtroom or Neutral Setting)

- A) Introduction to "Court School" and "Court School Teachers."
 - General information about court school and coming to court.
 - Children design art work folders and name tags for "Court School" resources.
 - Group leader reviews "Court School" goals: education, feelings, etc.
- B) Parents depart to their own information and support group if applicable. If not, ask the parents to wait outside. Parental observation may inhibit the child from play.
- C) Activities: Have children complete activities and games outlining their role in court; who key court personnel are, what they do and where they sit. Discuss expected courtroom behavior and terminology.
- D) Discuss feelings concerning court participation. Ensure enough time for questions and answers. Explain to children about recesses for lunch, breaks and going to the bathroom.
- E) Closure: Preview of next court school session. (Don't forget to praise, praise and praise children's participation and bravery.)

Session II (Held in Courtroom)

- A) Welcome and introduction to activities to be conducted in Session II.
- B) Sample Activity: Role play game. Each child should have an opportunity to "play" being a witness, judge, prosecutor, defense attorney, bailiff, etc. This allows the child to apply the information they learned from Session I concerning court personnel. If each child does not have an opportunity to play each of the key courtroom personnel characters, make sure each child has an opportunity to play "witness" or sit in the witness chair. Another version of this game can be played by placing cardboard cutouts in each of the key courtroom personnel assigned area and ask the children to name the personnel and their job in the courtroom. (You may want to have a microphone for the children to talk

into, a steno graph machine, a judge's robe, gavel or any other prop that is commonly found in the courtroom.)

- C) Other activities and/or skits.
- D) Relaxation techniques: Deep breathing, neck rolls, etc. Encourage practice of each technique at home and prior to court testimony.
- E) Bring parents and children back together for graduation ceremony and last question-and-answer time. (Remember, praise, praise, praise!)

Promising Practices for Communicating with Child Victims and Witnesses

When communicating with child victims, the following should be considered:

- Always introduce yourself and your role in the process.
- When possible, meet with the child in an environment he or she is familiar and comfortable with. Allow the child to choose a neutral party to serve as a support person during the meeting. (This would include non-offending parents, victim advocates, grandparents or other supportive family members.)
- Reassure the child of his or her safety. Many offenders use techniques of threat or intimidation to "keep" the child victim/witness quiet. A young child may be very much afraid that he or she will be hurt, or a loved one will be killed if the offender threatened that. If the child victim was victimized or witnessed a crime by a schoolmate, determine his or her fears for retribution upon return to school. Be prepared to work with school authorities to protect the victim/witness.
- If the offender is an adult, reassure the child victim that he or she did nothing wrong.
- If the child witnessed a crime or was victimized by a family member, realize the emotional dynamics that may be at play. Children reporting parents or other family members for crimes can feel tremendous amounts of guilt. They may encounter hostile family members that refuse to believe the child or have indicated the hardships the offender's arrest will cause the family. If these family members reside in the home with the child, contact child social services workers to determine if foster care placement is necessary.

- Explain to the child, if age and developmental level allow, what is required of them. If he or she must see a doctor for an medical examination, let the child know that this is going to be done. If the child must go to another location for further interviews, explain why. Always, if possible, allow the child to be accompanied by a supportive adult family member or friend to these appointments.
- Always be cognizant of your use of unfamiliar terminology. Use words appropriate for the victim's age level. Most professionals use jargon that comes as second nature to them. For example, don't ask an eight-year-old child to "describe" something -- rather, ask the child to "tell" you about something. If a child of sexual abuse describes his or her genitalia as "pee-pee" or "pocketbook," parrot the same names when talking with the child.
- Arrange meetings so the child's normal schedule is not disrupted whenever possible. School-aged children are highly embarrassed if they are called from class to the office in front of their peers. When possible, wait until school is over for the day and go to the child.
- Be aware of the child's emotional state during the meeting. If he or she becomes too upset or cranky, postpone or conclude the meeting until another time, if time is not a critical factor in apprehending the offender.

Promising Practices to Serve Parents/Guardians of Child Victims

- Provide parents/guardians with information on processes that will be used to investigate claims of abuse, neglect or criminal charges and the child's rights and parent's right to participate in decision making processes.
- If the offender is a family member, determine the family's need for financial assistance or the need to relocate. This is helpful for two reasons: If the offender was the primary breadwinner, the non-offending parent may need assistance with landlord/creditor intervention, obtaining food, lodging or transportation, and meeting medical or mental health costs. If money concerns are addressed, the remaining parent can concentrate more energy and emotion to supporting the child victim/witness.
- Provide information about community-assistance programs, local mental counseling and support services, both for the child and the family.

- Provide information about witness intimidation and assist in seeking protective orders where appropriate.
- If injury occurred, provide information on state victim compensation claim form.
- Provide parents with information about the emotional aspects of child victimization so that as symptoms manifest, the parent is in a better position to know what is to be expected and what requires professional intervention. If information about parental stress is available or if there are appropriate parental support groups located in the community, provide this information as well.
- Where possible, arrange appointments involving the child and parent around the parent's work schedule.

Child Victimization

- 1) What are the five types of child victimization?

- 2) Why might a child have difficulty in disclosing his or her abuse?

- 3) What common emotion(s) do children of abuse suffer from most? Why?

- 4) List three benefits of multi-disciplinary teams.

- 5) What three areas of child victimization were addressed under the 1994 *Violent Crime Control and Enforcement Act*? How?

- 6) Briefly describe the components of your proposed, ideal child victim assistance system.

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Chapter 16

Homicide: Its Impact and Consequences

Abstract: Homicide presents an enormous challenge for law enforcement and victim service providers each year. Tens of thousands of survivors of homicide victims suffer shock and grief at the loss of a loved one, friend, family member, neighbor, co-worker or acquaintance. The material for this chapter will be presented in two parts. Section One will describe the scope of homicide and identify who is at greatest risk for homicide. Section Two will discuss the impact of homicide on surviving family members and friends. The victim assistance needs of survivors will be described, and suggestions for helping and supporting these secondary victims are provided.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The extent and nature of homicide.
 2. The relationship between victims and offenders in different types of homicides.
 3. Key issues that survivors of homicide victims are likely to face.
 4. The stages of grief that survivors will experience following the murder of a loved one.
 5. The various services that survivors of homicide victims may find helpful.
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Statistical Overview

- The murder count for 1994 totaled 23,305, the lowest rate since 1989. The murder rate in the United States was nine per 100,000 inhabitants. (*Federal Bureau of Investigation, 1995, "Crime in the United States, 1994," U.S. Department of Justice, Washington, D.C.*)
- Based on supplemental data received, 79 percent of murder victims in 1994 were males, and 88 percent were persons 18 years of age or older. By race, 51 percent were black, and 47 percent were white. (*Ibid.*)
- Data based on a total of 25,052 murder offenders showed 91 percent of the assailants were males, and 84 percent were 18 years of age or older. Fifty-six percent of the offenders were black, and 42 percent were white. (*Ibid.*)
- Forty-seven percent of murder victims were related to (12 percent) or acquainted with (35 percent) their assailants. Among all female murder victims in 1994, 28 percent were slain by husbands or boyfriends. (*Ibid.*)
- By circumstances, 28 percent of murders in 1994 resulted from arguments, and 18 percent from felonious activities such as robbery, arson, etc. (*Ibid.*)
- Firearms were the weapons used in approximately seven out of every ten murders reported in 1994. (*Ibid.*)
- Of the 23,271 homicides in which circumstances were known in 1993, 5.5 percent were narcotics-related. (*Federal Bureau of Investigation, 1994, "Uniform Crime Reporting Program," U.S. Department of Justice, Washington, D.C.*)
- A 1987 study found that an estimated 6.7 million adult Americans had lost an immediate family member, other relative or close friend to criminal homicide. Of this number, 2.8 million had lost an immediate family member to homicide. (*Amick-McMullen, A. Kilpatrick, D.G. & Resnick, H.S., 1991, "Homicide as a Risk Factor for PTSD Among Surviving Family Members," Behavioral Modification 15(4), 545-559.*)
- A survey of murder cases disposed in 1988 in the courts of large urban counties indicated that 16 percent of murder victims were members of the defendant's family. (*Dawson, John M. And Patrick A. Langan, Ph.D., 1994, "Murder in Families," U.S. Department of Justice Bureau of Justice Statistics, Washington, D.C.*)
- Among murder victims, 6.5 percent were killed by their spouses, and 3.5 percent by their parents, 1.9 percent by their own children, 1.5 percent by their siblings, and 2.6 percent by some other family member. (*Ibid.*)

- One-third of family murders involved a female as a killer. In sibling murders, females were 15 percent of killers, and in murders of parents, 18 percent. But in spouse murders, women represented 41 percent of killers. In murders of their offspring, women accounted for 55 percent of killers. (*Ibid.*)
- Forty-five percent of family murder victims were female, compared to 18 percent of non-family murder victims. (*Ibid.*)
- In murders of persons under age 12, the victim's parents accounted for 57 percent of the murderers. (*Ibid.*)

Section One: Victims and Survivors of Homicide

Homicide includes all deaths caused by willful murder and non-negligent manslaughter. One homicide typically affects many people. The homicide victim is usually survived by family and friends who are often referred to as a *secondary victim* of crime. Survivors of homicide victims include family members, relatives, close friends, neighbors, and community members. Conservatively estimating that each victim is survived by at least three loved ones who will be permanently affected by the loss, the annual homicide victimization rate soars to over 130,000 persons. This does not include the hundreds of thousands of people traumatized as a result of viewing, hearing or reading reports of the killings.

Sudden violent deaths do not allow family members time to prepare for the loss of a loved one. The murder of a significant other is devastating for family and friends of the victim. Survivors may not be psychologically prepared to appropriately deal with the sudden violent death of a loved one.

Besides the loss of a family member, the survivors must almost immediately cope with the restructuring of family roles and responsibilities. Families must also learn to cope with the financial hardship of loss of income and support provided by the victim. Educational plans are disrupted, survivors may be forced to find employment, or re-enter the job market. Section Two of this chapter will discuss more fully the impact of homicide on survivors.

Domestic Homicide

A survey of murder cases that were adjudicated in 1988 in the courts of large urban counties indicated that 16 percent of murder victims were members of the defendant's family. The remainder were murdered by friends or acquaintances (64%) or by strangers (20%). Between 42% (Center for the Study and Prevention of Violence) and 52% (Carmody & Williams, 1987) of murdered women are killed by their intimate male partners. According to the Bureau of

Justice Statistics, in 1994, 6.5% of murder victims were killed by their spouses (Dawson and Langan, 1994).

Risk Factors in Spousal Homicide

The results of an eight year study by Segall and Wilson (1993) involving spousal homicide are of particular importance in understanding risk factors. By comparison the characteristics associated with these cases include the following:

- Most of the homicides in this study occurred in major urban settings and included single-victim and single-offender killings.
- Marital homicide victims tended to be older in age than homicide victims in general.
- Marital homicides were typically females in contrast to male victims in overall homicides.
- The choice of weapon in both marital and general homicides was a handgun.
- Among legally married persons, regardless of geographic region in the U.S., blacks were at greatest risk. Black males typically had the highest rates for spousal homicide. In parts of the western United States, blacks were 11 times more likely to be victims of spousal homicide than white males, almost seven times more likely than white females, and 1.4 times more likely than black females.

As a result of Segall and Wilson's study, the authors suggest that researchers include an examination of both the subculture of violence and socioeconomic theories to better understand spousal homicide.

In order to assist victims more effectively, it is important for victim service providers to be familiar with the risk factors that are associated with domestic homicides.

David Finkelhor (1983) offers five types of commonalities in family violence which can lead to homicide.

- Relationships that show the greatest power differential between individuals tend to have more abuse.
- Abuse is commonly in response to perceived powerlessness on the part of the abuser.

- Victims respond in similar ways, which often means blaming themselves.
- Abuse appears to be more prevalent in lower socioeconomic strata.
- Ambiguity exists regarding the boundary between acceptable discipline/punishment and abuse.

The primary factors reported in domestic homicide include:

- History of violence.
- Frequency and severity of violence over time.
- Addiction to illegal drugs, especially crack, crank, PCP, and methamphetamine.
- The practice of threatening death rituals.
- Homicidal and/or suicidal ideation.
- Access to weapons, especially firearms.
- Final factor: She says, "I'm leaving" (Carrillo, 1995).

Victims report being subjected to a process of dehumanization and subjugation. Part of this process may include the use of death rituals to control the victim. Death rituals are part of the process or homicidal route. As the level of violence escalates, so does the pattern in which it is administered. The abuser first talks about weapons, then displays weapons, then brandishes weapons, all while making threats to the victim. An abuser may take his partner for a drive out into a deserted rural area in the middle of winter, force her to disrobe in the snow, and tell her that if she ever tries to leave him he will bring her out here again and kill her.

Death rituals suggest a very dangerous level of implied and actual violence. The victim is forced to live in fear of her life, even when her partner is showing kindness. The more death rituals are acted out, the more likely the abuser is to finally carry out his threats. Potential victims and counselors must be aware that weapons are deadly ultimatums. They represent the anger and rage of the abuser. Eventually, weapons become extensions of the abusers as the offender comes to believe he not only has the power to use the weapons but that he has the right to do so. Providers should also inquire about rituals performed by the abuser.

In a major study by Christine Rasche (1993) of 155 "mate" homicides in Jacksonville, Florida, between 1980 and 1986, Rasche delineated and attributed motives for spousal killings. The following is a rank order of those motives:

- Possessiveness (48.9%)
- Self-defense (15.5%)
- Abuse by offender or mutual abuse (2.6%)
- Feelings arising out of arguments (20.7%)
- Other (9.7%)
- Unknown (7.7%)

The most salient motive for murder in the Rasche study was "possessiveness" which included the inability of the offender to accept the termination of the relationship as the greatest sub-category. Also included, as part of the definition of possessiveness, was sanctity or security of the relationship (jealousy, infidelity, and rivalry).

Key (1992) created five homicide survivor patterns showing how survivors of homicide cope with losses. The patterns were highly correlated with lifestyles and social settings of the victim and survivors in relation to the various types of homicide. In domestic abuse, the survivors may feel guilt for not having intervened earlier, before it was too late.

Law enforcement and victim service providers must recognize the correlation between escalating patterns of threatening behavior and increased risk of homicide. While risk assessment and predicting behavior are difficult tasks, the identification and application of risk factors can prevent some cases of domestic homicide.

Parricide

In a recent report by the Bureau of Justice Statistics, *Murder in Families* (Dawson and Langan, 1994), 1.97% of murder victims were killed by their children. Parricide is the killing of one's parent. The fact that over 1,200 children in the U.S. are killed each year by their parents or guardians has overshadowed homicides of parents at the hands of their children. Relatively rare when compared to other forms of homicide, parricide has begun to attract researchers interested in the etiological foundations of family violence.

Parricide usually is not the result of a one-time family eruption, but rather the culmination of unresolved conflicts. Teenagers are still more likely to end their own lives than harm their own families. Media exploitation of parricide cases has done much to underscore pathology within some families. The infamous Menendez case, where two sons were convicted in a second trial of murdering their parents, has been publicly scrutinized for several years.

Adult or juvenile children who resort to parricide often find themselves in familial relationships filled with repeated failures to gain approval and love from a parent or parents. Killing their parents becomes the ultimate form of expression where the victim will not have to risk rejection, disappointment, conflict, or failure. Indeed, the child perceives freedom from the dysfunctional bonds that so painfully estranged him or her. Parricidal ideation mirrors suicidal thoughts and feelings.

Characteristics of Parricide Cases

Kathleen Heide (1993) reviewed ten studies that examined adolescents who kill parents. The following characteristics appeared as the most predominant factors among these studies:

- A pattern of family violence.
- The adolescent's attempts to get help failed. There was little if any adult intervention to the self reports of victimization.
- The adolescents failed in their efforts to escape the family situation. These youths had a history of running away, suicidal ideation, and some suicide attempts.
- These adolescents experienced isolation and fewer social contacts than other youth.
- Family situations became increasingly desperate prior to the murder(s).
- The youth felt increasingly helpless in coping with the stress generated at home.
- Inevitably, the youth felt helpless and ultimately felt a sudden loss of control.
- Most of the adolescent murderers had no prior criminal history and were not criminally sophisticated.
- Offenders were found to have easy access to guns.
- Alcoholism or heavy drinking was common in over half of the studies.
- Evidence was found in several studies that the offenders may have been in a dissociative state during or after the killing.
- Offenders as well as other family members indicated relief that the victims were dead.

Heide goes on to outline several parameters of child maltreatment that are pervasive in the pathology of family relationships which may lead to parricide:

1. Physical abuse
2. Sexual abuse (e.g. incest)
3. Emotional abuse
4. Verbal abuse
5. Neglect: physical, medical or emotional

Recognizing and intervening in child abuse and domestic violence cases can be important methods of preventing parricide, a crime that is devastating to both the victim, the child or adult killer and the community in which they live.

Multiple Homicides in the United States

Although Eitzen and Timmer (1985) report that the majority of murders result from domestic and community conflicts, they also suggest that perhaps as many as one third of all murders are perpetrated by strangers. Because of a marked increase in stranger-to-stranger homicides, as many as 25% of all murders go unsolved each year. The increasing number of multiple and serial murders is believed by some experts to account for many of these unsolved cases (Holmes & DeBurger, 1988). Over the past 20 years, the murder and manslaughter rates increased 300%,

while police clearance rates for these crimes have declined from 93% in 1962 to 74% in 1982 (Federal Bureau of Investigation, 1984). Currently, the clearance rate is approximately 68%.

Ressler and his colleagues (Ressler, Burgess, & Douglas, 1988) also documented a dramatic rise of stranger-to-stranger homicides, or murders with no apparent motive. According to their research, these murders represented 8.5% of all murders in 1976, 17.8% in 1981, 22.1% in 1984, and 22.5% in 1985.

- In 1993, for the first time in history, Americans were more likely to be killed by a stranger or unknown killer (53% of cases) than by a family member or friend.

Mass murders, defined as a murder of several victims who are killed within a few moments or hours of each other, appear to be occurring with greater frequency. Currently in the United States, there is approximately one mass murder per week. This includes multiple homicides of families as well as public homicidal events. Some of these cases involve offenders walking into shopping malls, restaurants, or government offices and randomly shooting bystanders.

- In April, 1990 a man released only the day before from a psychiatric institution walked into a crowded shopping mall in Atlanta, Georgia, and began shooting everyone in his path.

In other cases, entire families have been annihilated by a troubled parent or sibling. In recent years there have also been several instances of assailants walking into elementary or secondary schools, or sometimes just standing by playgrounds and randomly shooting children.

Common Characteristics of Mass Murders

Although researchers have only begun to collect data on mass murders, certain commonalities have begun to emerge (Hickey, 1991):

1. The offenders are primarily white, male, and span a wide age range.
2. Handguns or semiautomatic guns, and rifles are used to kill suddenly and swiftly.
3. Victims are often intentionally selected by the killer. For example, a former boss, an ex-wife, a friend, or other persons who happen to be in the area, often also become the prey of the mass murderer.
4. Groups of victims who bear no relationship to the perpetrator.

The mass murderer appears to give little thought or concern to his or her inevitable capture or death. Some are killed by police during the attack, whereas others kill themselves once they have completed the massacre. In some cases, offenders surrender to police and offer no resistance. With the exception of those who murder their families, most appear to commit their

crimes in public places. In cases in which families are murdered, the killer usually leaves ample evidence to lead to his or her arrest.

Motivation

Those who commit multiple homicide appear to do so in an irrational effort to regain, even for a brief moment, a degree of control over their lives. To the observer, the severe mental imbalance behind these horrible acts is clear. To the killer, however, their thoughts and actions may make perfect sense, given his or her psychological disorientation. Feelings of rejection, failure and loss of autonomy create frustrations that inevitably become overwhelming, and the murderer cultivates a sickening need to strike back.

For many killers, the best way to lash out against a cold, forbidding society is to destroy its children. Gunning down children on a schoolyard not only provides the needed show of power and control, but is also a way of wreaking vengeance where it will hurt the community the most.

Increased security at schools, office buildings and shopping malls is the usual community response, including improved social services to better identify potentially dangerous individuals. However, the track record at predicting criminal behavior thus far has been dismal. Recognizing potential mass murderers is usually a matter of hindsight; we are quick to attach motivating factors and personality defects to offenders once they have murdered their victims. The fact remains that mass murders, in relation to other crimes, even other forms of homicide, are relatively rare, and they appear to occur as randomly as serial killings do.

Serial Killing

To include all types of serial killers, the definition of serial murder must clearly be as broad as possible. The broadest definition of a serial killer is:

- Any offender -- male or female -- who kills over time. They usually have at least three to four victims, and their killing is characterized by a pattern in the type of victims selected or the method or motives used in the killings (Hickey, 1991).

This includes murderers who, on a repeated basis, kill within the confines of their own home, such as a woman who poisons several husbands, children, or elderly people in order to collect insurance. In addition, serial murderers include those men and women who operate within the confines of a city or a state or even travel through several states as they seek out victims.

From a research perspective, the linkage of common factors among the victims is very important. For example, Egger suggests that some murderers select their victims because of their "place or

status within their immediate surroundings (such as vagrants, prostitutes, migrant workers, homosexuals, missing children, and single and often elderly women).”

Some data and literature show leeway in formulating tentative models to explain the construction of serial murder. We do know that alcohol and other drugs are often cited as contributing factors. Some offenders even suggest it as a primary causal factor. Ted Bundy's declaration that pornography led him to his career in killing caused considerable debate regarding the degree of influence such material has on people who become murderers. Many people believe that pornography and/or alcohol cause people to kill. Yet millions of people in the United States frequently consume alcohol and indulge in pornography and never physically harm anyone other than themselves.

The current belief in pornography and alcohol as causal factors in multiple murder belies a much more complex set of variables. If our society were to ban pornography, should one expect the incidence of serial murder to decrease? If we restrict or ban the use of alcohol, would that affect serial murderers' behavior?

There are no quick answers for the question of serial murderers' behavior. Some say that anyone who kills, especially serial killers, must be insane. However, the vast majority of serial killers are not only judged sane by legal standards, but are indistinguishable from non-offenders as they move about within our communities.

Section Two: Homicide: Its Impact and Aftermath

“Comforting the mourner is an act of loving-kindness toward both the living and the dead” (Kitzur Shulkhan Arukh 193:11).

Consider

Homicide leaves a devastating legacy in its wake. Family members, friends, community and the nation are frequently left shattered, violated, vulnerable, betrayed, and wounded by the most reprehensible of all crimes -- murder. The dynamics of murder can best be understood by focusing on some theories of grief and trauma. When murder occurs, family members of the victim need time and space to grieve.

- Grief is not abnormal but a healthy reaction to loss.
- Grief is the process of letting go.
- The grieving process helps the survivor to cope with various reactions -- shock, major loss, helplessness, fear, rage, and even murderous impulses.

- Grieving allows the survivor to deal with the reality of loss and to say an appropriate goodbye to the loved one.
- Grief is the path one takes on the journey to recovery.

For homicide survivors, very often the grieving process is interrupted and delayed by elements and events of the criminal justice system. Survivors sometimes put their grief on hold to focus on the arduous task of seeing that justice is served.

The Impact of Homicide

Each single death due to homicide directly affects a wide circle of individuals. The impact of homicide is said to resemble the ever widening circles caused by a stone tossed into a pond. The circles continue to spread until they become one with that entire body of water -- permeating. Society, like the pond, is eventually and finally engulfed by waves of glaring trauma that go unnoticed, perhaps because we have become indifferent to the grisly reality of murder. As each murder is served up in the media for information, evaluation, and sometimes just entertainment, there remains a population of grieving and often forgotten survivors of homicide who are consumed by rage and saddled with pain.

- Professionals working with surviving members of homicide victims must understand and be prepared for their intense reactions, often frightening, which go beyond any reactions observed in victims from other crime categories.

The Aftermath

Professionals who work with victims must be aware of the specific problems that homicide survivors encounter in the aftermath of sudden, violent, death. Survivors experience a wide range of emotional responses, that continually resurface, delaying and often preventing recovery. Many survivors report that there is no recovery for what they experience in the wake of homicide -- they develop instead the ability to survive the waves of emotional pain. They live with an encompassing fear of the strange, new and unknown reactions that control their behavior. Safety issues diminish when compared to their fear of feeling and living each new painful moment. They must endure physical reactions associated with a traumatic event. Survivors themselves provide the most accurate information regarding their experiences during this period. They are the real experts in explaining their problems and needs.

Parents of Murdered Children, Inc. (1989) listed eight problem areas for survivors of homicide.

1. *Financial considerations:* Funeral and medical expenses, psychiatric care for family members and various cost are all part of the aftermath experienced by survivors. These

considerations are grave and contribute in a major way to the continuing distress survivors must endure.

2. *The criminal justice system:* Survivors find themselves suddenly thrust into a complex system of legal players and jargon, where they believe that overwhelming consideration is given to the rights of the accused. They must become acquainted with a world of body bags, crime scenes, evidence, motives and autopsies. There is much to learn and understand about elements of the process, and survivors have a vested interest in obtaining as much information as possible.

When polled, regarding their needs during the legal process, the Fairfax Peer Survivors Group (FPSG), a homicide support group in Fairfax, Va, indicated that the single most important issue for them after losing a love one to homicidal death was being able to obtain information from the key players within the system, prosecutors, detectives and other professionals.

- They want to know exactly how, when, and why their loved one was murdered and who committed the murder.
- The most overriding cry -- "Did my loved one suffer?"
- They expect to learn the truth about the events of the death and elements of the case.
- They seek closure through the successful completion of prosecution when possible.

3. *Impact on work:* Surviving homicide often affects one's ability to function and perform on the job. Motivation is sometimes altered. Survivors report that emotional outbreaks of crying or shouting frequently occur. They indicate that having to explain or apologize contributes to their stress and anguish. Some survivors use work as an escape to avoid working through their grief. They resist dealing directly with their pain by placing it on hold.
4. *Relationships are affected:* It is not uncommon for marriages to end after the partners have experienced a death due to homicide, particularly the death of a child. Each partner grieves in a different way and may blame the other for the loss. They may each wish to turn away from the memories that the other partner evokes. They are sometimes unable to help each other because they cannot help themselves.
5. *Children in the family:* Children are sometime ignored by parents preoccupied with their own issues. The children fear adding to their parents' pain and simply withdraw. It must be noted that children experience the same psychological reactions that all survivors report. They often feel compelled to replace -- in the eyes of parents -- the dead sibling or family member.

6. *Religious faith is often shaken by the death:* Questions for, anger at, and challenges to God surface regarding the reason for the death. How could a loving God allow it to happen? Where is the loved one? Seeking out spiritual answers, often from unorthodox sources, is not uncommon. Comments and philosophies of clergy and church members sometimes create problems for survivors. Every aspect of one's life is shadowed by a homicidal death -- religious and spiritual areas are not exempt.
7. *The media:* Homicide survivors are subjected to the intrusion of an often insensitive media. The quest for sensational, fast breaking news items far overrides the anguish that a family may be experiencing by prolonged scrutiny, inaccurate reporting, and gruesome reminders of the violence associated with the death.
8. *Professionals who do not understand:* Survivors report that professionals -- police, hospital personnel, funeral directors, clergy, school personnel, psychologists and psychiatrists -- demonstrate by their comments and actions that they do not fully understand the impact of death by homicide upon the remaining family members.

Theories Regarding Recovery

Lula Redmond, founder of Homicide Survivors Group, Inc., of Pinellas County, Florida has worked with hundreds of homicide survivors. In her professional's guide (Redmond, 1989), she puts forth two intriguing theories regarding the recovery process for homicide survivors. She suggests that intent and stigma must be overcome as barriers before healing and recovery can transpire.

In each crime category, there seems to exist some perception that typifies the cruelty of the act. In family violence, relationships are key in helping victims to recover from their victimization; with child sexual assault victims, one must be mindful of violation of trust and betrayal; power and control are associated with rape, while robbery victims grapple with fear and isolation. Intent plays a major role in the psychological reaction experienced by individuals as a result of the trauma of homicide.

Homicide survivors are tormented by the notion that someone designed, planned and made a decision to take the life of their loved one, no matter how instantaneous the act. This factor distinguishes death by homicide from accidental deaths, and death due to a fatal illness or suicide. Homicide survivors are enraged that life for their loved one, such a precious and valued element, was intentionally aborted.

Survivors feel tainted stigmatized by the effects of the murder. They abhor that their loved one will forever be linked with the villain responsible for the murder. Society is quick to blame the victim for his or her own death by suggesting that they placed themselves in harm's way.

Blaming helps one to comprehend the horror of the murder and survivors sometimes resort to reaction. Homicide survivors change jobs, geographic location, and, in some cases, complete identities, in an effort to remove themselves from the stigma of homicide. Even as they seek to move away from the pain, they report feeling abandoned by friends, who are unable or cannot go the distance during the difficult recovery period.

Surviving and Recovery

Surviving homicide is possible. As painful as a survivor's journey may be, the human spirit can and will by nature endure. The loss of a loved one in this painful manner is abhorrent and traumatizing, high in the degree of complicated grief, and difficult in the provision of aftercare. One survives because it is the course of human development to do so. It is in the original order of things that people, nations and worlds persevere and continue to go on. Those who are dedicated to helping to restore the lives of survivors of homicide must accept that the real work is accomplished by not guiding, but through learning and understanding.

“It is much easier to tell a person what to do with his problem than to stand with him in his pain” (David Augusburger).

Bereavement Reactions of Homicide Survivors

Although many emotional responses are shared by family members when a loved one is murdered, each surviving family member will experience distinct emotional responses. In addition to the sudden, violent death of a loved one, survivors may experience additional stress if the deceased was subjected to acts of torture, sexual assault or other intrusive, heinous acts. They may have a constant need to be reassured that the death was quick and painless and that suffering was minimal. If the death was one of torture or of long duration, they may become emotionally fixated on what the victim must have felt -- the terror experienced. They may fixate on the race of the offender to try to understand the motive behind the murder, and may develop a biased view of a certain race or culture based on the actions of one. If the offender was a family member or friend, survivors may experience additional interfamilial discord as family members choose sides for support.

Relationship of the Victim and Emotional Ramifications

Murder of a Child: In the natural order of things, parents precede their child(ren) in death. The death of one's child is one of the least expected experiences in life. Parents serve as protectors for their child(ren). This sense of protectiveness often promotes parental guilt and self-blame. The feelings even occur when the deceased child is an adult.

The loss is often compounded when the victim is a young child. Parents must not only deal with their own emotions concerning the death of their child; they often have to attend to the emotional needs of the victim's siblings as well. It is not uncommon for a parent (or parents) to idealize the deceased child, attributing qualities that are idealistic, not real. This denies true feelings that the parent and siblings had for the child. Parents may become so focused on their own pain that they fail to notice the surviving children are in pain and need support and love as well. Family relations can become strained or permanently damaged. It is not uncommon for parents of a murdered child to divorce or separate.

Fathers often deal with their emotions by retreating into silence and denying the presence of intense emotions. Mothers may become more verbal and demanding. She may interpret her partner's silence as a lack of caring or concern. If the family structure incorporates step-parents, the roles and display of appropriate emotions may be even further complicated. The parent may feel that the step-parent could not possibly understand the type of pain he or she is feeling. This may lead to alienation of the step-parent in the grieving process.

Murder of a Sibling: Younger brothers and sisters of murdered children are often neglected in the delivery of services. Initial community and extended family support usually focuses on helping the grieving parent cope with the crisis. Rarely do service providers ask children how they are doing, what they are feeling or what they need. Siblings of a murdered child may suffer guilt that they are still alive while their sibling is dead. They may experience guilt over feelings of anger that the parents shows them little time, attention or affection. They may even believe this means that their parent(s) wish they were the one to die, leading to feelings of worthlessness.

Children may suffer guilt feelings because they do not agree with the idealizing of the deceased victim and resent being held to imagined standards that the deceased did not possess; and they often have lost not only a sibling but a best friend.

Siblings may be worried over their own safety and eventual death. They may become overly fearful of losing a parent or other sibling in the same manner. This can cause extreme feelings of helplessness and guilt.

Adult siblings may worry that the stress and loss of a sibling may hasten their parent's deaths due to increased stress and heartbreak. They may resent and rebel against the aging parent's pre-occupation with the victim and his or her idealization of the deceased.

Murder of a Spouse: The feelings and emotional needs of a surviving spouse will depend on the nature of the marital relationship. If there was discord or dissension, survivors may suffer intense guilt feelings -- they are to blame. If it was a loving partnership, the feelings of loss may be overwhelming. The age of the spousal survivor will also play an important factor in the emotions of the survivor. Elderly survivors may not recover as well as younger survivors. They may be displaced from their home because they are not able to care for themselves. They may

have lost partners of many years and, with their life so intertwined with that of the deceased, loss of the relationship is catastrophic.

Feelings of anger at the deceased victim tend to increase with the number of responsibilities left to the survivor such as child rearing responsibilities and/or assuming all financial obligations. This anger normally is replaced by guilt. Murder of the younger adult may leave the surviving spouse with a disillusionment of future marital relationships. They may suffer feelings that they have lost their future.

Murder of a Parent: If the surviving child has not reached adulthood, he or she may worry about "who will take care of me?". They tend to see the death as a desertion by the parent since they have little ability to conceptualize death. They may experience bouts of anger that the parent was not the "superhuman" they envisioned. They wonder why the parent didn't fight harder or run faster and may blame the victim for his or her own death. Some studies have shown that children who survive the murder of a parent have persistently low self-esteem.

For older or adult children, anger levels may increase because they feel their parent's death was not the dignified one in which they deserved or expected. If there was familial discord at the time of death, there may be intense feelings of guilt that all wrongs were not righted prior to death.

Stages of Grief

There are several common grief stages everyone experiences in the acceptance of death, no matter its cause. However, these stages can be significantly compounded when the death results from an intentional murder. The following outline of grief stages supplies the reader with information on the various stages of grief and includes, where appropriate, narrative specific to survivors of homicide:

Denial

Even in deaths caused by illness, in which there is previous notification of impending death, few loved ones really accept the impending death of a loved one. While not all illnesses allow for the planning and acceptance of the death of a loved one, illness and natural death are normal occurrences with which we are all familiar.

- For surviving members and friends of a homicide victim, the murder is always a shock. Emotional preparation *never* occurs. The shock and denial may be more intense than with other causes of death. This stage normally lasts for a few days or weeks but can extend to several months.

Numbness

After the flurry of activities surrounding the ritual of burial is complete, family members -- for the first time -- have an opportunity to confront the permanence of loss.

- Many survivors of homicide victims describe feeling like "zombies", passing each day through rote behavior. This stage typically lasts for a few weeks or a few months.

Anger and/or Abandonment

It is not uncommon for the surviving loved one to become angry at the deceased. Even though the deceased had little or no control over his or her death, surviving family members become angry they have been left alone to raise children, deal with the day-to-day problems of life; or to be left without a loving, caring partner.

- In deaths involving homicide, there will of course be anger directed at the offender, but there may be anger at the victim as well. If his or her lifestyle, *i.e.*, *drug abuse, prostitution, domestic violence, etc.*, is considered by any to have played a part in his or her death, and the deceased did not accept or refused help, there is a greater tendency to blame the victim for his or her death. This blame can lead to intense feelings of guilt for the surviving family member(s) or friend(s). This stage of grief is one in which many survivors become "stuck" and will most often need mental health counseling and victim assistance support to move forward.

Guilt

Even in expected deaths, there may be feelings of guilt -- guilt that one is gone, but others have an opportunity to continue living and enjoying life.

- Guilt for the surviving homicide victim's family or friends may come from feelings of not believing or protecting the victim and possibly contributing to his or her death. For example, family members of a murdered victim of domestic violence often feel that they should have intervened -- done something to prevent the homicide. Passage through this stage may require the assistance of mental health or a trained victim assistance professional.

Acceptance

This is considered to be the last stage in the grief process. Final goodbyes and a closure to the death are made during this stage -- signaling the survivor's readiness to move back into the world of the living.

- For survivors of homicide, this final stage is often prolonged or prevented either through the participation in the criminal justice process or the failure of law enforcement agencies to identify an offender. Because of the deep need for this closure, victim assistance personnel should be very aware of the emotional dynamics a trial may have on the homicide survivor.

The trial may provide an avenue of release for survivors experiencing feelings of guilt. The trial may allow the survivor a feeling of protecting the victim one last time, *i.e.*, *defending the victim's good name, showing public love and support, making sure justice is served, etc.* However, the trial can also lead to increased frustrations if the defendant is acquitted, allowed to plead to lesser charges, or not apprehended at all. Closure for these survivors may only be partially complete or not at all.

(The preceding section is liberally drawn from (1) *Focus on the Future: A Systems Approach to Prosecution and Victim Assistance*, a project funded by the U.S. Department of Justice, Office for Victims of Crime and sponsored by the National Victim Center, Arlington, VA; Mothers Against Drunk Driving, Irving, TX; and the American Prosecutors Research Institute, Alexandria, VA, and (2) *Mapping Strategies for Services*, an Office for Victims of Crime funded project conducted by the National Victim Center and the National Organization for Victim Assistance, Washington, D.C.)

Special Considerations

Children Who Witness Homicide

Among those who survive homicide, but are nonetheless victimized by this most extreme form of violence, are large numbers of minority children who witness homicides. Although the effects of such an experience can have profound consequences and produce emotional trauma, child witnesses seldom receive human service intervention. However studies show that these children often suffer from Post-traumatic Stress Disorder characterized, for example, by startle reactions, intrusive images of sounds, traumatic play or dreams, avoidant behavior and psychic numbing. Frequently described by children, and recorded with case transcripts, are the verbal or physical threats directed toward the child by the perpetrator.

Young people also report having to perform various tasks associated with the fatal injury. These tasks can involve telephoning for police or emergency medical services, or responding to the

immediate needs of the injured person or the perpetrator. These actions always present serious conflict or dilemmas. A 12 year-old girl described her feelings after witnessing her father fatally wound her mother:

While using a towel and attempting to help stop her mother's bleeding, she felt she needed to be cautious and take care not to implicate herself by getting blood on her clothing. She was afraid that the police would see blood on her clothes and blame her for her mother's death.

For child witnesses, the issue of blame or accountability for the death is not always resolved through police investigation. Depending on age and circumstances, children may re-examine their behavior and determine responses, they judge, if done differently would have prevented or altered the death. Without support and opportunity to explore the feasibility of such alternatives, child witnesses too often continue to unnecessarily blame themselves. The need for immediate intervention and support is clear.

(The preceding section is excerpted from materials produced by the Family Bereavement Center, 1441 St. Antoine Street, Detroit, MI)

Participation in the Justice Process

When someone is murdered, the natural order of grief is greatly interrupted. In addition to the normal ritual of burial for the dead, the survivor is forced to delay the emotional healing due to participation in the criminal justice system. As mentioned earlier, delays in hearings may cause the survivor added emotional stress as each hearing delay may require the survivor to unnecessarily relive the murder or confront his or her healing emotions. Being barred from proceedings may lead some survivors to feel "devalued" or to feel a lack of personalization for the deceased. They may feel betrayed by the justice process that their last chance to protect the victim has been taken away.

The survivor may develop very biased views of the justice process because laws seem unfairly to favor the offender and his or her family. Most important, however, may be feelings of unfairness and anger if survivors are not allowed input in determining fair plea settlements; if juries acquit; if findings on lesser charges occur; or sentences are not in line with what the survivor expected. The survivor may experience intense feelings of guilt that they have let the victim down.

Survivors involved with death penalty cases will likely experience additional stress. The final outcome may not be known for years. As they attempt to move forward with their lives, they are called back to relive the murder with each appeal and each execution date set.

- Some victims say that each time they hear of a decision by an appeal court, they feel as though they have just learned of the murder. Full and complete healing cannot take place until the case is finally settled and execution takes place. For survivors who do not support the death penalty, even more stress is felt. They may feel they betrayed the victim because they do not support the penalty.

Media and the Homicide Survivor

Survivors of homicide may face additional emotional stress caused by dealing with members of the news media. Pain, shock and raw emotion insures viewer audience, and nowhere are the emotions strongest than when a murder has been committed. The death of a small child invokes powerful feelings of outrage within a community and thus, the coverage of such an event can take on the appearance of a circus atmosphere with the family members serving as the "entertainment." A particularly heinous crime will cause a similar reaction.

Survivors confronting shock and denial and needing privacy are often harassed or ambushed by media who seek the most vivid, emotional response to the crime. As no one is ever prepared for a murder, survivors will most often be unaware of what to say and what (if any) rights they have in dealing with the media.

Victim assistance providers can help to protect the victim from media onslaught until the family is ready. Educating the media about the burdens that unwanted media attention places on victims in crisis is also important. As discussed in the chapter on news media coverage of crime, the media need a "code of ethics" in covering crime and victimization and, in particular, survivors of homicide victims. As a community, victim service professionals can boycott or otherwise fail to support offending networks or publications. This often works not only to the benefit of the victim, but to the entire community as well.

Methods *Anyone* Can Employ to Help Survivors of Homicide

- Allow survivors to grieve in whatever manner they wish and for as long as they wish.
- Allow survivors to cry freely. It is a healthy expression of grief and releases tensions.
- Allow survivors to talk about and personalize the victim. Let him or her tell you about the victim, his or her life and the murder. Allow the survivor to criticize the victim and to talk about the good times and the bad times.
- Allow survivors to get angry at you, the criminal justice system, the criminal, the victim, or simply the unfairness of life. Anger needs to be expressed.

- Remember the survivors at holiday times, on the anniversary date of the murder and the victim's birthday. Let the survivors know you remember, too.
- Allow the survivors some occasional “time out” from day-to-day pressures. If possible, offer to help with the children, a day off work, a day out of the house, etc.
- Reassure the survivors that the murder was neither their fault, nor the victim's fault.
- Tell survivors that you are sorry the murder happened and it is horrible that someone they loved was killed.
- Support survivors in their efforts to reconstruct a life, even if it means a major change in lifestyle.
- Let survivors know that you will remain their friend and they mean a great deal to you.

Promising Practices

For Victim Support Personnel

- Learn as much as you can about the case before you speak with the family. If the information is not flattering to the deceased but may affect the investigation of the case, tactfully and as sensitively as possible, alert the family to these facts. Prepare them for media reporting of such facts.
- Determine survivors’ needs for contact. Some will require constant contact while others will want minimal intervention. Temper your need to help if assistance is not needed or wanted.
- Become familiar with the stages of grief and additional stress factors.
- Personalize the deceased. Ask the family to tell you stories or show you pictures. Ask about the victim’s hobbies, dreams and desires.
- Protect the survivors from unwanted media attention.
- Determine if survivors need assistance with funeral arrangements or other family notification responsibilities. If yes, offer to help.
- Realize that financial considerations are paramount in any murder, but especially those in which the victim contributed significantly to the family's coffers. Help survivors to

file for insurance benefits, crime victims compensation, survivors benefits under Social Security, etc.

- Provide survivors with the names of mental health counselors or support groups.
- Provide survivors with information on the investigation or criminal justice process. Keep them informed of its progress. (Please note that although most victims will want to know even the smallest detail, not all victims will want this information. Find out the victim's desire for information and act accordingly. It is helpful to identify one family member who will disseminate information throughout the family; however, don't focus all of your attention on this one family member).
- Realize that each family member will have individual needs. Work with all family members to determine their need for information and support. Don't forget to include grandparents, siblings (where age appropriate) or other extended family members.
- Review, as necessary, all autopsy and/or murder scene photographs to determine the suitability of the family members remaining in the courtroom during their viewing. Some survivors will want to remain no matter how graphic the evidence is. Remember, the final decision is up to the survivor!
- Consider using an outside family friend or distant relative to identify the victim in any court proceedings if using an immediate family member will disqualify them from remaining in the courtroom throughout the trial (check with prosecutor concerning individual laws allowing this beforehand).
- Provide all court services available to victims of other crimes such as court accompaniment or secure waiting rooms. Assistance in preparing victim impact statements is appropriate.
- Alert the prosecutor or law enforcement representative of survivors' concerns for safety or other emotional or physical concerns.
- Inform survivors of their rights to file civil suits against the offender or third parties, where applicable.
- Prepare a brochure explaining the emotional ramifications of murder on the survivors and, with permission of the survivor, send materials or meet with survivors' employers so that allowances can be made for missed days from work due either to court or emotional needs.
- Be prepared to provide long-term victim assistance in cases involving the death penalty.

Homicide: Its Impact and Consequences

- 1) Which of the following groups is at greatest risk of being killed by an intimate partner?
 - a) Latinos
 - b) White females
 - c) Black males
 - d) Black females
 - e) White males

- 2) According to Rasche, what is the most predominant factor in spousal homicide?
 - a) Self-defense
 - b) Abuse by offender
 - c) Arguments
 - d) Possessiveness
 - e) Drug usage

- 3) Name five key issues that most survivors of homicide victims will have to confront.

- 4) What are the stages of grief and how are they impacted by murder?

- 5) What are five support factors anyone can provide to a survivor of homicide?

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Chapter 17

Victims of Drunk Driving Crashes

Abstract: Before the 1980s, drunk driving death and injury were considered unfortunate but socially acceptable. Victims were thought to have been in the wrong place at the wrong time, unable to avoid "accidents." With the advent of Mothers Against Drunk Driving and other grassroots victim groups, crash victims are no longer simply an amorphous mass of statistics; they have names and faces, and their tragedies impact hundreds of thousands of survivors. With a combination of victim assistance, prevention programs and aggressive public policy initiatives, drunk driving deaths are down 40% since 1980 -- but much more remains to be done.

Learning Objectives: Upon completion of this chapter, students will understand the following:

1. How grass-roots efforts founded a nationwide movement against drunk driving.
2. The impact of drunk driving on the victim.
3. Critical legislative measures enacted to reduce drunk driving.
4. Federal and state level responses to reducing drunk driving.
5. MADD's victim service programs.

Statistical Overview

- An estimated 16,589 persons died in alcohol-related traffic crashes in 1994 -- an average of one every 32 minutes. These deaths constituted 40.8 percent of the 40,676 total traffic fatalities. (*National Highway Traffic Safety Administration [NHTSA], 1995*)
- The number of alcohol-related traffic fatalities declined nearly 21 percent from 1990 to 1993. (*NHTSA, 1995*)
- During the period from 1982 to 1994, approximately 283,000 persons lost their lives in alcohol-related traffic crashes. (*NHTSA, 1995*)
- In single vehicle fatal crashes occurring on weekend nights in 1994, 72.3 percent of the fatally injured drivers 25-year-old or older were intoxicated, as compared with 57.7 percent of drivers under the age of 25. (*NHTSA, 1995*)
- About two in every five Americans will be involved in an alcohol-related crash at some time in their lives. (*NHTSA, 1995*)
- Traffic crashes are the major cause of death for children in the age group 6 to 28. Almost half of these deaths are alcohol-related. (*NHTSA, 1995*)
- Minimum drinking age laws are credited with reducing traffic fatalities involving drivers 18-to-20 year old by 13 percent. These laws saved 816 lives in 1993, and an additional 848 lives in 1994. (*NHTSA, 1995*)
- Arrests for DUI/DWI accounted for one of the highest arrest counts (1.2 million) in 1993. Arrests for DUI/DWI were highest among the 30-to-34-year-old age group in 1993. (*FBI, 1994*)
- Although about 297,000 persons suffered injuries in crashes where *police* reported alcohol was present (*NHTSA, 1995*), it is estimated that 950,000 persons were injured in alcohol-related crashes -- an average of one person every 33 seconds. Approximately 37,000 people a year will suffer permanent work-related disabilities. (*Miller & Blincoe, 1994*)
- It is estimated that 2.2 million drunk driving crashes each year victimize 1.3 million people who are injured or have their vehicles damaged. (*Miller & Blincoe, 1994*)
- Direct costs of alcohol-related crashes are estimated to be \$44 billion yearly. An additional \$90 billion is lost in quality of life due to these crashes. (*Miller & Blincoe, 1994*)

- More than half of the persons jailed for DWI in 1989 had previous DWI convictions. About one in six persons had served at least three prior sentences in jail for drunk driving. *(Cohen, 1992)*
- Nearly nine out of ten of those in jail (86 percent) for DWI in 1989 had previously been sentenced to probation, jail or prison for DWI or for other offenses. *(Cohen, 1992)*

Introduction

The 1982 Final Report of the President's Task Force on Victims of Crime did not address drunk driving, even though in 1982, 25,165 people were killed in impaired driving crashes, and drunk driving was one of the most frequently committed crimes in this country. The lack of attention to this class of victims is attributable, in part, to the fact that grassroots groups such as Mothers Against Drunk Driving (MADD) were in their infancy, and drinking and driving was still considered acceptable -- the consequences just an "accident."

Activism and Public Policy

With the advent of MADD and other grassroots groups, public awareness of drinking and driving as a preventable crime grew rapidly. The number of legislative countermeasures at both the federal and state levels increased, and public policy became the focal point of efforts to reduce deaths and injuries resulting from impaired driving crashes.

MADD and Remove Intoxicated Drivers (RID) were the first activist groups that began putting names and faces to the statistics. One of the first nationally recognized victims was five-month-old Laura Lamb, riding in the carseat beside her mother as they drove to the store in November, 1979. They were hit head-on by a drunk driver speeding toward them at 120 mph. He had no driver's license, no insurance, and a record of 37 traffic violations - three of them for drunk driving. Laura became the America's youngest quadriplegic and her story was told throughout the nation as Maryland's Congressman Michael Barnes introduced the nation's first tough anti-drunk driving legislation.

In May, 1980, 13-year-old Cari Lightner was walking to a church carnival with her friend when she was hit from behind and killed instantly by a man who had been out of jail only two days since being arrested for another hit-and-run drunk driving crash. In fact, his record revealed three previous drunk driving arrests. Candy Lightner, Cari's mother, from California and Cindy Lamb from Maryland joined forces late in 1980 to form Mothers Against Drunk Driving. Since then, thousands of volunteers, both victims and concerned citizens, have worked to stop drunk driving. Their efforts, combined with a lowered speed limit, increased use of seatbelts and

airbags, and other safety measures have contributed to more arrests for drunk driving every day than for any other crime. And drunk driving fatality rates are down 40% -- from 28,000 in 1980 to 16,884 in 1994 (NHTSA, 1995).

Historical Perspective

Drunk driving is not a new problem. Henry Ford worried about it when he introduced "motor carriages" as a quantum leap from horse-drawn carriages. He knew that imbibing would place drivers of his automobiles at more at risk than those traveling by horse and carriage. The horses knew how to get home.

In the 1960s, the Department of Transportation and the National Highway Traffic Safety Administration began showing legislators and the public the staggering number of deaths attributable to traffic crashes in general and alcohol-related crashes in particular. A few drunk driving laws were passed at that time, but they stipulated that a .10 or .12 blood alcohol content only "presumed" an individual to be intoxicated; the charge of intoxication was rebuttable. In 1972, Nebraska and New York passed the first laws stating that a .10 blood alcohol content was conclusively "illegal per se." No further evidence of impaired ability to drive was needed. These laws were based on the fact that at .10, every person, regardless of tolerance to alcohol, was significantly impaired in his or her ability to operate a motor vehicle (Alcohol and Health, 1974).

South Dakota, Utah and Vermont followed in 1973; Florida and North Carolina in 1974; and Oregon in 1975. By 1979, twelve states had set an illegal per se limit, all of them at .10 except New Hampshire which set its per se limit at .15 (Assembly Office of Research, 1979).

However, neither the press nor the public paid much attention, as indicated by a two-inch article printed in the October 16, 1979 edition of the *New York Times*, which noted an all-time record number of people had been killed in "road accidents" in 1978 -- 50,145 people (New York Times, 1979).

Not until 1980 did the National Highway Traffic Safety Administration publish its first issue paper on illegal per se and preliminary breath testing that proposed model language for both laws (NHTSA, 1980).

Anti-drunk Driving Movement

A unique characteristic of the anti-drunk driving movement is its equal emphasis on prevention programs and victim services. Perhaps this is most clear in public policy development and implementation. Grassroots victims organizations attracted not only the minds of the public and the legislative bodies, but their hearts as well.

Between 1982 and 1993, more than 1700 pieces of DUI legislation were passed nationwide. One result of legislative success is the proportion of traffic fatalities that are alcohol-related declined from 57% in 1982 to 40% in 1994 (NHTSA, 1995). The proportion of drivers in fatal crashes who had a blood alcohol level of .10 or greater has declined from more than one third in the beginning of the decade to less than one-fourth at the end of it. The percent of fatally injured drivers with high BACs (.20 or greater) has decreased substantially over the last decade. Alcohol-related fatalities in the 15 to 20-year-old age group declined from 4,133 in 1982 to 1,756 in 1994 -- a 56% drop. The bottom line success over the last decade, however, is measured in total lives saved. In 1980, there were approximately 28,000 alcohol-related fatalities. By 1994, this number had been reduced to 16,884 (NHTSA, July 1995).

