

**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**SELECTED SPEAKER  
BIOGRAPHIES**

## ABOUT OUR SPEAKERS

MONDAY, FEBRUARY 8, 1999

### WELCOMING PANEL

#### Noël A. Brennan, Deputy Assistant Attorney General, Office of Justice Programs

Noël Brennan is a Deputy Assistant Attorney General in the Department of Justice where she has served in the Administration since 1994. In her position, Ms. Brennan oversees the Attorney General's Community Justice Initiatives and many of the Administration's state and local public safety efforts including the Violence Against Women and Drug Court programs.

From August 1987 until her appointment to the Department, Ms. Brennan served as an Assistant United States Attorney for the District of Columbia. Ms. Brennan received her J.D. from Georgetown University Law Center in 1985 and subsequently served as a law clerk on the District of Columbia Superior Court and the U.S. District Court for the District of Columbia. Prior to that, she served as an associate with the Center for Dispute Settlement, was a principal in establishing the D.C. Mediation Service, and taught in the D.C. Public Schools.

Ms. Brennan is a member of the Board of Governors of the District of Columbia Bar and Co-Chair of the D.C. Bar Task Force on Children at Risk. She serves on the adjunct faculty at Georgetown University Law Center where she teaches Trial Practice and Professional Responsibility.

#### Elisabeth A. Bresee, Assistant Secretary (Enforcement), Department of the Treasury

Elisabeth A. Bresee was sworn in as Assistant Secretary of the Treasury for Enforcement on August 4, 1998. As Assistant Secretary, Ms. Bresee assists in the oversight of Treasury's law enforcement bureaus, including the Bureau of Alcohol, Tobacco and Firearms; the United States Customs Service; the United States Secret Service; the Federal Law Enforcement Training Center (FLETC); the Financial Crimes Enforcement Network; and has policy oversight responsibility for the Criminal Investigation Division of the Internal Revenue Service. The Executive Office for Asset Forfeiture and the Office of Foreign Assets Control also fall within Ms. Bresee's jurisdiction.

Prior to her nomination, Ms. Bresee served as Deputy Assistant Secretary (Law Enforcement) since October 1995. Ms. Bresee was promoted to that post after serving, since November 1994, as an Assistant Director and then as Director of Treasury's White House Security Review, the first departmental study of White House security.

Prior to joining the Treasury Department, Ms. Bresee worked as an Assistant United States Attorney in Washington, D.C., from December 1998 to November 1994. In this position,

she prosecuted criminal cases in the United States District Court and in the Superior Court of the District of Columbia. Ms. Bresee gained broad experience in the Appellate, Felony Trial, Grand Jury, Public Corruption and Government Fraud Sections. She devoted her last two years at the United States Attorney's Office to prosecuting violent crimes.

Ms. Bresee earned a J.D., cum laude, from the Georgetown University Law Center in 1988, where she served as Notes and Comments Editor of the Georgetown Law Review. She earned a B.S. in Personnel and Industrial Relations, magna cum laude, from Ithaca College in 1984.

#### Donna A. Bucella, Director, Executive Office for United States Attorneys

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Since December 1997, Ms. Bucella has been the Director of the Executive Office for United States Attorneys in the United States Department of Justice. In that capacity, she provides oversight of and support to the 94 Offices of the United States Attorneys, comprised of 93 Presidentially-appointed United States Attorneys (a single United States Attorney serves Guam and the Northern Mariana Islands), approximately 5,000 Assistant United States Attorneys, and approximately 5,000 support staff employees. She is also the liaison between the United States Attorneys and the Attorney General, Deputy Attorney General, the Department's legal divisions, and other Department components.

Prior to her appointment as Director of the Executive Office, Ms. Bucella was the Principal Deputy Director of the Executive Office. Previous positions in the Justice Department include Interim United States Attorney, Middle District of Florida, from May, 1994 to October 1994, Director of the Office of Legal Education, Executive Office for United States Attorneys, from June 1993 to May 1994, and Assistant United States Attorney, Southern District of Florida, 1987 through 1993.

Prior to the Justice Department, Ms. Bucella served in the Office of the Judge Advocate General, U.S. Army, and in the U.S. Army Judge Advocacy General Corps as a trial attorney.

Ms. Bucella received her JD in May, 1983, from the University of Miami Law School where she was Associate Editor of the Barrister. She received her undergraduate degree in Sociology and Italian from the University of Virginia in 1978.