Impact of Drunk Driving on the Victim

“The worst is to do nothing because you can only do a little.” (Edmund Burke)

It is difficult to work with survivors of those killed and injured in alcohol or other drug-related crashes because our criminal justice system does not provide similar sanctions for this crime as it does for other crimes with the same result -- dead and catastrophically maimed victims. It is difficult to explain to a family that the offender in their case faces a maximum sentence a fraction of what he or she would have faced if a weapon other than a vehicle had been used. Unfortunately, public policy has not yet caught up with the public notion that a death at the hands of an impaired driver is murder.

Much of what is known about grief is based on research of terminally ill individuals and their loved ones. Although correlations can be drawn from traditional thanatology, i.e. (the study of death and dying), there are significant differences when the death is sudden and traumatic. Understanding those critical differences can enable the service provider to create an environment of support and healing even when the system is unable to acknowledge drunk driving death as murder or drunk driving injury as assault.

Sudden Death & Injury

Impaired driving crashes are sudden. There is no time for psychological preparation, no time for closure with the dead, no time to draw upon previous coping skills. There is nothing in the human experience that can adequately prepare someone to kiss a spouse good-bye in the morning and then be notified that their spouse is never coming home again. No previous experience can equip someone to tell a child to be home by curfew and then to get a knock at the door from a police officer bringing the devastating news. When the death is caused by a vehicular crash, there is no opportunity to say the “goodbye’s,” “I love you’s,” and “I’m sorry’s” that need to be

said. Although it is a myth that ill and injured people and those around them take care of their closing business, at least they have the opportunity to do so.

For the survivors of those killed by impaired drivers, their first task is simply to grasp what has happened. It will take considerable time for the mind and the heart to assimilate the enormity of the trauma, let alone to accommodate it in any way. Those supporting the survivors want to see signs of healing, acknowledgment and moving on, often before the survivor has even comprehended what has happened. The injured experience the same unrealistic “pushes” toward recovery. Comments like, “You *are* getting better, aren’t you” and “You’re just so lucky to be alive” discount the physical and emotional trauma of the injured.

Service providers can create a supportive environment by allowing injured victims and family members of those killed or injured to talk about the elements of the experience that are the most significant to them at the moment.

- Asking, “What is the top issue for you today?” permits examination of the piece of the traumatic experience is most difficult at that time.
- There will always be a “most difficult” piece, but understanding of it will vary over time as components of the trauma are processed and mastered.
- Providing as much information as possible and allowing victims to talk about the issues that are important to them assists in the mastery process.

As Rabbi Earl Grollman says, “If it’s mentionable, it’s manageable.”

Violent Nature of Vehicular Crashes

Death and injury at the hands of an impaired driver almost always includes violence. No matter what one’s own theology is about what happens to the soul at the moment of death, there is something infinitely precious about the bodies of our loved ones. The knowledge that the loved one’s body was catastrophically damaged is enormously painful for the survivor.

Service providers naturally want to protect the family from additional pain and anguish and may mistakenly believe that withholding the opportunity to be with the body, photos, and information will help to do that. Unfortunately, lack of information and choices only exacerbates the pain, as survivors tend to fill in the gaps of their knowledge by imagining horrific scenarios.

Having the opportunity to view the body provides the survivor with important information needed to begin processing the traumatic event.

- Viewing the body is the point at which the death begins to become real to the survivor. It also helps to confirm the identity of the person who was killed which combats “magical thinking” i.e. there’s been a mistake; it wasn’t my loved one who has been killed.
- As painful as the experience can be, *knowing in advance* the condition of the body and being given the *choice* of whether or not to view the loved one is very significant. Survivors who choose to do so, after being prepared for what they would see, are grateful for the opportunity.

Whether or not the survivor viewed their loved one after death, many survivors want access to photographs that were taken at the crime scene or during the autopsy. If the survivor wishes to see the photographs or wants copies, do your best to honor those wishes. As one bereaved father put it,

“The worst thing that could happen to me had already happened. I knew her injuries were so severe that they killed her, and I was prepared for that. What I wasn’t prepared for was everyone’s resistance. I knew what I could handle, and all I was asking for was the opportunity to see pictures that a large number of people had already seen.”

As with viewing the body, the requirement for viewing photos is preparation. Parents of Murdered Children offers a helpful technique for assisting the bereaved in viewing difficult photographs of their loved one.

- Have a trusted friend sort the photographs with the least offensive photo on top to the most offensive on the bottom. Each photo is placed in its own envelope or separated by a sheet of paper. One at a time the trusted friend looks at each photo, describes it, and then asks the survivor if he or she still wishes to view it.

This technique offers the survivor two pieces of information from which to decide whether or not to look at a specific photo. The survivor has both the verbal description of the photo and the trusted friend’s reaction, through body language and tone of voice, to assist in deciding whether or not to view the picture.

Some survivors want to see all the pictures; others want to see only one or two, usually to confirm that it really was their loved one who was killed. Those who want possession of copies often don’t choose to look at them at that time. They may be tucked in a file or drawer, but the survivor knows the photos may be viewed at his or her discretion, not someone else’s.

Catastrophic injury resulting in permanent disability may have a more lasting impact on families than death. Physical and emotional suffering over-spends energy needed to function on a day

by day basis. Likewise, socio-economic levels nearly always drop due to lack of income of at least one wage-earner in the family. Advocates must not neglect this crucial component of services. Likewise, attention to the care-givers of the permanently injured must not be ignored. A good resource for families of the injured is *Injury: Learning to Live Again* (Mercer, 19??) available from MADD.

Senseless Act

Senselessness has been described as “the distinctive mark of drunk driving death and injury.” Drunk or drugged driving deaths are someone’s fault and therefore always could have been prevented. The offender engaged in choices -- to use alcohol or other drugs and to get behind the wheel of a car. That is the reason advocates within the anti-drunk driving movement are careful not to describe the consequences as an “accident.” Words like “crash,” “crime” or “incident” don’t minimize the offender’s responsibility for the tragedy as does the word “accident.”

Another language issue for survivors is distinction between “died” and “killed.”

- For many survivors the word “died” feels too passive; it fails to acknowledge that the death was someone’s fault and therefore could have been prevented. For those survivors, the word “killed” suggests that a life was taken, rather than simply lost.

According to Dr. Alan Wolfelt, one of the tasks of mourning that leads to healing is creating a context of meaning for the event. This may be among the most difficult tasks for victims of alcohol-related crashes. Some survivors find meaning within their personal faith journey. Others find it through activism or helping others who are suffering. Still others find a context of meaning through personal value changes, perhaps learning to say “I love you” more often or spending more time with family. Creating a context of meaning never explains the crime or makes it acceptable, but it does help the survivor identify outcomes that honor and memorialize the deceased and affirm the changed lives of survivors.

Faith/Philosophy of Life Issues

Just as there are financial, emotional, social, and physical components to every crisis, there are spiritual ramifications as well. Those who have never thought much about God before will do so after a loved one has been killed. For those of faith, there may be a spiritual crisis as great or even greater than that of the non-faithful.

In a study conducted of survivors of those killed in alcohol-related crashes, (Mercer, 1995a) it was noted those reporting they had some or a lot of faith prior to the death of their loved one found their faith becoming stronger over time. Those having little or no faith prior to the death of their loved one found their faith staying the same or getting weaker.

Among those whose faith became stronger, it was clear that the process took much time and that it was primarily an internal one. Respondents were highly critical of the lack of outreach or support they had received from their clergy and faith community. Reasons for dissatisfaction included being told that they shouldn't be angry; being told they should forgive the offender; feeling unsupported when they "fell apart" in church; and being told that they didn't have enough faith or trust in God.

- Even when spiritual issues are outside of the service provider's expertise, acknowledging that the faith community can sometimes be a source of revictimization may be useful to the survivor.
- As with other components of grief and loss, simply reminding the survivor that it may take considerable time to reestablish a relationship with God, to make a decision about forgiveness, or to feel comfortable in worship again may help to normalize their spiritual concerns.

Few things in life are more profound than standing with someone who has experienced the soul-shattering, sudden, violent death or catastrophic injury of someone loved. The authority and status of a victim service provider or criminal justice professional offers an unparalleled opportunity to be of support and guidance during this experience. The memory of a loved one killed by an impaired driver holds a unique place in the heart of the homicide survivor, but very near that special place are the memories of those who truly helped. Equipped with courage, compassion and knowledge about the unique nature of drunk driving death and injury, you will be counted as one of those extraordinary people.

Practices That Have Impacted Drunk Driving

Public Policy: Prevention

The following legislative measures helped reduce drunk driving nationwide:

- **Administrative License Revocation (ALR):** This is an administrative system that provides for the immediate suspension of the license of drivers who are arrested for driving under the influence and fail blood alcohol tests by registering above the legal BAC limit in their state. The 38 states that adopted ALR are seeing a six to nine percent

reduction in single vehicle nighttime fatalities. If all states without ALR would adopt the law, 200 to 350 lives would be saved each year.

Recommendation: ALR laws should be passed in all 50 states.

- **21 Drinking Age Laws:** The establishment of a uniform minimum drinking age of 21 in all states, territories and jurisdictions of the United States has been critical to progress in the drunk driving arena. No single piece of legislation has been more effective in reducing alcohol-related deaths and injuries among the under 21 age group than the federal *21 Minimum Drinking Age Law* of 1985. Faced with a loss of federal highway funds, every state raised its minimum drinking age law to 21 by 1988. As a result, alcohol-related youth fatalities decreased 56% between 1982 and 1994. Alcohol-related adult fatalities during the same time frame decreased by 40% (NHTSA, 1995).

In November, 1995, Congress and President Clinton further enhanced the 21 drinking age law by passing and signing the *National Highway System Act* which requires each state to pass "zero tolerance" laws (minimum BAC at .00 to .02) in order to receive federal highway funds. Enacting zero tolerance in all 50 states will result in saving the lives of many more young people.

Recommendation: All states should pass zero tolerance laws for drivers under 21, pass graduated licensing laws, and pass keg registration laws.

- **.08 BAC Limits For Adults:** Setting the legal blood alcohol content (BAC) limits for non-commercial adult drivers over the age of 21 at .08 per se is a crucial goal of the anti-drunk driving movement. California showed a 12% reduction in alcohol-related fatalities after .08 and ALR laws were passed. Preliminary results of the most recent studies reveal that California, Oregon, Utah and Vermont have shown significant decreases in driver alcohol involvement after lowering the BAC limit to .08 (NHTSA, December 1994).

Recommendation: All states should lower the illegal blood alcohol concentration level to .08 for non-commercial drivers age 21 and older.

- **Sobriety Checkpoints:** Sobriety checkpoints are frequent and regular highly publicized, high visibility enforcement programs to detect and apprehend alcohol- and other-impaired drivers. Programs in the areas listed below have shown how effectively-run sobriety checkpoints can have a substantial impact on drinking and driving and alcohol-related crashes.
 - Charlottesville, Va. (1985): 13% reduction in proportion of alcohol-related crashes.
 - Clearwater/Largo, FL (1986): 20% decrease in proportion of alcohol-related crashes.

- Bergen Co., NJ (1990): 10-15% decline in single vehicle nighttime crashes.
- Binghamton, NY (1991): 39% decline in drinking drivers based on a roadside survey.
- North Carolina (1994-95): More than 50% decline in drinking drivers at checkpoints.

Sobriety checkpoints have been upheld as constitutional by the U.S. Supreme Court.

Recommendation: All states should develop and legislatively protect sobriety checkpoints and other highly visible enforcement programs

- **Open Container Laws:** These laws restrict the consumption or possession of open containers of alcohol in any motor vehicle, thus separating alcohol consumption from vehicle operation.
- **Plate/Vehicle Confiscation/Impoundment/Forfeiture:** Laws providing for confiscation and/or impoundment of license plates or vehicles of habitual DUI/DWI offenders or those who drive on suspended licenses are believed to be effective, but more research is needed.

Recommendation: States which have passed these laws should study their effect and develop model legislation based on the findings.

- **Mandatory Confinement for Repeat Offenders:** Laws providing for mandatory jail sentences that cannot be suspended or probated for repeat DWI/DUI offenders are believed to serve as a deterrent to future violators, but definitely serve a remedial purpose by assuring that these drivers are kept off the public streets and highways during incarceration.

Recommendation: States should study the effect of mandatory confinement laws and amend their statutes accordingly.

- **Happy Hour Restrictions:** Prohibitions against "Happy Hour" promotions and other marketing practices that encourage excessive alcohol consumption have been shown to be effective in some communities.

Recommendation: Bars and restaurants which engage in Happy Hour promotions should be sanctioned by their state's Alcohol Beverage Control agency.

- **Excise Taxes:** Taxes on all alcoholic beverages are one means of funding programs to prevent drunk driving and serve victims.

Recommendation: Excise taxes on beer and wine should be equivalent to taxes on distilled spirits.

- **Mandatory Testing:** More than 80% of impaired drivers admitted to hospital emergency departments were not held responsible for their crimes because they were not reported by emergency physicians or charged by law enforcement (Orsay, Doan-Wiggins, Lewis, and Lucke, 1994).

Recommendation: All states should enact mandatory Blood Alcohol Concentration testing of drivers in all traffic crashes resulting in death or injury. Medical providers should be required to report BAC levels and other drug involvement of drivers to law enforcement agencies.

The federal government must continue to invest resources to stop drunk driving and ensure the passage of substantive laws at the state level. For every dollar spent on highway safety in 1992, a cost savings of \$33 was achieved in lives saved (NHTSA, 1994). Continuation of the incentive grant programs that have been so effective is crucial.

The goal of the National Highway Transportation Safety Administration (NHTSA) to reduce alcohol-related fatalities to 43% by 1996 has been achieved two years ahead of schedule, and MADD's goal to reduce the proportion of traffic fatalities that are alcohol-related to 40% by the year 2000 has been achieved. However, components of the *1995 National Highway Safety Act* that did away with the 55 m.p.h. speed limit and mandatory helmet laws are extremely likely to increase overall fatalities and injuries.

The Department of Transportation recently announced the ambitious goal of reducing alcohol-related fatalities to no more than 11,000 per year by the year 2005 (NHTSA, 1995). This would mean a reduction of about 5,000 annually from the 1994 level, saving 16 more lives each day. MADD has adopted the goal of 11,000 by 2005, but emphasized that there is *no* acceptable minimum number of alcohol-related deaths or injuries. MADD's mission will not be accomplished until drunk driving death and injury is eliminated.

Public Awareness

Public awareness programs must not be overlooked as a component of the significantly reduced drunk driving fatality rate. MADD's positive relationship with the National Association of Broadcasters was solidified in 1984 when MADD decided not to oppose alcohol advertising. Public service announcements, as well as paid advertisements by numerous corporations, are believed to have made a difference, although their effect is difficult to measure. "MADD: The Candy Lightner Story" which aired as NBC's Movie of the Week in March, 1983, was seen by hundreds of thousands of viewers and resulted in the development of more than 200 MADD

chapters in 40 states. It also served as the catalyst for a significant increase in media coverage on drunk driving. A Catholic University study indexed five major newspapers (*New York Times*, *Wall Street Journal*, *Washington Post*, *Los Angeles Times*, and *Christian Science Monitor*) and 370 periodicals in 1983. The study found that print coverage of drunk driving increased dramatically from four stories in 1980, to 30 stories in 1981, to 116 stories in 1982, and to 219 stories in 1983 (McCarthy, 1986).

Other public awareness programs may have contributed to the decline in drunk driving: MADD's Poster/Essay Contest for elementary through high school youth and the Red Ribbon Campaigns of Parents for Drug Free Youth and MADD "(Tie One on for Safety)" reach thousands. Alcohol-free prom and graduation parties are now common-place throughout the nation. MADD's Sobriety Checkpoint Weekend over the July 4 weekend has received significant media attention, as have Candlelight Vigils of Remembrance and Hope held at the local, state and national levels each December.

Victim Services

In 1980, victims of impaired driving crashes were rarely considered victims of crime. They were excluded, along with non-alcohol-related vehicular victims, from crime victims compensation programs. The few states developing Victims' Bills of Rights in the 1980s excluded drunk driving victims because drunk driving -- even when it resulted in death or injury -- was generally classified as a misdemeanor.

When drunk driving crash victims started speaking out in the 1980's, they pointed out that what had happened to them was *not* an accident. It was the result of two clear choices:

1. To use alcohol or other drugs.
2. To get behind the wheel of a vehicle.

These choices were as endangering to the public as wielding a loaded gun. Research began to show that families of someone killed by a drunk driver suffered a very similar aftermath to that of families of someone murdered (Amick-McMullan et. al., 1989, 1991; Lehman et. al., 1987). Persons permanently and catastrophically injured in crashes were incensed when someone said they were not victims of a violent crime.

MADD has developed a series of 20 brochures for victims which addresses various features of victimization. The organization also requires that each chapter provide eight basic services to victims, and many more are offered by chapters who provide Level II and Level III services. Each chapter's advocate must receive a minimum forty hours of training and must comply with numerous policies to encourage quality care. Many MADD chapters offer Victim Support Groups and Victim Impact Panels. Advocates assist victims in writing victim impact statements and completing compensation forms. They assist victims through the criminal justice process,

attending court if requested. MADD offers a wide array of prevention programs for victims to participate in, when they are ready to become actively involved in MADD's mission.

Public Policy Goals: Victim Rights

The following public policy goals related to drunk driving crash victims have been addressed since 1980.

- **Constitutional amendments for victims rights and statutory Victims' Bills of Rights:** While most states now have statutory rights, the courts will never work to assure that these rights are actually offered until they are placed in state constitutions.

Recommendation: The Federal Constitution and all State Constitutions must be amended to assure rights for victims of felonies and misdemeanors.

- **Bankruptcy protection:** In 1982, if a crash victim won a money judgment against a driver, the driver could immediately walk into federal bankruptcy court and successfully have the debt discharged. Through amendments to Chapter 7 of the *Federal Bankruptcy Code* in 1984 and to Chapter 13 in 1990, persons who kill or injure others while driving impaired cannot file bankruptcy to avoid paying criminal restitution or civil judgments to their victims.
- **Compensation:** The re-authorization of the *Victims of Crime Act* in 1988 represented a major step in assuring that impaired driving crash victims are considered "true" victims of crime. The new law stated that any state which excluded drunk driving crash victims from its crime victims compensation program would no longer be eligible for VOCA funding.

Within a couple of years, all 50 states had amended their statutes to include drunk driving crash victims and, in most states, victims of hit and run. It also opened the door for services grants to programs serving crash victims by designating that states must begin allocating a proportion of their services grants to "previously underserved victim populations."

Recommendation: More work needs to be done on compensation statutes to assure fair compensation for crash victims. Amendments should remove means tests, eliminate denial of benefits for victims uninsured, not wearing seatbelts, or passengers in a vehicle driven by an impaired driver. An ample number of mental health counseling hours for family members of someone killed and those who survived crashes should be assured. Compensation caps should be removed for victims of severe or permanent head or spinal cord injury.

- **Dram Shop/Social Host Liability:** Dram shop statutes and case law hold servers of alcohol (bars, restaurants, social hosts) financially liable for serving minors or noticeably intoxicated adults.

Recommendation: States should adopt measures to assure that those who knowingly contribute to the intoxication of others who then kill or injure become financially liable to the crash victims. States should also assure that their tort laws do not limit a seriously injured victim's ability to recover financially.

- **Endangerment of Children:** Driving intoxicated or impaired by alcohol and other drugs is clearly endangering to all passengers in the vehicle and is particularly negligent or even abusive when children have no choice about riding in the vehicle. *The Federal Crime Bill of 1994* enhanced the drunk driving penalty of all offenders on federal lands if a child under the age of 16 was a passenger in the vehicle.

Recommendation: The criminal sanction for drunk driving should be increased for offenders who have a child(ren) in the vehicle when the crime is committed. Also, states should define driving impaired with a child(ren) in the vehicle as a specific form of child endangerment. Evidence of such should be considered by Family Court judges in determining custody and visitation in suite affecting the parent-child relationship.

- **Victim Impact Panels:** Victim Impact Panels include a group of three or four victims who speak 10 to 12 minutes each about the effect of their drunk driving crash. Preliminary research (Mercer, 1995) indicates that while panels appear to reduce recidivism among offenders, even more significant is the fact that they offer a healing opportunity for victims.

Recommendation: States should pass laws mandating that attending a Victim Impact Panel is a component of every drunk driving offender in counties that offer the program.

- **Drunk Driving Death and Injury a Violent Crime:** The violence perpetrated on the bodies of those killed and injured in drunk driving crashes is well documented. Yet, it is not uniformly understood as a violent crime.

Recommendation: All states and the federal government must define drunk driving death and injury as violent crimes and elevate them to felony status. Repeat offenders who maim and kill should be prosecuted under second-degree murder statutes, or second-degree murder language should be amended to define this victimization as one form of wanton and willful disregard for human life. The FBI and Uniform Crime Reports should define drunk driving death and injury as major crimes.

Glossary

Administrative License Revocation: A law providing for prompt suspension of the license of drivers charged with DWI upon the finding that the driver had a BAC above the prescribed. The law enables the license suspension to go into effect prior to adjudication of the DWI charge.

Alcohol-Related Fatality/Crash: A vehicular crash or pedestrian fatality involving a driver who has a positive BAC, not necessarily above the illegal per se or presumptive level.

BAC - Blood Alcohol Concentration: The number indicates the grams of alcohol contained in every 100 milliliters of the person's blood. For example, a BAC of .10% means there is 1/10 gram of alcohol in 100 milliliters of blood.

Designated Driver: A person among a group who agrees to refrain from alcohol use so the group may be assured of having a sober driver. Some bars and restaurants offer incentives to designated drivers by offering free soft drinks, reduced-cost meals, etc.

Impairment: Effects of alcohol or other drugs that are less severe than intoxication or drunkenness but still diminish driving ability.

Intoxication: A term linked with a specific level of BAC, usually connotating observable and severe effects of alcohol.

Per Se: In and of itself; for example, operating a vehicle with a BAC at or above a certain level based on chemical tests is conclusive evidence of intoxication, regardless of whether or not the individual appears to be or acts intoxicated.

Presumptive: No conclusive evidence; for example, a legal presumption can, and often is, rebutted. A defendant whose BAC is above 0.10% could be found not guilty if the statute includes "presumptive" rather than "per se" language and the defendant did not appear obviously intoxicated.

Provisional License: A drivers license issued to young people (usually 15 to 17-year-olds) that withholds some of the driving privileges granted to adults; for example, a provisional license may require a curfew, seat-belt use, parental supervision; and .00% BAC. Each year, some of the restrictions are removed if the youth does not violate the provisions.

Sobriety Checkpoints: A system where law enforcement agencies select a particular location for a particular time period and systematically stop vehicles (for example, every third car) to investigate drivers for possible DWI. If any evidence of intoxication is noted, a more detailed investigation ensues.

Victims of Drunk Driving Crashes

- 1) Name at least one reason for the significant drop in drunk driving deaths beginning in the early 1980s.

- 2) Name three of the first states to pass .10 per se laws.

- 3) How much has the drunk driving fatality rate for victims under age 21 dropped since 1982?

- 4) How did the 1988 reauthorization of VOCA affect drunk driving crash victims?

- 5) Name three emerging issues in drunk driving that you think would make a difference in reducing injuries and deaths.

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Chapter 18

Elderly Victims of Crime

Abstract: This chapter will provide participants with an opportunity to examine the unique problems and needs of elderly crime victims, both in general and based upon specific crime types. A brief overview of the elderly crime victim's perception of crime is provided to place the participant in the mind-set of the elderly victim and his or her need for specialized, sensitive responses from those establishing and providing program services.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. Ageism and its impact on society's perception of elderly persons as crime victims in our society.
2. Specialized services that can be implemented by victim assistance personnel to better respond to the needs and problems of the elderly crime victim.
3. The general profile of elder abuse victims and perpetrators.
4. Techniques that can be used to improve communications with elderly victims.
5. Aspects of the impact criminal victimization has on the elderly.

Statistical Overview

- In 1986, there were about 117,000 reports of domestic elder abuse in the nation. This figure rose to 241,000 reports in 1994, representing an increase of 106 percent.
- It is estimated that approximately 818,000 elders became victims of various types of elder abuse in 1994. This figure, however, excludes self-neglecting elders. If self-neglecting elders are added, the total number of elder abuse victims would be 1.84 million individuals in the same year.
- In most states, certain types of professionals are designated as “mandatory reporters of elder abuse” and are required by law to report suspected cases of elder maltreatment. In 1994, 21.6 percent of all domestic elder abuse reports came from physicians and other health care professionals, while another 9.4 percent came from service providers, and family members and relatives of victims reported 14.9 percent of the reported cases of domestic elder abuse.
- The majority of domestic elder abuse reports are substantiated after investigations. For example, 54.9 percent of reports were substantiated in 1994. Additionally, 54.9 percent of the substantiated reports were self-neglect cases.
- Neglect is the most common form of elder maltreatment in domestic settings. Of the substantiated reports of elder abuse for which perpetrators were identified in 1994, 58.5 percent involved neglect. Physical abuse accounted for 15.7 percent in the same year, while financial/material exploitation was 12.3 percent of the substantiated reports.
- In 1994, 65.4 percent of the victims of domestic elder abuse was white, 21.4 percent were black, and Hispanic elders accounted for 9.6 percent of the domestic elder abuse victims.
- Adult children are the most frequent abusers of the elderly in domestic settings. It was found that 35 percent of the substantiated elder abuse cases in 1994 involved adult children as abusers. “Other relatives” ranked as the second most frequent abusers (13.6 percent) and spouses with 13.4 percent.
- In 1994, the majority of abusers were female (52.4 percent) and slightly more than three-fifths of victims were females (62.1 percent). Similarly, about three-fifths of self-neglecting elders were also females (62.4 percent).
- The median age of elder abuse victims was 76.4 years, according to 1994 data that excluded self-neglecting elders.

(The preceding statistics are derived from the findings of a national study of domestic elder abuse reports conducted by the National Center on Elder Abuse in 1994. Data on elder abuse reports were collected from state adult protective service and state units on aging across the nation for the years of 1993 and 1994. It is important to note that some experts estimate the only one out of 14 domestic elder abuse incidents (excluding the incidents of self neglect) comes to the attention of authorities. NCEA is operated by a consortium of the American Public Welfare Association (APWA), the National Association of State Units on Aging (NASUA), the University of Delaware, and the National Committee for the Prevention of Elder Abuse (NCPEA), with funding assistance from the Administration on Aging (AoA).

The Need for Elderly Victim Services

The last two decades have witnessed a tremendous growth in the field of victim services. From its infancy in recognizing that crime victims need and deserve basic rights and services, the field of victim assistance has grown to be a very individualized, complex system of service delivery.

In its early years, the victims' movement centered its energy and demands on improving the rights and services available to *all* crime victims. However, as time progressed and through trial and error, it has become evident that the generic, "one size fits all" type of victim programs do *not* meet the needs of all crime victims: many victims require different approaches, services, information and specialized rights.

Thus, a more pro-active, specific victim-centered approach for America's crime victims has evolved, including:

- Laws granting special rights and enhancing services to children, victims of domestic violence, and hate motivated crimes.
- Many victim service programs have conducted internal evaluations to determine if they are meeting the needs of their clients and, where less than adequate, services are being strengthened to meet their needs.
- Today, a community may have programs tailored to meet the needs of child sexual abuse, domestic violence, rape, drunk driving and homicide victims.
- Some communities have even expanded their programs to meet the needs of their ethnically-diverse clients.

However, there are few programs designed specifically to meet the needs of this nation's largest growing population: the elderly.

Crimes against the elderly have emerged as a new, crucial area of concern for victim assistance professionals. Consider the following facts:

- By the year 2000, persons aged 65 and older will account for 13% of the nation's population.
- By current estimates, this number will continue to grow at a rate of an additional twelve million each decade thereafter.
- Thus, the number of elderly victims entering the criminal justice system can be expected to increase significantly.
- There is no other segment of our victim population that will see such growth based upon their numbers alone.

Types of Elderly Victimization and Abuse

This chapter examines two types of crimes against elderly victims:

Elderly Victimization: Crimes against the elderly by strangers or acquaintances, excluding those committed by caretakers, family members, or crimes that are classified as domestic abuse.

Elder Abuse: Crimes against the elderly that are predominantly committed by caretakers and family members, and include acts such as sexual and physical violence, neglect and economic exploitation and fraud.

Elderly Victimization

In 1992, 2.1 million persons 65 and over experienced some form of criminal victimization (Bachman, 1992). For example:

- According to 1994 statistics, elderly males are more likely to become victims of a violent crime than elderly females, and elderly blacks are victimized at a rate of twice that of their white counterparts.
- Elderly citizens living in urban settings are three times more likely to experience some form of crime as those living in suburban or rural settings.
- Rural elderly persons are more likely to experience more household related crimes, *i.e.*, burglary, vandalism, than elderly persons living in urban areas.

- Income also seems to affect elderly victimization -- the less income the elderly person has, he or she is twice as likely to experience a violent crime compared to his or her more wealthy counterparts. However, elders with higher incomes experience a higher number of non-violent crimes such as theft, household crime or additional crimes of fraud (Bureau of Justice Statistics, 1994).
- Elderly crime victims are almost twice as likely as younger victims to be victimized at or near their homes (Bureau of Justice Statistics, 1992).

Although the elderly are victimized less frequently than any other age group, they have a higher fear of crime than any other age group. This is due largely to the physical limitations that age places on them. Physiological changes as persons age render them less able to fight or flee from dangerous situations. This is one reason why they are often targeted as potential victims. For example:

- Although elderly men experience more violent crime than elderly women, elderly women experience almost five times the rate of personal larceny with contact -- such as purse snatching or mugging -- as do elderly men.
- Elderly women may seemingly pose little threat to the attacker through resistance or chase than their male equals, making them better targets for crime.

However, when victimized, the elderly report the crime and participate in its prosecution more than their younger counterparts.

In today's crime stricken world, young children are taught to refrain from speaking to strangers. As a normal part of their daily lives, citizens install multiple locks, security systems, security bars or carry protective devices. They are simply taught at an early age to trust no one, and that crime is an inescapable fact in their lives. However, for many elderly victims, crime victimization is a new concept. Most often, they grew up in an era where one did not lock their doors, neighbors were trusted and a stranger was a friend yet to be met.

Therefore, when victimized, the elderly victim may suffer far greater emotional consequences than "street-wise" younger persons.

Special Victim Assistance Needs Based Upon Age

Providing assistance and support to elderly crime victim presents many challenges to victim assistance personnel. Physical limitations place a burden on both the victim and the personnel

assigned to assist them. To provide services, victim assistance professionals should consider the following:

- Incorporating home, hospital or nursing home visits to accommodate the specialized needs of the elderly.
- Sight and hearing impairments of victims may make services more difficult to administer, and may necessitate a higher level of personal involvement in the provision of program services and information. For example, the program's informational brochures may need to be redesigned to meet the needs of the sight-impaired, and hearing impediments may considerably slow the exchange of information.
- Older victims may need several reminders of court dates or court-related appointments.
- Many elderly victims will need transportation to and from these court-related appointments.
- Health problems in the elderly can cause significant delays in the prosecution of a criminal case.

This chapter provides a background and suggested approaches for the victim assistance provider serving the needs of the elderly crime victim. The suggestions may be helpful based on individualized need, and are not meant to imply that *all* person over age 65 will require specialized services.

There are many elderly victims who have not suffered significant hearing, vision, mental or physical impairment due to aging. Not all elderly victims will want or *need* assistance. Many elderly victims have strong family networks to provide support, guidance and assistance. The suggestions contained in this section are offered for the elderly victim who does *not* have a strong family support network, and will need the assistance of trained victim personnel. However, some service providers find it hard not to "rescue" elderly victims with services, advice or information. Providing services is critical in helping the elderly recover from a criminal victimization, but doing so with sensitivity and respect for the victim's wishes or capabilities is far more important.

Promising Practices

Victim Assistance Personnel Working with Elderly Victims

It is important to note that some of the outlined promising practices contained in this section identify emergency considerations for elderly victims that will most often fall to the responding

law enforcement agency. It is strongly recommended that an interagency agreement be established between law enforcement and other victim assistance programs to ensure that information regarding crimes against the elderly are shared immediately so assessments for emergency services can be conducted. An interagency agreement will also ensure that the "lion's share" of the workload does not fall to any one agency in particular:

- Immediately assess the victim's need for emergency financial intervention. In cases of physical assault or larceny with contact, the elderly victim's eyewear or hearing aid may be damaged or destroyed. The loss of or the damage to these items can significantly impede the victim's ability to resume everyday activities. Work with local agencies to identify emergency sources of funds to replace or repair eyewear or hearing aids. It is also critical to determine which medications might have been taken and need to be replaced immediately to avoid a potential life threatening situation. Work to identify agencies or pharmacies that will financially assist elderly crime victims in replacing their medication in an emergency situation.
- Variations in climate can also create life threatening situations for the elderly. When the crime has occurred in the home, it is important to repair damaged doors and windows to prevent heat or cooling loss as quickly as possible. The victim service professional should compile a list of local agencies, community or church groups that can provide this service at little or no cost to the victim.
- In cases which involve the theft or robbery of the elderly victim's money, pension or social security check, contact the victim immediately to determine the need for emergency financial assistance to buy food, medication or pay utility bills. Assist the victim in reporting the loss and filing for emergency replacement checks with the Social Security Administration or victim's retirement fund. If the money cannot be issued immediately, work with food banks to ensure that the victim will have food until a replacement check can be issued; also, work with the utility company to ensure that the elderly victim does not lose electrical service. These are potential life threatening situations often overlooked.
- Provide frequent breaks when interviewing the elderly victim. Sitting or standing on arthritic joints can become very painful, and can result in extreme stiffness in a short time. Allow the elderly victim to move around to reduce strain and swelling.
- Be aware that elderly victims may have complicated medication schedules or illnesses that call for frequent meals or snacks. Work with the victim or his or her family to determine such special needs. This information is important for a number of reasons. One, allowing the victim to control his or her schedule can reinstate some sense of "control" that may have been lost due to the victimization; second, some victims require food or medication at very precise intervals to remain healthy and mentally alert. If a meal or medicine is missed or significantly delayed, the victim may give the appearance

of being seriously confused, agitated and/or disoriented when, in fact, they are suffering from a lack of food or medication, such as in cases of diabetes.

- Talk to the victim or to the victim's family to determine the time the victim will be most alert, and schedule appointments or court appearances around these times, if possible. Consider the elderly victim's need to nap periodically throughout the day, and provide a quiet area for them to relax and rest if appointments or court appearances cannot be scheduled around these needs.
- Determine if the physical space in your office or in the court room needs to be adjusted to meet the needs of the elderly victim. If the elderly victim is confined to a wheelchair, make sure that access to your office or to the courtroom is clear of clutter. If the victim is hard of hearing, determine if turning up microphones in the courtroom will help the victim to better hear court proceedings. Sometimes, difficulty in hearing and not answering the questions correctly may be seen as confusion and uncertainty, rather than a physical limitation. These small gestures can provide the victim with a sense of dignity while minimizing any negative effects their physical limitations might impose. The same consideration should apply to elderly victims dependent on walkers or canes.
- Attempt to close the meeting room or court room to the public in cases of elderly rape or sexual abuse.
- Consider having program brochures or informational resources printed in larger type for elderly victims. Something as simple as an increased font size will significantly help visually impaired elderly victims understand services and programs available to them. Some programs have recorded program information on an audio tape to aid the visually impaired victim.
- When feasible, conduct "home or hospital" visits to obtain all related case information including restitution, victim compensation or presentence information rather than making the elderly victim "come" to you. To many elderly persons, even a short outing can cause extreme fatigue and mobility problems.
- Determine the transportation needs of the elderly. Many elderly persons have little access to dependable transportation, especially in rural areas. Additionally, weather conditions can adversely affect elderly persons and the medications they take. For example, some heart and blood pressure medications make the patient extremely susceptible to heat or cold. When the elderly victim is dependent on public transportation such as a subway or bus, long waits in extremely hot or cold weather do seriously affect them. Additionally, icy or snowy conditions in coming to court or to office appointments can increase the chances of sustaining additional illnesses and injuries. When at all possible, provide the elderly victim with transportation to and from all court-related meetings or hearings.

Victims of Elder Abuse

As the average life expectancy increases due to better medical and personal health care, the costs associated with the increase in longevity have skyrocketed. Today many families find that they cannot afford skilled nursing home care for their elderly parents or grandparents and, as such, more and more families must now assume a greater share of the "at home" care and expense for these family members.

- It is estimated that as many as 80% of the elderly are forced to receive care at home due to the rising costs of medical and skilled nursing care, which places added financial and physical stresses on these families (Tatara, 1992).

Our society is witnessing an increase in abuse and neglect towards the elderly by family members, in-laws or "paid" home-based care givers. Acts of abuse and neglect include:

- Physical abuse -- non-accidental use of physical force that results in bodily injury, pain or impairment.
- Emotional and/or psychological abuse -- willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other verbal or nonverbal conduct.
- Neglect -- willful (intentional) or non-willful (passive neglect) failure by the care giver to fulfill their caretaking obligation or duty to meet the needs of the elderly. This can include: isolation of the victim, over medication of the victim, leaving the elderly victim to live in unsanitary living conditions, failure to provide adequate food, water and heat.
- Sexual abuse -- non-consensual sexual contact of any kind with an older person.
- Financial or material exploitation -- unauthorized conversion, transfer or use of funds, property or resources of an older person for personal gain (Tatara, 1992).

Unique Characteristics of Elder Abuse

Elderly victims suffer the same psychological affects of domestic abuse as do younger victims of domestic violence. Some unique characteristics of elder abuse include the following:

- The abuse is rarely an isolated event, but one that is normally repeated over and over.

- Elder abuse is found among families of all racial, ethnic and socio-economic backgrounds.
- Victims feel trapped in situations in which they have little control and no chance of escaping. Elderly abuse victims may have even fewer options for leaving an abusive environment than younger victims of domestic abuse.
- There may be no other family member to live with that can assume the physical or financial demands of caring for them. Many of America's elderly do not have the funds necessary to place themselves in a "cost for service" facility or retirement housing unit.
- Due to physical limitations or mental infirmities, elderly victims may be unable to protect themselves from further abuse or neglect once they report the abuse.
- In other cases, family members may not believe an older person's claim of abuse.
- In many cases, the elderly may be embarrassed within their community to report that a child they raised would resort to such behavior -- reflecting poorly on them as parents.

Barriers to Reporting Abuse

According to a report released in 1990 by the Subcommittee on Health and Long-Term Care of the Select Committee on Aging of the U.S. House of Representatives, it is estimated that *only* one out of every eight cases of elder abuse are reported (Subcommittee on Health and Long-Term Care, 1990).

Some elderly victims may be fearful of destroying their children's marriages if they report their son-in-law or daughter-in-law for abuse and/or neglect. For many elderly, it is safer to remain silent and they often fall into a pattern of "learned helplessness" or "resignation" over time (National Victim Center [NVC], 1995).

In almost all states, laws have been drafted to address elder abuse and neglect that specifically requires the reporting of elderly abuse and neglect just as in the cases of child sexual and physical abuse and neglect. Physicians, care givers and social service personnel are required in these states to file a report of abuse to local law enforcement agencies for further evaluation.

(Portions of the above section were excerpted from *Focus on the Future: A Systems Approach to Prosecution and Victim Assistance*, Nation Victim Center under a grant from the U.S. Department of Justice, Office for Victims of Crime, 1995.)

Types of Elder Abuse Victims

Typically, the elder abuse victim tends to be female, above the age of 75, and lives with the perpetrator of the abuse. Due to a range of physical and mental impairments, the victim generally requires extensive physical care. The abuser tends to be related to the elderly victim and is more often female. Many abusers have alcohol or drug dependency problems and live under severe stress. Based upon research, the percentage of abusers by category in relation to their elder victims is as follows (Tatara, 1995, pp. 9-17):

■ Adult Children	35.0%
■ Spouse	18.4%
■ Other Relatives	22.4%
■ Non-family care giver	6.3%
■ Friend or Neighbor	5.2%

Emotional abuse and neglect is most often found to be perpetrated by a female family member or caregiver. Physical and sexual abuse is most often perpetrated by a male family member or caregiver.

One-third of elderly abuse and neglect occurs in an institutional setting, and is not relevant to this section since it primarily addresses interfamilial abuse.

However, this topic is introduced to provide a scope of the severity of the topic. Care givers at an institution have a legal or financial contractual agreement to provide care for the elderly. Institutions may include:

- Hospitals
- Nursing homes
- Group homes
- Foster homes
- Day care facilities for the aged

Civil, as well as criminal, remedies can be sought when physical, emotional, sexual abuse or neglect is perpetrated against the elderly in these facilities. Just as in a home situation, victims of elderly abuse often suffer intense threats and intimidation by care giver personnel to keep the disclosure of the abuse to a minimum.

Promising Practices

Victim Assistance Services for Victims of Elder Abuse

Victim assistance services provided to victims of elderly abuse and victim should be similar to those offered to victims of domestic violence:

- Information, referrals or removal to safe havens should be arranged once the report of abuse or negligence is made. This will most often fall to the state's department of protective services. They may look for foster care or additional family members to provide services and support to these aged victims.
- Obtaining protective orders, along with a thorough explanation as to the reporting of any threat or act of intimidation by the defendant or a representative on his or her behalf, should be offered. Due to their physical vulnerability, elderly victims may be more unwilling to prosecute cases in which they fear there will be defendant or family retribution.
- Information about mental health counseling services and support groups within the community should be provided. The emotional ramifications of charging your child with physical abuse and/or neglect can be immense.
- Transportation should be arranged for those that need assistance and, if the victim is bed-ridden, locate a mental health therapist willing to make "house calls."
- If possible, "senior" companions from an elderly community-based service program should be investigated to aid elderly victims. Senior companions can provide support, encouragement and a supportive ear for elderly victims without a strong family support system. Often this support system will assist elderly victims more than any other service the victim assistance professional can provide.

Medicare and supplemental medical coverage will seldom cover the cost of mental health counseling. It is important that the victim or a supportive family member receive an application and information for filing a claim to the state's victim compensation program.

If the elderly victim does not have a support system, the victim service professional should assist the victim in completing the application and mailing it on behalf of the victim. The victim service professional should continue to update the filing of all new bills to the compensation program. The victim and supportive family member(s) should be given information concerning their right to file for civil recovery against paid caretakers to recover medical or financial losses should the alleged defendant not be found guilty or restitution not ordered.

Elderly Victims of Sexual Assault

For many elderly women -- raised in a time when sexual matters were never discussed in the open -- becoming a victim of sexual abuse or rape represents the worst crime possible. To have to air one's private sexual life in the public arena of the criminal justice system is unfathomable.

- To many older victims, it is the worst form of lost dignity. There may be profound shame in discussing the crime, or participating in a medical exam with law enforcement and medical personnel.
- In some rural areas, the rape victim may have never had a pelvic exam, giving birth to her children at home and with the assistance of female family members or a midwife only.
- There may be feelings of embarrassment that family members and/or neighbors will find out, or that the media may somehow access and release the information to the community.

For some, the fear their religious community will discover the rape is unbearable. Some elderly victims are still surrounded with embarrassment about sexual activity, and have never discussed it, even with their children. Elderly victims may also suffer much anguish from the fear of contracting a sexually transmitted disease at their age.

As an added insult, a large percentage of elderly women are raped in their own homes during the commission of another crime -- such as burglary. This type of assault may intensify the older woman's sense of a loss of control. She can't control who enters her home or what happens to her body.

- The shame and guilt may be overwhelming. The elder rape victim may be asked to perform sexual acts that she has never done before, often degrading and humiliating her.
- These acts may have been condemned in her religious training or within her culture. Being forced to perform oral or anal sexual acts may also intensify her feelings of helplessness and shame.
- It is thought that some elder rape victims do not report these crimes for the very reason that they cannot talk about being made to perform such acts.

Rape in older victims can increase the chance of sustaining serious injury. Vaginal linings are not as elastic as those of a younger woman due to hormonal changes; this proclivity towards increased sexual trauma may cause infections, bruising, or tears that may never fully heal.

Brittle bones such as the pelvis and hips can be more easily broken or crushed by the mere friction and weight of the rapist (NVC, 1995).

Promising Practices

Elderly Sexual Assault Victims

Law enforcement protocol should be used when responding to the needs of the elderly sexual assault victim. This protocol should include training for first-responders as to the emotional consequences of rape for the older woman; assigning a female officer to question and accompany the victim for medical care and rape exam when possible; community-based programs and services for referrals; seeking the victim's consent before any contact is made with the victim's family, where possible; allowing the victim to retrieve a change of clothing so she is not released in hospital garb or inappropriate donated clothing; seeking the victim's consent prior to calling in a rape crisis advocate for emotional support both at the hospital and after release; ensuring the victim is shielded from any and all media if she so requests; providing information on security options; and perhaps most importantly, ensuring the victim has a safe place to go after the medical exam.

Victim assistance professionals can:

- Assist the victim in determining a need to relocate either temporarily or permanently, based on the victim's wishes and feeling of safety and help the victim find shelter or funds to relocate if a decision is made to do so.
- Work with community programs to repair damage to windows, doors or locks damaged or destroyed as a result of the crime if the victim is unable or does not wish to relocate. Have law enforcement personnel conduct a safety check of the home and work with the victim to increase her security options.
- Provide the victim with information on her rights to file for crime victim compensation, and help her complete the application if the victim so desires.
- Make sure the victim has referral information to mental health providers and support groups.
- Work with the victim's family members or friends, if consent is granted by the victim, to help them understand the emotional ramifications of the sexual assault.
- If no family support network is available, close contact should be maintained with the victim to help increase her feelings of self-worth. After a sexual assault, many elderly

victims will further isolate themselves from friends, family or community networks. This contact may provide the comfort and support she needs in increased phone calls or home visits.

- Keep the victim apprised of any arrest or release of the offender. This serves two purposes: to increase the victim's sense of safety if the offender is detained; and if not detained, to prepare the victim to take extra security precautions. The victim should be notified of the procedures to report any threats or intimidation by the defendant.
- Protect the elderly sexual assault victim at *all* costs from *all* publicity! Victims should be shielded from media attention, and *never* identified by the media. Advocates should ask the judge to close the courtroom to the public -- at least while the victim testifies. A secure waiting area should be provided during all court-related hearings or trials. Whenever possible, escort the victim to and from the courtroom.
- Work with prosecutor's office to establish protocol for *fast-tracking* and *vertical prosecution* of sexual assaults against the elderly. Fast-tracking will alleviate the additional stress of lengthy delays in court-related hearings; vertical prosecution will minimize the number of times the elderly victim has to recount the details of the assault.

Elderly Victims of Financial Schemes or Frauds

Elderly victims are targeted for crimes of a financial nature more than any other type of victim population. Although the elderly victim of fraud will not sustain any direct physical injury, the psychological impact of this type of crime can be devastating.

- Many victims blame themselves for the loss of their life savings.
- Out of this blame, elderly victims can suffer additional health problems from stress, depression, insomnia and loss of appetite.
- Some elderly victims will feel shame for not being more savvy in recognizing "cons," making some victims reluctant to report the crime out of fear that family members may blame them for mismanagement of finances, and seek to terminate their financial independence.

A vast majority of our elderly population live on *fixed incomes*. The financial impact of a crime of fraud can be devastating to those living on fixed incomes. They can lose their entire life savings and sometimes their homes. For some elderly victims, the crime costs them more than money because some must give up their last vestige of independence when forced to move in with adult children or other family members out of financial necessity.

Promising Practices

Working with Elderly Victims of Fraud or Financial Schemes

- Provide creditor/landlord intervention if the victim is left with too few funds to pay his or her bills.
- Provide the elderly victim (or family members) with information on the victim's right to file for civil recovery.
- Ask the court to order restitution so the elderly victim is paid before court cost, fines and attorney fees are collected. Request that the court permit the Court Clerk's office to pay-out partial payments to the victim -- as restitution payments are made. (Many jurisdictions allow for restitution payments only after the full amount of restitution has been paid. In cases of fraud, there may be multiple-victims, and the order for reimbursement should be made based on financial need).
- Encourage judges to impose sentence enhancements for vulnerable victims in suitable cases. Encourage prosecutors to consider large up-front payments to elderly victims as a routine part of any plea settlement in cases involving fraud.
- In allowable states, assist the elderly victim in recording a lien against any real property of the defendant through appropriate court procedures.

Elderly Victims of Violent Crime

Statistically, elderly citizens are the least likely to be physically injured in the commission of a crime. However, when injuries *are* suffered, they tend to be more serious due to the normal physical vulnerability of the aging body. According to national statistics for 1987 to 1992, the elderly are twice as likely as any other age group to be seriously injured and require hospitalizations when victimized. Elderly robbery victims are more likely than their younger counterparts to face multiple offenders and offenders armed with a gun (Bureau of Justice Statistics, 1987).

Most homicide victims age 65 or older were killed during the commission of another felony (like robbery) and were more likely to be killed by strangers. By contrast, younger homicide victims are more likely to be killed by an acquaintance and to die during events such as a fight or family argument (Bachman, 1992). The elderly are less apt to try to protect themselves than their younger counterparts. As part of the aging process, the elderly have an increased frailty that makes them more susceptible to physical injury and less able to recover from such injuries.

Even slight resistance during a criminal incident may result in serious injuries for an older victims. For example, as a victim of a mugging, a younger person may experience only minor bruising or scraping as a result of being pushed to the ground. For the elderly victim, there is a marked increase in sustaining serious injuries, such as broken bones or concussions -- injuries from which they may not fully recover.

Promising Practices

Working with Injured Elderly Victims

- Establish an interagency agreement between local law enforcement agencies (sheriff and police) and the appropriate agency representing the rights of the elderly (normally the state's Department of Human or Social Services) to be contacted when a police or social worker responds to a report of elderly victimizations with injuries.
- Establish a policy of providing hospital or home visits (only if the victim is stable or his or her family is receptive) to inform the victim and his or her family of available services. Use this time to determine specialized needs such as food shopping, transportation to and from doctors appointments and drug stores. Provide information on witness intimidation and harassment and security options. It might be a good idea to take a victim compensation form with you. Explain the benefits under your state plan and assist the victim in applying for compensation. For example, provide victims with several self-addressed stamped envelopes to forward the application to your agency, and ask that as they or family members receive medical or counseling bills, these to be forwarded to your agency as well. Obtain a police report for the victim; and, mail the package to the compensation program on behalf of the victim.
- Determine the physical extent of injury to the victim and any special assistance he or she may need in attending meetings and court-related hearings once released from the hospital and/or physician's care. If the elder does not have family in the nearby area and depends on public transportation, getting to and from court or medical appointments can be difficult if the victim is in a wheelchair or uses other mobility aide such as canes or walkers. Work with local agencies to determine services available to help the elderly with transportation issues.
- If the elderly victim is to be hospitalized for an extended length of time, be prepared to work with your local utility and phone companies to ensure that the injured victim will have electrical and phone service when he or she returns home. The phone may be his or her only life-line to emergency medical care upon return.

- Alert the prosecuting attorney of any extended hospital or physical therapy stay anticipated for the elderly victim. This information will be useful in determining when to hold police line ups, filing of charges, bond hearings, etc.

Elderly Victims of Burglary

For many elderly, their world becomes the area immediate to their home as they begin to lose networks that have supported them throughout their life. They retire from jobs, friends and family members begin to die, and outside leisure activities decrease due to increasing physical or mental limitations. Largely, this explains why the majority of elderly crime victims are victimized in or near their home.

Burglary's Impact on Elderly Victims:

- The larceny of even a small amount of money means many elderly victims must go without food, medication or other necessities, especially if the victim lives on a fixed-income.
- Undue hardship may occur when paying for property damage resulting from a crime.
- Hardships are possible in finding extra money to replace stolen items. Even with insurance, there may be large deductibles and depreciation on the items, making the replacement of stolen items difficult, if not impossible.
- The loss of items deemed non-important to many younger people poses life-changing impact on the elderly. For example, the loss of a TV or radio can further restrict the elderly's outside communication and further isolate them from society.

The sentimental loss of possessions stolen during a burglary is often far greater for the elderly. Their grief and emotional trauma may be extreme. It may be helpful for victim assistance personnel to work with family members so they can understand the emotional ramifications of the burglary on the victim.

Elderly victims are more likely than any other burglary victims to want to relocate after the crime, but financial limitations may not allow such a move. Although few, there are several federal, state and community programs that do help with the financial burdens of relocation. (A list of these resources is contained at the end of this chapter.)

In the event the elderly victim does not wish to move, he or she may experience an emotional need to withdraw from community involvement. As soon as possible after the crime is reported, it is important to restore a sense of security and safety to the elderly victim of burglary.

One approach is to conduct a thorough search of the property to identify points of entry that may need to be repaired or further secured. If the victim is unable to afford the repairs, replacement or increased security options, a list of community resources that can help should be provided to the victim or contacted on behalf of the victim.

Promising Practices

Elderly Victims

- Learn all local and state statutes applicable to elderly abuse and neglect and your professional role in carrying out these mandates.
- Learn of all local, state and national agencies and community support programs to form a solid framework for referrals for services. Be especially aware of safe havens for the elderly and any funding requirements or time restrictions entering and remaining in such havens.
- Create a multi-disciplinary team approach of working with the elderly abuse victim by including representatives of the law enforcement and criminal justice system, state health and human service organizations, social security administration, nursing home officials, medical community, local clergy and local community-based elderly programs especially those dealing with domestic abuse. The multi-disciplinary team approach should define and clearly delineate each agency's role in the reporting of elderly abuse, and in referring or providing the elderly victim with additional services.
- Attend seminars and meetings, and work closely with programs designed to educate the community and professionals about the changing trends concerning elderly issues.
- Work with local law enforcement and criminal justice personnel to "fast track" cases of elderly abuse through the justice process.
- Work closely with local community-based domestic violence assistance program(s) to learn the dynamics of elder abuse. If no specialized programs and services exist, work with local programs to establish such services. Consider adding the expertise of a senior citizen with a background in elderly abuse to serve as a liaison in matters pertaining to the elderly.
- Incorporate senior citizens as volunteers where appropriate. Most often, people relate best to someone of their own generation. Senior citizen volunteers can provide many

services that busy professionals often cannot. They are more often able to initiate home visits and referrals; provide court accompaniment and transportation; serve as a warm and caring friend and advocate; and be a useful resource in determining special needs, fears or concerns for professional administration.

Preventing/Addressing Elder Abuse

Although each state has a different system to address elder abuse, the following agencies have been established by federal, state and local governments to help:

State Elder Abuse Hotlines: Many states have instituted a 24-hour toll free number for receiving reports of elder abuse. These calls are confidential.

Adult Protective Services: In most jurisdictions, either Adult Protective Services or the County Department of Social Services is designated as the agency to receive and investigate allegations of elder abuse and neglect. If the investigators find abuse or neglect, they are mandated to make arrangements for services to protect adult victims.

Medicaid Fraud Control Units: Every State Attorney General's Office is required by federal law to have a Medicaid Fraud Unit to investigate and prosecute Medicaid provider fraud and patient abuse or neglect in health care programs that participate in Medicaid, including home health care services.

Law Enforcement: Local police, sheriff's offices and prosecuting attorneys may investigate and prosecute cases of elderly abuse and neglect. In states where statutes make elder abuse a crime, there may be a requirement to report all suspected cases to a law enforcement agency.

Long-Term Care Ombudsman Program: Since the passage of the 1975 Older Americans Act, every state has established a Long-term Ombudsman Program to investigate and resolve nursing home complaints, including elderly abuse and neglect.

Information and Referral: Every area Agency on Aging operates an information and referral line that can refer people to a wide range of services for people who are 60 years and older. These services can be particularly helpful in locating services that can help prevent abuse and neglect.

National and State Information: Often people who want to help older relatives or friends do not live near them. Long-distance caretakers can call a nationwide toll-free Eldercare Locator Number (1-800-677-1116) to locate services in the community in which the elder lives. In addition, some states have established a statewide toll-free number to provide centralized information on aging services for state residents.

(The preceding section excerpted from the *Focus on the Future: A Systems Approach to Prosecution and Victim Assistance* training manual developed by the National Victim Center under a U.S. Department of Justice, Office for Victims of Crime grant project, 1995.)

Promising Practices

Effective Communication Techniques with Older Adults in Stressful Situations

- Only fifteen percent of all adults over the age of sixty-five have serious visual impairments and over one-third are affected by documented hearing loss. Do not assume that an older adult has a sensory or cognitive impairment.
- Choose an environment most conducive to communication. Eliminate factors that interfere with listening. Minimize any distractions such as excessive background noise or interruptions by other staff members.
- Assure adequate lighting without glare. If reading is required by the older adult, provide enhanced lighting. If the elderly adult needs to identify information on a board or flip-chart, allow him or her to approach the documents rather than sitting in a chair and straining to read or identify it.
- Sit or stand facing the older adult at their eye level. This will ensure that your eyes and mouth are clearly visible. If the older adult has documented hearing loss, make sure you have their attention before you begin to speak.
- Keep instructions short and simple.
- Keep your voice and mannerisms calm.
- *Do Not Shout.* If necessary, speak slightly louder without shouting or yelling. Continue to raise your voice as the elder instructs you. If audio equipment is used, slowly turn the equipment up until the elder indicates he or she can hear it. Do not automatically assume he or she is hard of hearing and set the equipment on high.
- Ask questions to clarify confusion, but ask only one question at a time and allow for a response before asking another question. Allow plenty of time for hearing, comprehending and understanding.
- Be sensitive to whether the older adult is tired, not feeling well or becoming too upset. Allow breaks were possible for the taking of food, medication or moving about.

- Observe closely for nonverbal clues to see if you have been understood. For example: squinting of the eyes or a blank expression.
- *Be patient.* Expect to repeat what you say often or to rephrase questions.
- *Never interrupt.* It discourages free speaking and interruption may cause an older adult to forget what they were going to say.

(The preceding section excerpted from the *Focus on the Future: A Systems Approach to Prosecution and Victim Assistance* training manual developed by the National Victim Center under a U.S. Department of Justice, Office for Victims of Crime grant project, 1995.)

Elderly Victims of Crime

- 1) What are the five types of elder abuse and neglect?

- 2) Identify three “promising practices” for victim service providers for helping elderly victims.

- 3) What are three special concerns of elderly victims of sexual assault?

- 4) What are three specific services that can be offered to elderly burglary victims by victim service and law enforcement professionals?

- 5) Discuss the difference(s) between elder abuse and neglect and elderly victimization.

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Chapter 19

The Criminal Justice Continuum

Case Study

Abstract: Although a thorough review of history would reveal that victims have long played a major role in the administration of justice, recent history and practice have served to systematically exclude the victim from the justice process. In fact, the “criminal” justice system has only recently begun to restore and establish rights for and enhanced treatment of crime victims. This module will present a hypothetical crime scenario presented to a panel of criminal justice representatives and serve as a vehicle to walk through the “victim” justice system. This examination will demonstrate the existing rights of victims, and those circumstances under which additional rights can and should be implemented.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. How a case moves through the criminal justice continuum -- from arrest through incarceration.
 2. The contrast between the treatment of offenders and the treatment of victims by the criminal justice system.
 3. The role and responsibilities of key players in the criminal justice process -- law enforcement, prosecution, judiciary, probation, corrections, parole and victim services.
 4. The critical differences between the adult and juvenile justice systems at each stage of the criminal justice continuum.
-

Introduction

The American system of justice provides many safeguards established to protect the rights of the accused and to insure the humane treatment of those convicted of crimes. In its institutionalized zeal to protect the rights of alleged and convicted perpetrators, this “criminal” justice system has evolved in a manner that typically does not extend equal rights or protections to the victims of crime. In fact, many victims describe their exposure to the criminal justice system as a “secondary victimization” inflicted upon them by the agents and practices of that system.

In order to gain a better understanding of the contrast between the treatment of victims and offenders in the justice system, it is important to review the provisions of that system and the treatment offered to both parties. The following is an analysis and comparison of the criminal justice system’s response in relation to offenders and victims.

Treatment of Offenders

In contrast to the victim, the offender makes a cognizant choice to commit a crime or criminal act against an individual. Most offenders are not arrested, and those who are apprehended are afforded constitutionally protected rights immediately upon their arrest. Offenders must be informed of their rights immediately. If injured, medical attention must be given to them at the earliest opportunity. Offenders are arraigned within specific time periods, and their cases are reviewed for legal findings to ensure that their arrest was legal and that their pre-trial incarceration is warranted. Many offenders are released on their own recognizance or released on bail. In addition:

- Food, adequate housing, television, and medical services are provided to incarcerated offenders.
- Indigent offenders are given the services of court appointed attorneys.
- Legal provisions provide opportunities for charge reductions or plea bargaining without the input of the injured party: the victim.
- Offenders can waive time for court proceedings or request that the court consider moving the case to a new jurisdiction.
- Various legal provisions and court rulings provide the defendant with myriad protections and opportunities for motions to suppress evidence or dismiss charges.

- Convicted offenders also have the right to appeal their convictions through any number of legal proceedings that can continue for years.

If convicted, defendants are afforded a variety of punishment options, with the majority of convicted offenders receiving sentences of probation. Opportunities for job training or education programs are provided to some offenders at full expense to the taxpayers. Due to prison overcrowding, most prisoners are eligible to earn “good time” credits, which serve to reduce their sentence, while others become eligible for early release. Many participate in rehabilitative programs to assist them in the restoration of their lives. Finally, upon release, offenders on parole are given assistance in obtaining jobs, places to live and additional support services.

Treatment of Victims

Conversely, the victim has no choice in whether or not they become a crime victim. Victims who incur medical expenses as a result of injuries sustained due to crime are required to pay those expenses:

- For those who *do* have insurance, many are required to pay deductibles or uncovered expenses. Increases in premiums following claims resulting from crimes are common.
- Additionally, many are in need of psychological counseling that is frequently not covered by medical insurance.
- Similarly, those who suffer property loss must assume full responsibility for the replacement of all items lost or destroyed.
- The economic impact of crime upon victims also includes any losses suffered from brief or extended periods of time in which they are unable to work.
- Victim compensation programs are seldom able to cover all of a victim’s financial losses.

Many jurisdictions do not extend rights to victims in regard to obtaining information about the progress of their case. In efforts to protect the rights of the offender, victims are excluded from obtaining select information about the investigation, arrest, prosecution, or incarceration of the offender. Should offenders be arrested in “their” cases, many victims will have to assume all expenses associated with attending a number of court proceedings. Others are inconvenienced by the frequent continuances and legal maneuvering of the court process:

- Many victims are required to give numerous statements regarding the circumstances of the offense as they venture through the criminal justice system.
- Often, they are excluded from participation or consultation regarding any plea bargain agreements.
- With the exception of one state, victims are not entitled to legal representation, and are only served by the representation of the prosecuting attorney who, in reality, acts on behalf of the state.
- The victim has no right to make motions or introduce evidence, protest the suppression of evidence, or appeal any rulings or dispositions arrived at by the court.
- Provisions that guarantee “speedy” proceedings do not apply to victims.

In some cases, victims are never notified of the disposition of the case, nor are they afforded an opportunity to provide input into the sentencing process.

- Most victims do not have any right to mandatory restitution or reimbursement for financial losses incurred as a result of the crime.
- Many victims are subjected to continued harassment and intimidation from the offender without aggressive efforts to protect them from harm.

If the offender is incarcerated, some victims have no access to information about the offender or opportunities for input into the parole process. Victims receive no “time off” for good behavior, nor does the state afford them comprehensive opportunities for rehabilitation or reconstruction from the impact of the crime upon their lives.

Perhaps most significant, many victims experience a loss of faith and belief in the efficacy and inherent justice they previously thought existed as a part of this country’s well regarded justice system.

Panel Discussion

In order to further demonstrate both the changes made in support of extending rights to victims and the remaining inequities that exist within the criminal justice system, it is beneficial to review a hypothetical case as it progresses throughout that system.

Toward that end, this session has been developed to provide Academy students with an opportunity to observe a panel of criminal justice experts representing the various segments of the criminal justice system as they are presented with the facts of the hypothetical case.

The panel will include representative from the following perspectives:

- Law enforcement
- Victim/witness services
- Prosecution
- Juvenile justice
- Judiciary
- Probation
- Corrections
- Parole

During this presentation, each panelist will be provided with increasing amounts of information as the case progresses through each juncture of the criminal justice system. At each juncture, panelists will be asked to respond to questions regarding the victim's right to participate in or obtain information or services from the criminal justice system.

Throughout the panel, and upon completion of the presentation and discussion by panel members, students will be given the opportunity to ask questions and request explanations regarding the responses of panelists. This interactive process will serve to examine the full continuum of the "victim justice system."

Hypothetical Case

Loretta Martinez had just returned home after a long day which included work, picking up her children (ages eight and ten) at the baby sitter's house, and shopping for groceries. It was just past sunset and it had just turned dark. Loretta pulled into the garage and opened up the entry door from the garage into the house. Immediately upon entering the house, Loretta was surprised by an abrupt and painful blow to her head. She immediately fell to the ground and saw a large man with a scar across his face and a skull and cross bones tattoo on his forearm standing above her. Her assailant then ran toward the back of the house; she lay there thinking about the safety of her children who had witnessed the event while still inside the car. Not knowing for sure whether or not it was safe to go further into the house, Loretta pulled herself up and staggered from the house toward her neighbor's home, summoning her children to follow quickly.

With the assistance of neighbors, the police were called and arrived on the scene within a short time. Police told Loretta that she had likely surprised a burglar who assaulted her and then fled her home through a back window. Neighbors later told police that they had seen a man similar to the one described by Loretta jump into a car driven by a young woman. Police told Loretta that it appeared several electronic and household items had been taken, and that her house had been ransacked. Frank Martinez, her husband, worked the night shift and usually did not arrive home until midnight. Police located him at work and, upon being contacted, he returned home immediately.

Mr. and Mrs. Martinez speak Spanish as their primary language, and have limited knowledge of the English language.

1. Law Enforcement-suggested Questions

- What are the duties of the first officer to arrive upon the crime scene?
- Will the officer summon emergency medical personnel or transport the victim to the hospital?
- Will a crime victim's advocate be called to the crime scene?

- Will an interpreter assist in the initial investigation?
- Will information be given to the victim regarding the availability of services or the location of any victim service programs?
- If Ms. Martinez had required hospitalization and her husband had not been located, what would the police do with or about her children?
- What kind of information is available to the victim through the police department as the case progresses?
- Does Loretta have any opportunity for input if either of the defendants is being considered for potential release from custody?

Additional Questions from Academy Students:

- 1)
- 2)
- 3)

Two days later, a detective contacts Loretta and notifies her that two suspects have been arrested -- an adult male and a juvenile female -- after a neighbor provided police with a car license number and description of the car. The man in custody fits the description given by Loretta, having both a scar and a tattoo exactly as she described. The police have recovered some of the items taken from the Martinez home. She is told that the prosecutor is presently reviewing the facts of the case. Loretta and her children are beginning to experience nightmares and psychological difficulties. Her husband has been unable to sleep since the incident occurred. Loretta is still undergoing medical treatment.

2. Prosecution-suggested Questions

- Will the Martinez family be able to obtain any information regarding the status of its case?
- Will any property recovered be returned to the Martinez family?
- Can Loretta obtain a copy of the police report?
- Will Loretta be asked for input prior to any charges being filed?
- Will Loretta be asked for input should a plea bargain agreement be discussed?
- How will the prosecution of the juvenile be different from that of the adult?
- Will a victim/witness advocate be assigned to the case?
- How does the subpoena or victim notification process work?

Additional Questions from Academy Students:

- 1)
- 2)
- 3)

The prosecutor decides to charge the adult male with assault and burglary. The juvenile accomplice agrees to a sentence that includes probation, restitution and community service.

3. Courts/Probation-suggested Questions

- Will Loretta be able to make an impact statement at the time of sentencing, in writing or in person?
- If the Martinez children are required to testify, how will they be treated?
- Will interpreters be available to assist the Martinez family during court proceedings?
- Does the Martinez family have the right to be present at all of the criminal justice proceedings?
- Are all victims notified of the disposition in their cases, whether the offender is an adult or juvenile?
- What are Loretta's rights to restitution (if any)?

Additional Questions from Academy Students:

1)

2)

3)

After the court proceedings have concluded, the Martinez family is notified that the adult offender has been convicted of a variety of crimes, including burglary and assault. The judge sentences the man to state prison; the juvenile is placed on probation.

4. Corrections-suggested Questions

- What kind of information is available to Loretta regarding the incarceration of the offender (i.e., his classification, location, etc.)?
- Can Loretta expect any restitution while the offender is incarcerated?
- What happens if the offender contacts or in any way harasses Loretta or her family while incarcerated?
- Can Loretta request notification of when the offender is going to be released?
- Are notification materials available in languages other than English?

Additional Questions from Academy Students:

- 1)
- 2)
- 3)

Loretta realizes that eventually the adult offender will be released on parole. She and her husband have some concerns regarding the release of the offender.

5. Parole-suggested Questions

- Can Loretta request notification of the expected parole consideration date of the offender?
- Can Loretta participate in the parole hearing?

- If the parolee intimidates, harasses or threatens to harm Loretta, can she obtain assistance from the Parole Department?
- Can Loretta have any input into the parole conditions of the parolee?
- What is the likelihood of Loretta obtaining restitution as a condition of parole?

Additional Questions from Academy Students:

- 1)
- 2)
- 3)

Final Discussion

Academy students will participate in a discussion regarding their findings about the overall operation of the “victim justice system.” Students will be asked to identify areas that need improvement. Each student will be asked to critique the panel discussion, and to identify where legislative or policy action can be taken to establish or enhance the rights or treatment of crime victims.

List of Issues and Concerns of Academy Students (if applicable):

- 1)
- 2)
- 3)
- 4)
- 5)



Chapter 20

Mastering the Information Age

Abstract: The Information Age holds tremendous promise for victims of crime and those who serve them. Innovative technologies are being utilized to streamline the criminal justice process, create a “seamless” delivery of services to constituents including victims, and strengthen our nation’s capabilities to assist and serve victims. The wide-ranging potential offered by the Internet provides information and resources on-line, including many from the U.S. Department of Justice, any time to victims and service providers.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. Barriers to the implementation of technologies that benefit victims.
2. How technologies can be utilized to streamline the delivery of justice, as well as victims’ rights and services.
3. The resources available on the “Information Superhighway,” as well as how to access them.
4. Victim assistance and criminal justice resources available on-line from the U.S. Department of Justice and allied federal agencies.



Introduction

Information is power.

With the explosion of the information age, and the expansion of the “information superhighway,” victims and service providers have myriad opportunities to augment their individual and collective power by accessing and sharing information electronically. Information comprises the very foundation upon which many victims’ rights and services are based, including information about:

- Victims’ rights mandated by statute and case law.
- Victim services available locally, at the state level or nationally.
- Case status.
- Offender status.
- Research that documents trends in crime and victimization.
- Personal support and resources available to help victims reconstruct their lives following a crime.

In 1995, virtually *all* of these types of information are available on-line to any victim or service provider who has a personal computer, telephone line, and modem.

The growth in technological applications to manage the expansion and development of victim service organizations, enhance case management and tracking information for both victims and offenders, and simplify and expand communications through the worldwide “information superhighway,” holds great promise for the discipline of victims’ rights and services. Knowledge about and use of existing and emerging technologies can save greatly need time, money and human resources for victim advocates, as well as crime victims (Seymour, 1995, p. 1).

The primary purpose of the victim service discipline is to help crime victims obtain three basic objectives: rights, recovery and respect. Yet victims are often barred from securing these objectives by ignorance, mis-impressions, and lack of information. In a very real sense, *information is the key that allows access to victims’ rights, recovery and respect*. Unless victims are made aware of their rights, as well as how and when to exercise them, such rights have no meaning or usefulness. Simply put, *information is the means to victim service providers’ ends*. Indeed, it is the stock and trade of the victim service discipline, and the driving force behind most services for victims of crime. How victim advocates are able to gather, synthesize, analyze,



expand, distribute and dispense this precious commodity has a direct impact on the success of the victims' rights movement (Beatty, 1995, p. 1).

Barriers to the Use of Technology to Benefit Victims

There are five common barriers to the implementation of technologies that could benefit victims of crime:

1. "Technophobia."
2. Cost.
3. Security of victim information.
4. The need for change management.
5. Government and judicial policies relevant to technology.

"Technophobia"

"Technophobia" is the fear of utilizing new technologies. Victim service providers and, indeed, the entire criminal justice system have traditionally operated on a paper basis. The volumes of information relevant to crime victims, in both criminal cases and in the provision of quality services, can generally be found in paper format and files. While some service providers are equipped with personal computers, are able to communicate via facsimile machines, and have access to the "information superhighway" through the Internet, many others utilize no technology applications in their day-to-day activities.

Undoubtedly, the victims' rights movement has been slow to harness the powers of technology. Very real fears exist about technology applications: Will computer files be lost? What if the electricity shuts off and our systems go down? Can we protect the confidentiality of victim information? How can we become "computer literate?"

However, all these and other fears can be overcome with careful planning, training, technical assistance and implementation of technology applications that benefit victims. While initial efforts to become technologically savvy are challenging and, at times, difficult, service providers must view "the big picture" in terms of the time, money and human resources that can be saved through advances in technology, keeping in mind that the ultimate beneficiaries are victims of crime.

Cost

For many grass roots victim service providers and small agencies, the cost of technology appears to be prohibitive to implementation. However, both corporate America and the technology



industry are reaching out to social service organizations to augment their use of technology, as well as their expertise relevant to computerization and management information systems. For example, clearinghouses exist that provide used computers to non-profit organizations for free. More and more victim service agencies are securing the volunteer support of technology professionals on their Boards of Directors or in advisory capacities to initiate and enhance the use of computers. As the competition among technology firms grows more fierce, service providers benefit from the marketing of software packages that are inexpensive and adaptable to most personal computer systems. Furthermore, public policy developments are beginning to support the implementation of technologies that improve the provision of victim services (such as the *Violence Against Women Act* passed by Congress in 1994 that authorizes the use of technologies that benefit victims as a fundable outcome).

Security of Victim Information

Victim confidentiality is a priority for service providers. Much victim information related to the criminal justice system is confidential by law or by agency policy. However, technology today easily accommodates the security of any information that is deemed confidential by the courts, including victim information. Access to computer screens with confidential information can be limited only to authorized users with passwords when software packages are developed. The use of encryption, or “scrambling” of documents that are electronically transferred, further prevents unauthorized access. In developing technologies that benefit victims, careful consideration and planning relevant to the security of specific information must be a priority. This can be accomplished by partnerships among criminal justice and victim service professionals, as well as technology experts who develop software packages and offender management information systems.

The Need for Change Management

Change management is the means by which organizations successfully integrate technology with operations and people. While possessing the most advanced technology to benefit victims is important, it is *not* enough to ensure success. The best system can fail if it is not accepted by the people whose job it is to use it.

There are four key components to change management:

- *Leadership*: Setting and articulating a compelling vision, mission and agenda for change, then making this commitment visible, constant and contagious.
- *Ownership*: Creating an environment for the attitude, motivation and commitment of individuals and groups within and allied to our nation’s victim service discipline,



resulting in “buy-in” and ownership of change from early involvement through the total change process.

- *Enablement:* Providing professionals with the knowledge, skills, processes, technologies, structures, tools and advice to perform new roles in a changing workplace and discipline.
- *Navigation:* Creating the environment to manage, integrate and coordinate multiple change initiatives.

(The preceding section was excerpted from Andersen Consulting, *Change Management* workshop, International Integrated Justice Symposium, June 1995, New Brunswick, Canada.)

For victim service providers, change management means that they must:

- Understand the benefits to victims that technology has to offer.
- Be actively involved in planning activities that relate to applying technology to victim services and criminal justice.
- Be flexible in their willingness to adapt to new ways of doing age-old tasks.

Government and Judicial Policies Relevant to Technology

Often, state legislatures and/or judicial authorities must pass new laws and regulations that guide the implementation of technology. The acceptance of electronic data, imaging and signatures has been accompanied by legal mandates that authorize their acceptance as official documents within the criminal justice system. The National Center for State Courts in Williamsburg, Virginia has shown great leadership in seeking changes in rules and laws that allow for technological advances that streamline justice and benefit crime victims.

Offender Management Information Systems

In the United States today, there is an important and welcome move toward incorporating vital victim information into offender management information systems. Instead of having multiple databases that relate to an offender’s case and, hence, the victim’s case, many jurisdictions are centralizing databases that include victim information with substantial security protections to insure confidentiality.



One example is the statewide automated juvenile justice tracking system utilized in Oklahoma. A variety of data about juvenile offenders is included in the system, such as demographic, social and family information; case status and disposition; gang affiliations; juvenile profiles; and supervision and placement tracking. Two other key elements are victim notification and victim restitution. Juvenile justice and allied professionals who are authorized to access this information (from anywhere in the state, utilizing a personal computer that taps into the centralized database repository) can quickly surmise if the victim has been notified of the juvenile offender's status or release, and if restitution has been ordered, collected and/or paid.

The incorporation of these and other vital data -- such as victim impact information and protective orders -- into centralized offender management information systems, with appropriate security precautions built in to ensure victim confidentiality -- should be a goal of the victims' rights movement.

Case Tracking Technology

An important and recent phenomenon utilizes the power of current technology to track offenders and their victims throughout the criminal justice process. Case tracking serves five important purposes:

- Maintains up-to-date information on an offender's status and release.
- Provides substantial information about access to victim services, and whether or not victims' rights as mandated by law are being upheld.
- Holds the criminal justice system accountable by providing useful and timely data on case dispositions, including arrests, plea bargains, judicial sentences, and time served on actual sentences.
- Provides valuable data about victim and offender typologies.
- Provides law enforcement, criminal justice and victim service providers with historical data related to victims and offenders that can guide their approach to intervention.

The more America knows about criminal activity, the better our nation can be equipped to prevent and combat crime. Equally as important, the more America knows about *victims* -- who they are, what types of services they need and are able to access, and whether or not their rights are implemented -- the better our nation can be equipped to serve and assist victims.



The Automation of Victims' Rights and Services

Technological developments have been particularly beneficial to victims and service providers in two areas: victim notification and victim restitution.

Victim Notification

Approximately half of America's Departments of Corrections have automated victim notification processes. These approaches to the implementation of this significant victims right save time, money and human resources, and ensure that victims are notified of an offender's release or impending parole hearing in a timely manner that is in accordance with law.

The process of automated victim notification generally includes the following:

- Victims who request to be notified of an offender's release (either through a prosecutor, victim service provider, Department of Corrections, or paroling authority) have their name, address and telephone number entered into a centralized database.
- The victim contact information is on a security screen, which means that only authorized personnel (such as the victim service program manager or case records personnel at institutions) have access to it.
- Computerized notification letters designed to provide details on the offender's status, including release, upcoming release hearing, or death, are keyed into the system, and matched to the relevant victim information file.
- At the appropriate juncture mandated by law (such as 60 days prior to release), the letter is automatically printed out by the computer and disseminated by the victim service program (in centralized systems) or case records personnel (in decentralized systems).

The likelihood of victims "falling through the cracks" of notification processes is significantly decreased with the use of automated systems.

Victim Restitution

The frustration many victims face in receiving restitution that has been ordered by a court or paroling authority can be significantly decreased by automated restitution management software programs utilized by a number of courts, correctional agencies, and paroling authorities. Basically, a centralized software system tracks restitution orders and compliance with such orders, and provides victims with disbursement checks, as well as information about delinquent accounts.



One innovative restitution management program features the following functional specifications:

- Links multiple defendants, victims, cases and responsible officials in a single case folder.
- Provides complete financial ledgers.
- Provides for pro rata distribution of partial payments.
- Provides 1,000 different levels of distribution priority.
- Provides for joint and several, as well as partitioned, liability.
- Accommodates the assignment of restitution to third parties (such as insurance companies).
- Calculates “ability to pay” worksheets.
- Determines payment schedules.
- Prints receipts for money collected, either individually or in batch mode.
- Provides delinquency tracking.
- Employs three levels of security.
- Prints disbursement checks.
- Tracks unclaimed funds.
- Provides a comprehensive set of reports including collection reports, case histories, ledgers, impact statements, delinquency reports, and payment reports.

The application of this technology simplifies the complex and frustrating process of restitution collection for the criminal justice system, victims, service providers and offenders, and helps ensure that offenders are held financially accountable to their victims.

The Courtroom of the Future

Today, courtrooms are inundated by massive volumes of paper related to court cases. Original and many duplicate copies of case forms, evidence, pleadings and other documents are standard in virtually any criminal or civil case. The storage and dissemination of myriad documents contribute to considerable delays in the delivery of justice, and create a “paper maze” that is often difficult to maneuver for victims, witnesses, and those who serve them in the justice system.

The advent of remarkable new technologies can substantially streamline court processes and, as such, the efficient delivery of justice in civil and criminal cases. The following applications of technology offer many benefits to victims and witnesses, who are most often affected by the slow pace of court proceedings.

Computer-integrated Courtrooms

The computer-integrated courtroom in the United States District Court in Phoenix, Arizona, provides judges, attorneys and court personnel with many opportunities to perform their duties



in a more efficient and productive manner. As described by the Honorable Roger G. Strand, U.S. District Judge from Phoenix (1989):

“A computer-integrated courtroom (CBC) is a combination of hardware and software designated to accomplish specific tasks in the courthouse setting. The Phoenix CBC utilizes a . . . “local area network” linking ten DOS work stations. A local area network, or LAN, is a system that electronically links a number of otherwise separate personal computer work stations together so they can communicate with each other, and so they can share one central data base that is created and maintained on a specific item of computer hardware called a “file server.” The work stations are located on the judge’s bench, at each counsel’s table, and at the courtroom deputy clerk’s station, the court reporter’s position, the secretary’s desk, and each law clerk’s desk. In addition, the judge has a work station in chambers, and the court reporter, as LAN manager, has a work station in his or her office, along with a 70-megabyte, 386 file server. The local area network permits sharing of the data base by all users, thereby greatly enhancing the efficiency of the court in the disposition of its business.”

Real Time Translation

With real-time translation, the testimony of a witness appears on the computer monitor in plain English text within a matter of seconds from the time the words were spoken. This “computer magic” is accomplished by matching the reporter’s stenographic keystrokes with the same stroking already stored in the reporter’s “computer dictionary” and associated with a specific English word. If a match occurs, the English word appears on the screen. If a match does not occur, an “untranslate” appears on the screen in the form of the stenographic keystrokes. Although the stenographic keystroke occurs sometimes, almost always the words that were just spoken appear typed on the screen in front of you. Untranslates, of course, are unreadable to the untrained eye but can later be corrected by the court reporter or by an assistant. Ordinarily, untranslates occur when new words are not already in the court reporter’s computer dictionary (Beatty, 1995, p.1).

There are many obvious benefits to real-time translation. Perhaps most significant is that it brings courts into compliance with the *Americans With Disabilities Act* by providing hearing-impaired victims, witnesses and jurors with a computer monitor that allows full participation in criminal justice proceedings. By continuous referral to the real-time monitor, the need for read-backs of testimony is eliminated. In addition, real-time allows second parties in civil cases -- including victims -- to “be present” at bench conferences by reading the content of discussions on their monitor.



Virtual Writing

An important new technology, which plays an important role in the “courtroom of the future,” is virtual writing. Similar to current technology utilized by some Departments of Motor Vehicles to transfer a person’s signature electronically to his or her driver’s license, virtual writing can, when combined with other technologies, hasten the delivery of justice and, in particular, the protection of crime victims. With a few exceptions (such as cases that require witnesses), electronic signatures are legally accepted and binding in the criminal justice process. Virtual writing technology was described by Dora S.M. Lee of G2 Research, Inc. in *Government Technology*:

“Virtual writing is an exciting new technology which allows an individual to sign an original document located hundreds, or even thousands, of miles away. To begin the process, the original document is placed face up inside the scanner/writer device and a security door is locked until completion of the transaction. The document is scanned into the host system. When the individual is ready to sign the document, he or she calls the host system via a modem through regular telephone lines and the imaged document is transmitted to the remote system for the individual’s review. The document can be scrolled and magnified as needed. With a stylus, the individual signs the *image* of the document and may also add any handwritten notes he or she may wish to affix to the original.

The signature and any handwritten notes are transmitted by modem and reproduced in ink on the original document by an ink plotter. The signed original is then removed from the scanner/writer device, and the transaction is complete.

Within state and local government, the criminal justice sector -- namely departments of corrections and courts -- has been the first to employ virtual writing technology. Currently the technology is utilized the most by duty judges who are on-call in the evenings and on weekends.

For example, in order for a sheriff to respond to a domestic violence dispute, he or she must sometimes obtain a restraining order signed by a judge. With virtual writing, the sheriff simply scans the restraining order into the system. Meanwhile, through the remote system, the judge receives the image of the restraining order at home, reviews the order, signs it and transmits it back to the sheriff. Virtual writing therefore eliminates the need for the sheriff to bring the restraining order to the judge’s home for a signature, thus saving time and money, and dramatically reducing the time required to respond to the complaint.”



Applications of virtual writing technology, as described in the above example, have important implications for crime victims. In addition to speeding up the process of justice, it can also decrease the amount of time it takes for victims and witnesses to receive official protection orders from the courts.

Electronic Filing and Data Interfaces

The cutting-edge technology afforded by electronic filing allows attorneys and other entities who interact with the court -- including paralegals, insurance companies, investigators, mortgage companies, newspapers, and workers compensation agencies -- to electronically link with the court (and with each other) 24-hours a day, seven days a week. Delays in court proceedings that are a consistent source of frustration for victims can be considerably decreased by electronic data interfaces. Information that is accessible through electronic filing systems include:

- Filing pleadings and other official court documents;
- Accessing court calendars and legal research; and
- Obtaining case data that are considered in the public domain.

For victims and service providers, electronic filing and data interfaces simply mean that they will have greater and more expedient access to vital case information. Individuals who are “on-line” via a modem can tap into public court documents from their personal computers, saving time and money that is currently spent trying to track down case information. For victims specifically, electronic data interfaces will speed the delivery of justice, and ensure that motions, evidence and other documents related to their cases are filed in a timely manner before court-authorized deadlines.

Imaging

One of the most significant technologies to create a “paperless court” environment is imaging, which allows court personnel to scan documents and store them on optical disks. Court personnel -- including judges, prosecutors and defense attorneys -- as well as the public (including victims) then have “instant access” to imaged information because documents (that include pleadings and citations) are scanned onto the optical disk upon receipt. While the legality of accepting imaged documents is a continual concern for courts, the Association of Information and Image Management’s publication entitled *Performance Guidelines for the Legal Acceptance of Records Produced by Information Technology Systems* outlines three keys to increasing the likelihood that imaged records will be accepted as reliable and accurate, and therefore trustworthy by courts:

1. The records are produced as part of regular activity.
2. Methods used to produce the records ensure or enhance accuracy.



3. The timeliness of the records (with acceptance as evidence likely decreasing the further from the event that they are produced).

Public and Victim Access to Court Records

Many victim service providers can attest to the vast amount of time one can spend trying to access copies of information related to a victim's civil or criminal case. Today, more and more courts are establishing public "kiosks" that allow computerized access to, and copying of, docket entries for cases. This technology eases the burden of court clerks' offices, and makes access to justice a more realistic component of courthouses.

The "Information Superhighway"

What is the Internet?

The Internet is a catch-all word used to describe a massive world-wide network of computers. The word "internet" literally means "network of networks." In itself, the Internet is comprised of thousands of smaller regional networks scattered throughout the globe. On any given day, it connects roughly 40 million users in over 50 countries.

The *World Wide Web* is unquestionably the most popular facility on the Internet. Usage is growing at the rate of 15% per month. The newest versions of desktop operating systems, including IBM's OS/2, Microsoft's Windows 95, and the Macintosh have incorporated the necessary software to connect to the Internet. All UNIX operating systems already incorporate the necessary software. Because of these developments and plans on the part of Microsoft to include Internet access services within Windows 95 (anticipated first year sales in 1995 of 35 million), use of the Internet is expected to accelerate during the next few years. The Internet is quickly becoming the ubiquitous link in justice, business, and government.

Besides the World Wide Web, there are many utilities used on the Internet such as: Telnet, Ichat, E-mail, FTP (File Transfer Protocol), News Groups, Finger, Ping, and World Wide Web browsers. The World-Wide Web is mostly used on the Internet; however, it does not mean the same thing as the Internet.

The Web refers to a body of information distributed on over 30,000 computers throughout the world, while the Internet refers to the physical aspect of the global network, i.e. a giant mass of cables and computers.



What is the World Wide Web?

The World Wide Web is the most powerful and popular facility on the Internet. It looks like a color magazine that contains text, pictures, and even sound recordings and video clips. All of this is linked together on the Web by something called *hypertext*.

Imagine if you were able to link the pages (called “documents” on the Internet) of most magazines, newspapers, books, brochures and research papers together worldwide. You might read one document, find a keyword in that document that really interests you, touch that keyword, and automatically be taken to a new document somewhere else in the world -- and this new document could even have links to other documents around the world, and so on.

Thanks to *hypertext*, this can be done. The World Wide Web is based on hypertext. It is possible to roam around the Web, bouncing from document to document, using nothing but the links in those documents. The World Wide Web is officially described as a “wide-area hypermedia information retrieval initiative aiming to give universal access to a large universe of documents.”

Once one is on the Web, it is possible to do keyword searches using one of the Web’s many search engines. One of the best Web search engines is the *Webcrawler*, which searches for documents whose title and content match a keyword. In this fashion, a world-wide literature search can be conducted in a matter of minutes from a desktop.

The Web is accessed through something called a “browser,” which can read and fetch documents, download computer files, read newsgroups, and remotely log into other computers. In short, almost everything that can be done on the Internet can be done using nothing but the World Wide Web. The Web is able to accomplish all of this thanks to something called URLs (“earls”) -- *Universal Resource Locators*. URLs list the exact location of any Internet resource.

What is really special about the Web is that it does all of this “behind the scenes.” It is possible to bounce from one linked document to another without ever knowing the exact address of where you are, or even how you got there.

Graphical browsers allow access to not only text, but also pictures and sound (a.k.a. “hypermedia”). In fact, these pictures can be put in Web documents (a.k.a. Web pages), making that Web page look more like a page from a color magazine. Most graphical browsers use a mouse that points-and-clicks on a highlighted link to access it.

Recent technological advances in the Web will allow users to access all types of database information. For example, a person might access a case history or a payment history from a home computer, shopping mall kiosk, or public library workstation.



A list of World Wide Web sites relevant to crime and victimization is attached to this chapter. In addition, a sample of a Web page on “men and domestic violence” (<http://www.vix.com/pub/mrm/index.html>) is included.

What Does the Web Look Like?

The World Wide Web exists *virtually*; there is no standard way of viewing it or navigating around it. However, many software interfaces to the Web have similar functions and generally work the same way no matter what computer or type of display is used. In fact, many users navigate around the Web using text-only interfaces and are able to see all of the textual information a user with a graphic display would.

The Web may be in black or white or in color. The interface -- called a *Web browser* -- works in a window and may be a software program on any computer with a graphic interface, such as a UNIX, X Windows interface, a Macintosh, or an IBM-compatible computer with Microsoft Windows.

The Web offers a very simple-to-use interface to the traditionally hard-to-master resources on the Internet. It is probably this ease of use, as well as the popularity of many graphical interfaces to the Web, that caused the explosion of Web traffic in 1993. The potential of using networked hypertext and multimedia has promoted many users to create and explore countless innovative applications on the Internet. It is no surprise that more educational users are on the Web than would be expected.

What is a Secure News Server?

A *secure news server* is computer software that lets users create secure, public and private discussion groups for access over the Internet and other TCP/IP-based networks.

A secure news server improves collaboration and communication within workgroups, across agencies, and between remote sites around the country and the world, eliminating all geographic barriers.

These electronic discussion groups enable people to participate in a remote dialogue by posting and reading messages about topics of interest. Discussion groups support multiple conversations or “threads” on a given subject, displaying postings in the context of the prior discussion. This allows a reader to follow an entire conversation from its inception, though they may join well after the conversation has started.



Because discussion groups provide a unique vehicle for interactive group collaboration -- including "virtual victim support groups" -- they have become popular for internal workgroup tasks as well as for ad-hoc public forums. There are now over 10,000 public newsgroups on the Internet, accounting for more than 10% of its total communications traffic. A secure news server also incorporates advanced security features that guarantee the confidentiality of private discussion groups. Used in conjunction with any SSL-compatible newsreader, a secure news server can encrypt and decrypt its communications to ensure that only authorized users can access each discussion group, and that communications among groups are safe from eavesdropping.

E-Mail

E-mail on the Internet makes ubiquitous electronic messaging possible. The popularity of Internet E-mail is second in popularity and functionality only to World Wide Web services. Anyone who has a mail account on the Internet can correspond and transfer computer files to anyone else on the Internet. Connection to the Internet requires nothing more than a telephone, a modem and a computer.

Listserv

The *Listserv* is a computer program that automates the broadcast of E-mail across the Internet. Typically, it is used by a discussion group whose members wish to share E-mail with everyone else in the group. A Listserv is generally an informal ad hoc type of discussion. As participation increases, it is often replaced by a News Group.

Anonymous E-Mail Servers

Sometimes it is important for E-mail users to restrict knowledge about their identity. *Anonymous E-mail Servers* permit users to forward E-mail through their special server, which then removes any indication of the originator's identity. Such a server can benefit crime victims who need information or support, but wish to remain anonymous.

FTP (File Transfer Protocol)

File Transfer Protocol (FTP) is a popular facility on the Internet that allows users to download computer files from other sites. It is often used to transfer software or recent updates to software. It can be used to make documents as a computer file for downloading and printing by



participants. It has the potential of providing the most current and up-to-date information immediately.

Telnet

The *Telnet* utility allows Internet users to log on to remote computers and utilize them as though they were located locally. Although usually restricted by security considerations, Telnet allows remote users to utilize the information from large databases as though it were located on their desktop.

Ichat

Ichat is an Internet facility that allows individuals to participate in on-line real-time computer conversations. As one user types messages, they can be viewed and responded to by others on the channel. Users can go off-line publicly and restrict their conversations to only two participants.

(The preceding section is excerpted from Insko, M. (1995, June). *Promising Strategies and Practices in Using Technology to Benefit Crime* grant proposal to the Office for Victims of Crime. Arlington, VA: National Victim Center.)

U. S. Department of Justice Information Resources: The Office for Victims of Crime Resource Center

1982 marked the beginning of a momentous change in the crime victims movement. On April 23rd of that year, President Ronald Reagan established the President's Task Force on Victims of Crime, and "... led the nation into a new era ..." in improving the treatment of crime victims. Meeting to address the "... plight of those forgotten by the criminal justice system - the innocent victims of crime," the Task Force developed a series of unanimous recommendations designed to improve overall responsiveness toward victims by government, the criminal justice system, and other entities in both the public and private sector. In response to one of the recommendations made in the *Task Force* report, the Office for Victims of Crime (OVC) was created within the United States Department of Justice to advocate for the fair treatment of victims at a national level. In the twelve years since its creation, OVC has truly become the "federal focal point" for issues that affect victims of crime throughout the United States.



Another proposal made in the *Task Force* report, Federal Executive and Legislative Recommendation 3, called for the federal government to ". . . establish a federally based resource center for victim and witness assistance." It was envisioned that the proposed resource center

". . . would serve as a national clearinghouse of information concerning victim and witness assistance programs, victim compensation programs, and organizations from the private sector that seek to assist victims and witnesses. It should establish liaison with national, state, local and private sector organizations whose activities are directed toward improved services for victims and witnesses. It should monitor the status of compensation programs and victim/witness legislation. In addition, the center should maintain a directory of state, local, and private sector programs and experts in the field to facilitate communication and transfer of expertise . . . This center is essential because the sources of information in this area are many, and they are found at all levels in the public and private sector. In addition, these sources are located throughout the country. With increased attention in this area, many different groups need information to augment or implement programs to help victims. Because resources are precious, it is essential that these new and existing groups benefit from the work that has preceded them as well as from new insights acquired from the successful provision of services."

In accordance with this recommendation, a National Victims Resource Center (NVRC) was established in 1984, to ". . . encourage continued progress in the victims rights movement and to create an inventory of programs, research, and dissemination of information on victims of crime." Originally housed within OVC, NVRC soon expanded beyond its available facilities. It was moved to Rockville, Maryland in 1986, where it was joined with the National Criminal Justice Reference Service (NCJRS). In 1994, in an effort to more closely associate it with the work of its parent agency, NVRC was officially renamed the Office for Victims of Crime Resource Center.

The Office for Victims of Crime Resource Center and the National Criminal Justice Reference Service

The National Institute of Justice (NIJ), the research and development agency of the United States Department of Justice, was established to prevent and reduce crime and to improve the criminal justice system. Recognizing the need for a centralized location for criminal justice information, the United States Congress mandated that NIJ "serve as a national and international clearinghouse for the exchange of information" in the area of criminal justice. The National Criminal Justice Reference Service (NCJRS) was therefore established by NIJ in 1972 to serve as an international criminal justice information network supporting policymakers and criminal



justice professionals. NCJRS operates as a consortium of specialized information centers, sharing information resources with, and drawing from, all Office of Justice of Programs (OJP) agencies. OJP agencies represented include:

- The National Institute of Justice (NIJ);
- Bureau of Justice Assistance (BJA);
- Bureau of Justice Statistics (BJS);
- Office of Juvenile Justice and Delinquency Prevention (OJJDP); and
- The Office for Victims of Crime.

A new NCJRS affiliate, the Office of National Drug Control Policy (ONDCP), joined in 1994.

Working together, NCJRS and OVCRC serve a broad constituency of persons and organizations with professional, academic and advocacy-related interests. Requests for information come from sources as diverse as elementary schools and the White House. Many requests come from foreign countries. NCJRS and OVCRC use an array of resources to respond to those requests, including free publications; fact sheets; information directories; topical information packages; reading and referral lists; topical data base searches; audio and video tapes, and CD-ROM.

A premier feature of the NCJRS clearinghouse programs is the NCJRS library collection, housed in the NCJRS Research and Information Center. This premier information resource contains more than 130,000 criminal justice documents and audiovisual pieces, of which more than 9,000 pertain to victims' issues. Each piece in the collection, which grows at a rate of approximately 500 new additions per month, is abstracted for the NCJRS Data Base, which can be "searched" electronically for literature that is specific to the user's interests.

Prepared topical searches and topical bibliographies drawn from these abstracts are also available. Subjects covered by these prepared searches include battered women; bias-related violence; child sexual abuse; child witnesses; homicide victims; sexual abuse and assault; crime and the elderly; victim compensation and family violence.

Recent developments in information technology -- most notably the development of the Internet -- have dramatically altered the manner in which criminal justice information is now available to researchers, advocates, and practitioners. Now, victim serving agencies and individuals, no matter how remotely located, can obtain instant access to an enormous variety of resources specific to their professional concerns. The National Criminal Justice Reference Service and the Office for Victims of Crime Resource Center are in the forefront of this new medium, and are aggressively using its resources to enhance the delivery of timely and relevant criminal justice information. The following sections provide a description of these services, and instructions for obtaining access to them.



Victim Assistance in the Information Age

The year 1994 marked a new and exciting turning point for NCJRS and OVCRC in gathering and distributing criminal justice information. On October 5th of that year, NCJRS and OVCRC went "online" on the Internet, moving rapidly into the mainstream of electronic information management. Since that time, NCJRS has developed an array of online services that benefit criminal justice and victim service professionals, including:

- A *Gopher* site;
- *World Wide Web* page;
- *Anonymous FTP* site;
- *Justice Information (JUST INFO) Electronic Newsletter*;
- An *E-Mail Information and Help* line; and
- The *NCJRS Bulletin Board System (NCJRS*BBS)*.

Together with other present and future electronic access features -- including telephone (IVR) and online document ordering, CD-ROM, and fax-on-demand -- NCJRS and OVCRC have made a "quantum leap" forward in their mandate to provide timely and relevant criminal justice information. No longer constrained by office hours, mail delivery, and the use of paper documents, NCJRS and OVCRC now offer immediate, 24-hour-a-day access to material that can be used for research, advocacy, policy, program and legislative support. This information includes statistics; model programs; model protocols; grant funding sources; and local, state and national referrals to professional organizations in the victim-serving community.

NCJRS On-line Services: The Internet

In its current configuration, *NCJRS Online* provides the following access and services:

NCJRS Gopher

The NCJRS Gopher menus contain *text* providing information from each Office of Justice Programs (OJP) agency, NCJRS, and the Office of National Drug Control Policy. Information on each of the OJP agencies includes a general agency overview; press releases and public announcements, and conference information. Information is also provided about selected NCJRS services; downloading capabilities for selected information; previews of new products and publications; direct links to other criminal and juvenile justice resources on Internet, direct connections to the NCJRS Bulletin Board System and the *Partnerships Against Violence NETWORK* (PAVNET).



Access Requirements: The NCJRS Gopher requires that (1) the user must have access to the Internet, and (2) the user must have access to Gopher (Most universities and commercial services provide access to Gopher). The Gopher address is <[ncjrs.org](gopher://ncjrs.org)>.

NCJRS World Wide Web

The NCJRS/Justice Information Center site on the World Wide Web provides a *graphical interface* (a connection that displays graphics or illustrations) to NCJRS and Office of Justice Programs (OJP) information, as well as access to information from other criminal justice resources around the world. This ability to successively connect to other resources from within a World Wide Web “page” is accomplished through *hypertext links*. Currently, the NCJRS/JIC homepage provides general information about NCJRS, all OJP agencies, and the Office of National Drug Control Policy (ONDCP); a “keyword” search capability for locating full-text documents from the NCJRS inventory; the NCJRS conference calendar; federal grant-funding information, and announcements of new publications, research, and other justice-related matters of interest. In addition, the site provides links to selected documents and online resources related to courts; corrections; crime prevention (including PAVNet Online); criminal justice statistics; drugs; international justice issues; juvenile justice; law enforcement; justice research and evaluation, and victims.

Access Requirements: The NCJRS World Wide Web (WWW) requires that (1) the user must have access to the Internet, and (2) the user must have access to a WWW application such as Mosaic, Lynx, or Netscape. The World Wide Web address is <<http://www.ncjrs.org>>.

NCJRS Anonymous File Transfer Protocol

The NCJRS Anonymous FTP (File Transfer Protocol) site allows users to quickly access and download large, complex NCJRS publications and software, whether they are ASCII text or a binary document. These documents may include annual OJP agency program plans, which provide grant funding information.

Access Requirements: The NCJRS Anonymous FTP site requires that (1) the user must have access to the Internet, and (2) the user must have access to FTP (Most commercial services provide access to FTP). The NCJRS Anonymous FTP address is <<ftp://ncjrs.org/pub/ncjrs>>. Further directions are provided once the user reaches the site.



Justice Information (JUST INFO) Electronic Newsletter

The Justice Information (JUST INFO) Electronic Newsletter is a free, on-line newsletter that is distributed on the 1st and 15th of every month. JUST INFO contains information concerning a wide variety of subjects, including news from all Office of Justice Programs (OJP) agencies; criminal justice in the news; news of international criminal justice; criminal justice resources on the Internet; federal legislation updates; criminal justice funding and program information, and announcements about new NCJRS products and services.

Access Requirements The Justice Information (JUST INFO) Electronic Newsletter requires that the user have access to Internet e-mail. To subscribe, send an e-mail to <listproc@ncjrs.org>. Further instructions will be automatically forwarded to the user.

E-MAIL: Information and Help

Look@NCJRS

First-time users can *send* an e-mail message to this address: <look@ncjrs.org>. The user will automatically receive a reply outlining the services of NCJRS.

Ask NCJRS

Users requiring technical assistance or having specific questions on criminal and juvenile justice topics can *send* an e-mail to <askncjrs@ncjrs.org>.

Access Requirements *Look@NCJRS* and *Ask NCJRS* require that the user have access to Internet e-mail.

NCJRS On-line Services: NCJRS Bulletin Board System (NCJRS*BBS)

NCJRS*BBS is a free 24-hour electronic service accessible through a personal computer and a modem (now also accessible through the Internet). NCJRS*BBS serves as the primary online conduit for news and announcements from NCJRS, the Office of Justice Programs (OJP), and the Office of National Drug Control Policy (ONDCP). Agency "menus" contained on the system provide descriptions of OJP agencies and their missions; product and publications lists; full texts of documents and reports; conference, workshop, and seminar schedules; program summaries; applications for grants and funding opportunities; grant award summaries and training and technical assistance information. In addition to providing up-to-date criminal justice information,



NCJRS*BBS serves as an interactive network for information-sharing among criminal justice professionals. NCJRS collects, reports, and evaluates information from numerous sources, and users supply information on their vital findings. Information is also generated online, as users comment on resources, exchange ideas, ask questions, and provide answers.