#### Thomas A. Constantine, Administrator, Drug Enforcement Administration

Thomas A. Constantine was appointed Administrator of the United States Drug Enforcement Administration (DEA) by President William J. Clinton on March 11, 1994. Prior to this appointment, Mr. Constantine had been serving as the Superintendent of the New York State Police and was a veteran law enforcement officer with over 34 years of service with that agency.

As Administrator of the DEA, Mr. Constantine currently oversees a work force of over 7,500 Special Agents and support staff assigned to the agency's 200 domestic offices and 70 foreign offices in over 50 countries. In this capacity, he has focused enforcement efforts against the powerful international organized crime groups that control most of the drug trafficking in the United States and throughout the world. In addition, Mr. Constantine has initiated DEA mobile enforcement teams to assist state and local law enforcement with investigative and enforcement operations that target the violent drug gangs that have terrorized so many communities in the United States.

Administrator Constantine began his career as a Deputy Sheriff with the Erie County New York Sheriff's Department in 1960. He joined the New York State Police as a Uniform Trooper in 1962 and prior to being appointed Superintendent, served in every possible Uniform and Investigative rank, including Sergeant, Lieutenant, Captain, Major Troop Commander, Staff Inspector, Lieutenant Colonel and Colonel-Field Commander in Charge of all Uniform and Investigative operations. During his State Police career, Mr. Constantine received numerous awards for outstanding law enforcement efforts involving the apprehension of violent criminals, organized crime and narcotics investigations. In 1994, he was selected as the Governor's Law Enforcement Executive of the Year.

Mr. Constantine holds a Bachelors degree from State University College at Buffalo, and a Masters degree from State University of New York at Albany where he completed the academic portion of his doctoral program. Mr. Constantine was later awarded an honorary Doctor of Laws degree from Niagra University (New York) in 1995, and an honorary Doctor of Laws degree from Stonehill College (Vermont) in 1997.

Doris Meissner, Commissioner, Immigration and Naturalization Service

Francis M. Rush, Jr., Acting Assistant Secretary of Defense for Force Management Policy

Mr. Rush serves as the Acting Assistant Secretary of Defense for Force Management Policy which includes military and civilian personnel policy, equal opportunity, personnel support, families and education.

Mr. Rush was appointed to the Senior Executive Service on August 28, 1989 and previously served as Deputy Assistant Secretary of Defense for Reserve Affairs (Manpower and Personnel). He served as Consultant in National Defense, Congressional Research Service, The Library of Congress, in 1988-1989, and as the Director of the Sixth Quadrennial Review of Military Compensation from 1986 to 1988. From 1978 to 1986, Mr. Rush served in various positions in the Office of the Secretary of Defense and on the Air Staff.

Mr. Rush was born in Des Moines, Iowa on November 19, 1934. He received a Bachelor of Arts Degree from Drake University in 1956 and a Master of Public Administration from Auburn University in 1975. He has completed additional graduate studies at the George Washington University, University of California (Berkeley), and the University of Illinois in industrial relations and public administration. He has also completed the Harvard University Program for Senior Executives in National and International Security, the Program for Government Executives in Scientific and Technical Management (University of Wisconsin), and the Economics of National Security Program of the Industrial College of the Armed Forces, and is a graduate of the Air Command and Staff College.

Kathleen Hawk Sawyer, Director, Federal Bureau of Prisons

Kathleen Hawk Sawyer was appointed Director of the Federal Bureau of Prisons on December 4, 1992. She is a career public administrator in the Federal Bureau of Prisons and the sixth Director of the Bureau since its establishment in 1930. The Federal Bureau of Prisons is responsible for the confinement of more than 124,000 offenders. As Director, Dr. Hawk Sawyer oversees the operations of 93 Federal institutions and six regional offices located throughout the

United States. The Bureau currently employs more than 30,500 staff.