Access Requirements: To access NCJRS*BBS, the user must have a microcomputer or computer terminal; a 300-, 1200-, 2400-, or 9600-baud modem (faster modems will connect at 9600 baud), and access to a telephone line. (Microcomputer users also must have communication software that supports full-screen operation. TEAMterm for IBM-compatible computers is available from NCJRS either through downloading or by mail, as is technical assistance for its use. A graphical user interface (GUI) for accessing NCJRS*BBS from Microsoft Windows is also available from NCJRS). If the user does not have Internet access, they may direct dial through their modem: (301) 738-8895. Modems should be set at 9600 baud and 8-N-1. If the user has Internet access, they may either **Telnet** to <bbs.ncjrs.org> or **Gopher** to <[ncjrs.org](gopher://ncjrs.org)>. Each user designates a user name and a password of eight (or fewer) lowercase characters. Once a user has registered, access is immediate.

NCJRS On-line Services: Partnerships Against Violence Network (PAVNET)

Partnerships Against Violence **NET**work (PAVNET) **Online** is a new approach to give users information about techniques for combating violence in American society. It represents the cooperation of multiple federal agencies to quickly bring information on anti-violence programs to State and local officials. PAVNET was created in response to a report by the Interdepartmental Working Group on Violence to the President and the Domestic Policy Council in January 1994, which recommended that the federal government "develop online computerized information about federal resources, and produce new resource guides and how-to manuals about promising activities to reduce violence. At the present time, PAVNET Online is a searchable data base containing information about hundreds of promising programs and resources, providing the user with key contacts; program types; target populations; location; project startup date; evaluation information; annual budget; sources of funding, and program description.

Access Requirements: PAVNET Online requires that the user (1) must have access to Internet, and (2) must have access to Gopher or the World Wide Web (WWW). Users may access PAVNET directly from Gopher <[gopher pavnet.esusda.gov](gopher://pavnet.esusda.gov)>, the NCJRS Gopher site at <ncjrs.org>, or the NCJRS/JIC World Wide Web homepage at <<http://www.ncjrs.org>>, under the "Crime Prevention" section. Methods of accessing and using PAVNET Online are described in the *PAVNET Online User's Guide*, which may be obtained from the OVC Resource Center at (800) 627-6872. Please specify document number NCJ 152057.



Other Electronic Information Services Available from NCJRS

FAX-on-Demand

In addition to online document services, NCJRS provides access to selected OJP publications through the user's own fax machine, using toll-free NCJRS Clearinghouse telephone numbers. To obtain a copy of the current FAX-on-Demand document menu, and instructions on how to operate the system, call (800) 851-3420, and listen for the FAX-on-Demand message prompt.

CD-ROM

Users with CD-ROM capability can also obtain the NCJRS Data Base on CD-ROM. This disc features citations and abstracts of more than 130,000 criminal justice books, research reports, journal articles, government documents, program descriptions, and evaluations contained in the NCJRS library collection. The disc also contains search software that supports retrieval using any combination of words to search individual fields or all fields globally. The disc can be searched using "free text" methods, or in combination with the *National Criminal Justice Thesaurus*. Details are available by calling NCJRS at (800) 851-3420.

Information Access: Implications for Victim Service Providers

The development of new information technologies has profound implications for the victim-serving community. As recently as a dozen years ago, the availability of information was limited by a lack of centralized collection and distribution. Moreover, the form of the information was generally limited to paper documents that required considerable effort to locate and obtain. Today, however, victim service providers can instantly access an enormous store of information specific to the entire range of their professional concerns, including program development and funding. Importantly, this information is available to victim service providers *wherever* and *whenever* they desire -- at home or in the office, in the middle of a trial or in the middle of the night. The importance of this change in information access cannot be overstated. For the victim service provider, that access begins with the National Criminal Justice Reference Service and the Office for Victims of Crime Resource Center.



Mastering the Information Age

- 1) List three of the barriers to use of technology to benefit victims.

- 2) What are two innovative technologies that are included in “the courtroom of the future?”

- 3) What is the “World Wide Web?”

- 4) List two of the resources available on-line from the U.S. Department of Justice.



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Chapter 21, Section 1

Hate and Bias Crimes

Abstract: Bias crimes are motivated by hatred against a victim based upon his or her race, religion, sexual orientation, ethnicity, or national origin. These hate crimes pose unique challenges for victim service providers. The victim and, indeed, the entire community are detrimentally affected by bias crimes. The special needs of bias and hate crime victims require special sensitivity from victim service, law enforcement and criminal justice professionals.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The definition of bias crime.
 2. Bias crime indicators for law enforcement.
 3. The unique features of bias crimes that differentiate them from other crimes.
 4. The impact bias crimes have on victims, as well as the community.
-

Statistical Overview

- Preliminary figures show 5,852 hate crime incidents were reported to the FBI during 1994, including incidents reported by more than 7,200 law enforcement agencies in 43 states and the District of Columbia.
- Sixty percent of the incidents were motivated by racial bias; 18 percent by religious bias; 12 percent by sexual-orientation bias; and 11 percent by ethnicity/national origin bias. The 5,852 incidents involved, 7,144 separate offenses, 7,187 victims, and 6,189 offenders.
- Most of the incidents (84 percent) involved only one victim and a single offense type (98 percent). Fewer than one-third, however, involved only one victim and one offender.
- Seven of every ten incidents involved crimes against persons, and eight of every ten were directed at individuals. Of the total incidents directed at individuals, 15 percent involved crimes against property.
- In 1992, 17 persons were murdered in hate-motivated incidents. While bias against ethnic groups motivated fewer hate crime offenses than any other bias-types, it resulted in the highest number of murders; eight. Of the remaining murders, seven were motivated by racial bias, one was motivated by religious bias, and one by sexual-orientation bias.
- Law enforcement agencies reported 7,913 known offenders to be associated with the 6,623 incidents recorded in 1992. Fifty-three percent of the known offenders were white, and 42% were black. Offenders were unknown for 2,821 (36%) of the incidents.
- Nine out of ten offenders were identified in connection with anti-black offenses. Similarly, nine of every ten black offenders identified were associated with anti-white offenses.
- Twenty-five percent of hate crime incidents in 1992 occurred in residences. Following closely were highways, roads, alleys, or streets, accounting for 23%. The remaining incidents were widely distributed among varied locations.

(The preceding data were derived from the Federal Bureau of Investigation Uniform Crime Reporting Program "1992 Hate Crime Statistics," 1993, U.S. Department of Justice, Washington, DC.)

Overview of Bias Crimes

The *Federal Hate Crimes Statistics Act of 1990* defines bias crimes as crimes motivated by “hatred against a victim based on his or her race, religion, sexual orientation, ethnicity, or national origin.” Constitutional protections are guaranteed to all in America. Yet some within our country are victimized, sometimes subtly and at other times very overtly, for no reason other than the color of their skin, the religion they profess, the heritage of their parents, or their sexual orientation. Not only is the individual who is personally touched by these offenses victimized, but the entire class of individuals residing in the community is affected. Professionals must be particularly skillful in responding in a way that does not exacerbate the trauma of the victim and the community. Victims of hate crimes often suffer serious and long-lasting traumatic stress that can be made worse by an uninterested or inappropriate responses.

Unique Challenges for Victim Service Professionals

Bias crimes:

- May have a more devastating effect than other crimes because they have a unique psychological impact on the victim.
- Are considered “message crimes” -- crimes that send a message of fear and terror based on a foundation of bigotry.
- Have an impact on the victim’s community. As a result, a seemingly insignificant incident can exacerbate existing tension within the community with the potential for reprisals and escalating violence.
- Demand a special response from law enforcement, criminal justice, and victim assistance professionals.

Bias Crime Indicators

When law enforcement officials are investigating a crime, there are clues they can look for in determining if a case should be investigated as a bias crime. These clues are called *bias indicators*.

Ultimately, the determination that a crime is a bias crime will be based on the facts of the case. Bias indicators suggest a possibility, not a legal certainty, and can provide guidelines to shape the investigative process. Such indicators include the following:

Racial, Ethnic, Gender and Cultural Differences

- Racial, religious, ethnic/national origin, disability, or sexual orientation of a victim differs from that of the offender.
- Victim is a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident has occurred.
- Victim was engaged in activities promoting his/her group.
- Incident coincided with a holiday or date of particular significance to the victim's group.
- Victim, although not a member of the targeted group, is a member of an advocacy group that supports the victim group, or the victim was in the company of a member of the targeted group.
- Historically, animosity exists between the victim's group and the suspect's group.

Comments, Written Statements and Gestures

- Bias-related comments, written statements or gestures were made by the offender.

Drawings, Markings, Symbols and Graffiti

- Bias-related drawings, markings, symbols, or graffiti were left at the scene of the incident.
- Bias indicators need not establish that the predominant purpose of an offender's actions was motivated by hatred or bias. It is sufficient for classification of an incident as a bias crime that an offender was acting out of hatred or bias, together with other motives, or that a bias motive was a contributing factor, in whole or in part, in the commission of a criminal act.

Organized Hate Groups

- Objects or items that represent the work of organized hate groups were left (e.g. white hoods, burning crosses), or an organized hate group claimed responsibility for the incident.

- There were indications that a hate group was involved. For example, a hate group claimed responsibility for the crime, or was active in the neighborhood.

Previous Existence of Bias Crime/Incidents

- Victim was visiting a location where previous bias crimes had been committed against members of the victim's group.
- Several incidents occurred in the same area, and the victims were members of the same group.
- Victim has received previous harassing mail or phone calls, or has been the victim of verbal abuse based on his/her affiliation with a targeted group.

Victim/witness Perception

- Victims or witnesses perceive that the incident was motivated by bias.

Motive of Suspect

- Suspect was previously involved in a similar incident or is a member of, or associates with members of, an organized hate group.
- The victim was in the company of, or married to, a member of a targeted group.
- The victim was perceived by the offender as violating or breaking from traditional conventions or working in nontraditional employment.
- The offender has a history of previous crimes with a similar modus operandi, and there have been multiple victims of the same (citizenship, race, religious, ethnic/national origin, disability, sexual orientation, or gender).
- The victim was in or near an area commonly associated with or frequented by a particular (citizenship, race, religion, ethnic/national origin, disability, sexual orientation, or gender) (e.g. a gay bar).

Lack of Other Motives

- No clear economic or other motive for the incident exists.

Unique Features of Bias Crimes

Bias crime is likely to be more serious, injurious or lethal than any other personal injury crime. Motivated in part by fear, it often escalates when the members of the dominant culture think they are under attack. Bias crimes have been prevalent in, at least, certain parts of America and attributed to members of particular groups, e.g. the Ku Klux Klan. The issue emerged again during the 1991 Gulf War, when some Arab-Americans were harassed or even physically abused.

Bias crimes are usually perpetrated in groups. The notable exception is found in sex offenders who commit acts of sexual assault or other abuse out of a clear hatred of their victims. Group-instigated crime has a significant impact on the victim for several reasons:

- There is a diffusion of responsibility so that no one person is held personally accountable.
- The group seems to generate courage, particularly among those who fit the description of “cowardly.”
- Groups tend to exacerbate the viciousness of the crimes.
- The most egregious type of victim trauma of all hate crimes results from mass murders and/or assaults. Hatred has been thought to be one of the primary motives in a number of recent mass crimes.
- Bias crimes have also emerged in response to the AIDS epidemic. According to the Presidential Commission on the Human Immunodeficiency Epidemic, there is “increasing violence against those perceived to carry HIV,” and that for them, “so-called ‘hate crimes’ are a serious problem.”
- A large number of bias crimes seems to be aimed at individuals who are not only members of an identified group, but who are perceived as infringing on another group’s sovereignty.

Victim and Community Impact

Bias crimes affect both individuals and communities. Each of the unique characteristics of bias crimes impact -- from the perspective of the victim and the community -- is presented below.

Victim Impact

- Victims of bias crimes have been attacked for being different, for being misunderstood, and for being hated. Because the basis for their attack is their identity, they may suffer a deep personal crisis.
- Victims of bias crimes are targeted due to a core characteristic of their identity that is immutable. This may lead to increased vulnerability.
- When a bias crime is committed against a member of a minority group, the victim frequently perceives the offender as representative of the dominant culture in society who may frequently stereotype the victim's culture.
- If their membership in a target group is readily visible, victims of bias crimes may feel particularly vulnerable to a repeat attack. This heightened sense of vulnerability may result in the feeling of hopelessness.
- Victims may become afraid to associate with other members of the group that has been targeted, or may fear seeking needed services, believing that these actions increase their vulnerability.
- As a result of the victimization, bias crime victims may respond by more strongly identifying with their group -- or conversely, by attempting to disassociate themselves or deny a significant aspect of their identity.
- Assumptions about life/world view may be shattered. For bias crime victims who are minorities, this may be particularly devastating because their world view may have been very different than the dominant culture's world view.
- It may be very difficult for the bias crime victim to resolve that the crime was motivated by hatred, as opposed to another motive such as economics.

Community Impact

- When individuals are targets of hate because of their race, religion, ethnicity, gender or sexual orientation, their victimization is projected outward to all members of their wider community.
- Other members of the same group feel victimized; members of other commonly targeted groups are reminded of their vulnerability to similar attacks.

- Places of worship are often targeted by bias crime offenders; these attacks on sacred spiritual symbols that may harm victims more than other acts of vandalism, also harm other members of the community.

(The curriculum material included above is derived from *National Bias Crimes Training for Law Enforcement and Victim Assistance Professionals: A Guide for Training Instructors*, published by the Education Development Center, Inc. (EDC) and Massachusetts Criminal Justice Training Council under the U.S. Department of Justice Office for Victims of Crime (award #92DD-CX-K030) in 1994.)

Promising Practices

Roles and Responsibilities for Victim Service Providers

Because of the deep and traumatic emotional reactions that victims of hate and bias-motivated crimes experience, special services such as the following should be developed to respond to their particular needs:

1. Let the victim express the intense feelings aroused by the hate crime.
2. Provide information to the victim concerning the investigation and prosecution of their case, both about their case in particular and the system in general.
3. Any hate crime victim who is reluctant or refuses to prosecute should be carefully interviewed to determine the reasons for the reluctance or refusal. In many cases, this reluctance can be overcome by a prosecutor who expresses appropriate concern for the victim, provides reassurance that the criminal justice system can serve the victim's interests, and arranges to protect the victim. Prosecutor programs can also turn to community groups as a resource to help support reluctant witnesses through the criminal justice system.
4. Provide referrals for cross-cultural counseling for victims of hate crime.
5. Legitimize the bias-motivated crime for what it is to the victim.
6. Address the crisis of victimization as well as confront the obvious hate and prejudice exhibited in the crime.
7. Assist the victim with completing and filing an application to the state's victim compensation fund, if applicable.

8. Provide the victim with information about victim impact statements and their importance and use in the justice process; provide them with the appropriate impact form and offer whatever assistance they require in preparing their victim impact statement for court and/or for paroling authorities.
9. If there is a conviction in the case, provide a referral for the victim to the victim liaison in the state department of corrections or the probation/parole department for a continuation of victim notification and services concerning their case and the status of the convicted defendant.
10. If there is a conviction in the case, provide the victim with post-conviction appellate notification and services.
11. Inform and educate the victim of hate crimes about the possibility of civil remedies for the crime committed against them. Refer them to the local Bar Association for referrals, or to any local or state nonprofit legal organizations that possibly represent hate crime victims.
12. Be as non-judgmental as possible in dealing with the victim of hate crimes.
13. Improve outreach into the cultural and minority communities in your jurisdiction. Let the community members know your program is willing and able to serve victims of bias crime. Members of community-based advocacy groups in these communities can be helpful in the prosecution of hate crime cases and the provision of victim services by providing the following services:
 - Locating witnesses to the crime and encouraging them to come forward.
 - Locating victims who may have moved and changed phone numbers without notifying the prosecutor's office.
 - Providing emotional support to victims and encouraging them to continue the prosecution.
 - Acting as informal interpreters during pre-trial interviews and determining the effectiveness of the court-appointed interpreters.
 - Acting as "expert witnesses" at the sentencing hearing as they may be able to testify to the effect of the crime on the victim, either by discussing cultural issues that others might not be aware of or by discussing the crime's effect on the community as a whole.
 - Identifying significant dates relevant to the premeditation of the perpetrator. Community leaders will likely recognize any intentional choice of a date significant to a religious, ethnic or other group to commit a premeditated hate crime, and may make excellent witnesses in court concerning this fact.
 - Informing prosecutors of other relevant information, such as local demographic changes that contribute to a rise in hate crime.

14. If you are unfamiliar with the cultural or ethnic group of a targeted hate crime victim, contact the relevant community media outlet to obtain a competent referral for assisting with the crime victim and the case.
15. Get in touch with the local gay and lesbian communities. Most of them will never seek your services until your program shows that it is willing and able to serve this population. Make this known on your program's informational materials. For example, you can state on your brochure that: "Our services are available to all members of the community, including young persons, the elderly, persons with disabilities, persons of color, and lesbian and gay persons."
16. Offer to speak to different community groups that will help you advertise to the community and let every segment know what services are available for them.
17. Adopt an official policy prohibiting discrimination in your own program.

(Focus on the Future: Effective Service Delivery to Victims of Bias Motivated Crimes; sponsored by the U.S. Department of Justice, Office for Victims of Crime, 1994.)

Hate and Bias Crimes

- 1) Complete the following sentence: "Bias crimes are motivated by hatred against a victim based on his or her _____, _____, _____, _____, _____, or _____."
- 2) Identify five indicators of bias crimes.
- 3) What is one of the effects that group-instigated crime might have on a victim or community?
- 4) Identify three effects bias crime has on its victims.
- 5) What are three of the many roles and responsibilities that victim service providers fulfill when dealing with bias crime victims?
- 6) Briefly describe the components of your proposed, ideal hate and bias crime victim assistance program.

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Chapter 21, Section 2

Stalking

Abstract: Recent public policy attention to the crime of stalking has resulted in the enactment of anti-stalking legislation in all 50 states and the District of Columbia between 1990 and 1994. Criminal justice professionals have devoted increased attention to this problem, and important information about the profile of stalkers and their dangerousness has come to light. In addition, new issues have emerged as victims of domestic violence seek protection from the stalking of threatening spouses/partners or former spouses/partners. A multi-agency response to the needs of stalking victims is recommended.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The elements of a new form of crime that has emerged in the last five years.
2. The methods and motives of stalkers.
3. The characteristics of stalking and the difficulty in predicting violence.
4. Special issues related to applying anti-stalking legislation to domestic violence cases.

Defining Stalking

In 1990, California passed the first anti-stalking statute to restrict would-be stalkers and protect potential victims. Subsequently, every state has developed some form of anti-stalking statute. In some states, they are classified as misdemeanors and, in others, felonies. In many states, stalking could be deemed either a misdemeanor or a felony, depending on the circumstances.

While the specifics of the 50 state statutes vary, stalking is typically defined as:

- Willful, malicious, repeated following, annoying and harassing of another person. (NIJ, 1993)

The three primary elements in most stalking statutes are:

1. The behavior is threatening.
2. The defendant has intent and/or apparent ability to carry out the threat, i.e., criminal intent.
3. The crime involves a “course of conduct,” usually defined as “a series of acts over a period of time, however short, evidencing a continuity of purpose.” (NIJ, 1993)

In addition, the definition in a state’s statute may include any of the following:

1. A requirement that the victim has reasonable fear for his or her safety.
2. A requirement that the stalking behavior continues after the victim reports it to law enforcement.
3. A prohibition against non-consensual communication.
4. A specified number of acts and/or a specified period of time that may constitute a “course of conduct.” (NIJ, 1993)

Predicting Stalking Behavior

Predicting violence is a very inexact science. Attempts to predict dangerous behavior can produce both *false-positive* and *false-negative* results. False-positives occur when the prediction is that a particular individual or group is dangerous when, in fact, they are not dangerous. A false-negative occurs when the professional predicts that an individual or group is not dangerous when, in fact, they are dangerous, and then commit a harmful act. It is particularly important to reduce false-negative predictions, so that victims can be protected from violent stalkers.

Media accounts of Hollywood celebrities being stalked and attacked by obsessed individuals -- and court decisions (e.g. Terrisoff v. Board of Regents) holding mental health professionals liable for failing to warn potential victims of known threats of violence -- have increasingly forced psychologists and psychiatrists to attempt to determine the dangerousness of potential offenders. Generally, past behavior is the best predictor of future behavior. Those with histories of violence are more likely to commit violent acts than those with no such history. Unfortunately, this measuring rod is not always foolproof. Current factors related to risk assessment must also be examined. Also, hindsight bias, or the belief that professionals or even friends should have seen an individual's potential for violence before it occurred, is not unusual. However, some potential offenders are very adept at misleading others.

Key Factors in Stalking

An underlying factor in stalking is the exercise of control and power -- perceived or actual -- over another individual or group. The nature of control will vary from offender to offender and the offender's relationship with the victim. The variation in stalking behavior ranges from hang-up phone calls to more focused, direct threats toward a victim. If the behavior escalates over time, the likelihood of injury increases.

There appears to be a strong correlation between stalkers whose behavior escalates and those who eventually physically assault their victim. A critical point in escalation appears when the stalker begins to make visits to the victim's residence and/or cause property damage.

Who Are Stalking Victims?

- Most stalking victims are former lovers, former spouses, and spouses; however, some stalking victims are co-workers, neighbors, celebrities, political figures, or even strangers. (NIJ, 1993)

Many women who leave their abusive husbands or partners and fear for their lives are ultimately stalked and killed by these men. For example:

- In Indiana, a man incarcerated for spousal abuse (which included verbal threats to kill his then-wife) was released on a work furlough as a result of his good behavior. He was instructed not to go near his former wife. The victim -- who had requested notification in *any* change in her former husband's status -- was not notified that her husband was free. Within two hours of his release, on furlough, he had gone directly to her home and, in front of the neighbors, beat her to death with the butt of a rifle.

Rapists, pedophiles, and voyeurs also engage in various forms of stalking. Prior to physically stalking a victim, these types of offenders often participate in psychological foreplay or sexual fantasies. In preparation for physically acting out, these offenders “psychologically stalk” their victims before they physically make contact.

Law Enforcement Management of Stalking Incidents

Surveys conducted by the Police Executive Research Forum and the National Criminal Justice Association indicate that most police agencies do not report that stalking is a problem in their jurisdictions. However, nearly all jurisdictions report having stalking incidents. The handling of stalking incidents is similar among law enforcement agencies. When a report is filed, it is usually investigated by detectives or patrol officers. Subsequent calls to the victim’s address are tracked. The most frequent intervention on a call is to charge the offender with trespassing, whether or not a stalking law has been passed in the state. Agencies also report charging offenders with assault. Charging the offender with multiple offenses is believed to increase the chances that the stalker will stop. (NIJ, 1993)

Threat Management Unit - Los Angeles Police Department (LAPD)

The LAPD established the first Threat Management Unit (TMU) to specialize in stalker profiling and victimization intervention. As a result of its work and study of 102 cases, some patterns of behavior appear and initial typologies are available to assist in classifying people who stalk.

LAPD Stalker Profiling

The LAPD study suggests that most people who stalk do not physically harm their victims. The primary goals for stalkers are power and control. Stalkers use threats as a way of exerting that control, and threats alone are sufficient to appease some stalkers. Unfortunately, some stalkers carry out their threats as a way of maintaining that control. Differentiating those who will and will not carry out their threats is difficult.

The LAPD study indicates that:

- Most stalkers are male (80%).
- Among females, same-sex partners were the most likely to be physically dangerous stalkers.
- 80% of stalkers never carry out their threats.

LAPD Classifications of Stalkers

LAPD also created four classifications of stalkers:

- Simple obsessional
- Love obsessional
- Erotomania (celebrity stalkers)
- False victimization syndrome

Simple Obsessional: Sixty percent of the cases studied were described as simple obsessional cases. These were offenders who knew their victims. They were usually former spouses, lovers, or employers. The stalker had an emotional attachment to the victim. Eighty percent were male offenders and the age range was between 30-40. Typically these types of stalkers begin stalking as a result of a marital separation or perceived mistreatment by an intimate. Approximately 97% made prior threats and 30% carried out those threats.

- Joy Silverman, a woman who tried to end her relationship with a New York State Supreme Court judge, was a victim of simple obsessional stalking.

Love Obsessional: Those classified as love obsessional were strangers to their victims. These cases represented 30% of the cases, and almost all (97%) were male offenders. The age range was between 30-40 when each began a campaign of harassment to make the victim aware of his presence. About 25% of these offenders made prior threats, but only three percent (one out of 31) carried them out. Unlike other categories, victims of love obsessional stalkers tended to be younger than the offender (ages 20-30).

Erotomania: Erotomania is a relatively rare, typically female phenomenon. Cases of erotomania involve offenders who believe that a public figure is in love with them. Cases of erotomania represent only eight percent of all cases in this study. Approximately 85% of the offenders are female usually between the ages of 30-40. Prior threats were made in 40% of the cases. However, most of these offenders are letter writers (12%) who seldom confront the victim.

- Talk-show host David Letterman has been stalked for years by a woman who has managed to break into his home, steal his car, and continually harass him.

False Victimization Syndrome: The final classification identified by the Threat Management Unit is the rarest (two percent of all cases) among stalkers. These are persons with a conscious or subconscious desire to be placed in the victim's role. By insisting that someone is stalking him or her, the offender becomes the victim. There appears to be some similarity between this

classification and Munchausen Syndrome by Proxy, in which the offender harms the victim, then seeks medical assistance for the victim (usually the child of the female offender) in order to draw attention to herself, or himself.

Patterned Stalking

Another form of stalking, not identified in the study and typically not covered by anti-stalking statutes, is the behavior of sexual predators. This form of stalking may represent the greatest number of stalkers. These are often stranger-to-stranger relationships. This includes chronic sex offenders such as paraphiliac rapists and child molesters. Serial killers participate in stalking as a part of their attempts to locate victims. From this perspective, stalking is not an act, but a part of a process.

Forms of Stalking

Stalkers use several methods and instruments to harass and threaten their victims:

- Telephone
- Computer (Internet/E-mail)
- Fax
- Letters
- Gifts
- Following (walking/transport)
- Going to the victim's home
- Going to the victim's place of employment
- Vandalism (tearing up the victim's garden/painting on the victim's property)

Enforcement of Anti-Stalking Statutes

Anti-stalking statutes are not easily enforced. Warrantless arrests of stalking suspects, with probable cause, are permissible in many states. This is true also for the violation of a protective order. Some within law enforcement agencies believe that temporary restraining orders are effective in protecting the potential victim. However, this may depend on the type of stalker and his relationship with the victim.

In some cases, a visit from law enforcement will be enough to stop the harassment. However, if the stalker is deeply obsessed with the victim, the likelihood of deterring the stalker through informal or even court ordered sanctions is limited. For some offenders, the issuance of a protective order may be the final insult or challenge, and he will do everything possible to reach his victim. Research shows that the first 48 hours following the issuance of a restraining

order are usually the most critical time for the potential victim. The identification of such trends can be helpful to victim assistance providers who work with victims and must assess risk of harm. (NIJ, 1993)

Promising Practices: Victims of Stalking

It is important for stalking victims to recognize that their victimization is *not* their fault. Stalking is a crime that can touch anyone, regardless of where they live, with whom they associate, or their socio-economic status. With increased public attention about the crime of stalking, there are also increased services and resources available for victims of these crimes.

Victims of stalking include individuals in imminent danger of their physical and/or emotional welfare, and those with danger continually pending, but not immediately at risk for harm. In addition to becoming familiar with anti-stalking laws that presently exist or are pending in their state and/or municipality, victims of stalking should be informed of the resources and procedural precautions available to assist and protect them. The following is not intended to be a set of strict guidelines for stalking victims, but rather pragmatic information to assist them.

Victims in Immediate Danger

The primary goal of a victim in imminent danger should be to locate a safe place for her/himself. Safety for stalking victims can often be found in the following places:

- Police stations;
- Family/friends (if location is unknown to perpetrator)
- Domestic violence shelters/churches;
- Public areas (stalkers may be less inclined toward violence or creating a disturbance in public places);
- If departure from her or his current location is not possible, but a telephone is accessible, a victim may contact local law enforcement at 911; and
- Upon reaching safety, a victim may want to communicate with local law enforcement, victim services, mental health professionals and/or social services in order to receive additional assistance and referrals.

(The preceding section excerpted from: *INFOLINK Materials: Helpful Guide for Victims of Stalking*. The National Victim Center, February, 1993).

Victims in Continual Danger, But No Immediate Threat

While a victim may not be in immediate danger, he or she may assess the probability of impending danger. If a stalking victim determines that he or she is at risk for being in a potentially harmful or violent situation, the following options may be considered:

Restraining/protective/stay-away Orders

- Generally, these orders require the offender to stay away from and not interfere with the complainant. If violated, they may be punishable by incarceration, a fine or both.
- These orders are typically obtained through the district attorney's or prosecutor's office.
- Restraining orders are *not* foolproof -- they often do not extend beyond certain jurisdictional lines, and can only be enforced if they are broken. Victims should be cautioned against developing a false sense of security.
- Orders are *not* assured -- they are at the discretion of the sitting judge.

Anti-stalking Laws

- All states have enacted anti-stalking laws that make it a crime to willfully, maliciously, and repeatedly harass, follow, or cause credible threat to another individual in an attempt to frighten or cause harm.
- A victim may contact his or her local prosecutor's office to inquire about the state and municipal laws, and their applicability to his or her case.

Illegal Acts

- A victim may determine that the perpetrator has broken the law by entering the victim's household without his or her permission, stealing and/or destroying the victim's property, physically and/or sexually assaulting the victim, etc.
- If so, these acts may be punishable. Notifying the police of illegal acts may be important for the following reasons:
 1. If convicted, the perpetrator may be incarcerated and/or ordered to stay away from the victim -- the later may be ordered by a judge with probable cause shown at a hearing prior to conviction;
 2. Charges may intimidate the offender, sending the message that his or her actions are illegal, and will not be tolerated;
 3. Notification to the police produces documentation, which may be useful in a future complaint for evidentiary or credibility purposes.

Documentation

- Documentation of stalking should be saved and given to law enforcement.
- Documentation of the actions of the perpetrator may be useful in future complaints, or proceedings, for evidentiary or credibility purposes.
- Documentation may take the form of photos of destroyed property/vandalism or any injury inflicted on the victim by the perpetrator; answering machine messages saved on tape; letters or notes written by the perpetrator, etc.

Local Victim Advocate/Crisis Counselor

- Assistance may be obtained from:
 1. Domestic violence shelters/counselors;
 2. Rape crisis counselors;
 3. Victim advocates in district attorney's/prosecutor's offices; and
 4. Local law enforcement.
- Crisis counselors may either give the referral number to the victim, or offer to make the call and have someone from the referral organization contact the victim.
- The possibility exists that there will be no appropriate referral in the victim's vicinity. In such cases, law enforcement agencies should be contacted.

Contingency Plans

- If a victim is not in imminent danger, he or she could be at risk at any time. For this reason, a contingency plan may be appropriate. Suggested considerations include:
 1. Knowledge of and quick access to critical telephone numbers, including:
 - Law enforcement numbers and locations;
 - Safe places (e.g., friends, domestic violence shelters, etc.); and
 - Contact numbers for after safety is secured (this may include neighbors/family, attorneys, prosecutors, pet care, etc.).
 2. Accessible reserve of necessities:
 - Victims may wish to keep a packed suitcase in the trunk of their car, or other ready locations, for quick departure;
 - Reserve money may be necessary;

- Other necessities like creditors' numbers and personal welfare items such as medications, birth certificates etc.;
 - Miscellaneous items, like gas in the car, back-up keys for neighbors, etc.; and
 - If a victim has a child(ren), he or she may want to pack a toy, book and any special belongings the child(ren) may have.
3. Alerting critical people of the situation and potential crisis, including:
- Law enforcement;
 - Employers;
 - Family/friends/neighbors; and
 - Security personnel.

Preventative Measures

- Install dead bolts. If a victim cannot account for all keys, change locks and secure spare keys;
- If possible, install adequate outside lighting;
- Maintain an unlisted telephone number. If harassing phone calls persist, notify law enforcement;
- Treat any threats as legitimate and inform law enforcement;
- Vary routes taken and limit time spent walking;
- Inform a trusted neighbor (and colleagues) regarding situation. Provide neighbors with a photo or description of the suspect and any possible vehicles he or she may drive;
- If residing in an apartment with an on-site manager, provide the manager with a picture of the suspect;
- Have co-workers screen calls and visitors; and
- When out, try not to travel alone, and stay in public areas.

(The material in the preceding section excerpted from *Security Recommendations*, Los Angeles Police Department, Threat Management Unit, 1993).

Conclusion

Stalking is a complex social problem that has only recently been addressed in our nation's criminal codes. The objective in any response to a report of stalking is to intervene before the victim is injured or killed.

In order for communities to respond effectively, a coordinated, multi-agency strategy is essential. The multi-agency response to stalking should include: law enforcement, prosecutors, judges, community and institutional corrections, victim assistance, and social service agencies.

Training for criminal justice personnel is essential for proper identification and investigation of stalking reports. In addition, law enforcement agencies should develop policies related to handling stalking cases. Particular attention should be paid to procedures for the use of protective orders, to ensure that they are available to victims on an emergency basis.

Stalking

- 1) What is stalking and why is it addressed by the criminal codes of every state?

- 2) List the key elements of anti-stalking statutes.

- 3) Who might become the victim of a stalker?

- 4) What key factors suggest that a stalking victim is at risk for serious injury?

- 5) What is law enforcement's role in responding to stalking reports?

Additional Suggested Reading

Lardner, G. (1992, November 22). The stalking of Kristen: The law made it easy for my daughter's killer. The Washington Post, pp. C1, C2.

Marcia, S. E. (1993). Stalking the stalkers: A comment on new statutory initiatives. (on file with the Catholic University Law Review).

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Chapter 21, Section 3

Workplace Violence: Its Nature and Extent

Abstract: Workplace violence is a deadly aspect of modern day society. It is relatively widespread and when it occurs the results of workplace violence can often severe long-range impacts on both the employer and employees. The prediction of violence is very imprecise. There are certain factors that seem to be present in most of the reported cases of workplace violence. These factors should be considered when evaluating risk of potential situations of workplace violence.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The scope of violence occurring at workplaces across the United States.
2. What acts are included in the definition of workplace violence.
3. The nature and characteristics of workplace violence.
4. The dynamics of predicting dangerousness.

Statistical Overview

- Each year, nearly one million individuals become victims of violent crime while working or on duty. These victimizations account for 15 percent of the over six-and-a-half million acts of violence experienced by Americans age 12 or older. *(Ronet Bachman, Ph.D., July 1994, "Violence and Theft in the Workplace," page 1, "National Crime Victimization Survey," Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C.)*
- Crime victimizations occurring in the workplace cost about half a million employees 1,751,100 days of work each year, an average of 3.5 days per crime. This missed work resulted in over \$55 million in lost wages annually, not including days covered by sick and annual leave. *(Ibid., page 1)*
- Victims who were working were as likely to face armed offenders as those victimized while not working. Over 30 percent of victims who were working during a violent victimization faced armed offenders. Almost a third of these offenders had a handgun. *(Ibid., page 1)*
- Six out of ten incidents of workplace violence occurred in private companies. *(Ibid., page 1).*
- Homicide was the third leading cause of occupational death from 1980 to 1985, accounting for 13 percent of all workplace deaths. Homicide is the leading cause of death in the workplace for women. *(National Institute for Occupational Safety and Health, 1992, "Homicide in U.S. Workplace," Morgantown, WV)*
- According to a 1993 survey, more than two million Americans were victims of a physical attack at work during the past year. Another six million Americans workers were threatened, and 16 million were harassed. *(Northwestern National Life Insurance Company, 1993, "Fear and Violence in the Workplace," page 4, Minneapolis, MN)*
- Victims of violence or harassment experienced twice the rate of stress-related conditions, including depression, anger, insomnia, headaches and ulcers as non-victims (35 percent versus 18 percent); were 20 times more likely to say their productivity was reduced (21 percent versus one percent); and were ten times more likely to want to change jobs (39 percent versus four percent). *(Ibid., page 6)*
- Most attackers and harassers were people that victims dealt with on a daily basis. Customers, clients and patients accounted for the largest segment of attackers (44 percent). Co-workers and bosses accounted for 86 percent of all harassment at work, one-third of threats, and one-fourth of workplace attacks. *(Ibid., page 10)*

- The rate of workplace homicide has tripled in the last decade, and is now one of the fastest growing types of homicide in the United States. (S. Anthony Baron, Ph.D., 1993, "Violence in the Workplace: A Prevention and Management Guide for Businesses", page 15, Pathfinder Publishing, Ventura, CA)

What Is Violence in the Workplace?

- In October 1991, Elizabeth Teague shot and killed her plant manager and wounded two other employees because she was upset about her treatment at the Everready Battery Company in Vermont.
- In January 1992, Robert Mack, a General Dynamics plant worker in San Diego, California shot and killed his immediate supervisor and wounded an industrial relations supervisor after being fired from the job he held for 25 years.
- In January 1993, Jonathan D'Arcy, a part-time janitor for a cleaning service, walked into the office and threw a cup of liquid over the head and body of the bookkeeper. He fled the office after igniting the liquid. The bookkeeper later died from burns over 95 percent of her body.
- In January 1995, Gerald Rieflin killed two co-workers and wounded two others at the Ralston Foods, Inc. plant in Cedar Rapids, Iowa.
- On any given morning in every major city, there are accounts of armed robberies in which employees have been assaulted or killed.

Workplace Violence

Newspapers, magazines and the electronic media bombard us on a daily basis with the danger and violence that awaits us when we arrive at work. A rash of books has suddenly appeared in the market place dealing with workplace violence. This reaction to the phenomenon of workplace violence is not limited to the popular press. Prominent legal journals have recently published articles stating, "Workplace violence, often perpetrated by disgruntled employees, has reached epidemic proportions in the United States" (Barford and Tseng, 1994). Personnel journals publish accounts of violence in the workplace and discuss alternatives available to those professionals in the field of human resources. (Anfuso, 1994) The Occupational Safety and Health Administration (OSHA), an agency within the U.S. Department of Labor states that its mission is to assure as far as possible every working man and woman in the nation safe and healthful working conditions. The federal government is not the only agency that regulates

hazards within the workplace. States also have laws, regulations, and rules that govern working conditions. Additionally, there are general state and federal criminal codes that control acts of violence within the employment arena.

Definitions

One of the major problems in this emerging area is the lack of a unanimous definition of either violence or what constitutes the workplace. It should be obvious that before the extent of workplace violence can be determined, a definition must be agreed upon. Several texts on the market discuss and analyze workplace violence but do not include a definition.(Baron, 1993; Mantell, 1994)

Workplace

The workplace can and does take many shapes, forms and varieties. It may be a skyscraper in New York, a packing shed in California or even an eighteen-wheeler traveling down the interstate.

When counting injuries and fatalities, the U.S. Department of Labor, Bureau of Labor Statistics defines workplace as follows: “any location where a person is employed (working for pay, compensation, or profit) at the time of the event, or where a person is engaged in legal work activity, or present at a site of the incident as a requirement of his or her job” (Bureau of Labor Statistics, 1994).

In essence, a workplace is any location where a person carries out work-related functions. The Department of Labor does not include in its definition fatalities that occur when a person is commuting to or from work. It should be noted that this definition is broader than those used by other federal and state agencies administering specific laws or regulations. This definition does not require that the injured person be the one conducting work-related functions. As will be seen, individuals who are innocent bystanders at a work location can also become victims.

Violence

The more difficult and controversial definition is violence.

The Department of Labor defines injury as: “any intentional or unintentional wound, or damage to the body resulting from acute exposure to energy, such as heat or electricity or kinetic energy from a crash, or from the absence of essentials as heat or oxygen caused by a specific event or a series of events” (Bureau of Labor Statistics, 1994).

Work-related illnesses are excluded from this definition because of the difficulty associated with linking illnesses to the workplace. Weiner and Wolfgang (1989) have defined violence as including:

“Actual or threatened, knowing or intentional application of statutorily impermissible physical force by one person directly against one or more other persons . . . for the purpose of securing some end against the will or without the consent of the other person or persons.”

However, violence as used in this context is more than simple physical force. It can be as deadly as a shotgun blast to the chest or as simple as a slap to the face. Additionally, violence should and does include the establishment and maintenance of an oppressive work environment. In other words, violence in the workplace includes sexual harassment.

While the popular view of sexual harassment is that females are always the victim, this perception is not correct. Males have been victims of sexual harassment by females and even other males. Therefore, workplace violence is any form of nonconsensual verbal or physical actions carried out by one person or persons upon another within the working environment.

Nature and Extent of Workplace Violence

On a daily basis the news media report injuries and death in the workplace. Whenever the actions of the perpetrator result in more than one killing, it is usually the lead story on the evening news. Do we live in an environment that requires metal detectors at the entrance to every office? Is the workplace so dangerous that we should arm ourselves as we leave home?

In 1993, the Northwestern National Life Insurance company conducted a survey on workplace violence. The survey was based upon telephone interviews with 600 full time civilian workers excluding business owners and sole proprietorships. Workers were employees who worked 35 hours or more for eight hours a day between July 1992 and July 1993.

Northwestern National did not specifically establish a definition for workplace violence. However, it appears that three elements comprised the criteria used to establish violence at the job site:

- Harassment.
- Threats.
- Physical attack.

Northwestern National used common lay terms rather than technical legal terms in establishing these definitions:

- *Harassment*: The creation of a hostile working environment by words or actions, not resulting in physical harm.
- *Threats*: An expression of intent to cause physical harm.
- *Physical Attack*: Aggression that resulted in a physical assault.

Northwestern National found that violence in the workplace is commonplace. Using its survey of 600 workers to project results for the entire working population of the United States, Northwestern National reports that:

- In one year, over two million workers were victims of physical attacks; another six million workers were threatened and sixteen million were harassed.
- Most attackers were customers, clients, and patients. Co-workers and supervisors accounted for the majority of harassment.
- Employees who worked evenings or nights were more likely to be attacked, threatened or harassed on the job than those who worked day time shifts.
- Non-victims also reported being affected by workplace violence.
- Fear of violence and/or harassment caused twenty-one percent of all workers to report mental or physical distress.

(The above statistics are from: Northwestern National Life, *Executive Summary*, 1993)

Workers with employers who reported effective human resource programs such as grievance procedures, protection from and recourse for harassment, and security programs had lower rates of workplace violence. For example, only 18 percent of those employees whose employer had a grievance, harassment and security program reported being attacked, threatened or harassed in the past 12 months, versus 31 percent of the employees whose job did not have such programs. Northwestern National concludes that improved interpersonal relations and effective prevention programs can significantly reduce the levels of violence in the workplace.

In August 1993, the Center for Disease Control issued its *National Profile: Fatal Injuries to Workers in the United States, 1980-1989: A Decade of Surveillance*. The National Traumatic Occupational Fatalities (NTOF) surveillance system was developed by the National Institute for Occupational Safety and Health (NIOSH). The purpose of this system was to provide

information regarding work-related injury deaths in the United States. Information in the NTOF system was taken directly from death certificates filed in the 50 states, New York City and the District of Columbia for workers 16 years and older who died as a result of an injury at work. Some scholars have criticized using only death certificates as a means of measuring injury or death while at work (Russel and Conroy, 1991). Motor vehicle crashes and homicides are external causes of death that may be missed when using death certificates to establish occupational injuries.

The leading causes of death in the workplace in the United States were motor vehicle crashes (23%), machine-related incidents (14%) and homicides (12%). Homicides accounted for the highest fatality rate per 100,00 workers in the occupation divisions sales (1.4), service (1.1) and executive/administrators/managers (0.9). The rates for homicide are three times as high for males compared to females, but females are more likely to be killed as a result of a homicide in the workplace than from any other cause. The Center for Disease Control ended its report with the startling fact that more than 17 workers die each day from an injury at work.

Violence and Theft in the Workplace

In July 1994, the U.S. Department of Justice issued a report entitled *Violence and Theft in the Workplace*. This report indicated that each year, nearly one million persons become victims of violent crimes while working. Workplace violence is expensive. This type of crime costs an average of 3.5 days off work per incident. This translates into over 55 million dollars in lost wages annually, not including days covered by sick and annual leave. Over 30% of workplace victims faced armed offenders. Almost one-third of these offenders had a handgun. Six out of ten incidents of workplace violence occurred in private companies. While governmental employees make up approximately 18% of the U.S. workforce, 30% of the victims of workplace violence were federal, state or local governmental employees. This high percentage of incidents may be caused by several factors including certain governmental occupations that carry a high risk of violence such as peace officers.

Homicide in the Workplace

In September 1994, the Bureau of Labor Statistics issued the *National Census of Fatal Occupational Injuries, 1993*, which determined that there were 6,271 deaths in the workplace in 1993. Homicide was the second leading cause of job-related deaths in 1993, resulting in 1,063 deaths. This form of workplace violence accounted for 17 percent of all fatally injured workers during that year. Approximately one in seven workers was killed by a work or personal acquaintance. Homicide was the most frequent cause of deaths of women in the workplace, accounting for 39 percent of all women's fatal injuries.

Understanding the Nature of the Workplace Violence

It appears that no location within the workplace is absolutely safe. One out of every seven fatal incidents occurred in a building open to the public, such as a grocery store or other retail store, restaurant, office building or school. Of the approximately 200 deaths that occurred in a parking lot or garage, about 50% were homicides.

Assaults and other violent acts made up 21% or 1,309 of the total fatal injuries in 1993. Guns were the weapons most often used, accounting for 14% of all deaths or 875 times. Knives or other sharp or pointed objects were the second choice for inflicting fatal injuries on workers. These instruments accounted for two percent or 95 deaths during 1993.

Men are more likely than women to be attacked by a stranger, while women were more likely to be attacked by someone known to them. Five percent of women attacked in the workplace were assaulted by a husband, an ex-husband, boyfriend, or ex-boyfriend. Sixty percent of all women attacked in the workplace knew the assailant.

According to the federal government, an average of fifteen people are murdered at work each week in this country (U.S. Department of Health and Human Services, 1993). The Center for Disease Control (1993) states that workplace homicide is a serious public health problem that demands our attention. The National Institute for Occupational Safety and Health found that during one week, an owner of a pawn shop, a convenience store clerk, a psychologist, two sanitation managers, a tavern owner, a fisherman, a cook, two cab drivers, a co-owner of a furniture store, a restaurant manager, a maintenance supervisor, a video store owner and a postal carrier were all victims of workplace violence -- they were murdered on their jobs.

Have we become a more violent society in the workplace? At first glance, it might appear as if the workplace has become a war zone. However, by adding other figures, workplace violence takes on another perspective. Surprisingly, the statistics from NTOF show a dramatic lowering in the number of deaths over the last 10 years. During the last decade, the number of fatal injuries decreased from a high of 7,405 in 1980 to 5,714 in 1989. This represents a 23% decrease in deaths over a 10-year period.

The United States Department of Labor estimates that there is a total national workforce of 121 million people. Based upon the National Census of Fatal Injuries figure of 1063 homicides, which further indicated that approximately 14% all those homicides were committed by a co-worker or personal associate, the figure states that approximately 149 workers died at the hands of someone they knew or with whom they worked. Using these figures, the odds of being killed by someone you know or work with are approximately one in 812,080. The National Weather Service projects the odds of being struck by lightning at one in 600,000.

The fact that workplace homicide is considerably less prevalent than the media and some consultants would have us believe does not diminish the tragedy of preventable death in the workplace. Employers and those charged with the safety of their company's job site still need to be alert to possible incidents of violence.

Characteristics of Perpetrators of Workplace Violence

Is it possible to establish a set of characteristics for those who commit acts of aggression in the workplace? Scholars and researchers have difficulty in agreeing on the definition of workplace violence; therefore it is not surprising that we have not yet established a list of characteristics of those who may commit aggression at the job site. However, by combining scientific and academic studies, with reports from the popular media, it is possible to list some characteristics that should cause professionals to be more suspicious or careful in any given situation. The following is a brief list of some of the more common characteristics:

Prior Verbal Threats: If the employee engages in threatening conduct toward other employees or supervisors, this threat should be taken seriously and the employer should respond in an appropriate manner.

Intimidating Behavior: The employee may exhibit any of the following behaviors: repeated phone calls to the victim, following the victim, and/or leaving messages for the victim.

Mental Health Problems: Depression, fantasies, irrational/violent thoughts, paranoid delusions, and extreme mood swings all may indicate a potential for workplace violence.

Obsessions: The employee may be preoccupied with weapons and/or the military, or hurting a specific person. He or she may believe a romantic attachment exists to a co-worker.

Decline in Performance: Recent excessive and unexplained absences from the job, concentration problems, increased signs of poor health or hygiene and the inability to accept responsibility for errors.

Stress: Increased stress in the employee's personal life including financial problems, problems in his or her marriage or other relationships, inappropriate display of emotions on the job such as uncontrolled anger or excessive crying.

Substance Abuse: Some drugs increase paranoia and others can cause aggressive behavior. Alcohol is present in many violent situations. While there is no scientific evidence to substantiate that substance abuse causes violence, it is present in many of the reported cases of violent behavior.

These and other studies may indicate that we are making progress in our ability to predict violent behavior in certain specific situations. However, this still remains more of an art than a science. While there appears to be some common characteristics in those who commit violence in the workplace, no definite profile has been accepted by the professionals in this area.

Definition of Terms

Sexual harassment: The establishment and maintenance of an oppressive work environment.

Workplace: Any location where a person carries out work related functions.

Workplace violence: Any form of nonconsensual verbal or physical actions carried out by one person or persons upon another within the working environment.

**Workplace Violence:
Its Nature and Extent**

- 1) Define workplace violence.

- 2) Should the definition of workplace violence include sexual harassment? Why?

- 3) Can we, with any accuracy, predict dangerousness?

- 4) Describe the profile of a person who engages in violence in the workplace.

- 5) Briefly describe the components of your proposed, ideal workplace violence victim assistance system.

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Chapter 21, Section 4

Juvenile Justice

Abstract: This chapter provides the participant with a generalized perspective of the juvenile justice system as it pertains to the administration of justice and issues of importance to victims of crime. Included within the presentation and discussion is information concerning the differences between the juvenile justice and adult criminal justice systems. This chapter also addresses a variety of issues ranging from the impact of domestic violence, sexual and physical abuse upon children and how such crimes are perpetuated through the cycle of violence, to the effectiveness of prevention and offender conciliation programs involving juvenile offenders and their victims.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The original intent of the juvenile justice system.
2. The characteristics unique to the juvenile justice system, as well as to victims of juvenile offenders.
3. The nature of confidentiality as applied in the juvenile justice system.
4. The range of sanctions available for juvenile offenders.
5. The impact of the victims' rights movement on the juvenile justice system.

Statistical Overview

- Between 1988 and 1992, juvenile arrests for violent crime increased nearly 50 percent. *(Page iv)*
- In 1991, the National Crime Victimization Survey (NCVS) found that victims age 12 and older reported that the offender was a juvenile (under age 18) in approximately 28 percent of personal crimes (i.e. rape, personal robbery, aggravated and simple assault, and theft from a person). *(Page 1)*
- In 1991, juveniles were responsible for 19 percent of all violent crimes (i.e., rape, personal robbery, and aggravated and simple assault). *(Page 1)*
- Persons most likely to be victimized by juveniles were individuals between ages 12 and 19 (NOTE: Crimes against children below age 12 are not a part of NCVS). The offender was a juvenile in nearly half of these violent crimes. *(Page 1)*
- Law enforcement agencies made nearly 2.3 million arrests of persons under age 18 in 1992. *(Page 2)*
- In 1992, juveniles accounted for 13 percent of all violent crimes reported to law enforcement agencies and 18 percent of all violent crime arrests. Based on 1992 clearance data, juveniles were responsible for: 9 percent of murders; 12 percent of aggravated assaults; 14 percent of forcible rapes; 16 percent of robberies; 20 percent of burglaries; 23 percent of larceny-thefts; 24 percent of motor vehicle thefts; and 42 percent of arsons. *(Page 3)*
- The years between 1988 and 1991 saw a 38 percent increase in the rate of juvenile arrests for violent crimes. *(Page 6)*
- The number of violent juvenile crime arrests is projected to increase 22 percent between 1992 and 2010. If current trends continue, by the years 2010 the number of juvenile arrests for murder is expected to increase 145 percent over the 1992 level; for forcible rape, 66 percent; and for robbery, 58 percent. *(Page 7)*
- Between 1987 and 1991, the risk that a person between the ages of 12 and 17 would become a victim of a nonfatal violent crime increased 17 percent. *(Page 17)*
- Black juveniles are four times more likely than white juveniles to be homicide victims... Young black males have the highest homicide victimization rate of any race/sex group. The rate for black males was twice that of black females, five times that of white males, and eight times that of white females. *(Page 19)*

- When juveniles commit homicide, most of their victims are friends or acquaintances (53 percent). Thirty-two percent of juvenile murder victims are strangers, and 15 percent are family members. (Page 24)

(The preceding statistics are derived from "Juvenile Offender and Victims: A Focus on Violence," May 1995, by Howard N. Snyder and Melissa Sickmund, National Center for Juvenile Justice, Pittsburgh, PA and Office of Juvenile Justice and Delinquency Prevention, Washington, DC.)

Introduction

One of the greatest threats to individual and community safety in the United States is the astounding increase in juvenile crime and, in particular, *violent crimes* committed by our nation's youth. They murder, rape, rob, assault, steal, and commit arson at unprecedented rates. They intimidate their family, their friends, and their communities. They flood a juvenile justice system that is ill-equipped to deal with the steady onslaught of arrests. And "*they*" are just children, long termed "the future of America" whose futures too often hold promise of despair, dysfunction and even death by violent means.

Since the President's Task Force on Victims of Crime published its *Final Report* in 1992, the number of children committing crimes -- as well as being victimized by crime -- have considerably increased. In 1991, victims attributed about one in four personal crimes (28 percent) to juvenile offenders under age 18 (Bureau of Justice Statistics [BJS], 1992). That same year, juveniles were responsible for about one in five violent crimes (19 percent) (BJS, 1992).

The high level of violent crime committed by youth in 1992 is even more shocking when one considers the increase in violent crime over the past decade. Figure 1 depicts the levels of violent crimes committed by juveniles in 1992, as well as the percentage increase in arrests of juveniles for these crimes since 1983 (Snyder and Sickmund, 1995, p. 3, p. 10):

Type of Violent Crime	% Committed by Juveniles in 1992	% Increase in Arrests since 1983
Murder	9%	128%
Aggravated assault	12%	95%
Forcible rape	14%	25%

Historical Perspective

Compounding the many other startling issues that any crime victim is confronted with, is the realization that the administration of juvenile justice differs greatly from that of the adult criminal justice system. Historically, the juvenile justice system has evolved over the years based upon the underlying premise that juveniles are and must be treated differently from adults.

In the early 20th century, when formal distinctions were made between the adult and juvenile justice systems, it was believed that many youthful offenders were errant children who were in need of simple guidance and advice in order to resurrect them from a life of debauchery and crime. During the early years following the turn of the century, juvenile crime was often characterized by acts of truancy, petty thievery or burglary.

- As more and more youthful offenders were housed within jails or other adult facilities, separate courts, detention facilities, rules, procedures and laws were created for juveniles.
- This initiative was undertaken by social reformers for the purpose of protecting their welfare as children, and to ensure that they were offered opportunities for rehabilitation while attempting to maintain some sense of protection for the community.
- Within this context, the juvenile justice system was introduced into the American legal and social service system.
- Juvenile statutes were developed with an emphasis on protecting and salvaging the wayward children of society.

In this separately designed justice process, every effort was made to divert the child from the criminal justice system. Churches, community groups and social workers were enlisted to provide guidance and assistance the errant offender in modifying his or her behavior. Youthful offenders were often required to serve periods of time under the supervision of a truant or probation officer. Every effort was made to provide necessary assistance through non-institutional treatment. When institutionalization was necessary, youthful offenders were housed within schools of industry where attempts were made to provide them with vocational training

Within this historical context, it is important for every victim advocate to understand that there are some characteristics about the administration of the juvenile justice system that are clearly distinct from the adult justice system. It is also important to note that those characteristics are undergoing close scrutiny regarding their effectiveness in modern day society. Understanding

these distinctions are crucial to providing support and much needed information to victims and their families.

Characteristics Unique to Juvenile Justice

There are a variety of significant differences between America’s juvenile justice and adult justice systems. While these differences are enumerated throughout this chapter, it is helpful to know and understand differences in terminology, as depicted in the following chart:

ADULT JUSTICE SYSTEM	JUVENILE JUSTICE SYSTEM
Prosecutors	Court advocates
Convictions	Adjudications
Sentences	Dispositions
Being “found guilty”	A “finding”
Criminals/Delinquents	Wards/Kids
Getting locked up	A placement
Crimes	Incidents

In addition, victims of juvenile offenders share many unique characteristics, due in large part to the lack of rights and services afforded to them by juvenile justice systems throughout the United States. While 30,000 statutes have been passed that designate and enforce crime victims’ rights in America, only a handful of these apply to victims of juvenile offenders. Such omissions create tremendous hardships for individuals who are victimized by adolescents and children.

Characteristics unique to victims of juvenile offender include, but are not limited to:

- Shock and vulnerability which can be enhanced because of the age of the child who committed the crime.
- Vulnerability is also enhanced when the victim knows the juvenile offender.
- Victims have very limited participatory rights within the juvenile justice system.
- Confidentiality protections for alleged and/or convicted juvenile offenders make it more difficult for victims to receive vital information about the case.

- Information and resources for victims of juvenile offenders are limited, from both system-based and community-based programs.
- Many victim service programs are not geared toward assisting victims of juvenile offenders.

Confidentiality

Most states have included provisions within their juvenile justice statutes that mandate ensuring the confidentiality of the juvenile offender. These laws were enacted to avoid stigmatizing the youthful offender with every expectation that such information would only serve to impede any rehabilitative efforts. Consequently, information regarding the name and age of the offender is often unavailable to the victim from law enforcement and juvenile court records. Similarly, juvenile court proceedings are confidential and generally exclude all persons from the actual hearing, other than court personnel. In many states, the records of the juvenile court proceedings are sealed after the offender has reached adulthood and the dispositions of juvenile cases cannot be considered in any future criminal proceedings as an adult.

Victims' Rights in Juvenile Cases

As noted above, the profile and nature of juvenile criminal activity have changed drastically during the past two decades. The violent and increasingly serious nature of the crimes committed by young criminals no longer resembles the crimes committed by juveniles when these statutes were enacted. In light of the emerging seriousness of crimes now committed by juveniles, and because of the advancement of victims' rights, several states are changing existing statutes to allow victim access to information about the offender's status. It is important that advocates have knowledge of these confidentiality constraints, and that they be able to explain them sufficiently to victims and their families.

- In many states, victims are now able to obtain information regarding the status of the proceedings, the disposition of the hearing, and the conditions under which a juvenile is granted probation or detained in a juvenile institution.
- In an increasing number of states, victims and their families are now able to attend previously closed juvenile court proceedings.
- Information necessary to obtain restitution, file civil suits, or monitor the location and whereabouts of the offender is also increasingly available in many jurisdictions.

- The federal constitutional amendment introduced by the U.S. Congress in 1996 and its proposed broad participatory rights apply to *juvenile*, and well as adult offenders.

Juvenile Justice Procedures

In most states, the juvenile justice system is governed by specially created statutes generally associated with the administration of social welfare or programming. As such, these statutes are separate from the adult criminal justice statutes and contain significant differences in the provisions for administering justice. In this regard, the terminology is frequently different as it was developed within a different framework so as not to stigmatize the youthful offender. Within this framework, the terminology frequently differs that used within adult criminal proceedings. For example:

- In adult proceedings, charges may be filed and a trial may be held to ascertain the innocence or guilt of the offender.
- In juvenile cases, the court may be petitioned for a hearing on allegations made against a juvenile and a hearing may be held to ascertain whether the allegations were found true.

It is important that victim advocates become familiar with the statutory provisions, procedural operation and terminology of the juvenile justice system within their respective locales. The advocate can not only serve to support the victim or victim's family, but can act to advocate for change where necessary.

Age

Each state differs in its definition of youthful offenders who fall under the jurisdiction of and can be governed by juvenile justice statutes:

- Historically, most juvenile offenders were generally described as those persons under the age of 18 years of age.
- In other states, provisions mandated that the court could make a finding that a youthful offender over the age of 18 may be tried as a juvenile if the court found that the offender or offenses showed evidence that they lacked in maturity or social development.

- Conversely, other states provided that offenders could be tried as adults when circumstances demonstrated that the crime and the offender exhibited a great degree of criminal sophistication, or the nature of the crime was so heinous that incarceration in a prison setting was warranted.

It is this latter trend that has advanced in the United States during the past decade, with an increasing number of states enacting statutes that provide for youthful offenders to be tried as adults. Many states have enacted statutes that provide that 14- to 17-year-old offenders can be tried and convicted as adults for serious offenses such as murder, rape and crimes involving weapons. Some states, such as Missouri, have no age limitations to remand to adult criminal courts.

One other factor involving age pertains to the period of time a youthful offender can be incarcerated. Many states incarcerate juvenile offenders for a period of up to no more than the age of 25. Others have enacted statutes that provide for the transfer of serious youthful offenders to the adult penal system after a given age to finish the remainder of their designated period of incarceration. Again, it is important for the advocate to become familiar with the various provisions of local statutes as they pertain to age, and the juvenile justice systems as they vary greatly from state to state.

Diversion

Within the juvenile justice system, most states employ a progressive array of sanctions for juvenile offenders. Among these sanctions are the use of diversionary practices aimed at averting the juvenile justice system and redirecting youthful offenders from their criminal activity. These diversionary opportunities are generally characterized by programs such as parental and child counseling, police youth activities, community service, drug prevention education and informal probation; they are generally used with first time, non-violent offenders.

Every attempt is made to engage juvenile offenders in some endeavor that will serve to provide information regarding the consequences of their actions, while redirecting their “at-risk” behavior into a more positive direction. Often times these programs will impose restitution as a provision of diversion. Victims should understand that this sanction is the earliest form of intervention used with first-time offenders.

Victim Impact Statements

As discussed elsewhere in this curriculum, victims or surviving family members are often given the opportunity to submit or make statements prior to sentencing in adult cases. An increasing

number of states are passing statutes which extend the same right to victims and their surviving family members in juvenile cases:

- Victim impact statements vary in their method of presentation and format based upon the provisions of the statute.
- Generally victims of juvenile offenders are provided with an opportunity to submit a written statement for inclusion in the probation report to be read by the court prior to the rendering of a disposition.
- In other instances, victims may appear in court and make statements directly to the court, and/or submit audio or video recordings for consideration by the court.

Probation

Probation is the sanction used most in both adult and juvenile cases. This sanction of community supervision is imposed by the juvenile court. Probation is generally characterized by requirements, known as terms and conditions of probation, that delineate expected behavior which the probationer must adhere to for a given period of time. Terms and conditions can include educational programs (e.g., GED), community service, counseling programs, restitution requirements and participation in drug counseling programs. Terms and conditions can also be imposed that restrict the offender from contacting the victim or from harassing the victim in any way. Restitution can also be ordered as a term of probation. Differing from diversion, the probationer must have regular contact with a probation officer to demonstrate compliance with conditions of probation.

Community Programming

Often, juvenile courts will commit offenders to select community treatment programs. Such residential counseling centers and drug treatment programs are designed to hold offenders accountable while assisting them in learning the life skills necessary to re-integrate into society. The programs may be located in local communities or within adjoining jurisdictions or states.

Youth Detention Facilities

With the exception of serious and violent offenders, youth detention facilities are generally considered the disposition of last resort for young offenders within the juvenile justice system. Usually operated by state government or private corporations that enter into contractual

agreements with jurisdictions, the facilities are the modern day counterparts of the schools of industry that emerged after the turn of the century. The detention facilities of today operate using a combination of contemporary correctional and treatment programs that differ from those within adult institutions. Most continue to operate within a framework of rehabilitation, providing educational and vocational training within an institutional setting. The changing profile of the more violent, less responsive, juvenile offender has also resulted in a greater emphasis upon operating secure facilities with increased attention to incarceration and safety within the institution. Most states are also experiencing problems with overcrowding of facilities, which further impedes rehabilitation efforts.

It is important for advocates and victims alike to understand the differences associated with the operation and administration of youth detention facilities. Most markedly, youthful offenders are generally required to serve shorter sentences within such facilities than their adult counterparts in prison. Finally, it is important for victims to realize that most youthful offenders are eventually returned to the community.

Parole Hearings

Many states are enacting statutes or administrative policies that afford victims opportunities to participate in juvenile parole hearings. Each parole board considers many factors in determining whether an individual should be released from custody. Among the factors considered are the offender's progress toward educational or vocational goals and his or her overall behavior while incarcerated. In addition, it is important for the juvenile paroling authority to consider the seriousness of the original offense for which the person was incarcerated, and the overall impact upon his or her release back into the community. While many states still restrict such statements at parole hearings, it is increasingly being accepted as an important part of a comprehensive parole eligibility assessment.

Parole Supervision

Similar to probation in its design and functioning, parole (also called "aftercare") is granted to juveniles who are released after having served a period of detention or incarceration when they are returning to society. Parole officers can be a valuable asset to advocates in ensuring that youthful offenders refrain from contacting or harassing the victim of the offender in any way. Generally, when a person successfully completes a period of parole or aftercare supervision, he or she is discharged from the jurisdiction of the state.

Restitution

Restitution, as described in other chapters contained in this curriculum, is sometimes available to victims of crime. The requirement of the payment of restitution to a victim is an extremely effective tool to hold youthful offenders accountable. Court imposed or diversionary agreements of restitution are very constructive forms of rehabilitation. Youthful offenders can learn much about the impact of their crime by being required to make monthly payments in any amount. Such a payment schedule adds a realistic and constant reminder of the financial impact that their actions had upon the victim. In addition, restitution provides the offender with an opportunity to repay the victim and attempt to “right the wrongs” they have committed against another. Restitution programs present many difficulties from administrative to inability of offenders to pay. These are even more pronounced in juvenile restitution programs. However, this should not deter programs from attempting and enforcing juvenile restitution.

Community restitution is also an effective form of rehabilitation, and often proves satisfactory to victims as a disposition in their case. Offenders are required to perform some community service to satisfy the terms and conditions of diversion or probation. This type of activity often serves to provide the youthful offender with some sense of social responsibility while repaying society and a victim for the negative impact of their criminal activity. In some communities, victims are allowed to offer input into the type of community restitution that their youthful offender must complete.

In many instances, restitution cannot realistically be expected as the offender may be indigent or is sentenced to prison or a detention facility for a long period of time. In other instances, restitution may be difficult as teenagers often have problems finding jobs, and school requirements preclude their involvement in work. Each advocate must be realistic in their work with the victims of juvenile offenders. It is not productive to set unrealistic expectations for restitution payments when the opportunity for success may be limited. Advocates would do well to counsel victims as to the realistic feasibility of restitution in such cases.

Victim Impact Panels

An increasing number of victims and surviving family members have begun to participate in victim impact panels with juvenile offenders, both in non-institutional and institutional settings. Generally guided by victim advocates or organizations, victims of crime have addressed groups of young offenders, describing to them the impact of crime upon their lives. Such panels are conducted for groups of offenders including first-time offenders and those serving periods of incarceration. The panels serve as a form of empowerment to participating victims, as it affords them opportunities to symbolically confront and educate a community of offenders whose behavior represents that which caused them injury or personal suffering. For the offender, victims provide some much needed insight into the impact of their criminal behavior in human

terms. Research published by MADD National Office in 1995 shows significant benefits for both victims and offenders.

Victim-Offender Mediation

Victim-offender mediation and conciliation programs involve face-to-face meetings, in the presence of a trained mediator, between an individual who has been victimized by a crime and the perpetrator of that crime. Victim-offender mediation programs operate within the context of the criminal justice system, rather than the civil courts. Historically, these programs have been instituted successfully within the juvenile justice system, most significantly in cases involving property offenses. The purpose of such meetings is to provide the victim with an opportunity to gain insight into the reasons why an offender committed the crime, and to confront that offender regarding the impact of the crime. The meetings also provide the offender with information regarding the real life human consequences of their actions. These meetings often result in agreements in which juvenile offenders perform some restitution-related service directly for the victim. Victim-offender programs also focus on the need for closure, on the expression of feelings, and on greater understanding of the event and of each other. Victim participation in *any* mediation or conciliation programs must be *strictly voluntary*. Great caution must be taken to avoid the specter of even the most subtle, unintended coercion of victims to participate.

Federal Initiatives

The *Violent Crime Control and Law Enforcement Act of 1994* created new federal crime provisions for juvenile offenders. The following is a summary of these provisions:

The Act amended current federal law to permit adult prosecution of 13 to 14-year-olds charged with certain crimes of violence, including robbery or aggravated sexual abuse committed with a firearm. It should be noted that this provision does not apply to offenses committed by Indian juveniles in Indian Country if the jurisdiction for the offense is solely within Indian Country. However, exceptions to this can occur if the tribe elects to subject the tribe to the new provision under the Act.

In addition, the Act adds several serious firearms offenses to prosecuting juvenile offenders as adults. For example, in determining whether a juvenile should be tried as an adult, the Act requires courts to consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced others to take part in criminal activities, involving the use of, or distribution of, firearms or drugs.

Firearm Safety

The 1994 *Violent Crime Control Act* establishes a federal offense when juveniles under 18 years of age knowingly possess a handgun or handgun ammunition.

In addition the Act establishes that:

- It is unlawful to transfer a handgun or handgun ammunition to a person the transferor knows or has reasonable cause to believe is under 18 years of age.
- There are certain exceptions, such as for the armed forces, ranching, farming, hunting, and other specific uses. These may require juveniles to possess prior written consent from a parent or guardian.
- Probation is established as a penalty for juveniles in possession of a handgun or handgun ammunition if the juvenile has never been convicted of an offense or adjudicated as a delinquent for an offense. Otherwise, the maximum penalty for a juvenile is one year of imprisonment.

In addition, the penalty for an adult who transfers a handgun or handgun ammunition to a juvenile is generally one year imprisonment. Under the new federal law, if the adult knew or had reasonable cause to know that the juvenile intended to possess or use the handgun or ammunition in a crime of violence, the maximum penalty is 10 years of imprisonment.

Previous federal laws state that a licensed firearms dealer who transfers any firearm to a person under 18 years of age, or any firearm other than a rifle or shotgun to a person under 21 years of age, is subject to a maximum penalty of five years of imprisonment.

Juveniles and Drugs

With respect to using minors to distribute drugs in or near a protected zone the 1994 *Violent Crime Control Act* also created new criminal provisions. The Act tripled the maximum penalty for using a minor to distribute drugs around or within 1,000 feet of a protected location, such as a school, college, playground, or public swimming pool. In addition, it tripled the maximum penalty for using a minor to assist in avoiding detection or apprehension for drug dealing at or near a protected location.

ACA Recommendations on Victims of Juvenile Offenders

In 1994, the American Correctional Association published 16 recommendations to initiate and enhance rights and service for victims of juvenile offenders. This landmark publication included the following:

1. The rights of victims of juvenile offenders should mirror the rights of victims of adult offenders in the United States. Crime victims should *not* be discriminated against based upon the age of their offenders.
2. Crime data and statistics must be better categorized and analyzed according to the age of the offender, the classification of crime, and the type of victim.
3. Victims must have access to information about their offenders' status. Therefore, restrictions on confidential information relevant to the victim must be removed from juvenile offenders and the agencies that serve them.
4. Any treatment and/or education programs for juvenile offenders must include a victim awareness component.
5. Juvenile justice, victim service and allied professionals should collaborate on efforts to adopt and implement the balanced approach of restorative justice as a guide to agency and system policies, programs and services.
6. Victim/witness and victim assistance programs must be expanded to serve victims of juvenile offenders, and be housed in juvenile courts, probation and corrections departments for easy access by victims and witnesses.
7. Juvenile justice personnel -- including administrators, managers and line staff -- need victim sensitivity and awareness training included as part of their basic and continuing education. In addition, victim assistance personnel need training on juvenile justice policies, procedures and programs.
8. Juvenile corrections agencies must adopt protocol, programs, policies and training for field, custody and support staff on how to respond to staff victimization and critical incidents.
9. There must be updated comprehensive literature reviews and research into existing statutory and constitutional protections affecting victims of juvenile crime, along with existing programs and policies that pertain to victims of juvenile crime.

10. Existing victim service and victim awareness programs within the juvenile justice and juvenile corrections systems must be evaluated, with the data utilized to enhance, expand and replicate effective programs nationwide.
11. Juvenile offender management and tracking systems should incorporate databases that include information about crime victims and rights relevant to the juvenile offenders' cases.
12. There must be improved efforts to network and provide comprehensive cross-training among local, state and national juvenile justice officials, juvenile corrections professionals and associations, and local, state and national victim service professionals and associations.
13. All programs and services designed to assist victims of juvenile offenders must understand and respect diversity of juvenile offenders and their victims -- by culture, gender, geography, race and religion -- in order to be truly effective.
14. All U.S. Department of Justice agencies that provide research, evaluation, training and technical assistance relevant to juvenile justice and/or crime victims should designate a staff position specific to victims of juvenile offenders.
15. The American Correctional Association should conduct public hearings to receive testimony from juvenile corrections professionals, juvenile justice officials, victim service providers, crime victims and allied professionals about all topics relevant to victims and victim services within the juvenile justice system.
16. The American Correctional Association should adopt these Victims Committee recommendations as a foundation for Association policy on victims of juvenile offenders.

U.S. Department of Justice Initiatives

In the *National Juvenile Justice Action Plan* published in 1996, the U.S. Department of Justice affirmed its commitment to supporting improved rights and services for victims of juvenile offenders. The *Plan* included the following response to victims' concerns:

“As a civilized society, we need to feel safe in the company of people who walk our streets and attend our schools. Even if we improve the juvenile justice system so that it is capable of providing treatment, skills training, and rehabilitation, mechanisms must be in place to provide information about juvenile offenders and support the rights of victims. Simultaneously, however, we need to ensure that reasonable confidentiality protections are afforded to juvenile offenders.

The *Action Plan* endorses the presence of victims in the courtroom, particularly in felony cases. Victims of juvenile offenders should be given the opportunity to address the court and be notified of the disposition, parole status, and release of perpetrators. It also supports programs that help young offenders understand the long-term effects of their behavior and learn how to control anger and resolve conflicts without violence. . . .”

In addition, the *Action Plan* endorsed the ACA recommendations cited above relevant to victims’ participatory rights, access to information, victim awareness programs for youthful offenders, and training and collaborative efforts among victim services and juvenile justice professionals.

The Office for Victims of Crime has provided leadership and resources to promote victims’ rights and services in juvenile justice. In 1995, OVC funded three forums sponsored by the National Organization for Victim Assistance to address these issues. In 1996 and 1997, OVC plans to assess the current state of victims’ rights and services in juvenile justice, and develop training resources that highlight promising practices.

In addition, OVC has provided input and advice to national organizations that are seeking ways to improve victim involvement in juvenile court, treatment and rehabilitation, and probation and aftercare processes. OVC-funded projects -- such as victim impact statement guidelines, resources for victims of gang violence, and promising practices in corrections -- all include important components relevant to victims of juvenile offenders.

Conclusion

During the past decade, the overall profile of juvenile crimes and juvenile offenders has changed significantly. Gone are the days when youthful offenders were mere truants or spirited youth engaging in crimes like joyriding or the theft of phonograph records. The profile of today’s juvenile offender has grown increasingly violent and progressively more bold in the commission and violent nature of their crimes. Fueled by the influx of highly addictive drugs such as crack cocaine, the aggressive influence of gangs, and the indiscriminate use of weapons, today’s youthful offender is responsible for more serious crimes than those committed by his or her counterpart at the turn of the century. Consequently today’s juvenile justice system is challenged by this changing profile of offenders. The role of the victim advocate is also challenged as each becomes engaged in the lives of the victims of these youthful offenders.

The challenges presented to the victim advocate working with victims of juvenile crimes are very different than that of others working within the adult criminal justice system. The juvenile justice system presents more barriers to obtaining information and accessibility on behalf of the victim and the victim’s family. The juvenile justice system of today is undergoing increasing scrutiny, as well as timely, significant changes. The advocate working with victims within the juvenile justice system encounters the challenge of not only serving as advocates for the victim, but may be challenged to serve as advocates for change as well.

Juvenile Justice

- 1) Describe the historical purpose of the creation of the juvenile justice system.
- 2) Discuss the concept of confidentiality in the juvenile justice system.
- 3) Describe two characteristics that are unique to victims of juvenile offenders, and two characteristics that differentiate juvenile justice systems from adult criminal justice systems.
- 4) Describe the new federal crime provisions for juvenile offenders as enacted under the *Violent Crime Control and Law Enforcement Act of 1994*.
- 5) Briefly describe the components of your proposed, ideal juvenile justice assistance system.

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Chapter 21, Section 5

Restorative Justice

Abstract: Restorative justice represents a paradigm shift in the way justice is dispensed in America's criminal and juvenile justice systems. The framework for restorative justice involves the offender, the victim, and the entire community in efforts to create a balanced approach that is offender directed and, at the same time, victim-centered.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The three components of the restorative justice framework.
 2. The victim's role in restorative justice as it translates to practical programs and services.
 3. The assumptions of restorative justice and their implications for victims.
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Introduction

Traditionally, America's systems of criminal and juvenile justice have focused on crimes committed against the state, on retribution, and on punishment of the offender. In the United States, victims' involvement in the criminal justice system has emanated from their roles *primarily* as witnesses, rather than as *active, welcome participants*. While this has changed with the advent of increasing victims' rights and programs, the justice system still tends to be more "offender directed," rather than "victim centered."

This traditional approach has been challenged by the new paradigm of a more balanced vision. Restorative justice, the guiding philosophical framework for this vision, promotes maximum involvement of the victim, the offender, and the community in the justice process, and presents a clear alternative to sanctions and intervention based on retributive or traditional treatment assumptions (Bazemore & Umbreit, 1994, p. 1).

The framework of restorative justice has been primarily focused on juvenile justice. However, its positive implications for the criminal justice system as well cannot be overlooked.

The framework of restorative justice can be best described as a combined emphasis on three programming priorities:

Accountability: Restitution, community service, and victim/offender mediation create an awareness in offenders of the harmful consequences of their actions for victims, require offenders to take action to make amends to victims and the community and, whenever possible, involve victims directly in the justice process.

Community Protection: Intermediate, community-based surveillance and sanctioning systems channel the offender's time and energy into productive activities. A continuum of surveillance and sanctions provides a progression of consequences for noncompliance with supervision requirements and incentives that reinforce the offender's progress in meeting competency development and accountability objectives.

Competency Development: Work experience, active learning, and service provide opportunities for offenders to develop skills, interact positively with conventional adults, earn money, and demonstrate publicly that they are capable of productive, competent behavior (Bazemore & Umbreit, 1994, p. 3).

New roles in the balanced approach promulgated by restorative justice are included in the following chart: (Bazemore & Umbreit, 1994, p. 4)

<p>Accountability - When a crime occurs, a debt incurs. Justice requires that every effort be made by offenders to restore losses suffered by victims.</p>		
<p>Juvenile justice system role: Direct juvenile justice resources to ensure that offenders repay victims and complete other relevant restorative requirements as a top system priority.</p> <p><i>Intended Outcome:</i> Efficient, fair, and meaningful restorative justice practices; increased responsiveness to victims' needs.</p>	<p>Offender role: Actively work to restore victims' losses and participate in activities that increase empathy with the victim and victims generally.</p> <p><i>Intended Outcome:</i> Understanding of consequences of offense behavior; increased empathy; feeling of fairness in justice process.</p>	<p>Community role: Assist in the process by providing paid work opportunities for offenders, helping to develop community service work projects, and supporting victim awareness education.</p> <p><i>Intended Outcome:</i> More participation in and support for the juvenile justice system; message that victims receive priority.</p>
<p>Competency Development - Offenders should leave the juvenile justice system more capable of productive participation in conventional society than when they entered.</p>		
<p>Juvenile justice system role: Access youths' strengths and interests and identify community resources to build on those strengths in a way that demonstrates competency. Engage youth in these activities and provide necessary supports for successful completion. Build prevention capacity through productivity partnerships with employers, educators, and other community agencies.</p> <p><i>Intended Outcome:</i> More opportunities for youth competency development; improved image of juvenile justice; increased competency.</p>	<p>Offender role: Become actively involved in activities that make a positive contribution to the community while building life skills; make continuous progress in improving educational skills while using existing skills to help others.</p> <p><i>Intended Outcome:</i> Increased sense of competency and self-esteem; exposure to and interaction with positive adult role models; improved public image of youth.</p>	<p>Community role: Become partner with juvenile justice system in developing opportunities for youth to make productive contributions to the community while learning positive civic and other values.</p> <p><i>Intended Outcome:</i> Increased community involvement in and ownership of delinquency problem; completion of positive work in communities; improved quality of life in community.</p>
<p>Community Protection - The public has a right to a safe and secure community; juvenile justice should develop a progressive response system to ensure offender control in the community and develop new ways to ensure public safety and respond to community concerns.</p>		
<p>Juvenile justice system role: Ensure that offenders are carefully supervised by staff and a range of community guardians and that offenders' time is structured in productive activities; develop a range of supervision restrictiveness options and alternative responses to violations and incentives for progress.</p> <p><i>Intended Outcome:</i> Increased public support for community supervision.</p>	<p>Offender role: Become involved in competency building and restorative activities; avoid situations that may lead to further offenses.</p> <p><i>Intended Outcome:</i> No offenses while on supervision; reduced recidivism when the period of supervision is over.</p>	<p>Community role: Provide input to juvenile justice system regarding public safety concerns; share responsibility for offender control and reintegration.</p> <p><i>Intended Outcome:</i> Increased feelings of safety in community; increased confidence in juvenile community supervision.</p>

The Victim's Role in Restorative Justice

While restorative justice offers a framework of a balanced approach, its practical application to victims must be defined in actions that *equate to rights and services*. These include, but are not limited to:

Fair treatment of victims, which must be sensitive, inclusive and respectful of their rights and needs. It must be recognized that the restorative justice model does not apply to *all* victims, some of whom demand punishment as a driving force in their personal reconstruction following a crime.

Victim participation in restorative justice *must* be totally voluntary, particularly in attempts to implement victim/offender mediation or conciliation programs. Any attempts to coerce victims into participating in such programs work against the basic principles of restorative justice that focus on restoring the victim, as well as the offender and community.

Victim notification of all key aspects of the criminal and juvenile justice systems -- including arrest, bail or bond, preliminary and court hearings, disposition, convicted offenders' status following sentencing, and potential release from incarceration -- is an integral "victim-centered" component of restorative justice.

Victim impact statements -- accepted by the criminal and juvenile justice systems in written, audio, video, and allocution forms, as well as in forms that are commensurate with the age and cognitive development of child victims -- provide victims with the opportunity to tell the court(s) and offender(s) about how the crime affected them and their loved ones.

Victim impact panels -- in which crime victims address an audience of offenders regarding how specific criminal actions affect victims emotionally, physically and financially -- serve two purposes: First, they provide offenders with an in-depth understanding of the pain and suffering they cause -- both short-term and long-term -- as a result of their criminal actions, and; second, they provide victims with the opportunity to possibly deter future criminal behavior and enhance public safety by making convicted offenders examine their behaviors and the devastating effects they wreak on innocent victims of crime.

"Impact of Crime on Victims" programs, pioneered by the California Youth Authority and replicated since then in 16 states, offer a 40-hour educational curriculum to adult and juvenile offenders in jail, prison, diversion, probation and parole settings. In a structured environment, students learn about the impact of crime on victims, on the offenders' families, on their communities, and on themselves. Crime victims and advocates serve as guest speakers, offering poignant stories that personalize crime and its traumatic effects on individuals.

Restitution is a key component of restorative justice. Victims often endure substantial financial losses resulting from crime. Far too often, offenders believe that "insurance will cover it" or,

even worse, fail to consider the financial consequences to victims at all. Direct restitution payments to victims that are not only ordered, but monitored, and many times collected and disbursed, remind the offender of his or her direct accountability to an individual to whom they have caused loss and harm. For victims, restitution payments send a message that the criminal or juvenile justice system is willing to demand and enforce accountability.

Fines that support law enforcement, victim compensation, and criminal justice services serve to promote the basic concept of public safety, as well as offender accountability to make reparations for his or her crimes, are critical.

Community service provides convicted offenders with the opportunity to make amends with the larger entities affected by their crimes: Their neighborhood, their community, and society as a whole. Community service should be meaningful to the offender, as well as helpful to the community. For example, an attorney convicted of a white-collar crime can provide 500 hours of free legal services to battered women. Juveniles convicted of graffiti "tagging" can support neighborhood renewal efforts for elderly persons whose homes require minor repairs. It is also helpful if crime victims have input into the terms and conditions of community service sanctions, providing them with a level of involvement and input that is, in most jurisdictions, unprecedented.

New Roles in the Balanced Approach to Restorative Justice

The traditional and accepted roles of *all* parties in the criminal and juvenile justice systems are challenged by the framework of restorative justice. The following values and assumptions should be considered by victim service providers in developing roles and responsibilities that are relevant to restorative justice:

- All parties should be included in the response to crime -- offenders, victims, and the community.
- Government and local communities should play complementary roles in that response.
- Accountability is based on offenders understanding the harm caused by their offenses, accepting responsibility for that harm, and repairing it. (McLagan, 1992)

The new roles in the balanced approach to restorative justice, as articulated by Dr. Gordon Bazemore, are included in the second column, and the implications of these roles on victims are summarized in the third column of the following chart:

Retributive and Restorative Justice Assumptions and Implications for Victims of Crime

RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE	IMPLICATIONS FOR VICTIMS
The criminal justice system controls crime.	Crime control lies primarily in the community.	The community - including victims and their allies - participates in and directly benefits from deterrence.
Offender accountability defined as taking punishment.	Accountability defined as assuming responsibility and taking action to repair harm.	Offenders are held directly accountable to victims.
Crime is an individual act with individual responsibility.	Crime has both individual and social dimensions of responsibility.	Prevention, intervention and breaking the cycle of violence are important considerations.
Crime is an act against the state, a violation of the law, an abstract idea.	Crime is an act against another person or the community.	The victim is individualized as central to the crime and the criminal justice system process, with the community duly noted as also affected by crimes.
Punishment is effective: a. Threat of punishment deters crime. b. Punishment changes behavior.	Punishment alone is not effective in changing behavior and is disruptive to community harmony and good relationships.	Punishment is augmented by direct accountability to the victim and to the community, with victims having a strong, consistent voice.
Victims are peripheral to the process.	Victims are central to the process of resolving a crime.	Restorative justice principles are "victim-centered."
The offender is defined by deficits.	The offender is defined by his or her capacity to make reparation.	Reparations to the victim and to the community are a priority.
Focus on establishing blame, on guilt, on past (did he/she do it?)	Focus is on problem solving, on liabilities/obligations, and on the future (what should be done?)	A central goal is to deter future criminal action through conflict resolution, problem solving, and fulfilling obligations to the victim and to the community.
Emphasis on adversarial relationship.	Emphasis is on dialogue and negotiation.	Victims are active participants in determining appropriate reparations.
Imposition of pain to punish and deter/prevent.	Restitution is a means of restoring both parties; goal of conciliation/restoration.	Restitution holds the offender accountable and is meaningful to both him/her and the victim.
Community is on the sideline, represented abstractly by the state.	Community as facilitator in restorative process.	Just as the community is negatively affected by crime, it is positively affected by restorative justice process.
Response is focused on the offender's past behavior.	Response focused on harmful consequences of the offender's behavior; emphasis on the future.	Crime deterrence in the future focuses on victim and public safety.
Dependence on proxy professionals.	Direct involvement by participants.	Victims and their allies are directly involved in the criminal and juvenile justice and restorative justice processes.

Restorative Justice

- 1) What are the three components included in the framework of restorative justice?

- 2) Identify three victims' rights and services that equate to the practical application of restorative justice.

- 3) What are three assumptions of *retributive* justice, as well as three parallel assumptions of *restorative* justice?

- 4) Briefly describe the components of your proposed, ideal restorative justice crime victim assistance system.

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Chapter 21, Section 6

Drugs and Victims of Crime

Abstract: Much of today's violence is related to drug trafficking and substance abuse. Correlations between substance abuse, violence and victimization are important issues for victim service providers to understand. In addition, victimization extends beyond individuals to entire communities that are paralyzed by drug-related criminal activity.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The methodologies employed to study drugs and crime.
2. Recent data on the connection between drugs and victimization.
3. How drug-related crimes, often considered "victimless," affect many victims.
4. Current developments in drug prevention programs.

Statistical Overview

- In 30 percent of violent crime victimizations in 1992, victims reported that they believed their assailants were under the influence of drugs or alcohol. In half of violent crime victimizations, the victim did not know whether the offender was under the influence. (*Bureau of Justice Statistics, 1995, "Drugs and Crime Facts, 1994," page 4, U.S. Department of Justice, Washington, D.C.*)
- The number of suspects prosecuted for federal drug offenses increased from 7,697 in 1981 to 25,663 in 1991. (*Ibid., page 18*)
- Overall, ten percent of federal prison inmates in 1991, 17 percent of state prison inmates in 1991, and 13 percent of convicted jail inmates in 1989 said they committed their offense to obtain money for drugs. (*Ibid., page 8*)
- Between 54 percent and 81 percent of male felony arrestees throughout the country in 1993 tested positive for illicit drugs at the time of arrest. In addition, between 42 percent and 83 percent of female felony arrestees tested positive for illicit drugs. (*National Institute of Justice, "Drug Use Forecasting, 1993 Annual Report on Adult Arrestees: Drugs and Crime in America's Cities," U.S. Department of Justice, Washington, D.C.*)
- Of 27,000 drug offenders sentenced to probation in 32 counties across 17 states in 1986, 49 percent were rearrested for a felony offense within three years of sentencing, and 7.4 percent of rearrests were for violent crimes. (*Bureau of Justice Statistics, August 1994, "Drugs and Crime Facts, 1993," page 24, U.S. Department of Justice, Washington, D.C.*)
- In 1993, the percent of juvenile arrestees/detainees who tested positive for marijuana ranged from 14 to 51 percent, with a median value of 26 percent; in 1991, the range was from five to 38 percent with a median of 16.5 percent (an almost ten percent increase in the median). (*National Institute of Justice, "1993 Annual Report on Juvenile Arrestees/Detainees: Drugs and Crime in America's Cities," page 3, November 1994, U.S. Department of Justice, Washington, D.C.*)
- About 43 percent of people using marijuana before age 18 go on to use cocaine, and young person between 12 and 17 who use marijuana are 85 times more likely to use cocaine than non-marijuana users. (*Columbia University Center on Addiction and Substance Abuse, as reported in the Washington Post (12/13/94), "Use of Drugs by Teenagers Is Increasing," Washington, D.C.*)

Drugs and Crime: The Connection to Victimization

“No where are the consequences of drug use and drug trafficking more visible than in the magnitude and patterns of drug-related violence” (Office of National Drug Control Policy, 1995).

Introduction

Illicit drug use and related problems are taking a tremendous toll on our society. The National Drug Control Strategy cites one source as estimating that “the cost of drug use to the nation’s taxpayers [is] nearly \$67 billion. Not the least of the problems associated with drug use is criminal victimization.”

A substantial amount of violent victimization appears to be directly or indirectly related to substance abuse. Obviously, drugs are directly involved in drug trafficking crimes, and related homicides and violence. Indirectly, when crimes are committed for the purpose of supporting drug addictions, the connection is also present. A review of important statistics in this area is necessary to provide a foundational understanding of the drug-victimization connection.

According the Office of National Drug Control Policy:

Nationally the number of drug-related murders has risen steadily since the mid-1980s, peaking at 7.4 percent of all murders in 1989. Since then, the rate has declined to 5.2 percent of all murders, but this level of drug-related violence is still unacceptable.

However, it is not just homicide that involves drugs as an integral precursor. Other crimes of violence, and serious property crimes, are related to drugs and addictions. The support for this notion comes from several sources, including victim perceptions, offender self-report data, and drug testing studies.

Victim Perceptions and Inmate Reports

Several studies confirm the notion that drug and alcohol use is often present during the commission of crimes. The Bureau of Justice Statistics (BJS) reports that in 1992:

- 30% of violent crime victims reported in the National Crime Victimization Survey believed their offender to be under the influence of drugs or alcohol.

Other data generally support these perceptions. A BJS corrections survey indicates that significant numbers of all incarcerated individuals confirm that they were under the influence of an illegal drug when they committed their crimes, as follows: one-quarter of jail inmates, one-third of state prisoners, and two-fifths of long-term juvenile placements.

- According to the BJS data compilation, in 1991, 49% of *all* state prisoners stated that they were under the influence of drugs or alcohol at the time of the offense.
- Similarly, 50% of *violent* offenders in state prison reported that they were under the influence of drugs or alcohol during the time of the offense.

Many of these crimes involved crimes against persons. BJS notes that 18% of homicide perpetrators, 14% of assault perpetrators, and 36% of robbers admitted being under the influence of drugs at the time of the offense.

Relying upon these "self-report" data provided by inmates can be very useful, but has its limitations. Often self-reported data carry with them certain unreliability or invalidity due to the various motivations of those answering the questions. Another approach to gauging the drug-crime connection may provide a more reality-based assessment.

Drug Testing of Adult Arrestees

The Drug Use Forecasting (DUF) project of the National Institute of Justice utilizes a much more direct data collection methodology. DUF data is collected through urine samples collected from arrested detainees in selected sites across the U.S. These arrestees have been in the respective facilities for less than 48 hours. Although the individual must voluntarily agree to the specimen being taken, apparently compliance rates are significant. Samples are lab tested for an array of substances.

Although comprehensive, DUF focuses on serious crimes, including the array of violent crimes against persons, and serious property crimes. Therefore, DUF data provide significant insight into the drug-victimization connection.

- The percentage of usage of at least one of 10 illicit drugs in 1993 ranged from 54% to 81%, with a median usage rate of 63% for males, and 42% to 83%, with a median of 67.5% for females.
- Multiple drug use was found in 13% to 42% of those males tested, with a median multiple drug use rate of 21%, for females the range was 14% to 39%, with a median of 20.5%.

- For the most part, marijuana and cocaine comprised the most common combination of multiple drug use arrestees. A summary of selected other 1993 results:

Marijuana	Male	21%-42%	median 28%
	Female	9%-25%	median 16.5%
Cocaine	Male	19%-66%	median 43%
	Female	19%-70%	median 46%
Opiates	Male	1%-28%	
	Female	3%-23%	

These data clearly indicate that drugs are related to considerable victimization in the adult offender population. The same holds true with juvenile offenders.

Juvenile Drug Use and Crime

The relationship between drug use and juvenile crime appears to confirm anecdotal accounts. Citing a recent Parent Resource Institute for Drug Education (PRIDE) study, the National Drug Control Strategy notes there appears to be a strong correlation between drug use and crime among the nation's youth.

- PRIDE reported that students who bring guns to school, participate in gangs, threaten school staff, contemplate suicide, and are in trouble with juvenile or law enforcement authorities are significantly more likely to use drugs than their peers who do not engage in these activities.

Testing Juvenile Offenders

The DUF project reports data on male juvenile detainees. The methodology is similar to that reported above for adult arrestees. There was a wide variation among sites in juvenile testing rates; however, the averages noted in the 1993 DUF report are instructive.

- Marijuana and cocaine were the two most commonly used drugs.
- 14% to 51% of juvenile males tested positive for marijuana, with a median of 26%.
- Cocaine was report in 2% to 18%, with a median value of 6.5%.
- Use of opiates was insignificant with no reports above 2%.
- 18% to 54% (median 33%) reported use of at least one drug.
- 1% to 14% (median 7.5%) reported multiple drug use.

Drug-related Crimes: Who Are the Victims?

It is often stated (and believed) that drug-related crimes are “victimless.” To the contrary, substance abuse is directly correlated to many crimes within families; in addition, communities and society as a whole are victimized by drug traffickers and substance abusers.

Intrafamilial Crime and Victimization

- Research continually points to substance abuse as one of two correlates most often associated with partner abuse (the other correlate is violence in the perpetrator’s home of origin).
- Parents who abuse controlled substances are more likely to neglect their children and be unable to provide for basic care.
- Substance abuse has also been correlated to increase the likelihood of physical and sexual abuse in familial situations.
- In absent-parent families resulting from one parent with addictions, children are the ultimate victims, lacking important role models, support and guidance, especially in their formative years.

Community and Societal Victimization

The costs to neighborhoods and society that are directly attributable to substance abuse are significant in terms of their financial, as well as social and environmental impacts:

- Overall costs to society include: expenses related to both emergency and long-term medical services for persons addicted to controlled substances; physical and financial losses resulting from drug-related crimes, such as driving under the influence, with the ultimate loss being murder; and lost productivity from addicted individuals who might otherwise contribute positively to society.
- Children born addicted to crack are often viewed as the “tiniest victims,” with myriad emotional, physical and psychological disabilities resulting from an addiction that began in the womb. Society is also victimized by the tremendous cost it bears to address the long-term medical needs of these children.
- The threat of the intravenous transfer of HIV has both individual and societal implications.

- Many addicts support their habits through crimes such as burglary and robbery, which produce not only financial losses, but psychological crises for victims as well.
- Perhaps most significant, the limited resources of our nation's criminal justice system are constantly called upon to deal with the interdiction, investigation, prosecution, supervision, and incarceration of drug traffickers and felony substance abusers. In some states, prison overcrowding that is due, in part, to large numbers of drug offenders, results in the early release of violent offenders who have not completed the terms of their sentences.

Drug-related Victim Initiatives

Victims and their advocates can and should become part of the numerous drug-related initiatives that exist in communities large and small across America. Indeed, victims and their perspectives can provide a tremendously untapped source of insight to this issue. Coordinated efforts, as evidenced by the following example, are key to stopping drug abuse that terrorizes neighborhoods:

For one and a half years, tenants in an apartment building on Manhattan's Lower East Side complained repeatedly to the police about neighbors who were conducting illegal drug sales from their apartment. Police arrested the tenant, a woman living with her four children aged 15 to 21, for possession of heroin and narcotics paraphernalia. Police testified that they observed a handgun and 21 glassine envelopes of heroin "cascading" out of the apartment window. Inside her apartment, police seized an electronic currency counting machine, two triple beam scales, a bullet-proof vest, 20 to 30 pairs of sneakers (used by drug runners), a flare gun, two walkie-talkies, and nearly \$23,000 in cash. Yet the family continued to use the apartment as a base for selling drugs.

Eventually, the Manhattan District Attorney's Narcotics Eviction Program petitioned the court to evict the tenant under the authority of the *Real Property Actions and Proceedings Law*, a state civil statute. The tenant argued that she should not be evicted because police did not find any drugs or evidence of drug sales in her apartment. Judge Peter Tom, however, authorized the eviction because the civil statute does not require the district attorney to prove that the tenant committed a specific crime. The district attorney only has to present evidence warranting the conclusion that the premises are being used for an illegal business. The family was evicted from the apartment after the trial, and the landlord re-rented the unit to another tenant who left his neighbors in peace.

The eviction process involves three principal steps: screening the case, notifying the landlord and tenant, and going to court. The program asks the landlord to begin eviction proceedings against tenants who are using or allowing others to use their apartment to sell drugs. If the landlord refuses to act, the district attorney's office has the authority under the *Real Property Actions and Proceedings Law* to initiate eviction proceedings in court as though it were the owner or landlord of the premises.

In many towns and cities, drug dealing is a major problem that not only disrupts the lives of law-abiding tenants, but also ties up criminal justice system resources. Efforts to arrest and prosecute drug traffickers often fail to solve the problem because the crime cannot be proved beyond a reasonable doubt. Even if drug dealers are convicted and jailed, the process may take over a year. Because they are often not the tenant of record, they may be quickly replaced by other drug traffickers. However, as the vignette above illustrates, using a civil -- rather than criminal statute -- the Manhattan District Attorney's Narcotics Eviction Program can permanently rid apartment buildings of drug dealers (Finn, 1995).

Prevention

All crime victims would, of course, agree that their first desire would be to not be victimized in the first place. This involves, at least in part, a call for expansion and enhancement of crime prevention programs. The connection between drugs and victimization offers a good reason for victim service providers to consider becoming involved in drug prevention efforts in their communities.

Drug prevention programs come in many forms and variations (DuPont, 1990). Major categories of these programs include, but are not limited to, the following:

- School-based prevention programs, including D.A.R.E.
- Community-based efforts which include a vast array of approaches
- Multi-level, multi-disciplinary collaborative approaches
- Coordinated law enforcement/crime prevention programs
- Coordinated prevention/early intervention/treatment approaches as components of other projects such as community policing plans, etc.

Victims and advocates can contribute significantly to these efforts. For example, describing the drug-victimization connection in school and community presentations on drug prevention and/or victim assistance issues is essential. Also, as many of the community-based efforts involve organized and coordinated inter-agency or collaborative efforts, a representative with a victim's perspective needs to be at the planning table. Victim service providers and related professionals should inventory the programs that exist in their areas and become an integral part of these efforts.

Drug-related Criminal Justice Reform

In addition to important prevention efforts, drug-related law enforcement and criminal justice activities are an important part of a concerted program to combat illicit drug use. The victim's perspective is a compelling and necessary element to fully understand of the effects of drug use on our society. Victims and their advocates can and should offer their perspectives to policy-makers as drug-related criminal justice reform measures are adopted in various jurisdictions.

Drugs and Victims of Crime

- 1) Describe the various methods of demonstrating linkage between drugs and victimization.

- 2) Choose two statistics relevant to the correlation between drugs and victimization, and describe how you would incorporate these into a presentation on drugs, crime and victimization.

- 3) Cite two examples of how substance abuse directly creates and/or affects victims.

- 4) Cite two examples of how communities and societies can be “victimized” by substance abuse.

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Chapter 21, Section 7

Gang Violence

Abstract: This chapter will provide students with a basic understanding of gang-related violence and victim assistance. Students are presented with a psychological and sociological model of a typical gang member and gang. The course will discuss why gangs form, gang membership, law enforcement intervention/suppression programs, and prevention efforts. Victims' rights and needs -- which have unique aspects when perpetrators are gang members -- are also examined, with components of a model victim advocacy approach offered.

Learning Objectives: Upon completing this chapter, students will understand the following concepts:

1. The role of psychology and sociology in efforts to better understand the gang phenomena and why youth join gangs.
2. Sociological characteristics commonly found in gang members.
3. Law enforcement and social service strategies to prevent gang membership.
4. Characteristics that are unique to victims of gang violence
5. The impact of gang crime on victims.
6. Recommendations for a model victim advocacy approach to meet the needs of victims and witnesses of gang-related crime.

Statistical Overview

The preliminary findings of the first ever nationwide survey of gang activity, the *1995 National Youth Gang Survey*, were released on June 20, 1996. The survey was conducted by the National Youth Gang Center under the direction of the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The survey found:

- Communities in all 50 states reported that approximately 652,000 gang members are part of 25,000 gangs nationwide.
- Gang problems are reportedly worsening in 48 percent of communities, and only improving in 10 percent.
- Of 3,447 responding police and sheriff agencies, 1,974 reported youth gang activity in their cities and counties during 1995. Only 210 of the respondents reported that gang activity was decreasing. The rest said that their gang problem was getting worse or staying about the same.

Other gang-related statistics include the following:

- Over a ten-year period, from 1980 to 1990, the number of gang-related deaths rose from 350 to 795 in Los Angeles County, California (Conly, 1993).
- One survey of Chicago public schools reported that 40,000 school children had been attacked or threatened some time by gang members (Roberson, 1994).
- Among state prison inmates who were gang members, 81 percent reported past drug use, and 69 percent said they manufactured, imported or sold drugs as a group. (Bureau of Justice Statistics, August 1994, "Drugs and Crime Facts, 1993," page 27, U.S. Department of Justice, Washington, D.C.).

Introduction

The problem of youth gangs is reaching a critical point in many communities today. The cost to individual victims resulting from drive-by shootings, assault, property damage, drug-related violence, and robberies is felt in all urban communities, as well as many suburban and rural communities today. Communities are affected as they struggle to pay for the costs of law enforcement strategies to combat the operation and spread of gang violence. No one can place a dollar amount on the loss of life and the physical and emotional sufferings experienced by

victims. Thousands of our youth are irreparably harmed by the violent and criminal activity that is condoned and encouraged by gang membership. Most disturbing is the increasing trend for gangs to recruit children as young as seven eight years of age.

Defining Gangs

Gangs are defined differently by researchers and criminal justice professionals. A statutory definition of “gang” is:

An on-going, organized association of three or more persons, whether formal or informal, who have a common name or common signs, colors or symbols, and members or associates who individually or collectively engage in or have engaged in criminal activity (Conly, 1993).

In other words, according to law enforcement, a gang is any group gathered together on a continuing basis to commit anti-social behavior.

The Sociology of Street Gangs

Street gangs begin for myriad social and economic reasons. Two of the most common reasons youth join gangs are:

- The breakdown of the family as a cohesive unit; and
- Desperate poverty.

In recent years, street gangs have been observed in middle-class areas, but close scrutiny of these gangs, in general, reveals that the nucleus for gang formation is still found in the families' instability. In many cases, the families have moved from gang-infested neighborhoods, due to an improved socioeconomic condition, and simply transferred a hardened street gang member to virgin turf.

Recruitment

There are a variety of reasons why youth join or become members of street gangs.

At one time, most youth joined gangs due to economic depravity. Most gangs that originated in “ghetto” areas would commit crimes, such as burglary or robbery, to buy food and other essentials for survival. Poverty is still prevalent in those areas, and many youth join to relieve their desperate circumstances. Others join for the imaginary riches that narcotic trafficking supposedly delivers at the end of the rainbow.

Some join gangs because of peer group pressure, or because it is just the popular thing to do. Often times, a person joins a gang for protection against rival gangs. If an individual grows up in a gang neighborhood, the people he or she associates with, goes to school with, and possibly even his or her parents, are members of the gang. So it is understandable, in some cases, that a person may become a member of a given gang merely because everyone in the neighborhood is, and he or she knows it only as a common practice or thing one is supposed to do.

“Jumping In”

The transformation of a youth into a gang member does not take place overnight, of course, but involves a slow assimilation. Older members informally observe the development of the “recruit” and gradually allow him or her to associate with the gang. Once the gang member reaches an age where he or she can prove himself or herself to peer leaders within the gang structure, he or she may perform some sort of rite of passage or ceremony which officially recognizes his or her full membership. This process is called “jumping in.” In many instances jumping in rites of passage are extremely violent and may involve the beating of the prospective gang member and that recruit’s performing some violent crime against another person. Alternately, members may be “courted in,” where they are simply accepted into the gang and do not have to prove themselves in any particular way.

Gang Activity

Gang activity on school campuses is evidenced by various indicators. Acts of vandalism, arson and graffiti painting, although secretive in nature, are often considered gang involved. Stabbings and shootings between rival gangs take a toll on innocent students and teachers. Student extortion and teacher intimidation also exist.

Gang activity, when viewed from a law enforcement perspective, is a study in violent crime. A perpetual cycle of violence has been established within the street gang milieu. Gang rivalries dating back many years exist. As new generations of gang members enter the mainstream, they are taught to hate their rivals as vehemently as their predecessors. In conversations with gang members, investigators have found that many times they do not know the reasons they originally became rivals of a particular gang. They only know of the more recent incidents. One gang member stated, “I don’t know why we fight them. We’ve fought ‘em since my father’s time.”

With this mentality affecting the socialization and personality growth of a child, it is easy to see why conventional law enforcement techniques are difficult to apply to street gangs. Many street gang members see their violent behavior toward rivals as a legitimate endeavor.

Gang Violence

In a recent survey of high school students in Seattle, Washington, gang members were nearly three times as likely as non-gang members to report that obtaining a gun was easy. In response to the survey, more than half of the gang members reported owning a gun, while just four percent of non-gang members gave the same response.

Conly recently reported the account of a former gang member who testified before a public hearing on gang violence in Dallas, Texas:

“It’s real easy (for teenagers to get guns). You just have to have the money, and know somebody who can get one. Most gang members have . . . it’s probably related to a drug dealer. They contact the drug dealer and tell him, ‘I pay so much for a gun.’ . . . A .12 gauge sawed-off would run, like, about 50 to 90 bucks. Nobody really ever buys a gun over 50 unless it’s fully automatic.”

In recent years, gangs have been able to acquire automatic and semi-automatic guns. These have been used in drive-by shootings which have become a trademark of gang violence. With the introduction of such powerful and destructive weapons, the nature of the violence between gangs has changed since the 1970s. Spergel and others point to the increase in weaponry and mobility as major reasons for the increase in violence, especially homicide. The ability to “hit and run” has made attacks easier to accomplish and more deadly.

Law Enforcement Strategies to Target Gangs

Numerous law enforcement organizations across the country have developed specialized gang units to combat the problem of gang crime and violence. The traditional law enforcement approach has been:

- Incapacitation of hard-core gang members;
- Increasing punishment;
- Deterring involvement in gangs; and
- Gang crime and rehabilitation of gang members.

Experience shows that incapacitation of individual gang members is not sufficient to control gang crime because removing individuals does not diminish the influence of the gang on the street. In addition, gangs have learned the procedural differences between juvenile and adult court and have used these to their advantage. Since gangs consist of both juvenile and adult members, gangs have come to use juveniles extensively in the commission of crimes. This ensures lenient penalties for adjudicated juvenile offenders.

Some police departments, such as Oxnard, California, have developed special gang units that target gang members and attempt to reduce over labeling. They have defined gang membership more narrowly and are targeting hard-core gang members with serious violent criminal histories. The program aims at stiffer penalties if a convicted gang member on probation associates with known gang members. A key feature of the approach is the sharing of information with all officers that is likely to lead to an arrest and conviction of the most serious members.

Community-oriented policing has also been used in communities with known gang problems. For example, in Reno, Nevada, the department's primary emphasis has been on peripheral gang members, or "wannabes," and their parents. Officers work with parents to inform them that the child or youth is associating with gang members and assist parents in obtaining social services as needed. Through these methods officers have gained the confidence of parents and have been successful in working cooperatively with them to prevent gang involvement.

Some consistent themes tend to emerge when discussing effective responses to gangs and gang violence. They are:

- Gang Resistance Education and Training (GREAT).
- Coordination and information sharing among federal, state and local agencies.
- Continued use of Drug Abuse Resistance Education (DARE) programs.
- Increased use of community-based policing.
- The development of integrated, automated tracking systems for information on gang members as they move in and out of the criminal justice system.

In addition, concern has been widely expressed regarding victim and witness services in cases involving gang violence. Intimidation of witnesses is reported to be a serious problem in most metropolitan areas, and the use of escort services as a method of witness protection has been suggested.

Prevention

The goal of prevention programs is to reduce the appeal of gangs as a vehicle for enhancing self-esteem, receiving recognition, achieving financial independence and receiving protection. Programs sponsored in the community generally attempt to prevent gang involvement and the associated behavior by providing opportunities for youth to develop skills to resist gang involvement. In addition, a positive support system and alternative activities that will provide a sense of acceptance and affiliation are key elements of prevention programs. More specifically, the goal is to address characteristics of youth who are prone to join gangs:

- Lack of education.
- Lack of job skills and job opportunities.

- Lack of family support.
- Low self-esteem.
- Drug and alcohol abuse.
- Lack of opportunity for positive, social interaction (recreation or sports).

Boys and Girls Clubs of America have played a significant role in the development of community-based programs to serve high-risk youth in urban areas. In addition, *Cities In Schools* attempts to improve the array of social services available through schools at the elementary, junior and high school levels. These programs focus on drop-out prevention and academic achievement through the provision of social, medical and counseling services in the school.

Victims and Witnesses of Gang Violence and Crime

Victim assistance professionals face special challenges in supporting and serving victims and witnesses of gang-related crime. Geographical, cultural and racial considerations can create significant barriers to in a victim's ability to access services. Systems-based victim/witness programs are woefully unequipped to meet the myriad needs of gang-related crime victims and witnesses. Few community-based organizations have the experience or expertise to offer comprehensive assistance to this underserved victim population.

In order to assess the current scope of services for victims and witnesses of gang-related crime, as well as to determine victims' most salient needs, the Office for Victims of Crime convened a focus group in May 1996 of gang violence victims, survivors, victim assistance professionals, justice officials, and a researcher on witness protection. Their insights concerning the special needs of victims and witnesses in gang-related crime were very helpful, and are reflected in this section of this chapter.

Characteristics Unique to Victims and Witnesses of Gang Violence

OVC focus group participants were asked to address specific aspects of victimization that are *unique* to gang-related crime, i.e. different from victims and witnesses of other types of crime. Their responses included the following:

- Victims and witnesses must face the *entire community* of the gang, as opposed to a *sole* perpetrator. Issues arising from this factor include intimidation and retaliation.
- There tends to be a lack of sympathy for victims of gang violence, often because of false assumptions made regarding their "contribution" toward the crime.

- If a victim has gang affiliations, there is also a lack of sympathy and services from the criminal justice system, their families and other victims. Because of restrictions on individuals who, in some way, “contribute” to their crimes, victims’ rights, services and compensation are non-existent or very limited.
- Victims and witnesses are often intimidated in court, or intimidated into not cooperating with the justice system.
- In many court settings, victims and witnesses are in the same hallways as gang members.
- When gang-related convictions result in prison and/or jail sentences, adult and juvenile correctional agencies often lack clear policies and procedures to ensure inmate security and prevent possible further victimization, intimidation or gang retaliation.
- Attitudes toward and services available for victims of gang violence can be affected by a community’s attitudes toward gangs, which varies from “despise” to “respect.”
- There is a lack of personal support for victims of gang violence.
- The popular media portray victims of and witnesses to gang violence in a negative and sensational manner. Gangs are often “glamorized,” and the media fail to adequately show the *consequences* of gang violence on victims and witnesses.
- Gang violence produces the only type of victimization (besides domestic violence) where victims and witnesses live with and/or among their perpetrators.
- In some cases, both victims and perpetrators of gang violence cross generations.
- Victims of gang violence may be affected by cultural norms and mores that include a “general distrust of government;” as such, they may be hesitant to access services that are in any way related to government, or be willing to be witnesses within the justice system.
- *Victims Of Crime Act* (VOCA) dollars cannot be used to assist witnesses who are intimidated, or to provide protection to victims and witnesses of gang violence.
- Geography and poverty of some victims of gang violence combine and equate to a lack of support and services.
- Children who are victimized by gang violence, or lose a loved one, have unique grief and reconstruction issues.

Issues Relevant to Hatred, Race and Culture

“Gangs emerge from specific, diverse cultures.” This statement from the OVC focus group initiated an in-depth discussion about cultural and racial considerations/issues that are crucial to understand when dealing with victims of gang violence, including:

- Victims are often “judged” by their race and culture. The question may be asked: “Are they really *deserving* of victim services and rights?”
- Children from non-White races and cultures are viewed only as perpetrators.
- Contributory issues are significant with victims of color.
- Victim blaming is considerable, including questions like “Why didn’t you just move (away from a gang-infested neighborhood)?” or “Why was your child out, and why don’t you control that child?”
- Victims who are frustrated with and/or angry at the criminal justice system response (or lack thereof) in their cases are less likely to want or access services.
- Victims of hate crimes are viewed differently, i.e. “with more sympathy.”
- Victims who are recent immigrants are often “afraid of the criminal justice system.” They need specialized services, recognizing not only differences in language but also dialect. For victims and witnesses who are threatened, blackmail (to turn them into the INS, etc.) is often a component of intimidation.

Issues Relevant to Gang-related Victimization in Indian Country

Currently, there are jurisdictional issues of concern. Federal dollars emanating from the Bureau of Indian Affairs to tribes are prioritized into “wish lists” by tribes. Assisting victims of gang-related crimes can be “very low” for tribal priority allocation.

Victims in Indian Country have “limited rights.” Often, crimes cross jurisdictions (county/municipal/state/federal) and require interagency cooperation. In addition, the penalties can differ for offenses against Native Americans versus non-Native Americans because of the involvement of Tribal Courts. For a detailed discussion of jurisdictional issues, please refer to the chapter on federal, military, and Native American victim assistance.

Gang Characteristics

OVC focus group participants, many of whom provide assistance and support “on the front line” of gang territories, provided a summary of their knowledge of gang characteristics:

- Gangs provide security and support to their members. There is a lack of alternatives in communities that can provide security and support, especially to youth.
- As a society, the United States is very “unforgiving” of former gang members’ pasts.
- Youthful gang members have “no fear of death” and, often, *how they die* is important in the gang dynamics. This factor contributes to retaliatory gang violence and criminal acts that are increasingly violent in nature.
- Gangs have highly complex, multi-tier structures. They are “smart and organized,” making prevention/intervention efforts more challenging.
- Efforts to seek “peace treaties” among gangs, and reduce violence and victimization, can be destroyed by one person within one gang.
- Children in some communities where gangs are present often have a “strong frame of reference for violence.” For many parents, it is an “everyday battle” to maintain control over their children. There is no support for parents who want to protect their children, and prevent them from entering into gang lifestyles.
- With hate gangs (such as skinheads), there are unique cross-jurisdictional issues because the gang members “roam” from one community to the next.
- Asian-American gangs tend to “stay within their culture,” are “more capitalistic,” economically prosperous, and reinvest in their own operations. With Asian-American gang-related crimes, there is no trust in the criminal justice system, and law enforcement is “not esteemed.” Coalitions to provide victim assistance and services are difficult to build.

Meeting the Needs of Victims of Gang Violence

The special needs of victims of gang violence are seldom met with specialized services. To the contrary, access to services and support is very limited, often due to geographical and cultural barriers, as well as fear of seeking assistance for a gang-related criminal victimization.

The OVC focus group on victims of gang violence, throughout an eight-hour discussion, identified key components of an ideal comprehensive, vertical gang victim assistance unit that is “user friendly,” with easily accessible services.

Each unit should be staffed by a coordinator who has experience in and knowledge about providing sensitive, ongoing assistance to victims and witnesses of gang violence, as well as general expertise in the criminal justice system, gang prosecutions, and how corrections systems deal with gangs. Professional and volunteer support should be sought from gang prevention and intervention programs, system- and community-based victim assistance organizations, community policing efforts, and victims/survivors of gang violence. Program staff and volunteers must have the ability to provide services and support that are multilingual and dialect-specific.

Program components should include, but not be limited to:

- How to provide case information to victims without jeopardizing any current or future criminal case. Victims of gang violence must be told the truth about the facts of their cases, from the initial crime through the justice system.
- Protocol on addressing the needs of family members whose loved ones are critically injured or deceased, coordinating efforts with emergency rooms, hospitals, medical examiners, and funeral homes.

In gang-related deaths, it is important for family members to be able to see their loved one while they are still alive, and/or have private time with the deceased victim prior to making funeral arrangements.

- Crisis lines for victims and witnesses should be available 24 hours a day, seven days a week.

Program staff and volunteers should provide multi-lingual information, crisis counseling and referrals for ongoing assistance to victims and witnesses of gang violence. All services should be confidential, and should be coordinated, as needed, with criminal justice and law enforcement officials for calls related to witness intimidation, harassment or harm.

- Staff and volunteers should be available to provide death notifications and crisis intervention 24-hours a day, seven days a week.

Through close coordination and communications with law enforcement, staff and volunteers who are trained in culturally-specific death notification and crisis intervention will be on-call at all times.

- Through close coordination with law enforcement officials, comprehensive intervention services must be made available to victims and witnesses as soon as a gang-related crime is reported.

Immediate intervention services are often lacking because referrals are not made at the crisis stage of crimes for victims and witnesses. Improved coordination among law enforcement, prosecutors and victim service providers is needed, as well as interagency agreements regarding referrals and responsibilities for victim assistance.

- An ongoing volunteer recruitment and training program must be established to increase human resources needed to provide victim and witness assistance around-the-clock in jurisdictions where gang violence is pervasive.

There is a lack of volunteers who are willing to assist victims of gang violence. Efforts to recruit and train volunteers and interns from allied professions, i.e. gang prevention and intervention programs, community policing efforts, colleges and university internship programs, grass-roots community development groups, neighborhood churches, and victims and survivors of gang violence who want to assist other victims, should be institutionalized within the gang victim assistance program.

- Ongoing community outreach about available services for victims and witnesses should be established to increase usage of the program.

In many cases, there are no arrests, and thus no victim assistance available from court-based programs. Regardless of case status, victims and witnesses of gang violence should receive information, assistance and referrals for ongoing help. By coordinating outreach efforts with the news media, justice officials, and other victim assistance programs, more victims of gang-related violence should be aware of services available to assist them.

- Victim information, assistance and referral resources -- including detailed information about specific victims' rights and services -- should be available on-site at all locations at which victims and witnesses of gang violence might be present.

The gang victim assistance unit should provide multi-lingual information resources to emergency rooms, hospitals, funeral homes and medical examiners' offices. Training about available resources should also be provided to personnel at these locations to assist victims and witnesses who are illiterate.

- Assistance in completing victim compensation applications must be provided on a timely basis.

The victim compensation application process can be bureaucratic and burdened by “red tape” for victims of gang violence. The gang victim assistance unit should guide victims through the process, and conduct thorough examinations of cases where victims have been deemed as “contributory” in the crimes (and therefore ineligible for compensation). Copy and fax machines should be available to help expedite the claims process. Multilingual services should overcome language barriers for non-English speaking victims. Follow-on to compensation applications should be provided, as needed.

- The gang victim assistance unit should coordinate witness protection services with appropriate justice officials.

Victims and witnesses may be afraid to take advantage of witness protection assistance; often they are threatened (including death threats) or intimidated into not getting involved in investigations and prosecutions.

- Information and support services should be made available to extended family members of victims and witnesses of gang violence.

Currently, there are few services available for extended family members of victims and witnesses. Outreach programs to this underserved victim population, along with support groups and information dissemination, will be established.

Recommendations for the U.S. Department of Justice and Allied Federal Agencies

In the *Report and Recommendations on Victims of Gang Violence* (draft published in June 1996), the OVC focus group offered the following ten recommendations to improve rights, services and support for victims and witnesses of gang violence:

1. Comprehensive vertical gang victim assistance units should be established in all jurisdictions where gang violence and crime are pervasive.
2. Mentoring sites should be established with support from OVC to replicate model programs, policies, protocols and approaches that best serve victims and witnesses of gang violence.
3. A comprehensive training curriculum that includes cross-disciplinary components should be developed that offers insights and skills necessary to assist victims and witnesses of gang violence.

4. Policies, protocols and programs that promote safety for victims and witnesses of gang violence should be established at the federal, state and local levels.
5. Protocols must be established for hospitals and emergency rooms on how to best serve victims of gang-related crimes.
6. A protocol for debriefing all crisis responders to victims of gang violence must be developed and implemented.
7. All federally-funded gang intervention/suppression programs should have a trained victim advocate position mandated as a component necessary for funding.
8. OVC should establish an Advisory Board on Victims of Gang Violence to provide advice and direction to the U.S. Department of Justice, and assist in the development of curricula and resources on a nationwide basis.
9. The U.S. Department of Justice should examine its existing resources relevant to all gang-related issues, and incorporate programs, policies and model approaches that apply specifically to victims and witnesses of gang violence.
10. A national network of professionals and volunteers concerned with victims and witnesses of gang violence should be established to provide vision, support and direction to federal, state and local initiatives.

All of these recommendations require collaboration and commitment across agencies and jurisdictions in order to be truly effective in improving rights and services for victims and witnesses of gang-related crimes.

Federal Initiatives

The *Violent Crime Control and Law Enforcement Act of 1994* created new statutory provisions under federal law for addressing street gangs. Generally the Act provides new and stiffer penalties for violent and drug trafficking crimes by gang members.

The statute increased the maximum prison sentence by up to ten years, under certain circumstances, for participating in gang-related federal drug offenses or for offenses committed by members of criminal street gangs.

Criminal street gangs are defined as an "ongoing" group or association of five or more persons that has as one of its primary purposes either:

- The commission of a federal drug offense punishable by at least five years in jail, or
- The commission of a federal violent offense.

The statute also requires that gang members must have engaged in a "continuing series" of such offenses within the past five years. In addition, the gang's activities must affect interstate and foreign commerce.

Conclusion

Gang violence and victimization present unique challenges for the criminal justice system and for victim assistance programs. This area has received more attention in recent years; however, our understanding of services for victims of gang violence is still formational, and, moreover, our ability to overcome distinct obstacles for service provision needs to be addressed. This chapter provides an overview of current state-of-the-art knowledge in this area.

Gang Violence

- 1) List four reasons why youth may become members of violent gangs.

- 2) List five characteristics that are unique to victims of gang-related crime.

- 3) List five components of a comprehensive vertical gang victim assistance program.

- 4) What innovative services/approach might victim advocates want to take in providing services to victims of gang-related violence or surviving victims of youth killed in gang-related activity?

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Chapter 21, Section 8

Campus Crime

Abstract: Crime on college and university campuses first captured media attention in the mid-1980s and brought the issue into public view. Civil suits filed by victims and surviving family members of homicide victims against universities and administrators served as the prelude to successful advocacy for federal legislation that requires colleges to compile and publish annual campus security reports. The legislation has served to enhance safety, security, and crime victim assistance on many campuses.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. How crime victims used civil remedies to combat crime on college campuses.
2. Federal legislation to address the problem of campus crime.
3. Information that is available related to campus safety and security policies and crime on campus.
4. The effect of crime victim advocacy on college campuses in America.

Statistical Overview

Number of Crimes on 796 U.S. College Campuses

	<u>1992</u>	<u>1993</u>	<u>1994</u>
<u>Incidents</u>			
Murder	17	15	19
Forcible sex offenses	417	430	n/a
Nonforcible Sex Offenses	83	110	127
Rape	458	892	1,001
Robbery	1,311	1,340	n/a
Aggravated Assault	3,022	3,103	n/a
Burglary	21,079	20,123	n/a
Motor-vehicle theft	7,270	7,032	n/a

Arrests

Liquor-law violations	14,812	14,876	14,890
Drug-law violations	3,601	4,993	6,138
Weapon violations	1,282	1,425	n/a

Note: The data represent crimes reported for 1993 and 1992 by 796 colleges with enrollments of 5,000 or more. The data representing crimes reported for 1994 were reported by 831 colleges with enrollments of 5,000 or more. The figures were compiled from statistics published by the colleges in compliance with federal law (The Chronicle of Higher Education, February 3, 1995).

Crime on Campus

Few issues affecting colleges and universities captured media attention more dramatically in the last decade than violent crime. Awareness of the incidence of violent crime on college campuses burst into the public's consciousness with the reporting of several tragic cases in the 1980s. Headlines of major newspaper across the country have described violent incidents on campuses in California, Pennsylvania, Texas, Minnesota, Virginia and Florida, to name a just few. These reports:

" . . . put to rest the long-cherished notion that colleges and universities are somehow cloistered enclaves -- sanctuaries far removed from the threat of crime that haunts the rest of us" (Carrington, 1991)

Victim Advocacy Through Campus Violence Civil Litigation

Campus violence civil litigation emerged in the mid-1980s as a relatively new and formidable legal strategy to address the problem of campus crime. It caught school administrators by surprise and threatened the financial resources of colleges and universities, many of which have suffered in recent years from declining enrollment and escalating costs.

Civil cases have been filed, primarily by students or their surviving family members, against universities, their administrators and trustees. In such cases, plaintiffs seek compensatory damages for financial losses and pain and suffering, and punitive damages which are awarded to punish perpetrators and deter others from engaging in similar behavior. Cases have alleged negligence and gross negligence, and in recent years, civil lawsuits have resulted in large judgments or out of court settlements. Generally, lawsuits have alleged unsafe campus conditions. Awards ranging from \$50,000 to \$2 million for plaintiffs who were victims of assault and rape have shaken several universities, attracted Congressional and media attention, and forced an examination of security on campuses and institutions' response after a crime occurs.

One of the more tragic cases involves the torture, rape and murder of 19-year-old Jeanne Ann Clery in her dormitory room at Lehigh University on April 5, 1986. Following the conviction and sentencing of Jeanne Clery's murderer, who was also a university student, Howard and Connie Clery filed suit against the university for its negligence in failing to take reasonable action to protect their daughter from foreseeable harm. The amount of the settlement was not made public but, in the course of settling, the university agreed to improve security throughout the campus, particularly in dormitories.

Following the settlement, the Clery's formed Security on Campus, Inc., an organization dedicated to bringing the problem of violent crime on college campuses to the attention of those

who most need to know: applicants, students, faculty and staff. Their crusade has had widespread results. Since their initial success in securing passage of campus crime legislation in Pennsylvania in 1988, similar legislation has been passed in several states. The Clery's are also recognized as the driving force behind the first federal campus crime legislation.

Federal Legislation

In the early 1990s, two pieces of federal legislation were introduced and passed in a climate of new concern about the safety of students on college campuses: the *Campus Security Act of 1990* and the *Campus Sexual Assault Victims Bill of Rights*:

The Student Right to Know and Campus Security Act of 1990

The *Campus Security Act* was the first federal legislation to address the issue of crime on college campuses and reflects a national commitment to increase campus safety. In brief, the *Act* requires that institutions publish and distribute an annual report which describes security and law enforcement policies, crime prevention activities, procedures for reporting crimes on campus, and certain campus crime statistics. The first reports covered the 1991 academic year.

The Campus Sexual Assault Victims Bill of Rights

Amid continued media focus on several cases of alleged sexual assault on college campuses and the reported response of university officials and campus judicial bodies, the *Campus Sexual Assault Victims Bill of Rights* was passed in 1991. This legislation requires institutions of higher education to develop and publish as part of their campus security report, policies regarding the prevention and awareness of sex offenses, and procedures for responding after a sex offense occurs. A key point in the new statute is the responsibility of university officials to inform students of their rights, and provide them with clear information about how to report sex offenses and about the assistance (medical, legal and psychological) available for victims. These provisions became effective in 1993.

The Department of Education is responsible for the enforcement of both statutes and failure to comply could mean the loss of federal funds, including student loan monies, to an institution. However, the Department of Education has not required universities to submit annual reports for review. In addition, the reporting requirements of the *Campus Security Act* have been amended twice and the rule making process has been slow. The most recent amendment, the *Hate Crime Statistics Act* (28 USC 534) requires universities to report whether certain crimes (murder, forcible rape, and aggravated assault) manifest evidence of prejudice based on race, religion,

sexual orientation, or ethnicity. The final regulations governing compliance with both campus crime laws were issued on April 29, 1994.

Proposed Legislation: Open Campus Police Logs Act of 1995

At the time of this printing (summer, 1996), an amendment to the Higher Education Act of 1965 is currently pending before Congress which, if passed, will require open security crime logs at this nation's colleges and universities.

Introduced by Congressman John Duncan, Jr. (R-TN), the bill would require each institution participating in any program under this title which maintains either a police or security department of any kind to make, keep and, maintain a daily log, written in a form that can be easily understood, recording in chronological order all crimes against persons or property reported to its police or security department, the date, time and location of such crimes, and, if an arrest has been made, the names and addresses of all persons arrested and charges against such persons arrested. The proposed amendment also allows for the privacy of persons reporting the crime or witnesses to the crime, unless the release of such information is required by law.

Federal Campus Crime Reporting Requirements

Pursuant to the final regulations, the *Campus Security Act* and the *Campus Sexual Victims Bill of Rights* now require that colleges and universities include the following policy information and statistics in their annual security reports:

- Information about the number of occurrences of the following crimes: murder, forcible and non-forcible sex offenses including rape, robbery, aggravated assault, burglary, motor vehicle theft, and arrests for violations of liquor, drug and weapons law violations.
- Current campus policies regarding procedures and facilities for students and others to report criminal actions and other emergencies occurring on campus, policies concerning the institution's response to the reports, and a list of the titles of each person or organization to whom students and employees should report the criminal offenses.
- Current policies concerning security of and access to campus facilities, including residences and security considerations related to maintenance programs.
- Current policies concerning the campus law enforcement's authority of police/institutional security personnel, their relationship with state and local police agencies, authority of campus police/security personnel, i.e., arrest powers, and policies

that encourage prompt reporting of all campus crime to the campus police and local police.

- A description of the type and frequency of programs designed to (1) inform students and employees about campus security procedures, (2) inform students and employees about the prevention of crimes, and (3) encourage students and employees to be responsible for their own security and the security of others. The description of the program should include reference to the manner in which the campus will provide a "timely warning notice" of violent crimes reported to campus or local police that are considered to be a threat to students and employees. Institutions are encouraged to specify that such action will depend on the particular circumstances of the crime.
- Policy concerning the monitoring and recording by local police agencies of students' criminal activity at student organizations' off-campus locations, including off-campus housing facilities.
- Policy regarding the possession, use or sale of alcoholic beverages and illegal drugs; as well as any drug or alcohol abuse education programs required by the *Drug-Free and Communities Amendments of 1989* (Public Law 101-226).

With regard to certain sex offenses, the institution's statement of policy must include the following information:

- Education programs designed to promote awareness of rape, acquaintance rape and other forcible or non-forcible sex offenses.
- Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as it may be necessary for the proof of a criminal sexual offense, and to whom the alleged offense should be reported.
- The student's option to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying these authorities if the student chooses to do so.
- Existing on- and off-campus counseling, mental health, or other student services for victims of sexual offenses.
- Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if requested by the victim and if the changes are reasonably available.
- Procedures for on-campus disciplinary actions in cases of alleged sexual offense that shall include a clear statement that:

1. The accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and
 2. Both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceedings brought alleging a sex offense.
- Sanctions the institution may impose for rape, acquaintance rape, or other sex offenses (forcible or non-forcible) following an on-campus disciplinary procedure.

Reporting Campus Crime

For many institutions, gathering and publishing statistics on campus crime was not new. Approximately 325 universities had reported crime statistics to the FBI for inclusion in the annual publication of *Uniform Crime Reports*, prior to the *Campus Security Act*. The University of Washington Police Department has combined a community policing approach to law enforcement with an annual report to the university community for more than a decade.

Other institutions have been reluctant to release information about violent crimes and have been accused of attempting to "cover-up" incidents or to minimize their significance to the point of discouraging students from reporting or cooperating with local police departments. Such tactics have become an issue in several civil suits and were the impetus for enactment of the campus crime amendments to the *Higher Education Act*.

The recently legislated annual reports of campus crime statistics have been available for most schools since 1993. However, the changes in some reporting categories and differences in school reporting practices in the absence of final regulations, have made interpretation of the data difficult. In addition, the increased attention to the issue of crime on campus, may well influence the rate at which crimes are reported to campus law enforcement officials.

While the crime reports provide previously unavailable information, it is agreed that the published numbers provide an incomplete picture of the relative safety of any particular campus. The policies and practices regarding the handling of individual criminal incidents and the various of campus safety programs must also be considered.

Patterns of Campus Crime

An examination of the aggregate data compiled and published annually by the *Chronicle of Higher Education* suggests that patterns of crime on campus is similar to crime across the United States. Violent crime reports (aggravated assaults and robberies) increased and property crime

(burglaries and motor vehicle thefts) decreased. The number of murders fell from 17 in 1992 to 15 in 1993.

In addition, the number of arrests for liquor, drug and weapons violations increased, suggesting increased law enforcement attention to these violations. This is particularly important because research suggests that alcohol and other drug abuse is directly related to crime perpetration and victimization.

Rape statistics were the most significantly affected by changes in reporting requirements since passage of the *Campus Security Act in 1990*, making year to year comparisons of reporting patterns impossible. However, other sources of data are useful in analyzing campus sex offense occurrences. According to numerous recent studies, sex offenses on college campuses have reached epidemic numbers. A Virginia Council on Higher Education survey of 5000 students found that five percent of female students were raped or sexually assaulted. However, only two percent reported the incidents to authorities and were thus reflected in campus crime statistics.

This trend has been repeated in other campus surveys. Rape is the most under reported crime, generally, and on college campuses nationwide as well. When asked why they have not reported rapes or attempted rapes, students have given several reasons. They:

- Thought reporting would do no good.
- Thought they would not be believed.
- Did not know to whom to report the offense.
- Felt embarrassed.
- Blamed themselves.
- Told no one about the incident.

Improved Treatment of Crime Victims

Although most of the initial discussion of the *Campus Security Act* was focused on the reporting of campus crime statistics and confusion about the requirements, the long-term effects of the *Act* have been far greater. Crime on college campuses and its impact on victims, the college, and the surrounding community has received much needed attention. Many campus law enforcement officials have reported resource increases that have improved security and improved or clarified relationships with local police or sheriff's departments. In addition, many universities have developed or expanded crime victim assistance programs on campus and established more formal ties with off-campus victim assistance programs.

Crime Prevention

Information is a powerful tool in crime prevention and law enforcement. If students, faculty and other employees are made aware of the extent of crime in their midst, they can take precautions which will improve the likelihood of their safety. If applicants and their families have information about crime rates, they can make informed choices about schools and housing options.

Although monitoring of compliance by the Department of Education has been minimal, many schools have utilized the annual reporting process to clarify policies that are of critical importance to a crime victim. Having readily accessible information about crime prevention, information about how to report a crime, and/or how and where to seek services can be invaluable.

Policies and practices regarding crime prevention and security are also important components of safety. Lighting, emergency phone systems, shuttle services to transport students, escort services for evening hours, locked dormitory doors, controlled access to buildings, crime watch programs, and 24-hour security are all responsible steps that schools can take to reduce the risk of victimization of innocent students and faculty.

Campus Crime and the Crime Victims' Rights Movement

Civil liability for injuries sustained by students who are victims of crime on campus is the most recent outgrowth of the crime victims' rights movement. Attention to the treatment of victims of crime gained national prominence in the early 1980s when former President Reagan's *Task Force on Victims of Crime* released its report calling for improved treatment of victims by the criminal justice system and the community at large. The report identified the tendency for the public and some criminal justice professionals to "blame the victim" for his or her situation as an impediment to the fair and sensitive treatment of victims and effective prosecution of cases.

The Task Force recommended an array of legal and programmatic reforms that would bring about greater balance in the criminal justice system and provide for expanded services to help victims recover from the trauma of their victimization. Throughout the last decade, every state has passed some form of victims' rights legislation; victim assistance programs have grown dramatically in number; and victim compensation for out-of-pocket expenses as a result of a violent crime is available in every state.

The enactment of the two new pieces of legislation cited above in a two-year period, as well as the proposed amendment to the Higher Education Act of 1995, is evidence of the impact of violent crime and the strength of the victims' rights movement in the world of higher education. The threat of civil suits will provide additional impetus for many institutions to evaluate crime prevention and security efforts. Whatever the reasons that motivate institutions to improve their crime prevention, security and victim assistance programs, the beneficiaries will be the students, faculty, staff and the communities who will be spared the trauma of becoming the victim of a violent crime, and ultimately, the university itself.

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Campus Crime

- 1) Name one mechanism used by victims to address the problem of crime on college campus.

- 2) What is the purpose of federal legislation responding to crime on college campus?

- 3) Name a national crime victims' advocacy organization that is dedicated to remedying the problem of campus crime.

- 4) What kinds of information are colleges required to compile and publish, who might be interested in having this information, and why?

- 5) Briefly describe the components of your proposed, ideal campus crime victim assistance system.

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Chapter 21, Section 9

Federal Crimes: White Collar/Economic Fraud/ Bank Robbery

Abstract: Federal criminal justice officials have begun to recognize that victims of white collar crime, fraud, and bank robbery have many of the same needs as victims of violent crime. In response, these victims are beginning to see an increase in services and resources available to them. It is important to develop a basic understanding of the impact of these crimes and how the federal criminal justice system addresses victims' rights and needs. Victims of white collar crime, fraud and bank robbery may suffer severe psychological and financial harm, and sometimes, physical effects. They require assistance and intervention that takes into account their particular needs and the unusually complex nature of these cases.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. Understand important legal, programmatic and definitional issues in white collar crime, fraud, and bank robbery.
2. Have a better understanding of victim needs.
3. Learn about innovative services at the federal level to address each type of crime.
4. Begin to formulate appropriate methods for handling these cases.

Introduction

Victims of white collar crime, fraud and bank robbery represent a tremendously underserved and poorly understood segment of the victim population. This is due to several factors:

- The initial emphasis of the victims' rights movement focused on serious *violent* crime, with little or no attention paid to non-violent, white collar/fraud/and bank robbery crime victims.
- Lack of understanding regarding the serious emotional impact of these crimes on the victims.
- Lack of consistency in the response of law enforcement and victim services to these crimes.
- No organized constituency group advocating for rights and services for fraud victims.
- Insufficient allocation of resources, including the necessary funding for personnel, to provide services to large scale cases.
- Lack of partnerships among victim assistance and consumer advocacy groups to address economic fraud victims.
- A significant number of victims are elderly, who have historically been poorly served and have typically under-reported their victimizations.

Definition Issues: White Collar and Fraud

There is a lack of a clear definition of white collar crime and fraud. In fact, there is no unified or standardized definition of white collar/fraud crime victimization. This is an issue that must first be addressed in order to better define the universe of white collar crime victims so that appropriate responses to victims can be planned and implemented.

Significant issues regarding the appropriate definitions of white collar crime include matters such as: the type of victims in question, even as basic a determination as individuals versus organizations; and the nature of crimes involved. McGowen (1993) discusses both individual and business victims. Wellford and Ingraham (1994) list several competing definitions of white collar crime:

- They noted, for example, Sutherland's (1983) definition that "white collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation."
- In addition, they point out that the various definitions adopted by State Attorney Generals and U.S. Attorneys indicate that they, "in general . . . look more to the way the crime is committed . . . than the nature or social status of the offender or the social context in which the crime is committed."
- The FBI's operating definition is: "Those illegal acts characterized by deceit, concealment, violation of trust, and not dependent upon the application or threat of physical force or violence. They are committed to obtain money, property, or services; or to avoid the payment or loss of money, property, or services; or to secure personal or business advantage" (Office of the Attorney General, 1980).

Examples of White Collar/Fraud

Victims of white collar and fraud crimes can include individuals, as well as small and large institutions. Examples of these types of crimes include:

- Mail fraud
- Bankruptcy fraud
- Wire fraud
- Computer fraud
- Health care and insurance fraud
- Pension and trust fund fraud
- Mail theft resulting in check washing
- Credit card fraud
- Embezzlement
- Security fraud
- Commodities fraud
- Cellular phone fraud
- Antitrust fraud
- Telemarketing fraud
- Advance fee schemes

Research from the National Institute of Justice on Fraud

The lack of sufficient data on the extent of fraud victimization was highlighted in a recent report entitled *Victimization of Persons by Fraud*, based on research supported by the National Institute of Justice. The NIJ Report stated:

“The FBI’s *Uniform Crime Reports* (UCR) and the Justice Department’s *National Crime Victimization Survey* (NCVA) provide annual tabulations on property and violent crimes, based on crimes reported to the police and surveys of households. However, they do *not* provide information with regard to the victimization of persons by fraud.”

Crimes of fraud are targeted against individuals and employ deception for the purpose of obtaining illegal financial gain. They involve the misrepresentation of facts and the deliberate intent to deceive with the promise of goods, services, or other financial benefits that in fact do not exist or that were never intended to be provided. This includes:

- Various forms of telemarketing.
- Frauds involving consumer goods or services.
- Frauds dealing with financial advice, insurance coverage, pension, investment or business schemes.

Wellford and Ingraham (1994) suggest *three* working definitions of different classes of white collar/fraud crimes:

1. Business and professional crimes.
2. Occupational crimes.
3. Individual frauds.

Needs of White Collar and Fraud Victims

White collar crime victims share many of the same devastating outcomes as their serious violent crime victim counterparts (Kusick, n.d.). Indeed, certain white collar crime victims may suffer more emotional distress. In his 1989 article “White Collar Crime: What About the Victims?,” Wells notes that some of the effects suffered by victims include:

- Guilt and shame
- Disbelief
- Anger
- Depression
- Sense of betrayal
- Loss of trust

These emotional repercussions are often misunderstood by law enforcement, criminal justice and victim service providers, as well as the community at large, and the victim is often doubly victimized by this dynamic. As Walsh and Schram (1980) described:

“People who have lost money to nonviolent white collar criminals (like swindlers and con artists) often encounter skepticism, suspicion, and contempt when they seek help. This negative treatment leaves them feeling guilty and ashamed. The double standard used in handling white-collar offenders and their victims - as opposed to handling street criminals and their victims (except rape victims) - has been attributed to the higher status of the accused perpetrators, the difficulty of establishing criminal intent in such cases, and a belief that imprisonment is not the cure for this kind of stealing.

Another factor is the largely ambivalent attitude toward and negative image of these victims held by the public and by criminal justice officials. A number of aphorisms blame these victims: fraud only befalls those of questionable character, an honest man can't be cheated and people must have larceny in their mind to fall for a con game. The stereotype of cheated parties is that they disregard the basic rules of sensible conduct regarding financial matters. They don't read contracts before signing and don't demand that guarantees be put in writing before making purchases. Their stupidity, carelessness, or complicity undermines their credibility and makes others reluctant to activate the machinery of the criminal justice system on their behalf, to formally condemn and punish those who harmed them, and to validate their claims to be treated as authentic victims worthy of support rather than as mere dupes, losers, or suckers who were outsmarted” (Quoted in Karmen, 1990, p. 14).

Reactions to White Collar Crime and Fraud Are Severe

Victims of white collar crime often describe a tremendous violation of their personal integrity, often using phrases such as "It was like being raped." and "I have lost all of my sense of trust." Because these psychological "wounds" are not perceived in the same way as wounds to the body, nor as generally understood as the emotional scars of a sexual assault, the effects on white collar crime victims are often, and inappropriately, minimized. Wells noted that white collar crime victims, unlike their violent, physical crime victim counterparts, have “wounds” that “are not always easy to see and are most often internal rather than external.” However, he goes on to support the notion that white collar crime victims have a similar sense of violation and often require “psychological first aid.”

Victim Self Blame is High

One particular characteristic of white collar crime victims that seems to occur in even higher degrees than in cases of violence is victim self blame. White collar crime victims' self-blame

is often extremely high and sometimes debilitating. This may be exacerbated by the insensitive professional and societal responses described above. Since the perpetrator of white collar crime typically uses methods that involve first gaining the confidence and trust of the potential victim, and then using manipulation and trickery to achieve their goals of robbing the victim of his or her various assets, the victim's ability to trust is shattered.

Victims Feel Violated

White collar crime victims justifiably feel a sense of tremendous violation. The net result is often a life in financial and emotional ruin, seemingly out of control with no recovery in sight. Because these crimes may appear obvious in retrospect, the victims, who may already feel like they should never have fallen for such an obvious scheme, are frequently not viewed by professionals and society as "legitimate" victims, even though there is often nothing the victim could have done in advance that would have prevented the fraud.

This is compounded by the fact that many white collar crime schemes involve investments and other financial arrangements, which may lead some to feel that it was the victim's own greed that caused him or her to be blinded to the realities of the situation. Therefore, attitudes of professionals and others frequently will not exhibit a sense of outrage at the plight of the crime victim that normally accompanies their response to victims of violent crime.

Lack of Closure

Moreover, victims of white collar crime, similar to victims of violent crime, may never see the perpetrator of their crime again. If they do, they observe that the perpetrator often escapes all sanctioning or punishment. If the perpetrator is ever located, often the scheme has been adequately layered with buffers which keep the individual perpetrator from prosecution, i.e. if arrested, alleged perpetrators often liquidate their assets and, if prosecuted and convicted, typically employ methods such as bankruptcy to avoid paying victims adequate restitution. Even when the prosecution of these cases is successful, victims may have to endure many years of emotional and financial struggle and turmoil, only to receive an insignificant outcome.

Many fraud victims in both state and federal cases may not even be told an arrest or prosecution has occurred, as a prosecutor may decide there are too many victims to notify, or that only a few of the victims will be included as counts for indictment and/or restitution purposes. This can greatly impact the victims ability to be heard, especially at sentencing, if the victim is not provided the opportunity to submit victim impact information, to seek restitution, or to seek prison release information. Due to lack of communication with the victim, many victims may not even know that restitution was awarded in a case.

Repetitive Victimization is Often Typical

It is not uncommon for victims to be swindled on several occasions, sometimes repeatedly by the same individual, or by other swindlers who have acquired their name as potential “dupes” from previous perpetrators. White collar crime perpetrators share lists of potential victims, including individuals who have previously fallen prey to their crimes, enhancing their successful completion of repeat victimization. In addition, it is often difficult for the criminal justice or victim service professional, or family and friends, to understand how someone could continue to give their money away to other scam artists.

Impact on Family and Friends

Many victims, unaware of the fraudulent investment or scheme, encourage family and friends to participate. When the fraud is uncovered, they may be resentful and often blame the victim. This may lead to mistrust of the victim by a family member or spouse in handling financial affairs. Too often, separation and divorce may follow. Victims may also experience separation and isolation from family members and friends who may expect the victim to repay. Some victims try to hid the fraud from family members out of shame and the fear of repercussions when they find out about the fraud.

Such Cases Are Very Demanding

Those who work with victims of white collar crime understand that these cases can be extremely time consuming and demanding, and typically involve a unique population. Because of these needs, specialized attention must be paid by victim service providers and others in the criminal justice system to the particular issues involved. White collar and crimes of fraud cases are often very complex, with many victims (sometimes numbering in the hundreds) residing over a wide geographical area. Automated systems could help relieve some of the burden on victim assistance personnel in maintaining the necessary contacts with these multiple-victim groups. In light of these resource shortages, it is therefore important to develop inter-agency, cross-district collaborations to reach these victims. Victims needs for information are often immediate.

- Brochures should be provided by investigators responding to the crime and should include information on local, regional or national resources. One example is the Consumer Credit Counseling Service, which has locations nationwide, at 1-800-388-2227.

Importance of Victim Impact Statements and Restitution

Determining which victims are entitled to restitution can be a source of frustration for the victim, the probation officer, the prosecutor and the advocate. In some federal districts, unless specifically provided in the plea agreement, only the victims listed in the indictment may be considered victims for purposes of restitution.

In the past, judges could consider the ability of the defendant to pay when considering whether or not to order restitution. This often led to victims not having restitution ordered in their case. On the federal level, the court may still do this where the number of victims is so large as to make restitution impractical, or if determining complex issues of fact related to the cause or amount of the victims loss is too large of a burden.

Others issues that may prevent victims from receiving restitution include:

- Judgments not listing the victim's name and loss, thus making it unenforceable as an order.
- Prosecutors may not feel that it is necessary to include all victims, feeling that victims have the option of civil recovery for their losses. However, by the time a case has been fully investigated and accepted by the prosecution, several years may have gone by, precluding civil recovery under statute of limitation laws. Even more crucial, most victims have losses that make it difficult to hire an attorney, especially if a defendant appears to have few assets.

Although restitution is usually difficult to obtain, it is essential that court orders be pursued vigorously, as it is very important to a victim's financial and psychological recovery. One of the issues involved in obtaining an adequate restitution award is the preparation of a comprehensive and hard-hitting victim impact statement. Detailed accounts of funds lost in these crimes and documentation of emotional distress are imperative to achieving adequate awards. This is often made difficult because of the large volume of victims involved in white collar crime schemes, and the fact that some victims experience difficulty with trust in divulging personal information, even to officials of the criminal justice system.

Law Enforcement Response

In an article entitled "Your Best Evidence," Wells notes that utilization of a "victim first aid" technique will assist investigators and other who work with victims (see the section on the important role of law enforcement at the end of this chapter):

- A fully trained investigator will focus first on the victims' needs, identify emotional roadblocks that separate them from important case information, and help the victim deal with these emotions.

Elderly Victim Services

In addition to restitution and victim impact statement issues, white collar and fraud perpetrators often target elderly victims. The needs of this special population requires special understanding and specific skills. The elderly can be particularly vulnerable if they are in frail health, suffering from loneliness and/or isolation, or economically distressed. Con artists, aware of these dynamics, can easily manipulate these victims. Once the crime is revealed, elderly victims may be reluctant to come forward or provide information. Many may fear the loss of their autonomy if family members perceive they can no longer make 'sound' financial decisions, or are simply too embarrassed to admit they have been victimized. For additional information on elderly victims, see the chapter on elderly crime victims.

Physical and Mental Health Issues

The white collar crime victim population tends to not seek appropriate mental health or psychological support. When they do, it is usually through a counselor covered by private insurance or a religious advisor. Victim service providers must assist white collar crime victims in either developing their own support groups, or help them to seek appropriate emotional support from trained professionals. Other issues that are not often considered in working with white collar crime victims include:

- Increased susceptibility to physical illness or death.
- The possibility of physical violence within the family of the victim, including elder, child, and/or partner abuse.
- Substance abuse as a reaction to the victimization.
- An increased risk of suicide (which can be a tragic outcome of such cases).

Recent Updates on a Specific Aspect of Fraud: Telemarketing Fraud

In the 1995 *Attorney General Guidelines for Victim and Witness Assistance*, telemarketing is defined as the following:

A plan, program, promotion, or campaign that is conducted to induce purchases of goods or services, or participation in a contest or sweepstakes, by use of one or more interstate telephone calls initiated either by a person who is conducting the plan, program, promotion or campaign or by a prospective purchaser or contest or sweepstakes participant -- 18 U.S.C. Section 2325 (1)(A)(B).

The *Crime Control and Law Enforcement Act of 1994* contains specific provisions for victims of telemarketing fraud targeted against senior citizens. The Act increased penalties for telemarketing fraud and requires mandatory restitution for victims in the following manner:

- *Senior Citizens Against Marketing Scams Act of 1994* (Section 250002): Enhanced Penalties for Telemarketing Fraud

This section enhances penalties up to five years in addition to any term of imprisonment, and for those who practice telemarketing fraud and victimize ten or more persons over the age of 55, or target persons over the age of 55, enhances penalties up to ten years.

- Section 2327: Mandatory Restitution

This section states: ". . . in addition to any other civil or criminal penalty authorized by law, the court shall order restitution" for any offense under this chapter. "The issuance of a restitution under this section is mandatory. The court shall direct that the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court" and that "the United States Attorney enforce the restitution order by all available and reasonable means."

Special Circumstances

When there is more than one offender, the *Senior Citizens Against Marketing Scams Act* provides that the court may make each offender liable for payment of the full amount of restitution, or may apportion liability based upon the level of contribution and economic circumstances of each offender.

When there is more than one victim, the court shall order full restitution for each victim, but may provide for different payment schedules based upon the economic circumstances of each victim.

Conditions of Probation for Defendants

The Act requires that compliance with restitution orders be made a condition of any probation or supervised release of the defendant.

Rewards for Conviction

The Act allows the U.S. Attorney General to offer rewards up to \$10,000 for information leading to the prosecution and conviction of telemarketing fraud against older Americans.

(The information in the preceding section is taken from the Office for Victims of Crime, *Violent Crime Control and Law Enforcement Act of 1994, Select Crime Victim Provisions Contained Within the 1994 Crime Act*, prepared by Laura Federline, November, 1995.)

Statistical Overview Bank Robbery Victims

- Acts of violence were committed during 348 of the 7,384 robberies, burglaries, and larcenies occurring during 1994.
- These acts included 149 instances involving the discharge of firearms, 6 instances involving explosives, 172 instances involving assaults, and 34 other instances of violence.
- In almost half of the number of bank robberies in 1994, the threat of a weapon was used by the bank robber against the bank employee.
- One or more acts of violence may occur during an incident. Acts of violence resulted in 167 injuries, 23 deaths and 61 persons being taken hostage.
- Loot was taken (cash, securities, other property) in 6,804 incidents totaling \$58,428,792.

The type of individuals injured, killed or taken hostage during violations of the *Federal Bank Robbery and Incidental Crime Statute*, 18 USC 2113 (1994) are as follows:

<u>Type of Victim</u>	<u>Injuries</u>	<u>Deaths</u>	<u>Hostages Taken</u>
Total	167	23	*61
Customer	23	0	45
Employee	88	2	84
Employee family	0	0	3
Perpetrator	25	16	n/a
Law officer	16	2	0
Guard	12	3	9
Other	3	0	11

*These hostages were taken in 36 separate incidents.

Financial institutions experienced the following types of violations:

<u>Institution</u>	<u>Robberies</u>	<u>Burglaries</u>	<u>Larcenies</u>
Commercial Banks	5964	218	66
Mutual Savings Banks	310	14	2
Savings and Loan Associations	429	14	2
Credit Unions	325	25	2
Armored Carrier Companies	1	0	12
Totals:	<u>7029</u>	<u>271</u>	<u>84</u>

The types of **Modus Operandi** used in 1994 includes the following:

Demand note	3,767
Firearm used	2,248
Other weapon used	87
Weapon threatened	3,371
Explosive devise used or threatened	279
Oral demand/no weapon	954
Vault or safe theft	73
Depository trap devise	55
Till theft	111

(The preceding statistics and charts are from the U.S. Department of Justice, Federal Bureau of Investigation, *Bank Crime Statistics, Federally Insured Financial Institutions, January 1, 1994-December 31, 1994*, Washington, DC: U.S. Department of Justice, 1995.)

Uniqueness of Bank Robbery Victims

As shown above, victims of bank robbery can include bank customers, bank employees (tellers, managers and security guards), law enforcement officers, as well as other members of the community. A common reaction by the largest group affected by bank robberies -- the tellers -- is a tremendous amount of self-blame. Bank tellers, in the aftermath of a bank robbery, feel that they should have been able to do something to stop the crime. While generally bank robbery is not considered a personal crime, but a crime against the bank, most tellers take it very personally. In some instances, tellers are injured, taken hostage, or even killed.

In addition, tellers must return to the scene of the crime -- their place of employment -- in order to keep their job. They often fear the return of the perpetrator, until told by a law enforcement

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officer that a suspect has been apprehended. Often their family and friends will encourage them to quit their job and find a safer job, but many like their work and do not want to seek other employment.

Because bank robberies occur in all jurisdictions -- large, urban communities and small, rural towns -- victimized bank tellers are left with the fear that there is no "safe place" to move to reestablish their sense of security. Many leave their jobs, due in large part to this fear and the resulting stress.

In addition, law enforcement officials and the employer may look at the teller suspiciously, or even fire the employee, if he or she did not give the perpetrator bait money or the dye packs that some banks employ to intercept bank robbers. Law enforcement may not understand crisis reactions to trauma where the victim may not remember or follow bank procedures in this area, rather, the victim responded in what he or she felt safe in doing at the time of the robbery. Thus, the teller may, in some cases, be viewed by law enforcement officials as a possible suspect "of an inside job."

While many banks are supportive of their employees in the aftermath of a robbery, some banks cause a secondary victimization, isolating the employee from other workers while the investigation is being conducted.

The Advocate's Role

In addition to the more immediate crisis services that victims may require on-scene, victim advocates need to ensure that when a suspect has been charged, the bank teller is notified, as well as other victims who were present during the robbery. They need to inform victims how the case will be processed throughout the system (whether federal or state), assist victims in filling out victim impact statements, and inform victims of their right to allocution during sentencing. Victims may also qualify for restitution payments for time lost from work, and health and mental health related expenses that resulted from the bank robbery.

Victim advocates should also provide bank robbery victims with information about victim compensation, including the application process, and assist them as needed in completing necessary forms.

Support Groups and Community Referral Counseling

U.S. Attorneys' offices have developed a variety of useful approaches to deal with victims of federal bank robbery. For example, the Victim-Witness Coordinator in the U.S. Attorney's office for the Eastern District of Wisconsin has developed an innovative outreach program for victims of bank robberies, specifically addressing bank employees.

The office, with input from bank tellers who have been victims of bank robberies, has developed a brochure entitled: *When Bank Employees Become Victims of a Robbery*. It not only provides information about the specific trauma reactions of bank employees, but offers advice about how to cope and where to go for assistance.

The program has many unique features that can serve as a possible model for establishing outreach and response to bank teller's needs in the aftermath of victimization. The program's response to bank employees includes:

- Immediately following the robbery, a trained crisis response professional goes to the scene of the robbery and provides follow-up visits to bank employees.
- The crisis response professional and trained counselors also provide debriefing to customers, tellers and staff, as well as referrals to local assistance programs.
- The staff provides a workshop for victim tellers every three months where employees are able to tell their stories, in a supportive group atmosphere.
- Law enforcement officers attend the workshops to provide case updates.
- An Assistant U.S. Attorney attends the meetings to discuss the court system and to answer any questions about victims' rights.

The workshop is available for all bank employees. The U.S. Attorney's office and the local District Attorney's office cooperatively established the program. They have received wide support from the banking community for the program -- including five local banks underwriting the cost of conducting the workshops and printing accompanying brochures and other written information.

In addition, the Victim-Witness Coordinator for Eastern Wisconsin created a Task Force in the early 1990s composed of bank security professionals, law enforcement personnel, and federal and local victim-witness providers, crisis response professionals and victim bank tellers. The Task Force organizes the workshop, which is conducted four times a year. Any individual that attends can join a support group that is generally held for six weeks. Following the termination of the support group, employees who need additional counseling are referred to specially trained local mental health professionals.

Impact on Financial Institutions and Impact on Victims

When a financial institution is robbed, there is an obvious monetary loss to the institution; however, there are additional costs to financial institutions that go unnoticed. There is a direct

link between trauma suffered by victims of bank robbery and the amount of indirect loss to financial institutions caused by the robbery itself (Powers, 1989).

The violent crime of bank robbery or any other traumatic event causes a severe disruption in the lives of these employee-victims, which can continue as long as twelve months or more. This in turn can result in a decrease in work performance. Some consistent yet normal reactions among employee-victims of bank robbery victims include:

- Fear of perpetrator's return.
- Hyper alertness.
- Seeing clothing similar to that of perpetrator may trigger crisis reaction.
- Trouble concentrating on work and an increased incidence of simple mistakes (counting, calculating, etc.).
- Difficulty in making even simple everyday decisions.
- Increased use of sick time.
- Irritability around customers and co-workers.
- A decline in customer service born out of a fear of strangers (some tellers refuse service to customers).
- Increased stress related workers compensation claims.
- Eventual resignation or dismissal of employee-victims.
- Return of symptoms if there is another robbery, even if the employee is not directly involved.

One can only speculate as to the indirect cost to financial institutions in the areas of customer service, workers compensation claims, employee productivity, turnover and training. In addition, advocacy and counseling can result in employee-victims being stronger witnesses at trial and thus increase the possibility of conviction.

The Primary Victim

The "primary" victims are survivors of the violent crime of bank robbery, and the surviving family members of those killed in bank robberies. It is not unusual for victims of "property" crimes such as burglary, theft, and robbery to suffer from many of the same symptoms as those victimized by physical or sexual assault.

The crime of bank robbery, like many other crimes, usually has a rippling effect upon family members, coworkers and crisis responders, among others. There are primary victims -- the tellers -- or others who have been directly threatened with harm by either being on the fringe, such as customers or other personnel; to those arriving on the crime scene, like police, paramedics, and journalists. Even entire communities can be victimized. Family and friends of the primary victims can suffer victimization comparable to primary victims even if they were not present at the crime because of the emotional ties.

Common Reactions by Victim/Tellers

There are some re-occurring reactions expressed by victims of bank robberies, including:

- Continuing fear that the robber will return either for retribution or to rob them again. This reaction persists until the suspect is caught and they are informed that a suspect has been apprehended.
- Fear of any strangers who approach them in the bank. Some fears are so strong that tellers have refused to wait on customers -- especially in instances where clothing, glasses, bags, etc. are similar to that of the suspect.
- Guilt that they are responsible for the monetary loss.
- Difficulty handling daily tasks and decision making on the job or at home.
- Identification of the robber especially on a face-to-face basis.
- Feelings of intense vulnerability and feeling "trapped" in their positions.
- The prevalent feeling that they are "going crazy." This comes from victims not recognizing they are reacting normally to trauma.
- Anxiety about their part in the criminal justice process (particularly being a witness and facing the alleged robber in court).
- Reluctance to share their feelings and concerns with co-workers or supervisors for fear of being judged unstable and losing their job.
- Fear that they will be disciplined or even lose their jobs because they were robbed or allowed the robber to escape.
- Thoughts about resigning as a teller and, in many cases, acting on this impulse. It is interesting to note that most exit interview forms do not cover robbery as a reason for an employee resigning his or her position.
- Insecurity about being singled out by the robber provokes thoughts of being picked for other robberies.
- Frustration at not being told by police or prosecutors that the suspect was apprehended or prosecuted.
- Fear that requesting counseling paid under workers compensation will label them as a troublesome employee or employer.
- Revictimization by insensitive employers.

Costs of Bank Robbery to the Banking Industry

- Dollars lost to robbery
- Productivity affected
- Service delivery influenced by fear
- Increased sick leave
- Attendance problems

- Morale affected
- Balancing problems
- Workers compensation claims
- Increased insurance costs
- Risk of stress claims
- Management-employee relations
- Turnover due to resignations
- Loss of customer accounts

(Source: M. Gibson, Managed Health Network, January 1990.)

The Important Role of Law Enforcement in Responding to Victims of White Collar, Fraud and Bank Robbery

As initial responders, law enforcement officials play a significant role in not only gathering evidence and beginning the pursuit of the perpetrator, but also making sure the victims/witnesses are safe and secure. Victims who are treated well at the crisis state of the crime are more likely to be better witnesses, and more helpful to the investigations and prosecutions of perpetrators who are arrested.

In an article entitled "Your Best Evidence," Wells describes psychological first-aid techniques for officers responding to crime scenes:

"Law enforcement officers and investigators get information because people talk to us. We need the complete cooperation of our victims and witnesses to get accurate information and prove our case in court. To do this, emphasis needs to be placed on providing "psychological first aid" to victims and witnesses. Successfully administered, psychological first aid returns some sense of emotional control and order to a victim in crisis. The way you do that is by focusing first on the victims or witnesses and by attending first to their needs. Just as it is important to apply appropriate first aid techniques to an open wound following a shooting, for many victims it is equally important to apply psychological first aid to the emotional wounds they have just received. By using psychological first aid, we can remove emotional roadblocks that separate us from the information that we need. The result is that the best available information obtained in a timely manner. By properly applying these techniques, your victim or witness becomes stronger evidence.

When victims call law enforcement, they are upset; they often don't know what to expect from the police or other professionals in the criminal justice system. The crime they have experienced has often resulted in a crisis reaction. It is necessary to provide

emotional stabilization in order to meet one of your most important goals: obtaining accurate information.

There are some simple and quick methods for providing psychological first aid to victims and witnesses. These methods are not only considerate of the victims and their needs, and secondly, considerate of your own needs -- meaning that they fit into standard police operations. One such approach is the 'You/We/I' approach developed initially by Jim Ahrens, a law enforcement trainer in Fairfax, Virginia. With this simple approach, you can quickly determine what emotional reactions, if any, can stand in the way of getting the quality information you are after.

If you are responding to the scene of a violent crime, there are two principal emotions you are likely to encounter from your victim or witness: anger and fear. Emotions are barriers to communication and we need a method for eliminating them. That method is 'You/We/I.'

The 'You' Stage

Your focus should first be on your victim or witness. Always begin by asking the obvious: 'Are you OK?' Really listen to the answer. See what emotions or feelings, if any, surface. Check to see that victims non-verbals match what they are saying. As a crisis responder, you have to deal with what's there. By listening to the victim and witness, you will learn their perspective of the event.

Let them vent their feelings. If you don't, they can create barriers between you and the information and cooperation you need. Validate these feelings or emotions with statements like 'You have every right to feel like that; I would be angry too; or I understand that you are afraid, and I want you to know that you are safe now.'

The 'We' Stage

For most victims and witnesses, the simple act of showing concern, reassuring them of their safety, letting them vent their feelings, and validating the feelings they vent, is enough to move them to the second stage, 'We'.

Move quickly to 'We' with a statement like 'I want you to understand what we are doing.' Starting again with 'you' further emphasizes the importance you place on the victim or witness. The message of the 'We' stage is simple: The victim or witness and the officer or investigator are in this together. You should spend a short period of time helping the victim prepare for what is coming next. Now move to 'I' . . . what you as a representative of law enforcement need. Consider asking . . . 'Is there anything that you would like to ask me?'

The 'I' Stage

Start again with 'you,' with a statement like, 'Now, if you feel up to it, I need a description.' You may want to follow with a question like, 'I am going to be taking a report so I'll be writing down what you say, OK?' Engaging the victim in a process that requires that they answer simple questions helps them regain a sense of control they may have lost as a result of their victimization.

If victims still want to talk rather than give you a description, be honest. Tell them your time frames. Don't be afraid to suggest that they move on. Be sure, however, to let them know that you will be happy to discuss their concerns after you get the description you need. If the victims pause in their words -- give them a chance; don't rush them. Use positive reinforcement. You don't want to destroy the original intake of information. You are after the best available evidence and when you rush a victim or witness in crisis, you may destroy evidence.

Start again with a statement like, 'Now if it's OK - I need you to talk about what happened.' Don't interrupt their response. Permit victims to pause. Don't interject just because they stop talking. Wait. Give them a chance to continue. Pay careful attention to the feelings and emotions being expressed.

Follow-up should be specific and open ended: 'Tell me more about . . . the person . . . the car . . . etc.' Don't rush the response or appear to be in a hurry.

When Concluding the Interview

After a description is provided by the victim/witness, explain that you need to get the description out to other officers. Ask permission to leave temporarily in order to do so. Again, you are giving the victim a choice and helping to return control to him. In some cases the victim or witness will need further assistance to start regaining control. You can help him to define the principle problem. Ask, 'What is the one thing you need, right now?'

You will probably get a quick response such as: 'What about my kids? Are they alright? My jeans are ripped. I want to change clothes.'

If at this stage you take care of a little problem, you help your victim or witness regain control, and you build rapport. You will also increase your chances of getting accurate information.

Return to the victim after putting out the description. Focus again on their immediate needs. Give them an idea of what to expect from the investigation. Consider referral to

a victim assistance program in your community. Remember, as a first responder, you have only a short time with the victim; and often you are turning the victim loose on his own to go right back into crisis if you don't refer him to victim assistance services. Think of it this way: You have started to build a strong case since you stabilized the victim. You want your victim even stronger emotionally when it comes time to testify” (Wells, 1991, p. 47).

These excellent guidelines for psychological first aid for law enforcement are particularly effective when dealing with bank employees or other victims/witnesses of bank robberies.

21-9-20

Federal Crimes: White Collar/Economic Fraud/ Bank Robbery

- 1) What would you propose as the definition of white collar and fraud crime victims from the perspective of a victim advocate?
- 2) Describe the needs of white collar and fraud crime victims. How are they the same and different from their violent crime counterparts?
- 3) Briefly describe the components of your proposed, ideal white collar/fraud crime victim assistance system.
- 4) List two significant changes that have recently occurred in the federal justice system's response to fraud victims.
- 5) An often overlooked victim of bank robbery is the employee. Describe the impact on the victim and unique interventions that have been created to assist victims in the aftermath of this crime.
- 6) How would you know if crisis intervention and follow-up support services exist in your community to specifically assist victims of bank robbery?

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Chapter 21, Section 10

Restitution

Abstract: This chapter will provide the participant with information about the history of restitution, its purpose, operation, and the rehabilitative aspects of restitution as it exists within the United States. Participants will receive information regarding the importance of acquiring restitution for victims who have suffered financial losses as a result of crime. Participants will also be informed of how restitution can be used to hold each offender accountable while affording the maximum opportunity for rehabilitation.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The historical basis for restitution in administering justice.
2. The extent of financial losses to victims of crime.
3. Correctional and rehabilitative goals of restitution.
4. Obstacles to implementing restitution.

Statistical Overview

While many may associate the physical and psychological impact of crime as the most obvious and serious tolls taken by any crime, the financial impact of crime can be devastating. Considerable losses can be incurred by such things as unforeseen medical expenses, psychological counseling costs and the need to replace stolen property. The financial losses incurred as a result of crime can be as debilitating as any other type of injury suffered by crime victims:

- Crime victims in 1992 lost \$17.6 billion in direct costs, according to the National Crime Victimization Survey (NCVS). These costs included losses from property theft or damage, cash losses, medical expenses, and amount of pay lost because of injury or activities related to the crime. (*Klaus, Patsy A., 1994, "The Costs of Crime to Victims," page 1, Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C.*)
- Economic loss of some kind occurred in 71 percent of all personal crimes. For crimes of violence, economic loss occurred in 23 percent of victimizations. Household crimes of burglary, theft, and motor vehicle theft involved economic loss in 91 percent of all victimizations. (*Ibid., page 1*)
- Among crimes that involved loss, about 12 percent of personal crimes and 24 percent of household crimes involved economic losses of \$500 or more. (*Ibid., page 1*)
- Adjusting for inflation, the cost of crime to victims has risen 17 percent from 1981 to 1991. (*Bureau of Justice Statistics, October 1993, "Highlights from 20 Years of Surveying Crime Victims: The National Crime Victimization Survey, 1973-92," U.S. Department of Justice, Washington, D.C.*)
- Crime related injuries typically account for more than 700,000 days of hospitalization annually -- the equivalent of about 30 percent of the hospital days for traffic accident injuries and just over one percent of the days resulting from heart disease. (*Ibid.*)
- Direct costs of alcohol-related crashes are estimated to be \$44 billion yearly. An additional \$90 billion is lost in quality of life due to these crashes. (*Miller, Ted R. and Lawrence J. Blincoe, "Incidence and Cost of Alcohol-involved Crashes," Accident Analysis & Prevention, Volume 26, Number 5, pp. 583-591, 1994.*)
- Property valued at \$15.6 billion was stolen in connection with all Crime Index offenses in 1994. (*Federal Bureau of Investigation, 1995, "Crime in the United States, 1994," U.S. Department of Justice, Washington, D.C.*)

- Abuse of alcohol, tobacco, and other drugs cost the nation at least \$238 billion during 1990 in crime costs, destruction of property, lost productivity, and medical outlays. (*Robert Wood Johnson Foundation, October 31, 1993.*)

Historical Perspective

The concept that any offender should make restitution to another individual as part of the consequences for committing a criminal act can be traced back to the earliest forms of laws governing society. Most people are familiar with the clause “an eye for an eye”, which dates back to the Code of Hammurabi in the eighteenth century B.C. (trans. 1904). The Hebrew Law of Moses (about 1688 B.C.) specifically provided for the payment of restitution, as can be seen in this example from the Old Testament:

“If a man shall steal an ox, or a sheep, and kill it, or sell it he shall restore five oxen for an ox, and four sheep for a sheep. If a man be found breaking up, and he be smitten that he die, there shall no blood be shed for him; If the sun be risen upon him, there shall no blood be shed for him; for he shall make full restitution; if he have nothing, then he shall be sold for his theft. If the theft be found in his hand alive, whether it be ox, or ass, or sheep; he shall restore it double.”

Restitution as described within this Biblical framework functioned as both a form of restitution and punishment. The idea of restitution was prevalent throughout primitive societies. In Saxon England, a legal system developed which delineated between the restitution owed to the victim’s family (called the *Bot*), and that owed to the king for violating the king’s peace (called the *Wit*) (Frank, 1992). Eventually, Anglo-Saxon law established the concept of the “botless” crime, and crimes were punished solely on the basis of being violations of the king’s peace. Thus, the victim took on a secondary role and was left without remedies within the criminal system; the only recourse was to pursue damages in a separate civil action.

With the development of the Western legal system, the state continued in its primary role by taking on responsibility for prosecuting crimes, which were viewed as crimes against the state - not against the victim. Restitution became less important as the state pursued punitive justice. While recognition of restitution’s importance continued to receive attention in discussions of international prison issues in the 1700s and 1800s, the focus on monetary relief for victims began to turn toward civil remedies as an alternative to criminal justice involvement (Schafer, 1970).

The emergence of modern restitution can be traced to the establishment of penal laws which permitted suspended sentences and probation. By the late 1930s, the courts in at least eleven states were specifically empowered to order restitution, within their discretion, as a condition of probation (Frank, 1992, p. 111). It was not until the late twentieth century that restitution found new prominence, not as a correctional objective, but as a critical element in the burgeoning

victims' rights movement. Protecting victims from suffering financially (in addition to psychologically and physically) from the impact of crime resulted in renewed interest in restitution.

The federal government provided leadership on this issue through the publication of the Final Report of the President's Task Force on Victims of Crime in 1982 as well as the enactment of the *Victim and Witness Protection Act of 1982* (VWPA). Referring to the VWPA, the message expressed by the late Senator John Heinz on the Senate floor was that restitution should be "the expected norm, no longer an afterthought." Senator Laxalt concurred: "It is the intent of Congress that judges order restitution in each and every case where the court finds there has been property loss or injury to the victims." In the decade that followed, virtually every state passed some form of restitution statute, most following the federal model.

The American Bar Association followed in 1988 with the issuance of *Guidelines Governing Restitution to Victims of Criminal Conduct*. During the 1980s, organizations with widely differing goals expressed support for utilization of restitution. Some of these include: the American Civil Liberties Union, the National District Attorney's Association, the U.N. General Assembly, and the President's Commission on Law Enforcement and Administration of Justice.

While all states have some type of restitution statute, some have taken the step of actually *mandating* restitution. Because there are numerous ways to structure and define mandatory measures within legislation, it is difficult to precisely quantify how many states actually require restitution. Some states mandate restitution with respect to violent crimes, while others do so with respect to property crimes. Still other states may require restitution for juvenile offenders, and also may require that the offender be on probation during the period of probation. As of 1993, at least twenty-nine (29) states had enacted statutes requiring restitution at sentencing for most violent crimes. Some states mandate restitution or, in the alternative, require the sentencing judge to state on the record his/her reasons for not ordering restitution.

In recent years, jurisdictions around the country have focused increasing attention upon their systems for managing restitution. Some of the national trends regarding restitution programs are described in *Crime Victim Restitution: An Analysis of Approaches*, a comprehensive review of restitution programs published by the National Institute of Justice in 1986 (McGillis). The clear majority of restitution programs are located within the probation and parole divisions of corrections departments, but there are many prosecutor-based restitution programs as well, usually located within the victim-witness division.

Increasingly, states are creating and amending legislation pertaining to specific procedures in the restitution process. Moreover, many states are pursuing increased victims' rights through the passage of victims' bill of rights constitutional amendments. On the federal level, restitution reform became law in 1995. The *Victims' Justice Act of 1995* amends the federal criminal code to require judges to order restitution for victims of the following crimes of violence: property crimes, fraud, consumer product tampering, and drug crimes. In addition, procedures for issuing

and enforcing restitution orders were significantly expanded under the Act. Full implementation of these new provisions will bring new importance to restitution in federal criminal proceedings. Also, Senate Joint Resolution 52, proposing an amendment to the United States Constitution, was introduced on April 22, 1996 and referred to the Senate and House Judiciary Committees. The joint resolution contains language calling for "full restitution for the convicted offender" and is expected to be voted upon sometime in the next Congressional session.

Restitution Philosophy

Restitution is an important tool in criminal justice. With increasing emphasis on community-based sentencing alternatives, restitution is likely to increase in importance. With this in mind it is critical -- for victims and for justice -- that effective models be developed to enable the numerous professionals involved to carry out their responsibilities more effectively.

The idea of restitution has re-emerged in modern day criminal justice practices and serves many different purposes in the administration of justice. Restitution attempts to establish a relationship between the offender and the victim in an effort to raise the offender's sense of responsibility to the victim and to society. The relationship is generally facilitated through the criminal and juvenile justice processes. The idea of restitution also attempts to advance a sense of personal accountability to the victim. Restitution can impress upon the offender some measure of the impact of the crime through the association of financial costs with the loss experienced by the victim. Some jurisdictions utilize mediation programs which bring the offender and victim together in a face-to-face meeting to negotiate a restitution settlement. While the victim must consent to such a meeting, this approach attempts to address the economic as well as psychological injuries in such a way that the offender may be able to comprehend the full impact the crime has had upon the victim.

In reviewing the current literature regarding restitution, a continuous theme emerges espousing that while restitution cannot undo the harm it has done, it can assuage the injury, and it has a genuine educational value for the offender, whether adult or child. The importance of restitution as a criminal justice practice and as a right of crime victims is its ability to make efforts to repair damages suffered by the victim while also serving to rehabilitate the offender, and further the goals of justice. Restitution can be implemented in a number of ways at various points throughout the criminal justice system process (more fully described below). Although restitution is most often imposed in a mandatory fashion, it may be entered into voluntarily by the offender as well.

Restitution to the victim of a criminal injury can be effective as a punitive measure as well as a financial remedy. It must come from the offender's own resources (either money or service) and it must be part of the criminal court sentence by being tied to case disposition. Restitution can potentially go well beyond compensation by requiring the offender to restore the victim to his

or her pre-injury condition, to the fullest extent possible. It compensates the victim, relieves the state of some burden of responsibility for the victim's injuries, and permits the offender to pay his debt to society and to his or her victim. Thus, it makes a contribution to the reformatory and corrective goals of criminal law and is an important facet of the criminal justice system.

The renewed interest in restitution has launched a great deal of discussion concerning how management of restitution may be made more effective. An American Bar Association (ABA) study which involved an in-depth survey of program directors in 75 sites as well as intensive on-site personal interviews of restitution personnel at four (4) sites produced some interesting conclusions indicating the need for further study. Some of these include: (1) close program monitoring of offender, beginning as soon as a restitution order is entered, can increase compliance; (2) offenders whose profiles indicate a higher risk for non-payment should receive increased attention; (3) greater program efforts can greatly increase victim satisfaction with the restitution process; and (4) an increase in funding for restitution programs is needed, particularly with respect to technology development and implementation (Smith, Davis, and Hillenbrand, 1989).

Obstacles to Restitution

Restitution is a highly complex process, involving numerous professionals and a diverse array of tasks. Moreover, there are inherent difficulties in requiring financial reparation from offenders who are predominantly in difficult financial and/or personal circumstances. This is not to condone failures to pay restitution -- simply to acknowledge the realities. However, contrary to what many professionals have claimed, the "myth of collectibility", referring to the "mistaken notion" that restitution can actually be collected, may itself be a myth of its own making. Jurisdictions all over the country are currently experimenting with and institutionalizing procedures to organize and streamline restitution procedures.

This very definite progress notwithstanding, there is general acceptance that "restitution remains, as it has been for the past century, underutilized in actual case dispositions." (Roberts, 1990) The "underutilization" is apparent both in decisions to order restitution and in efforts to collect amounts ordered for payment to victims.

In a recent (February 1992) report on *Recidivism of Felons on Probation, 1986-89*, the Bureau of Justice Statistics reported the results of a two-phase survey of selected counties. Of the 32 counties surveyed, "only half of the counties required restitution in at least one-third of all felony probation cases." A study of a follow-up sample revealed that the average restitution order imposed was \$3,368 per probationer. For felony probationers who had completed their sentences, only 54% of the amount of restitution ordered was paid.

Recent research has also investigated aspects of effectiveness of various restitution programs, including victim satisfaction. A study funded by the State Justice Institute (1989) found that victims who were not satisfied with their involvement cited lack of input into the decision about amount imposed and a lack of ongoing information about the process. Hudson and Galway (1980) earlier found that more than half of the victims surveyed (51%) indicated dissatisfaction with restitution, mostly because they felt the amount imposed was insufficient. Despite this, most victims (61%) said that “monetary restitution was the fairest form of punishment.” The ABA study found that victims expressed the most satisfaction with the process when they felt there was communication between them and some member of the criminal justice system who served as their contact, most typically a member of the victim-witness office.

Much of the disparity between the perceived value of restitution and actual effectiveness of restitution practices may be traced to very cumbersome procedures involving several agencies and personnel, many of whom may not be communicating clearly and effectively. Since restitution necessarily requires the involvement of numerous personnel and agencies, it is often poorly managed. The attempt to manage a complex process such as restitution without clearly defined roles and streamlining of tasks has led to many problems, of which the most frequently cited are the following:

- Poor communication among agencies.
- Lack of consultation and communication with victims.
- Unrealistic judicial orders that lack follow-through from probation and parole.
- Ineffective monitoring of offenders.

Critics and detractors of the concept of restitution point to several reasons why the concept cannot be successfully implemented. In that regard, in working with crime victims, certain realistic factors must be understood and explained. For example, only a minority of offenders are apprehended and convicted. The late Senator John Heinz pointed out that “since less than 20% of all crimes lead to an arrest, less than 10% of the accused are ever prosecuted, and less than 3% of those arrested are actually convicted, 97% of all victims would go unaided if restitution were their only means of assistance or retribution” (Harland and Rosen, 1990). Senator Heinz was a strong supporter of victims’ rights and advocated fair treatment of victims and witnesses throughout all stages of a criminal proceeding, as one way to encourage their involvement in the criminal justice system, thus increasing the likelihood of bringing offenders to justice.

As mentioned above, another potential problem with restitution is the socioeconomic status of many offenders. In a majority of cases, offenders are in extremely dire financial straits and are unlikely to earn the funds necessary to make full restitution. Moreover, juvenile offenders are also often incapable of obtaining jobs that might help them fulfill obligations.

The experience in some jurisdictions, however, has shown that these obstacles can be alleviated and in some cases, overcome. The ABA study, although mainly generating hypotheses for further study, did document correlations between the amount of restitution collected and certain other factors, such as: (1) amount of restitution ordered; (2) consideration of the offender's ability to pay; and (3) amount of follow-up actions taken in the event of default. The Earn-It Program, first created in Quincy, Massachusetts, is a restitution/employment program that places offenders who are ordered to pay restitution with local businesses who have agreed to participate. The offenders are paid minimum wage and are allowed to keep one-third of their earning, while the remaining two-thirds go to the victim(s) (McGillis, 1986). This program has been duplicated in many jurisdictions around the country. In the case of juveniles, community service has proven to be an effective means of imposing meaningful restitution.

Types of Restitution

Financial Restitution: Financial restitution refers to payment of money by the offender to the actual victim of the crime. This is probably the most common definition and actual use of restitution.

Financial-Community Restitution: Monetary-community restitution involves the payment of money by the offender to some other entity, such as a community program. Examples of this type of restitution include such mechanisms as Restitution Centers or court orders for payment to specifically designated charities.

Individual Service: Individual service by the offender requires that offenders perform a service for the actual victim. Examples of this type of restitution program might include the offender actually repairing some damage done to the victim's personal property through work or the completion of other specified services. This type of restitution usually involves some form of third-party mediation and obviously must be a remedy with which the victim is comfortable.

Community Service: Community service requires the offender to perform some beneficial community service. Conditions of probation often require that the probationer provide some specified number of hours and days of service to society at large. In this type of restitution, society serves as a "symbolic victim" and the practice is often referred to as "symbolic restitution."

Restitution Fines: Several states have enacted statutes that establish the authority of courts to impose restitution fines either as a condition of probation or in conjunction with sentences to prison. Restitution fines differ from actual restitution in that they are imposed and collected for the purpose of depositing funds into the state crime victims compensation fund. Once deposited in the compensation fund, the monies are then used to reimburse victims for out-of-pocket losses suffered as the result of having been a victim of a crime. All compensation programs cover the

same types of expenses, but the specific monetary limits imposed may vary. Types of compensable expenses include: loss of support for dependents of the victim; mental health counseling; lost wages; and funeral expenses. It is important to note that many expenses covered by victim compensation funds are not typically recoverable in an order of restitution.

Pre-Trial

Restitution is frequently imposed in the earliest phases of the criminal and juvenile justice processes. Often times, restitution may be ordered in juvenile cases and some adult cases as a condition of an agreement reached through a pretrial agreement or plea bargain. This can be as a result of an agreement between the offender and the victim in conjunction with a police diversionary program or other formalized pre-trial diversionary program. In some jurisdictions, offenders may reach an agreement with the prosecutor pursuant to which they agree to pay an increased amount of restitution and/or restitution with respect to counts which may not have been contained in the original indictment. These agreements are typically in exchange for a decrease in number or change in nature of the criminal charges entered. Whatever the type or nature of agreement, the intent and purpose are generally to resolve the matter to the satisfaction of the victim at the earliest stages.

Restitution as a Term of Probation

The imposition of restitution as a term of probation is the most frequently used method of imposing and collecting restitution. Criminal and juvenile court judges regularly order restitution as a condition of sentencing. The corrections agency most often responsible for administering an offender restitution program is the probation department, since this entity deals most directly with offenders who are not incarcerated.

Restitution is usually ordered as a term of probation. When this occurs, the probation officer has the responsibility of monitoring monthly payments, and evaluating the rehabilitative progress of the program. In most cases where a restitution order is entered, a payment schedule is established indicating the amount of monthly payments and the length of time necessary to pay the amount in full. The probation department typically has responsibility for the monitoring and enforcement of restitution payments; however, these duties are in addition to all other monitoring duties with respect to offenders on probation. The monitoring of restitution payments may not be perceived as highly significant in the hierarchy of probation officers' responsibilities. Moreover, some probation officers have expressed a sense of conflict regarding their "supportive" role to the offender as it relates to their obligation to enforce the collection of restitution. Some jurisdictions have handled this potential problem by setting up a system whereby certain probation officers handle nothing but restitution cases.

Although the probation department may be responsible for the actual receipt of restitution payments; quite often these payments are made to the clerk of court. When such is the case, it is important to have effective procedures for keeping all relevant parties timely informed of the status of restitution payments.

In preparation for the sentencing phase, the amount and terms of restitution need to be carefully and specifically determined. All factors pertinent to the payment plan must be addressed. In the event of multiple offenders and/or victims, these additional factors must be expressly set forth. Losses which are typically addressed in a restitution order include such direct compensable losses as: medical expenses; hospital and doctor bills; lost wages; property repair or replacement; and deductible amounts for insurance coverage. Jurisdictions vary as to the extent to which, if at all, third parties such as insurance companies, victims' compensation funds or workers' compensation programs may be directly compensated for payments to victims.

Assessment of the loss is a complex process and can take place in a variety of ways. In some jurisdictions, the prosecutor negotiates directly with defense counsel, after substantiating all losses with the victim. In other cases, assessment of the loss may be made solely by the probation officer as part of the pre-trial sentencing investigation. However the process occurs, the victim is generally required to present receipts or other evidence that substantiates the actual losses experienced. In cases involving medical expenses, psychological counseling or repairs, the presentation of actual bills or other documentation is necessary. It is important to note that victims are not entitled to orders of payment for pain and suffering as any form of restitution.

Correctional Restitution

Correctional restitution is generally considered to be restitution ordered as a condition of an individual's commitment or sentence to prison or detention facility. Increasingly, prisoners are required to participate in some type of work program while incarcerated. While working in prison, inmates often receive minimal amounts of pay which they can then use to purchase various personal items. Several states (such as California) have passed statutes or implemented policies that require that a portion of all wages earned by inmate, no matter how minimal, be set aside for payment of restitution to the victim or to the state. Other states provide opportunities for businesses to establish industries within prison. These statutes or policies also require that inmates pay a portion of their wages earned toward restitution to the victim or the state.

Parole

Increasingly, states are implementing statutes or policies that provide for restitution to be established as a term or condition of parole. Mechanisms that have been established for the monitoring and collection of restitution pursuant to an offender's release on parole are essentially similar in nature to those utilized in the context of probation. Imposing restitution as a term of parole, however, is more problematic due to the length of time that expires in between the time

of the crime and the release of the offender on parole. In some cases, judicial sentences regarding restitution never make it to parole board files for review and enforcement. In addition, it is often difficult to locate victims when a long period of time has elapsed after the court case is completed.

In spite of these difficulties many correctional and parole agencies are aggressively pursuing the collection of restitution as a systematic part of correctional practice. Many jurisdictions require the inclusion of the original Victim Impact Statement with the offender's file at the time of parole. In some cases, victims are given the opportunity to testify at parole hearings, allowing them to speak about consequences of the crime which may not have been present or apparent at the time of sentencing.

Civil Restitution

Many states have established statutes that provide that any order of restitution in a criminal case shall also stand as a civil order for remuneration from the defendant to the victim. In some instances, an order of restitution can simultaneously and automatically be docketed as a civil judgment, or the order may be recorded as a lien on the offender's real property. The civil court process also allows victims the right to seek financial reimbursement for pain and suffering caused by the offense, in addition to the direct out-of-pocket expenses.

It is extremely important that victims be made aware of their jurisdiction's options with regard to civil recovery. While procedural advancements may exist with respect to the imposition of civil liability, these tools cannot be accessed without educating victims as to the means at their disposal.

Summary

During the past two decades, restitution has re-emerged within the juvenile and criminal justice systems as a viable method of recovering losses experienced by victims. Victim advocates have embraced this right on behalf of victims and continue to advance the concept through statute and policy. Victim input in criminal corrections and offender rehabilitation is also vitally important. Offender restitution is a popular idea in modern correctional thinking and it exists in varying degrees in most states. Increasingly, state laws are mandating that restitution be ordered under particular circumstances. Currently, a great deal of attention is being focused on the management of restitution and ways in which restitution systems can be improved. Prosecutors and victim advocates have a responsibility to advise victims of the existence of restitution as a right, and to advocate for the imposition of this sanction when appropriate. It is also important for criminal justice system officials and victim advocates to educate themselves and the public as to the appropriateness of the imposition of restitution at virtually every stage of a criminal justice proceeding. Studies have shown and continue to show that obstacles to successful

restitution management can be overcome. Effective assessment, ordering, monitoring and enforcement of restitution is highly dependent upon a given jurisdiction's approach to the complexity of coordinating the multiple tasks and personnel inherent in the process of restitution.

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Restitution

- 1) Identify the earliest use of restitution.

- 2) How has the administration of restitution changed as a result of the development of our current legal system?

- 3) What are the purposes of restitution in today's criminal justice systems?

- 4) Identify three impediments to full enforcement of restitution and describe solutions to these impediments?

- 5) Who is responsible for administering restitution?

- 6) Briefly describe what an ideal restitution collection program would entail.

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Chapter 21, Section 11

Funding for Crime Victim Services

Abstract: Services for crime victims began more than two decades ago as a volunteer supported, grass roots effort. During the last decade, new funding has become available to support the development and expansion of crime victim programs. The number of crime victim programs has increased from 2,000 to more than 7,000 programs since 1986. Although the public and private support for crime victim programs has increased, the demand for services continues to exceed the resources available. To ensure continued expansion, innovative and more stable funding sources must be developed.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. The major source of funding for crime victim service programs.
2. How funding patterns at the federal and state level have influenced the development of victim services.
3. Innovative funding methods for supporting crime victim services.
4. A comprehensive model of victim services that has received significant community financial support.

Introduction

Since the emergence of the first crime victim service programs in the early 1970's, adequate, stable funding has been a persistent problem. The crime victims' movement has at its roots -- volunteer- initiated services that were created by victims and victim advocates to assist victims of rape and domestic violence. The allocation of LEAA funding for prosecutor-based victim/witness programs in 1974 provided the foundation for broad-based governmental support. In the last two decades, support for victims' services has grown to include a wide range of public (community, state, and federal governmental levels) and private sector sources.

The results of a 1985 survey (Roberts, 1990) of 184 victim and witness assistance programs (the majority of which were criminal justice-based programs), indicated that the programs received funding from a host of sources. These included: federal and state grants, state, county, and city revenues, and a variety of private sources (United Way, churches, Junior League, local businesses and corporations, hospitals, and private foundations and donations.)

This pattern of multiple funding sources for crime victim services has continued today. It is reflective, in part, of the growing demand for victim services and the fact that no single source can meet the demand for the vast array of services that millions of crime victims need today.

Victims of Crime Act Funding

The creation of the Crime Victims Fund, authorized by the *Victims of Crime Act* in 1984, has greatly increased the amount of federal funding available for crime victim programs. Since 1985, VOCA funding has increased from \$68 million to more than \$233 million in 1995. Growth in the fund has enabled OVC to award more than a billion dollars in grants to benefit crime victims, through assistance, compensation, and training. VOCA funds have been used to support a growing number of victim assistance programs. It is estimated that approximately 2,000 community-based programs served crime victims in 1986; in 1995 more than 7,000 programs served victims of crime. Of the programs funded in 1995, approximately 2,500 programs received VOCA funding.

Information that VOCA-funded programs provide to the Office for Victims of Crime (OVC) suggests that the vast majority of federally supported crime victim assistance programs obtain funding from a variety of sources and utilize volunteers to augment the efforts of staff. The average amount of a program's VOCA grant award is less than \$20,000, representing only a small portion of the average program budget.

States have also allocated a significant amount of (general revenue, offender fines, etc.) state funds to support crime victim assistance services. OVC's most recent Report to Congress suggests that states provided \$670 million in 1989 and more than \$700 million in 1990 and 1991

funding levels. By providing matching grants that are based on a percentage of prior year compensation payments to victims, VOCA created an incentive for states to develop and expand their crime victim compensation program. Responding to this incentive and an increasing demand for crime victim compensation, states without compensation programs created them and states with existing programs expanded them.

Gradual increases in compensation funding have been seen since the first VOCA grants in 1985. In addition, an increasing number of states enacted legislation that authorized the use of criminal fines for victim compensation programs. Today, the majority of states utilize criminal fines as the sole source of compensation, and several more use fines for partial support.

In addition to VOCA funding, several other programs have been created by federal legislation to address a variety of victim issues. In 1986, the *Family Violence Prevention and Treatment Act* created funding for shelters for battered women and law enforcement training on the issue of domestic violence. *The Child Abuse Prevention and Treatment Act* has provided funding for child abuse programs and the *Children's Justice Act of 1986* has supported systemic changes in the handling of child abuse cases in the criminal justice system.

Violence Against Women Act

The Violence Against Women Act, enacted as *Title IV of the Violent Crime Control and Law Enforcement Act of 1994 (VAWA)*, provides for improved prevention and prosecution of violent crimes against women and children, in addition to creating new legal remedies for certain victims of violent crimes motivated by gender, and significantly increasing the amount of federal funding available to support service programs. The following highlights the major provisions found under VAWA and provides an overview of funding opportunities, beginning with the 1996 fiscal year. If a more detailed description of any of the following provisions is needed, the reader is encouraged to refer to the Act for further clarification. VAWA includes the following provisions.

Safe Streets for Women:

Federal penalties for sex crimes which requires the U.S. Sentencing Commission to review and amend its sentencing guidelines for sex offenders, and allows for penalties up to twice the time otherwise authorized; mandates financial restitution to victims by defendants convicted of federal sex crimes, including sexual exploitation and other abuses of children; and authorized monies for federal victim-witness counselors for the prosecution of sex crimes.

Law enforcement and prosecution grants to reduce violent crimes against women which authorizes monies to states, Indian tribes and local governments to improve law enforcement,

prosecution and victim services in cases of violent crimes against women, including sexual assault and domestic violence.

Safety for women in public transit and public parks with funding for increased security in public transportation systems, and for the reduction of violent crime in national parks, urban parks and recreation areas, with priority to areas with the highest rates of sexual assaults.

New evidentiary rules whereby victims' past sexual behavior or alleged sexual predisposition are no longer admissible in civil or criminal proceedings involving sexual misconduct.

Assistance to victims of sexual assault with authorized funding for rape prevention and education programs; the development of training programs to assist personnel in treating released sex offenders; the treatment, counseling, information and referral for homeless, runaway and street youth at risk of sexual abuse; assistance to victims of child abuse, including advocates, judicial training, and televised testimony; and also requires the Attorney General to study and evaluate state measures to propose model legislation providing for the confidentiality of communications between sexual assault or domestic violence victims and their therapists.

Safe Homes for Women:

The creation of a national domestic hotline with authorized funding. (1-800-799-SAFE; 1-800-787-3224 if hearing-impaired.)

Interstate enforcement with federal penalties for persons who travel across state lines with the intent to injure spouses or intimate partners and for persons who travel across state lines with the intent to violate a protection order, and violates such orders; requires financial restitution; and provides the victim with an opportunity to be heard in court regarding the danger posed by pretrial release of the defendant.

Arrest policies in domestic violence cases with authorized funding for grants to states, Indian tribes and local governments to implement mandatory arrest or pro-arrest programs to: improve tracking domestic violence cases, increase coordination among police, prosecutors and the judiciary in cases of domestic violence, strengthen legal advocacy programs, and to educate judges about domestic violence.

Shelter grants, youth education, community programs on domestic violence, family violence prevention and services act amendments, and confidentiality for abused persons in which the following is provided: authorization for the funding of battered women's shelters; the creation of model programs to teach youth about domestic violence; the creation of community programs on domestic violence intervention and prevention by non-profit organizations; and, a requirement that the U.S. Postal Service protect the confidentiality of domestic violence shelters' and abused person's addresses.

Data and research funding to develop a research agenda to increase understanding and control of violence against women; requires the Attorney General to study and report how states may collect centralized databases on the incidence of sexual and domestic violence within a state; and, requires the Centers for Disease Control to study the incidence and cost to health care facilities of injuries resulting from domestic violence and to recommend strategies for reducing both.

Rural domestic violence and child abuse enforcement which authorizes funding to rural states and Indian tribes to improve the prosecution of domestic violence and child abuse cases and to increase prevention strategies and victim services.

Civil Rights for Women (Title IV - subtitle C) establishes a federal civil rights cause of action for victims of gender-motivated crimes of violence.

Equal Justice for Women in the Courts Act provides education and training for judges and court personnel in State and Federal courts by authorizing the State Justice Institute to award grants to develop, test, present and disseminate model programs for use by states and Indian tribes in training judges and court personnel in the laws of rape, sexual assault, domestic violence and other crimes of violence motivated by the victim's gender; encourages the study of gender bias in the federal courts; encourages the Federal Judicial Center to include information on gender bias in the courts in its educational programs, and to gather and disseminate reports and materials issued by the gender bias task forces.

Violence Against Women Act Improvements provides for pretrial detention in sex offense cases, increased penalties for sex offenses against victims younger than sixteen, payment for testing of sexually transmitted diseases, limited HIV testing of defendants, a report on the revision of sentencing guidelines for the intentional transmission of HIV, enforcement of restitution through suspension of federal benefits; study of campus sexual assaults, a report on battered women's syndrome and its use in criminal trials, a study and report on the confidentiality of victims' addresses and, a report on record keeping relating to domestic violence.

National Stalker and Domestic Violence Reduction provides for access to federal crime databases by civil and criminal courts for use in domestic violence and stalking cases; and provides for the inclusion of stalking and domestic violence information into crime databases, with funding to improve the entering of such data to states and local governments.

Protections for Battered Immigrant Women and Children permits battered immigrant spouses and children of U.S. citizens and legal residents who have immediate relative status to self-petition for legal resident status and to proceed with their petition; and permits battered immigrant spouses and children of U.S. citizens and legal permanent residents, and parents of battered children of U.S. citizens and legal residents, residing in the U.S. for at least three years to obtain suspension of deportation, if they currently are deportable, if deportation would result in extreme hardship to the alien or the alien's parent or child.

Sentencing Provisions (Title XXVIII) which requires the U.S. Sentencing Commission to establish guidelines that provide sentencing enhancements for offenses that are determined, beyond a reasonable doubt, to be a crime in which the defendant intentionally selects a victim, or the object of a crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.

Protection of Privacy of Information in State Motor Vehicle Records (Title XXX) which requires, except for specific exemptions, personal information obtained by State departments of motor vehicles not to be disclosed or made available to any person or entity, and where released outside of permissible guidelines, punishable by civil and criminal penalties.

First Time Domestic Violence Offender Rehabilitation Program (Title XXXII - Subtitle I) which provides that a defendant convicted for the first time of a domestic violence crime to be sentenced to a term of probation if not sentenced to a term of imprisonment, or where granted parole or supervised released, the mandatory participation in an offender rehabilitation program that has been approved by the court in consultation with a State coalition Against Domestic Violence, where services are available within a 50-mile radius of the defendant's legal residence.

Admissibility of Evidence of Similar Crimes in Sex Offense Cases (Title XXXII - Subtitle I) amends the Federal Rules of Evidence to allow, in a prosecution for sexual assault or child molestation and in civil cases concerning sexual assault or child molestation, the introduction of evidence of a defendant's commission of another offense or offenses similar to the one of which he or she is accused.

Additional provisions of VAWA:

- Crime prevention block grant programs to establish supervised visitation centers for children at risk due to domestic violence, sexual physical or emotional abuse.
- Family unity demonstration projects that enable eligible non-violent offenders to live with their children in community correctional facilities.
- Death penalty enhancements in cases where a person causes the death of a person during the commission of a sexual abuse offense or makes a prior conviction of sexual assault or child molestation an aggravating factor for consideration whether the death penalty is justified.
- Prohibiting the disposal of firearms to or receipt of firearms by persons, who have committed domestic abuse, and subject to a restraining order.
- The establishment of Attorney General guidelines for state compliance to the Jacob Wetterling Crimes Against Child and Sexually Violent Offender Registration Act.
- Allowing victims of a crime of violence or sexual abuse to be present at sentencing events, and to make a statement or present information in relation to the offender's sentence if so desired.
- The establishment of a 28 member Commission to study, report and make recommendations for preventing and controlling crime and violence in the U.S.,

including violence against women; and, to evaluate the adequacy of and make recommendations regarding State and Federal laws, law enforcement efforts, judicial response and current education, prevention and protective services.

(Highlights are based on the (September, 1994) *Violence Against Women Act Overview* written by the NOW Legal Defense and Education Fund, Washington, D.C..)

Violence Against Women Act Funding for Fiscal Year 1996

The *Violence Against Women Act* offers new funding for programs that address the needs of victimized women. In 1995, states were eligible to receive approximately \$426,000 in new federal funds for law enforcement, prosecution, and victim services addressing violence against women. In FY 96, appropriations for the Violence Against Women Act have increased to \$228 million, with \$53 million appropriated to the U.S. Department of Health and Human Services, and \$175 million appropriated to U.S. Departments of Commerce, State and Justice. There are three key categories of funding for VAWA appropriated by Congress for FY 1996. A brief summary of 1996 appropriations is as follows:

Grants to Combat Violence Against Women

In 1996, \$130 million has been appropriated for the "STOP Violence Against Women Formula Grants," with a total of \$774 million authorized for FYs 1996-2000 to:

- Develop and strengthen law enforcement and prosecutorial strategies to combat violent crimes against women; and
- Strengthen victims' services in cases involving violent crimes against women.

The funding formula provides four percent for grants to Indian tribal governments; a base amount of \$500,000 to each state; and remaining funds distributed to states based upon population ratios. Each state must allocate 25% of its funds to support law enforcement programs, 25% to prosecution programs, and 25% to nonprofit, nongovernmental victim services programs.

Grants to Encourage Arrest Policies in Domestic Violence Cases

Twenty-eight million dollars are appropriated for FY 1996, with a total of \$120 million authorized for FYs 1996-1998 to establish a discretionary grant program to insure policies that treat domestic violence as a serious criminal offense. Grants will be awarded to:

- Implement mandatory or pro-arrest policies and programs in police departments;

- Develop police department policies and training to improve tracking of cases involving domestic violence;
- Centralize or coordinate police enforcement, prosecution or judicial responsibility for cases;
- Coordinate computer tracking systems to ensure communications between police, prosecutors, and both criminal and family courts.
- Strengthen legal advocacy service programs for domestic violence victims.
- Educate judges about domestic violence and to improve judicial handling of such cases.

Rural Domestic Violence and Child Abuse Enforcement Assistance

Seven million dollars are appropriated for 1996, with \$30 million authorized for 1997-98, to implement, expand and establish cooperative efforts and projects among law enforcement officers, prosecutors, victim advocacy groups, and other related parties to investigate and prosecute incidents of domestic violence and child abuse; to provide treatment and counseling to victims of domestic violence and child abuse; and to work in cooperation with the community to develop education and prevention strategies directed toward such issues.

These, and other federal funding sources, have helped to support the expansion of services for crime victim services across the United States. In addition, a remarkable increase in state and local support for crime victim services has been seen over this same time period. Even with these increases, and a substantial amount of private sector support, the demand for victim services has continued to outpace the development of the service system. To learn more about these or other funding opportunities under the Violence Against Women Act, contact: Violence Against Women's Grant Office, 633 Indiana Avenue, NW, 4th Floor, Washington, D.C. 20531(202) 307-6026.

Innovative Approaches to Fundraising for Victim Services

Many local victim service organizations have become very creative in raising funds to support their worthy programs and services. Among them are:

- Teaming up with local running clubs and corporations to sponsor 10 kilometer and "fun runs." The running clubs publicize the event to their membership and help with logistics; corporations "underwrite" the event by paying for refreshments, tee-shirts for participants, and any paid publicity. Local media usually provide excellent coverage of these events, as they exemplify public-private partnerships at their finest.

- In California, inmates in the Department of Corrections sponsor annual fundraisers, with proceeds given to victim service organizations. Activities include barbecues, candy sales, and athletic competitions. In 1994, over \$200,000 was raised and donated to victim services, usually in the community in which the institution is located.
- Many restaurant chains -- during special commemorative weeks (such as National Crime Victims' Rights Week) -- provide a percentage of their profits for a specified period of time (such as one week) to non-profit organizations. Often, servers also contribute a portion of their tips, encouraging their customers to be generous with the money going to a worthy cause. Table stands and public service information on printed placemats provide an overview of this fundraising event, and also valuable tips on topics ranging from crime prevention and victim assistance, to how to detect and report child abuse.
- Victim service providers are joining forces with the arts community -- most of whom have a lengthy tradition of strong community and financial backing -- to sponsor events that benefit crime victims. Examples include art shows at galleries and special performances of the community ballet, with proceeds going to benefit victim service organizations. These "arts and assistance for victims" events represent unique partnerships that easily become "annual events" with loyal supporters.
- More and more judges are ordering community service for non-violent offenders that benefit victim service organizations. Non-violent juvenile offenders help rehabilitate housing for elderly citizens in low-income neighborhoods, which includes measures that help guarantee the person's safety and prevent crime (such as installing locks and trimming high bushes). These in-kind contributions hold offenders accountable and, at the same time, assist victims in need.

A Model Approach to Stable Funding

In Jacksonville, Florida -- through the leadership of an elected official, City Councilman Eric Smith, and other crime victim advocates -- the first free-standing facility for comprehensive crime victim services center was established in 1991. The mission of the Jacksonville Victim Services Center is:

To provide crime victims, survivors, and their families with counseling for mental, emotional and physical trauma, resulting from criminal victimization within Jacksonville, Florida.

The history of the Center is unique. The development of the Center followed the analysis of a study commissioned in 1982 by the City Council and the Fourth Judicial Circuit State Attorney's Office, to identify victim service needs and develop a plan for a Victim Service Center. With

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the study complete, the City of Jacksonville established a position dedicated to providing crime victim services an allocated \$25,000 in 1983. By 1985, the City's funding for victim services had increased to \$190,000 and a Victim Service Division within the Department of Human Services was created. Throughout the late 1980's services continued to expand and the appropriations increased to more than \$500,000 in 1990. Capitalizing on broad community support, the construction of a new facility designed for the purpose of meeting the needs of Jacksonville's victims of crime was completed in 1993. The support for the Center has steadily grown and the services provided have expanded tremendously. Local funding for the Center is currently near \$900,000. Staff of the Center screen 2,300 police reports monthly for appropriate outreach and work with 1,400 victims each month. As a result of their assistance to victims, the City's crime victims were awarded approximately \$526,000 in crime victim compensation in 1991.

The Center has established a wide range of services for victims. The philosophy of the City's approach is to establish crime victim services in such a way that crime victim services become an essential part of the "infrastructure of the community," not an afterthought funded through sporadic or discretionary funding mechanisms. The Center has become an integral part of the community service system.

Critical Elements of Success in Establishing The Jacksonville Victim Services Center

1. A community-wide assessment of the needs of crime victims was conducted.
2. A comprehensive services approach was recommended and adopted.
3. Key community leaders supported the Center, e.g. elected officials, law enforcement, victims advocates, etc.
4. Interagency cooperation was ensured by formal agreements and city ordinances.
5. Financial support from the City of Jacksonville has been stable and steadily increasing.
6. Center staff have constantly sought feedback from victims and service providers, and have been open to change and new ideas to expand services.
7. The Jacksonville Victim Services Center has gained the support of the press and other media in the community.

8. The Jacksonville community has begun to think of victim services as a necessary part of services in the community. Victim services have become part of the “infrastructure” of community services upon which all citizens of Jacksonville can depend.

Cause-related Marketing

A popular trend that links volunteer agencies with the private sector of America is *cause-related marketing*. This approach to fundraising involves a partnership with (usually) a corporation that lends its personnel and professional services to a non-profit organization or professional field, resulting in increased public awareness of an issue, as well as increased funding support for important services.

With cause-related marketing initiatives, a corporation or other entity (such as a Chamber of Commerce, national civic organization, etc.) works with a non-profit organization to develop a plan-of-action with specific goals. Such goals might include:

- Helping develop a public awareness plan, which includes the development and publication of information resources, creation and dissemination of audio and video public service announcements, design and implementation of billboards, etc.
- Sponsoring a specific fundraiser, with all planning and implementation costs assumed by the corporation, with funds designated to support the non-profit organization (examples include golf tournaments and "fun runs" that are commonplace in many communities).
- Designating a specific portion of the cost of a corporation's product (such as five percent) to go toward a non-profit organization or cause.
- Donation of in-kind contributions -- such as computers and other office equipment -- to a non-profit organization.
- Donation of the professional expertise of the corporation's personnel in specific areas that have tremendous benefits for non-profit organizations (such as training and technical assistance in technology, development of software for records keeping, accounting support, providing facilitators for strategic planning, etc.).

Benefits of Cause-related Marketing

For the private sector, cause-related marketing:

- Confirms a corporation's status as an entity that is caring, concerned about salient social issues, and involved in their community's or nation's efforts to improve or address a specific problem.
- Provides public awareness that ties the corporation's name to positive outcomes that benefit a community or society as a whole.
- Involves employees in volunteer or professional activities that enhance their communication skills and networking capabilities.
- Publicizes the corporation's name and identity to potential consumers of its products and services.

For victim service providers, cause-related marketing:

- Provides expertise in specific areas that are often considered "weak points" in an organization's structure (such as public awareness, media relations, materials development, and technology initiation/expansion).
- Generates public awareness about specific rights and services available to victims.
- Often provides funds for programs and services.
- Ties the victim service community directly to the private sector; often to "big name" corporations that have positive name identification with consumers, many of whom are potential clients or donors.

Examples of Cause-related Marketing:

The concept of cause-related marketing has already had a powerful impact on America's victims' rights movement:

- Women's clothing giant Liz Claiborne has, for several years, joined forces with advocates for battered women's advocates to promote awareness about violence against women and children in the home. Included in their efforts have been a series of hard-hitting public awareness posters (which bear Liz Claiborne's name and corporate logo, and leave room

for victim service organizations to include their own contact information) and public service announcements.

- In Dade County, Florida, Andersen Consulting provided over \$600,000 of in-kind contributions -- including extensive staff time -- to help the Metropolitan Anti-drug Coalition formulate a public awareness and action campaign that focused on substance abuse awareness, prevention and treatment. Participants included elected officials, criminal justice officials, victim service providers, substance abuse prevention and treatment professionals, churches, and schools.
- Ryka Rose, a woman's athletic shoe corporation that was founded by a sexual assault victim, donates seven percent of its net profits to organizations that provide services and support to women who have been victimized. In 1992, Ryka Rose donated \$10,000 toward the commencement of the National Victim Center's toll-free information and referral service for victims and professionals. Once this national information service was implemented, Ryka Rose helped publicize INFOLINK by including a laminated card with the toll-free "800" number -- as well as information on what to do if you become a victim of crime -- in each box of shoes sold.

Increasing the Fundraising Skills of Victim Service Professionals

Private sector fundraising has become increasingly important as a source of support for victim service programs. The following tips will help service providers to become more effective fundraisers for their organizations:

- Take the effort, time and expense to attend a course on grant writing. Many are offered free through colleges and universities, while others are available at limited costs. Grant writing is virtually an "art" that requires expertise for success.
- Invite the leadership of local corporations, civic organizations, and social groups to serve as a member of the agency's Board of Directors. In addition to provide expertise in a variety of important issues (such as organizational development, accounting and legal affairs), such leaders provide important connections to potential sources for funds.
- Know your local media! Public awareness about victim services is a key component to any fundraising strategy.
- Get involved and be a presence in local politics. Many victim service organizations receive ongoing, valuable funding from city councils and Boards of Supervisors. It is

helpful if elected officials who make key budget decisions are aware of the important services and support provided to the community by victim service organizations.

- Consider asking a community agency with an active “annual giving” campaign to help you explore the feasibility of duplicating such a campaign for your organization, along with practical information on time commitments, staffing requirements and financial considerations to launch an “annual giving” campaign.

Identifying Corporate, Foundation, and Grant Funding Sources

Victim service providers or victim assistance program administrators with responsibilities for seeking and obtaining program funding sources may also wish to visit their local library; contact professional organizations; or review publications specifically designed to highlight funding opportunities.

Many local libraries house reference materials for fundraising or identifying funding sources that may be helpful. For example, directories used by grant-writers, business and corporate directories, and The Foundation Center’s listing of private philanthropic funding agencies may provide useful information.

Some professional organizations provide their members with information on funding opportunities, while The National Society of Fundraising Executives, with chapters located nationwide, offers its members the use of its fundraising resource center monthly and quarterly publications. (1-800-666-FUND.)

Professional fundraising publications often provide the fundraiser with information about available foundation and grant funds, with an emphasis on the funding source’s primary funding interests and geographical requirements. A subscription to these publications is normally required. A sampling of professional publications includes: The Chronicle of Philanthropy (1-800- 347-6969), Foundation & Corporate Funding Advantage (1-800-220-8600), and The Public Assistance Funding Report (1-800-666-6380).

Focus on Innovation:

Elected officials are often an untapped resource in local and state program development and fundraising. An example of the skills, dedication and resources elected officials can bring to program development and fundraising are highlighted in the article below written by Eric Smith, Esq. Mr. Smith is the President of the Jacksonville, Florida City council and has been active in the victim’s movement for more than two decades. He was

instrumental in founding and securing the steadily increasing community funding for the Jacksonville Victim Services Center.

A Local Elected Official's Perspective On Creating and Funding Comprehensive Victims Services

by Eric Smith, President
Jacksonville City Council, Florida

A couple of decades ago, United States Senator Mike Mansfield astutely made an important observation when he said: "The greatest failure of the criminal justice system in America today is its utter disregard for the rights of innocent victims of violent crime." Undeniably much progress has been made; yet in the sophisticated environment of today's criminal justice system, the accused and later (if convicted) criminal has an enormously greater array of support, assistance and rehabilitative systems available than the victim, many of which are mandated by law.

Perhaps the cruelest irony is that much of this support, assistance and rehabilitative system infrastructure is provided by dedicated funding from the public, guaranteed and mandated by years of favorable court decisions. Typically victim assistance programs, on the other hand, are tied to the philosophy that they should be funded primarily by scarce dollars from court assessments against convicted criminals and instates which have a constitutional amendment to guarantee victim rights, no public lawyers exist (like public defenders on the other side) with a mission to advocate for those rights.

All across the fifty states massive public appropriations are made annually to support the hundreds and hundreds of jails, prisons, pre-trial detention facilities, rehabilitation centers and halfway houses constructed. Federal and State monitors are vigilant to assure quality, provide service delivery, and compliance with rights and conditions mandated by the courts. Meanwhile, on the victim side of the equation, only one victim assistance center has been constructed in America, to provide under one roof, one-stop facilities to enable the victim to have a chance for rehabilitation. What is wrong with this picture?

Necessity Is the Mother of Invention -- Beginning with a Vision

If the assumption is made that victim assistance needs require a substantial infusion of additional dollars, the question becomes one of how victim advocates can obtain funding. Granted, this is not easy. However, with a new concept, traditional sources of revenue can be persuaded to provide increases and non-traditional sources can produce unexpected first time dollars.

In Jacksonville, Florida, there was both a vision and a new concept. The vision was one of an enlightened criminal justice arena with crime victims receiving at least the same level of assistance opportunities as the accused and convicted criminals can access. Furthermore, this

vision involved players from outside the criminal justice system . . . like the city, the county, clerk of the court, and the economic development arm of government.

The new concept was to create “infrastructure” for the victim assistance community to chisel a strong commitment into the granite of a system that heretofore has provided service in only limited, poorly-funded ways. An example of infrastructure is a building. When government constructs a building, adequate funding for programs and public servants within comes much easier. Funding is almost a foregone conclusion, and reducing appropriations to well-run, popular programs becomes most difficult.

Accordingly, the City of Jacksonville, as a legislative program of the City Council, provided for the construction of the first, and probably still the only, freestanding victim services center in America. It is now functional, well-funded and within a year of construction of an addition that will double its size and increase staff. At this one-stop intake facility, victims can access any assistance they need including, but not limited to, crimes compensation, counseling, protection, support groups, shelter and court problem resolution.

As we approach the next century, the time is long overdue to embrace the concept that every place in America where a jail or rehabilitation facility exists for criminals, we should build a safe house for and about the services necessary to help and heal crime victims. Absent this concept of infrastructure, funding for victim programs will never make a quantum leap forward.

A victim center becomes a lightning rod for positive changes, better funding for staff and an incubator to bring in non-traditional funding sources. The cost of construction: less than 5% of the cost of an average jail.

What are these non-traditional sources which might be found in any jurisdiction to build a center and finance some of its activities or enhance existing programs?

- A hospital realizes the importance of a center and provides the site free or at a minimal cost.
- The mayor and city council consensus moves victims to the top of the political agenda instead of the bottom, takes the lead on the center and puts together an intergovernmental agency consortium to fund, construct and operate it.
- An enlightened attorney general allocates money for the only satellite crimes compensation office in the state. The center provides free office space in the center.
- A group of builders, like a homebuilder’s associate, provides construction and materials at cost.
- The clerk of the court reinvests public trust funds at a more favorable interest rate. He dedicates the windfall to the construction fund for the center.
- Pursuant to law, pari-mutuels must have certain number of charity racing days. Educated president designates part of these funds for the Victim Assistance Services Trust (V.A.S.T.).

- Sheriff or police chief donates substantial part of income from fines, forfeiture and seizure revenue to help construct center.
- State Legislature creates a matching or pilot program which would fund one-half of construction cost.
- City Council passes ordinance to require 25% of all profits from jail and prison farm inmate canteens to be paid to the V.A.S.T. fund for victims.
- Federal Judges and United States Attorney for District respond to presentation of plan to serve victims of federal crimes. Impressed, they direct funds derived from plea agreements involving corporate crimes for special purpose, which said funds pay cash for over half of victim center expansion. (Note: **not** VOCA dollars)

With your dedication, imagination and innovation this partial list can grow. The quintessence of excellence for justice for victims . . . funding, building and operating a center dedicated to victims' rehabilitation.

Involve, Insist and Innovate with Politicians to Create Funding Mechanisms -- Everyone Else in the Criminal Justice System Does.

Victims of crime declined in stature from the days of the Hammurabic Code to the present. They are the poor, the powerless and the lobby-less. You may be the only lobbyist in your area, but one voice can make a difference. "Everyone else" includes judges, law enforcement, public defenders, district attorneys, parole, the prison systems, have hired guns seeking funds. You can bet your last nickel that the seeking is not usually for money for programs to help victims recover. The challenge to victim advocates is to educate and involve a few good politicians from the courthouse to the White House and show them the way.

Why do criminals get the feast and their victims the bake sale proceeds? Because we, together haven't demanded this change. We haven't stood up on our hind legs long enough and loud enough to object to inadequate funding for victims, to sound the cry for parity. Because we haven't developed and used the silent crime victim constituency to achieve the political clout to succeed.

The sources of funding are there. We have to conceive, believe and ask. What will tomorrow be for victim assistance in your city or town? If you need dollars, don't let the bucks stop somewhere else. Go for it!

Funding for Crime Victim Services

- 1) Name the most significant source of funding that has supported the growth of crime victim services.

- 2) Name four other existing sources of funding for crime victim sources in your state and/or community.

- 3) Discuss how you would develop a strategy to secure community funding for a comprehensive services program in your community.

- 4) Describe three fundraising events that you could initiate in your community to increase the funding of your program.

Chapter 22

The News Media's Coverage of Crime

Abstract: The news media wield a “double-edged sword” in their coverage of crime and victimization relevant to the “public’s right to know” versus “the victim’s right to privacy.” Victim service providers play crucial roles in protecting victims’ privacy rights, and helping victims cope with media coverage immediately following a crime, during the trial, and following verdicts. Advocates must possess knowledge of who the media are, how they operate, and victims’ rights and needs pertinent to dealing with the media.

Learning Objectives: Upon completion of this chapter, students will understand the following concepts:

1. Individuals and entities that comprise the news media.
2. Major concerns of victims and service providers when dealing with the media.
3. Guidelines for victims who choose to deal with the media.
4. First Amendment issues and precedents relevant to victim privacy.
5. The role and responsibilities of the victim advocate in helping victims deal with the news media.

Impact of News Media Reporting on Crime

Crime in America is big news. According to a *Media Monitor* report published in January 1994, "The public is preoccupied with violent crime. The number of Americans naming crime as the nation's most important problem jumped six fold (from 5% to 31%) between June 1993 and January 1994 (according to *Washington Post/ABC News* polls) (Litter and Litter, 1994).

The public was hit with a wave of crime news in 1993, as a record number of crime stories reached the national TV audience. The three major networks aired nearly 1,700 crime stories that year, nearly five stories per night. Not only did overall crime news double from 1992 levels, but coverage of murder tripled, from 104 to 329 (Litter and Litter, 1994).

Media reporting of crime and victimization -- in both print and broadcast formats -- has far-reaching effects on a number of populations and special interests:

The American Public

The media play a significant role in public safety by keeping citizens apprised of increases and decreases in crime, trends in violence and victimization (that are specific to national, state, local and even neighborhood targeted audiences), efforts to prevent crime, reduce violence, and assist victims (including new and existing programs, policies, and legislation), and measures individuals and communities can take to promote safety.

The Criminal Justice System

Coverage of criminal justice system activities offers citizens an overview of the entire justice process, from law enforcement to prosecution through probation, parole and corrections. The news media's examination of individual cases has resulted in groundswells of public opinion and action that have, in many cases, ultimately changed the way our criminal justice system operates. In addition, the emergence of cameras in the courtroom and the Court TV network have expanded the American public's knowledge of the myriad intricacies that comprise our justice system.

The criminal justice system is also affected by its attempts to preserve the sanctity of criminal cases and, in some cases, protect victims' privacy. The espoused theory of the "public's right to know" often puts the media in direct conflict with system officials who believe that case confidentiality is essential to obtaining criminal convictions.

The Media Profession

Over the past decade, coverage of crime and victimization has drastically changed. For example, in 1985, footage of bodies and/or body bags on national networks elicited organized outcries from victim advocates across the nation. Today, such footage is commonplace. The volatile issue of identifying victims of sexual assault in the media has been debated and analyzed from both victim advocacy and First Amendment perspectives, with little consensus from either side of the argument.

However, the past ten years have also witnessed an increase in media professionals who seek sensitivity training from crime victims and advocates so that they can accurately cover crime stories with the least amount of trauma to the victim. Today, crime victims and service providers offer training programs to newsrooms, professional journalism associations, and university-level journalism classes about media sensitivity in addressing violence and victimization.

Journalists who cover crime beats are also affected by the scope and demands of their jobs. Those who cover the horror and degradation of violence on a regular basis have few outlets for the personal trauma they must endure. As such, there is high demand for a protocol to "debrief" journalists whose assignments include regular coverage of violence.

Victim Service Providers

The increase in the news media's coverage of crime and victimization has resulted in a very specialized discipline within the field of victim services: Advocating for crime victims whose cases are covered by the news media. Training programs to help service providers better work with the news media who cover crime and victimization, as well as guidelines in media relations that help them enhance their professional relationships with the news media, are regularly offered at training conferences and as a component of victim service professional education.

Crime Victims

The constituency most affected by the news media coverage of violence and victimization is crime victims. While sensitive coverage of victim's cases can be helpful and, in some cases, even healing, media coverage that is sometimes viewed as insensitive, voyeuristic and uncaring compounds victims' emotional and psychological suffering.

Most crime victims have never before dealt with the news media. They are thrust, often unwillingly, into a limelight they do not seek and do not enjoy solely because of the crimes committed against them. Many victims describe the initial assault from the perpetrator, a secondary assault from the criminal justice system, and a tertiary assault at the hands of the news

media. As ABC News and Political Analyst Jeff Greenfield explained in 1986, "What weighs in the scale is not simply the desire of a victim for privacy . . . but the prospect of further victimization beyond the involuntary thrust into the public arena. And this is something that the journalism community must begin to consider in its daily business" (Greenfield, 1986).

The Major Concerns of Crime Victims and Service Providers

In addition to privacy protections, the National Victim Center has identified 14 significant concerns that crime victims and service providers have in regards to the news media's coverage of crime and victimization (Seymour and Lowrance, 1988, pp. 5-7).

- *Interviewing at inappropriate times.* "Inappropriate times" for interviewing victims include, but are not limited to, immediately following a crime, at funerals, in hospital settings, and during trials when the judge or prosecutor has issued a gag order to witnesses. It is during these periods that a victim's trauma and distress tend to be extremely high; dealing with the news media can create a secondary victimization that compounds the victim's tragedy caused by the violent crime.

A 1992 study of homicide survivors found that 92% of respondents felt that "it is *not* appropriate for a television news reporter and camera crew to approach a grieving individual immediately following a death" (Fritz, 1992, p. 91). The feelings of many victims at the crisis stage following a crime were summed up by the mother of a murdered daughter:

"You're in such a state of shock, you're not thinking in terms of newspapers. . . . You're not prepared for this . . . I thought I'd come home by myself and cry my eyes out, but there already were 500 people waiting when I got home. We're not ready. We're numb. We don't know what's going on" (Grotta, 1986, p.10).

- *Using euphemisms to describe victims and offenders.* Euphemisms are often utilized by journalists and, in particular, newspaper headline writers to capture the essence of a violent act in a brief, memorable manner. However, in doing so, the identity of the victim can be demeaned and even lost. Most Americans remember the notorious "Preppie Murder" in Central Park in the 1980s, but how many people can recall the name of the victim, Jennifer Levin?
- *Glamorizing the offender.* The following words were used at various times to describe a well-known criminal: "handsome"; "intelligent"; "rape crisis center volunteer"; and "law school student." The man who was so described was Ted Bundy, one of our

nation's worst mass murderers. While such descriptions may be essential to a news story, what often adds insult to the victim's injury is the lack of such detail in describing the victims of such heinous criminals.

- *Exhibiting aggressive behavior toward victims, survivors and their advocates.* The pressure to obtain a news story, often under a tight deadline, can lead some journalists to be overly aggressive to victims, their loved ones, and victim service providers. A television photographer illuminated this problem when he noted:

"I think at times we don't take into consideration what these people have been through. There is pressure there, someone breathing down your back to go out and get that story, get that interview. We should be more sensitive to these people's feelings. Sometimes I think we're a bit too aggressive" (Grotta, 1986, p. 7).

- *Ignoring victims' and survivors wishes.* The issues of control and decision making are essential to a victim's reconstruction following a crime. Since victims do not choose to be victimized, their ability to make decisions and have some degree of control over their lives following a violent crime is very important. Crime victims' wishes relevant to the news media's coverage of their cases should be respected and followed.
- *Filming and photographing scenes with bodies, body bags, and blood.* Many victim service professionals believe that the steady diet of gory crime scenes -- often involving murdered victims, body bags and blood -- portrayed in broadcast and print media contributes to individual and collective desensitization to violence and the personal tragedy it wreaks on victims and survivors of crime.
- *Repeatedly using crime scene footage as a "lead-in" to newscasts.* When a broadcast medium chooses to show crime footage as the "lead-in" prior to a newscast, it can re-victimize anybody who was involved in that specific crime. One victim told of watching the evening news and seeing a body bag containing her husband:

"There was no warning to the family that this was upcoming. You look up and there's his body. That's offensive. You can't be any more offensive than that" (Grotta, 1986, p. 7).

- *Reporting innuendoes.* The "double-edged sword" wielded by the media who cover crime is often evident when victims, their loved ones, and law enforcement officials refuse to be interviewed for reasons including the need for privacy, or to preserve the sanctity of the criminal investigation or case. In such cases, some media rely on interviews with third parties, including neighbors and people who may, or may not, have known the victim, to obtain details about the victim and/or alleged perpetrator. However,

such hearsay interviews often cannot be relied upon for accuracy, and can invoke additional trauma for victims.

- *Interfering in police investigations.* The need for cooperation among law enforcement, other criminal justice officials, and the news media is essential to criminal investigations and prosecutions. Often, details that journalists consider key to a good story are also details that must be kept confidential in order to successfully complete a criminal investigation.
- *Referring to drunk driving crashes as "accidents".* The public awareness generated over the past two decades by Mothers Against Drunk Driving, Remove Intoxicated Drivers, and other victim advocacy organizations has successfully educated citizens about the dangers of drinking, drugging, and driving. There is nothing "accidental" about a person who chooses to drink and drive, resulting in a crime that injures or kills another human being. Many journalists have begun referring to such tragedies as "crashes" or "crimes," which more accurately describes the criminality of driving under the influence of alcohol or other drugs.
- *Failing to cover a crime at all.* Societal biases in America are sometimes reflected in news reporting. The length of news copy and scope of broadcast coverage tend to vary based upon the victim's race, where they live, socio-economic status, and other factors that have nothing to do with the crime committed against them. These issues were elaborated upon in an article by the associate editor of a large metropolitan daily newspaper:

"When city editors get calls from the crime reporter, often the first question asked is 'Where did it happen?' The news team's reaction to the crime is often predicated on where the crime occurred. If it's at one of the projects in predominantly black and Hispanic West Dallas, we call in a brief; it's in white, fashionable University Park, we roll a reporter or two. That attitude is unlikely to change" (Sotomayer, 1987).

Such institutional biases can only be changed with continual training on cultural sensitivity, particularly as it relates to the coverage of crime.

- *Identifying child victims.* The criminal justice system goes to great length to protect the privacy of child victims, recognizing that any public identification of children's emotional, physical or sexual assaults can have devastating consequences. The media should similarly respect the privacy rights of child victims, and should avoid all reporting that in any way contacts or identifies victims of child abuse. In cases of incest allegations or convictions, journalists should not identify perpetrators if the child victim is in any way at risk of also being identified.

- *Attempting to interview survivors of homicide victims prior to official death notifications by law enforcement.* In homicide cases, the news media should always ascertain whether or not surviving family members of the victim have been notified of their loved one's murder. One victim recalled driving his car on a Florida freeway and hearing a radio report of his brother's brutal murder at the hands of a high-profile, and yet unidentified, killer. The shock and grief associated with the news media's reporting of violent deaths prior to sensitive death notification comprise a second tragic victimization that can be easily avoided with communication and cooperation between law enforcement and the media.
- *Inaccurate reporting.* Accurate media coverage of details of a crime, however minute, are very important to crime victims and survivors. For example, inaccurately reporting of the age of a homicide victim can have traumatic consequences on that victim's surviving family members. Factual reporting of all details associated with a crime is critical to not only to the media's underlying philosophy of accuracy, but also to a victim's efforts to reconstruct his or her life following a crime.

Guidelines for Victims Who Choose to Deal With the Media

A brochure published by the National Victim Center in 1987 entitled "Victims' Rights and the Media" offers valuable guidelines to crime victims whose cases are covered by print and broadcast news media. While the "rights" enumerated in this brochure are not mandated by statute or policy, they should be considered guiding principles provided by all service providers to crime victims prior to dealing with the news media:

You have the right:

1. To say "no" to an interview.
2. To select the spokesperson or advocate of your choice.
3. To select the time and location for media interviews.
4. To request a specific reporter.
5. To refuse an interview with a specific reporter even though you have granted interviews to other reporters.
6. To say "no" to an interview even though you have previously granted interviews.

7. To release a written statement through a spokesperson in lieu of an interview.
8. To exclude children from interviews.
9. To refrain from answering any questions with which you are uncomfortable or that you feel are inappropriate.
10. To know in advance the direction the story about your victimization is going to take.
11. To avoid a press conference atmosphere and speak to only one reporter at a time.
12. To demand a correction when inaccurate information is reported.
13. To ask that offensive photographs or visuals be omitted from broadcast or publication.
14. To conduct a television interview using a silhouette or a newspaper interview without having your photograph taken.
15. To completely give your side of the story related to your victimization.
16. To refrain from answering reporters' questions during trial.
17. To file a formal complaint against a journalist.
18. To grieve in privacy.
19. To suggest training about media and victims for print and electronic media in your community (Seymour and Lowrance, 1988, pp. 7-10).

The Public's Right to Know Versus the Victim's Right to Privacy

The question of where a society's right to know ends and an individual's right to privacy begins is one of journalism's thorniest ethical dilemmas (Thomason and Babbili, 1988).

This double-edged sword has serious implications for victims and those who serve them. While the legal aspects relevant to the First Amendment are quite clear, ethical considerations that take into account the traumatic nature of victimization and related news coverage are much more complex.

There have been two precedent-setting decisions handed down by the U.S. Supreme Court relevant to the privacy rights of crime victims.

In *Florida Star v. B.J.F.*, a weekly newspaper in Jacksonville published a news article that identified the name of a sexual assault victim, violating its own policy of protecting the privacy of rape victims. The resulting appeals and ultimate High Court decision rendered in 1989 were summarized in a 1990 *Mercer Law Review* article:

In *Florida Star v. B.J.F.*, the Supreme Court invalidated a Florida statute proscribing the newspaper publication of the identity of sexual assault victims. In making its determination, the Court balanced the state interest of protecting the privacy of assault victims against the first amendment concerns of the free press. The Court did not focus on the privacy right of the plaintiff as much as it considered the inability of the statute to achieve its desired goal. Accordingly, the Supreme Court found the Florida statute unconstitutional primarily because of its failure to protect the privacy of assault victims effectively without an impermissible intrusion on the first amendment freedom of the press (Hughes, 1990).

The constitutionality of a Georgia law that prohibited the identification of rape victims by the news media was called into question in a case involving a television station's reporting of the name of a deceased rape victim. When *Cox Broadcasting Corporation v. Cohn* was appealed to the U.S. Supreme Court, Justice White noted in the affirming opinion that the "commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions . . . are without question events of legitimate concern to the public and consequently fall within the responsibility of the press to report the operations of government" (*Cox Broadcasting Corp. v. Cohn*, 1975, p. 493).

There are several arguments adopted by journalists in support of identifying victims of crime and, in particular, victims of sexual assault and rape. First, the public's right to know any information that is part of public record (i.e. law enforcement or court documents) is frequently cited. Next, some journalists believe that, in the name of fairness and equity, the victim's identity should not be protected when the name of the alleged assailant is published or broadcast, particularly when the defendant is found not guilty. Finally, some journalists believe that identifying rape victims will somehow eliminate or reduce the stigma that is often associated with sexual assault.

However, research clearly shows that crime victims, service providers, and American women in general strongly support protecting the privacy of rape victims. Key findings from *The National Women's Study*, as reported in "Rape in America: A Report to the Nation," include the following:

- Eighty-four percent of rape victims do not report to the police.

- Half of rape victims (50%) would be "a lot more likely to report" to police if there was a law prohibiting the news media from disclosing their name and address, with 16 percent indicating they would be "somewhat more likely to report" rapes to the police.
- Almost nine out of ten American women (86%) felt victims would be less likely to report rapes if they felt their names would be disclosed by the news media.
- An overwhelming majority of American women (75%), rape victims (78%) and rape service agencies (91%) favor legislation that would prohibit media disclosure of rape victims' names (Kilpatrick, Edmunds, and Seymour, 1992).

Recent surveys of American newspaper editors have shown that most do not routinely publish the names of rape victims. In 1982, Oukrop reported that 68 percent of the editors she surveyed believed names of rape victims should not be published (Oukrop, 1982, p. 21). Wince (1991) surveyed editors in 1990 and found that 9.6 percent said rape victims should never be named; 39.6 percent said they should be named only with the victim's permission; and 43.6 percent said they should be named only in exceptional cases.

Furthermore, more news media today are addressing the issue of rape than ever before. In "Newspaper Coverage of Rape: Editors Still Reluctant to Name the Victim," the following data were revealed:

- The topic of rape coverage had been discussed in respondents' newsrooms, with 57.5 percent noting that their paper had seriously re-examined policy on rape identification, and 55.2 percent saying that they had re-examined policy on rape coverage in general.
- More than 40 percent believed their own newspaper is more sensitive toward rape victims than five years ago, and more than 50 percent said they believed newspapers as a whole are more sensitive.
- Almost one-fourth of the editors (22.6 percent) disagree with the idea that routine printing of the names of rape victims would remove the stigma of rape.
- Only 24.3 percent of respondents agreed that not printing names of rape victims was a violation of the public's right to know.
- However, they indicated that the decision to withhold a name should be the newspaper's, not a result of legislation that keeps the name from the press. Almost three-fourths of the editors (71.8%) said those laws should be repealed because they violate the First Amendment (Thomason and LaRocque, 1994, pp. 11-12).

Clearly, the correlation between rape victims' fear of being identified and the fact that only 16 percent of rapes are ever reported to police should be a driving force behind the protection of the privacy rights of all sexual assault victims. While legislation mandating such protections has been held unconstitutional by the U.S. Supreme Court, the news media should adopt policies that protect rape victims' right to privacy as a basic ethical premise of journalistic doctrine.

Code of Ethics for Victim Advocates in Dealing With the News Media

In 1988, the National Victim Center published a suggested code of ethics for victim advocates in the media. With adherence to these recommended guidelines (which have been updated in 1995), victim advocates can ease the trauma of the news media's coverage of crime and victims and, at the same time, assist the news media in their attempts to focus public attention on crime in our nation:

I shall always:

1. Honor the victim's wishes relevant to any news media coverage of their tragedy.
2. Protect the privacy of any victims who do not wish to have contact with the news media.
3. Provide victims with guidelines on how to deal with the news media.
4. Upon request, help victims prepare for print or broadcast media interviews.
5. Inform victims that they have the right to refuse an interview with the media.
6. Upon request, accompany crime victims to media interviews and press conferences.
7. Review with reporters, producers and talk show hosts exactly what questions they can and cannot ask your client.
8. Reserve the right to end any interview if the client shows signs of trauma during the course of an interview.
9. Discourage the participation of children in any interviews or talk shows.

I shall never:

1. Force a victim into an interview against his or her wishes.
2. Provide any information about the victim without his or her explicit consent (Seymour and Lowrance, 1988, p. 15).

The Role and Responsibilities of the Victim Advocate in Helping Victims Deal With the News Media

Advocacy for crime victims in the media has become a specialized discipline within the field of victim advocacy. Victim service providers who assume this immense responsibility must:

- Be knowledgeable about how the news media operate (see Worksheet #2).
- Be knowledgeable about victims' rights and issues in general, and about the specifics of the victim and case at hand.
- Develop solid relationships with news media professionals who are known to be sensitive to crime victims and victims' rights issues.
- Consider the needs and desires of the victims they represent -- especially privacy concerns -- as foremost among their responsibilities.
- Be sensitive to the specific needs of the victim and/or the victim's family and friends, as well as to the parameters of the criminal investigation, criminal justice system, and criminal case (when applicable).
- Be available 24-hours-a-day, seven days a week for both the victim and the news media.
- Be aware of and prepared to protect victims' rights in the media.

Advance Preparation

Victim service providers should have a roster of key media in their community, which includes: contact name; address; telephone number; fax number; and e-mail address. A database that allows rapid distribution of information via fax, mail, or the Internet such as victim statements and press releases, is helpful.

It is helpful to also know which media professionals have provided thorough, sensitive coverage of victims' cases, as well as those who have been less sensitive or intrusive. If the victims asks for recommendations on specific media who have contacted them, this type of background information is useful.

Helpful Tips

- Be well-versed about victims' rights in the media.
- Know all the facts of the case, including detailed, accurate information about the victim.
- Coordinate media outreach with relevant criminal justice officials.
- Always separate fact from opinion.
- Always remember that a defendant is innocent until proven guilty, and is "alleged" to have committed a crime prior to conviction.
- Be aware that anything you or the victim say to the media may be used by the defense.
- Be professional and courteous at all times.

Victim Advocacy

In some cases, the victim service provider will be directly contacted by the victim or a family member or friend. In other cases, a telephone call to the victim, followed up with a personal note that provides the service provider's/agency's contact information for support and services (including media advocacy), is appropriate.

The role of the victim advocate in helping victims deal with the media may include but is not limited to the following activities:

- Determining "ground rules" for the news media, i.e. does the victim want to deal with the media and, if so, in what manner?
- Providing to the news media the victim's wishes ("ground rules") both verbally and in writing.

- Providing victims with an answering machine if they do not have one that contains a message concerning the victim's wishes for dealing with the media and others.
- Explaining how the media work and, in particular, how the media might cover the victim's case.
- Helping the victim select a spokesperson, when applicable, and being prepared to fulfill this role upon request from the victim.
- Being prepared to develop a written statement, upon request from the victim, for dissemination to the media. A double-spaced statement that includes the spokesperson's contact information, limited to 60 seconds or less, is most appropriate.
- Protecting the privacy of sensitive victims, i.e. sexual assault victims, children and elderly victims, and victims with disabilities, at all costs.
- Providing the media with contact information for the spokesperson selected by the victim.
- Coordinating interview guidelines and other release of information with the media throughout the duration of the case.
- Releasing only information to the media that has been approved by the victim.
- Remember that the media are visually oriented.
- Providing copies of a photograph chosen by surviving family members in cases involving deceased victims, with the original photograph returned promptly to the family.
- Prior to the verdict, helping the victim prepare two statements: One for a "guilty" verdict, and one for a "not guilty" verdict.
- Advising the victim that following a verdict, the news media will have access to persons who had been previously silenced during court proceedings.
- Being prepared to provide follow-on support and advocacy to victims following a verdict, regardless of what that verdict is.
- Maintaining a log of media coverage of the case, including newspaper clippings and audio/video footage of interviews.

Case Coordination

- Determine key criminal justice officials (such as the police public information officer, prosecuting attorney, or victim/witness coordinator) with whom media outreach should be coordinated.
- Coordinate any release of information with key criminal justice officials.
- For cases involving trials, determine a room in the courthouse where the victim can be guaranteed privacy. Also, determine alternative routes for the victim to enter and exit without being confronted by the media.
- Always keep in mind that pre-trial publicity can result in a change of venue.
- Never speak about the case in any public situations and, in particular, anywhere in or around the courthouse.
- Coordinate victim privacy protection rules in cases involving trials, especially in cases in which cameras are allowed in the courtroom, with the prosecutor and judge.
- Respect any orders issued by the judge relevant to the release of information, especially "gag orders."
- Avoid any adversarial role with anyone involved in the case.
- Coordinate post-trial media activities with the prosecuting attorney and the victim.
- Prepare the victim for potential media inquiries on anniversaries of crimes or court decisions.

The Media Perspective of Crime and Victimization

Over the past decade, news media professionals have begun to examine their roles in the coverage of crime and victimization. The "double-edged sword" -- involving the victim's right to privacy versus the public's right to know -- has been debated among journalists, with such discussions often involving input and advice from victim service providers. While levels of

sensitivity to victims' rights and needs continue to vary among journalists, news media today more than ever are adhering to basic principles of fairness and sensitivity that ultimately benefit victims of crime whose cases they cover.

Guiding Principles for the Journalist

There are three guiding principles for journalists that are particularly applicable to their coverage of crime and victimization (Black, Steele, and Barney, 1995).

1. *Seek truth and report it as fully as possible.*
 - Inform yourself continuously so you in turn can inform, engage, and educate the public in a clear and compelling way on significant issues.
 - Be honest, fair and courageous in gathering, reporting, and interpreting accurate information.
 - Give voice to the voiceless.
 - Hold the powerful accountable.
2. *Act independently.*
 - Guard vigorously the essential stewardship role a free press plays in an open society.
 - Seek out and disseminate competing perspectives without being unduly influenced by those who would use their power or position counter to the public interest.
 - Remain free of associations and activities that may compromise your integrity or damage your credibility.
 - Recognize that good ethical decisions require individual responsibility enriched by collaborative efforts.
3. *Minimize harm.*
 - Be compassionate for those affected by your actions.

- Treat sources, subjects, and colleagues as human beings deserving of respect, not merely as means to your journalistic ends.
- Recognize that gathering and reporting information may cause harm or discomfort, but balance those negatives by choosing alternatives that maximize your goal of truth telling (Black, Steele, and Barney, 1995).

A Media Code of Ethics

Victim service providers should encourage media professionals, both print and broadcast, to adopt a code of ethics specific to their coverage of crime and victimization. Such a code can serve as a basic ethical foundation from which difficult decisions -- frequently made in very short time periods -- can be made.

The most comprehensive written policy on ethical considerations affecting journalists, including those affecting crime victims, was developed by the *St. Louis Post-Dispatch* in 1992. In the sensitive introduction to its "Guidelines on Privacy Issues," the following guiding statement was made:

"As we consider the policies that will best serve the *Post-Dispatch*, we should bear in mind some broad principles:

The perceptions and perspectives of reporters and editors are on the one hand, and readers and other members of the public on the other, are different. The news professionals are motivated chiefly by a desire to get the news and publish it. The others are more likely to react personally, imagining how they would feel as the subject of a story. In weighing matters of privacy, perhaps some effort should be made to bring that personal perspective into the equation.

Major changes should be approached with caution. The wind may seem to be blowing very strongly in one direction today, but could shift direction tomorrow.

No policy will cover every eventuality. The policy here enunciated (in the *Guidelines on Privacy Issues*) includes many exceptions, and must be augmented by the constant application of fairness, common sense, reasoned Judgment, and a degree of compassion by reporters and editors all along the line" (Guidelines on Privacy Issues, 1992).

When victim advocates consider proposing a code of ethics to media professionals, the following issues should be seriously considered.

The news media should:

- Present details about a crime in a fair, objective and balanced manner.
- Recognize the importance of publishing or broadcasting information that can contribute to public safety while, at the same time, balancing this need with the victim's need for privacy.
- Respect the privacy of individuals who choose to refrain from dealing with the media, or who choose to address the media through a spokesperson of their choice.
- Provide a balanced perspective relevant to a criminal act that reflects the concerns of the victim and offender.
- Never report rumors or innuendoes about the victim, the offender, or the crime unless such information has been verified by reliable sources.
- In crimes other than homicide, identify the victim by age and area where the crime occurs, omitting street addresses and block numbers.
- Refrain from using information gained from private conversations of victims or their relatives who are in shock or distraught.
- Identify witnesses only when they volunteer to be named, and when there is clearly no danger that can be predicted through their identification by the media.
- Never publish the identity of a sexual assault victim without his or her prior consent, regardless of whether the case is in the criminal or civil courts.
- Never publish the identity of a child victim.
- Never identify alleged or convicted incest offenders when such actions could lead to the identification of the victim.
- In cases of kidnapping where it is determined that the victim has been sexually assaulted, stop identifying the victim by name once a sexual assault has been alleged.
- Never identify the names of victims of scams or other crimes that tend to humiliate or degrade the victim without the victim's prior consent.

- Refrain from photographing or broadcasting images that portray personal grief and/or shock resulting from a criminal act.
- Never publish photographs or broadcast images that could place the subject in danger.
- Refrain from showing photographs or broadcast images of deceased victims, body bags, or seriously wounded victims.
- Never publish photographs or broadcast images of funerals without the surviving family members' prior consent.
- Refer to drunk driving incidents as "crashes" or "crimes," not accidents -- regardless of whether or not the use of alcohol has been determined as a factor.
- Approach the coverage of all stories related to crime and victimization in a manner that is not lurid, sensational, or intrusive to the victim and his or her family.

The Media Hierarchy

Victim service providers most often will deal with a reporter from a print or broadcast news medium. However, in the newsroom, the reporter’s place is on the lower end of the hierarchy, with many senior officials often responsible for key decisions affecting the coverage of crime and victimization.

The following depicts the hierarchy of the newsrooms of both newspapers and broadcast (radio and television) media (which may vary depending on the personnel and policies of a specific medium).

If victims or advocates are not happy with the media’s coverage of a crime or of an issue, they can appeal through the various levels of hierarchy in the media’s organization. Ultimately, who has significant influence over each medium -- print and broadcast? Fill in the blank for each.

Print	Broadcast Media
<p>Owner Executive Editor Managing Editor Copy Desk Editor City or Metro Editor Reporter Other</p>	<p>Owner Station Manager Anchors News Director Reporter Other</p>

Other journalists who may affect how stories of crime and victimization are covered, or with whom service providers may have contact, include:

- **Headline writers.**
- **Editorial page editors.**
- **Editorial boards.**

**Who Are the Media?
(Answers)**

PRINT	BROADCAST	NATIONAL	STATE	LOCAL
DAILY NEWSPAPERS				
WEEKLY NEWSPAPERS				
MAGAZINES				
JOURNALS				
AGENCY NEWSLETTERS				
ALLIED PROFESSIONAL PUBLICATIONS				
NEWS SERVICES				
INTERNET ACCESS TO ALL OF THE ABOVE				
TABLOID NEWSPAPERS				
	NETWORK TELEVISION			
	CABLE TELEVISION			
	INDEPENDENT TELEVISION			
	T.V. NEWS			
	T.V. TALK SHOWS			
	T.V. TABLOID SHOWS			
	T.V. EDUCATIONAL PROGRAMMING			

	T.V. ENTERTAINMENT PROGRAMMING			
	T.V. PSAs			
	RADIO NEWS			
	RADIO TALK SHOWS			
	RADIO PSAS			
	FILMS (FEATURE AND DOCUMENTARY)			
	INTERNET ACCESS TO ALL OF THE ABOVE			

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Laboratory One

Checking Your Values and Beliefs

This exercise is designed to provide a unique opportunity for Academy students to explore individual values and beliefs in the context of expanding multi-cultural awareness.

The following questions require answers that are grounded in your belief system or your attitudes about society.

The letters A, B, and C have been designated on the walls surrounding the classroom. When it is time to answer each question, you will be asked to "take a stand" by physically moving and standing in a space with other Academy students who have made that choice.

There is no right answer for each question. Questions are expected to require difficult choices and to prompt discussion on the issues related to attitudes and beliefs of Academy students.

Once you have selected your choice and moved to the letter A, B, or C, a class discussion will follow.

1. What is the most important, fundamental right?

- A) Equal opportunity.
- B) Freedom of speech.
- C) Freedom of religion.

2. Which factor has the greatest influence on an individual's success?

- A) Genetic make-up.
- B) Home environment.
- C) Educational opportunity.

3. What has the greatest influence on an individual's beliefs about another person's race or culture?

- A) Personal experience.
- B) Current events.
- C) Family's traditions and beliefs.

4. What is the greatest barrier to an individual seeking help in the aftermath of crime?

- A) Location of services.
- B) Language barriers.
- C) Cultural traditions and beliefs.

5. What characteristic is most important in another person?

- A) Integrity.
- B) Compassion.
- C) Intelligence.

6. What Constitutional protections are most important to you?

- A) Unwarranted search and seizure.
- B) Equal protection under the law.
- C) Right to due process.

7. Which one of the following will ultimately be most effective in reducing crime?

- A) Reduce poverty.
- B) Guarantee swift and sure punishment.
- C) Reduce child abuse and neglect.

Laboratory Two

Crisis Intervention Exercise

This exercise is designed to provide Academy students with an understanding of the wide range of issues involved in immediate crisis response to crime victims. In addition to identifying the emergency needs of victims in the aftermath of crime, it is intended to elicit discussion of the wide range of services and assistance the primary and secondary victims may require.

This exercise utilizes two hypothetical cases as a basis for students to formulate a plan for an immediate response. Work sheets with the questions, issues, type of intervention, immediate concerns and potential conflicts, are provided.

Hypothetical Case #1

June was working late at the office, Dan, her co-worker in an adjacent department, offered her a ride home. On the way they decided to stop by the local bar for a drink. They talked about home renovations and Dan offered to loan June his sander. He said he lived close by and it would be no problem to pick up his tools on their way to June's. After entering the house, his demeanor changed. He became aggressive, displayed inappropriate physical contact, and made comments about how "she didn't really stop by for just the sander." When she asked him to leave her alone, he physically restrained and raped her. Afterwards, his mood changed; he got dressed and offered to take her home. Afraid of additional violence, she accepted the ride.

An hour later, she called her sister who, after talking with June, then immediately calls you at home because she knows you work with crime victims.

1. What do you tell her to do?
2. What are the issues in the next 24 hours?
3. What are the parameters of the crisis intervention?
4. What unique needs or problems will June experience in the near future?

These and other questions need to be addressed in the following worksheets:

Crisis Intervention Strategy

Identify	Immediate Needs: First 24 - 48 Hours	Short-term Needs: 3 days - 1 month
Primary Victims		
Secondary Victims		

Key Professionals: Roles and Responsibility

Professional	Role	Responsibility

Crisis Intervention Issues to Be Addressed

Safety and Security	Ventilation and Validation	Prediction and Preparation

Federal Crime Victims

Hypothetical Case #2

Angela and Reggie and their two children had attended a family reunion in Lake City, Florida and were driving to their home in Knoxville, Tennessee. En route, as the family entered Great Smoky Mountains National Park, they were hit head-on by a drunk driver who swerved into their lane attempting to pass another car.

Reggie was killed instantly, Angela and one child sustained minor injuries, and the second child was critically injured. Reggie was taken to the hospital morgue, one child was medivaced to the hospital, and Angela and the other child were transported to the hospital by ambulance. Their car was totaled. The drunk driver, also taken to the hospital, survived.

After examination, Angela and one child were released, while the other child remained in intensive care. Angela has no money, nor friends or family in the immediate vicinity. How do you respond?

1. What unique aspects of this case arise out of the crime occurring on federal land?
2. What are Angela's immediate concerns?
3. What services should be available to assist her children and her?
4. Who will provide the services -- what coordination issues between federal, state and local victims service providers or law enforcement agencies may arise?
5. What are the potential problems and obstacles with Angela being so far away from home -- immediately and in the long term?

Crisis Intervention Strategy

Identify	Immediate Needs: First 24 - 48 Hours	Short-term Needs: 3 days - 1 month
Primary Victims		

Crisis Intervention Issues to Be Addressed

Safety and Security	Ventilation and Validation	Prediction and Preparation

Laboratory Three

Assessing Victim Service Needs A Skills Building Exercise

- Understanding the Impact of Crime on Victims
- Identifying the Needs of Crime Victims
- Developing an Advocacy Plan for Crime Victims
- Understanding the Array of Services that May be Needed by Crime Victims and Techniques for Making Referrals

In previous chapters, students have learned about the impact of various crimes upon victims. The needs of crime victims will vary, due to many different factors, including: age, race, language, or culture of the victim; relationship to the perpetrator; nature of the crime; psychological impact of the crime; age and location of the offender; and the jurisdiction in which the crime occurred.

This is an exercise that provides students with the opportunity to integrate their knowledge and understanding of the impact of crime on victims, the information and service needs of crime victims, and students' understanding of the criminal justice system.

To complete this exercise, students will select one of the victim descriptions listed below and work as a Team with a Laboratory Group to develop an *Advocacy and Referral Plan* for the victim(s).

The plan should include a systematic assessment of the impact of the crime upon the victim(s); the service needs that the victim(s) may have; the best options for referral; and a plan for delivery of the appropriate services that the victim(s) may need for a six month period following the crime.

Each Team will have 25 minutes to complete the *Advocacy and Referral Plan*. At the close of the Team exercise, each Team will report to the entire class and describe the essential elements of its *Advocacy and Referral Plan*.

Descriptions of Crime Victims in Need of Services:

- 1) A seven-year-old girl complains to her teacher that her stepfather, a member of the U.S. military, keeps touching her with his "privates." The school on the base has called the military authorities. The mother denies that abuse has taken place. What is the Plan?
- 2) Four members of a Vietnamese-American family -- a mother, two of her children and two nieces (aged 3 to 8 years) -- were hit by a drunk driver while they were standing at a bus station. The nieces were visiting from across town. Four of the victims have died. The eight-year-old daughter -- who speaks very limited English -- is in critical condition. What is the Plan?
- 3) The friend of a 22-year-old woman, who is a student from Lebanon, has just called to report that her friend was assaulted by someone who came into her apartment when she was sleeping. She was tied up, raped, beaten, and left for dead. The friend has just found her and called 911. What is the Plan?
- 4) A Native American domestic violence victim with two children, ages 4 and 6, has called the tribal police because her ex-husband was brandishing a gun, threatening her children and her. This is not the first call to the house. The victim has a standing order of protection from the tribal court. What is the Plan?
- 5) An elderly man has just been shot while sitting on the front porch of his inner city home after dinner. His wife of 52 years calls 911 when she hears the shots down the street. The man, a veteran, dies on his way to the hospital. His widow has no children, and no immediate family members in the community. What is the Plan?
- 6) A young woman has called the precinct nearest her to see whether she can do anything to keep the man who has been following her away from her house. He works in the same federal building with her, and won't take no for an answer. He is upset because she will not go out with him on a date. What is the Plan?

- 7) Two men leaving a coffeehouse are accosted by a group of seven juvenile males. After being verbally taunted and spit on, the men are physically assaulted and robbed. The manager of the coffeehouse, after calling the police, states that "these same kids have threatened some of my male clientele before." Law enforcement arrive and call for ambulances, which take the two men to the hospital for emergency treatment. What is the Plan?

- 8) An elderly woman is befriended by a young woman who, for several months, helps around the house, runs errands, and drives her to appointments and church. When young woman advises her elderly companion to invest her life savings in a "foolproof" investment involving property to be developed in the Nevada desert as a retirement community, the elderly woman readily gives her \$65,000 in a cashier's check. The young woman departs to "finalize the investment." When the elderly woman does not hear from her companion for two weeks, she calls the police. What is the Plan?

- 9) A young businessman is held hostage, physically assaulted and raped in a hotel room. After the hotel manager calls the police, a housekeeper whispers to the victim that "this type of horrible crime happened last year. They were supposed to fix the locks and beef up security, but they didn't!" Police arrive, followed by an ambulance, which takes the victim to the hospital, where he is met by a rape crisis counselor. The responding officer interviews hotel employees, including the housekeeper. What is the Plan?

- 10) A young bank teller, who started work at a large metropolitan bank six weeks ago, assists a customer who proceeds to tell her that he has a gun. The robber threatens to kill her if she doesn't turn over her money, and takes her hostage, holding his gun to her head until he gets outside the door of the bank. She is a single mother of two pre-school children who, until she began work at the bank, was looking for steady employment for over six months. The teller is afraid to go back to work, but is also afraid to lose her job. What is the Plan?