Dr. Hawk Sawyer began her career with the Bureau of Prisons as a Psychologist at the Federal Correctional Institution (FCI) in Morgantown, West Virginia, in 1976. Dr. Hawk Sawyer was selected as Associate Warden for Programs at the FCI in Ft. Worth, Texas, in 1985. In 1986, Dr. Hawk Sawyer was appointed the Bureau's Chief of Staff Training. She was responsible for all training at the Bureau's 3 training centers (Glynco, GA, Aurora, CO, and Ft. Worth, TX) as well as local training provided at each Bureau facility. Dr. Hawk Sawyer coordinated Bureau training activities with those of other Federal agencies at the Federal Law Enforcement Training Center, Glynco, GA. Dr. Hawk Sawyer was named Warden of the FCI in Butner, North Carolina, in 1987. In May 1989, Dr. Hawk Sawyer was selected as the Assistant Director for the Program Review Division at the Central Office of the Bureau. As Assistant Director, Dr. Hawk Sawyer was responsible for developing and implementing a system of internal controls and monitoring for all operations throughout the Bureau. The Bureau's internal control program was recognized by the Department of Justice as being the best in the agency. This led to Dr. Hawk Sawyer receiving the Attorney General's award for Excellence in management in 1992.

Director Hawk Sawyer is a native of West Virginia. She received a Bachelor of Arts degree in Psychology from Wheeling Jesuit College, Wheeling, West Virginia, in 1972, and a M.A. degree and Ed.D. Degree in Counseling and Rehabilitation from West Virginia University in 1973 and 1978 respectively.



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Washington, D.C. 20535

ROBERT M. BRYANT

Mr. Bryant was born June 30, 1943, in Springfield, Missouri, where he received his early education. He earned a Bachelor of Science Degree in Business Administration in 1965 and a Law Degree in 1968 from the University of Arkansas.

Mr. Bryant received an appointment as a Special Agent of the FBI in October, 1969, and, following a period of training, was assigned to the Seattle, Washington, office. He was then transferred to the Dallas, Texas, office where he remained until March, 1975, when he was ordered to FBI Headquarters in Washington, D.C., where he served as a Supervisor in the Criminal Investigative and Records Management Divisions until his assignment to the Planning and Inspection Division in September, 1977. In June, 1978, he assumed supervisory responsibilities in the Las Vegas, Nevada, office.

He was designated Assistant Special Agent in Charge of the Kansas City, Missouri, office in August, 1980, and named a Permanent Inspector in March, 1984. He was later designated Acting Chief Inspector. In December, 1985, Mr. Bryant was transferred to the Salt Lake City Division as Special Agent in Charge and, in September, 1989, was appointed Deputy Assistant Director of the Criminal Investigative Division in Washington, D.C. In July, 1991, Mr. Bryant was named Special Agent in Charge of the Washington Metropolitan Field Office.

Mr. Bryant was designated Assistant Director of the National Security Division in October, 1993, and on March 3, 1997, assumed the position of Assistant Director of the Criminal Investigative Division. He was appointed Deputy Director of the FBI by Director Freeh on October 2, 1997.

Mr. Bryant is married and has three children.





## U.S. Department of Justice

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### DEPUTY ATTORNEY GENERAL ERIC H. HOLDER, JR.

Deputy Attorney General Holder was born on January 21, 1951, in New York City. He attended public schools there, graduating in 1969 from Stuyvesant High School where he earned a Regents Scholarship. He attended Columbia College, majored in American History, and was graduated in 1973. Mr. Holder then attended Columbia Law School from which he was graduated in 1976. While in Law School he clerked at the N.A.A.C.P. Legal Defense Fund and the Department of Justice's Criminal Division.

Upon graduating from Columbia Law School, Deputy Attorney General Holder moved to Washington and joined the Department of Justice as part of the Attorney General's Honors Program. He was assigned to the newly formed Public Integrity Section in 1976 and was tasked to investigate and prosecute official corruption on the local, state and federal levels. While at the Public Integrity Section, Mr. Holder participated in a number of prosecutions and appeals involving such defendants as the Treasurer of the state of Florida, the Ambassador to the Dominican Republic, a local judge in Philadelphia, an Assistant United States Attorney in New York City, agents of the Federal Bureau of Investigation, and a "capo" in an organized crime family.

In 1988, Mr. Holder was nominated by the President to become an Associate Judge of the Superior Court of the District of Columbia. His investiture occurred in October of that year. Over the next five years, Judge Holder presided over hundreds of criminal trials, many of which involved homicides and other crimes of violence.

In 1993, President Clinton nominated Mr. Holder to become the United States Attorney for the District of Columbia. Mr. Holder was confirmed in October of that year and served as the head of the largest U.S. Attorney's Office in the nation for nearly four years. As U.S. Attorney, Mr. Holder created a new Domestic Violence Unit to more effectively handle those types of tragic cases, implemented a community prosecution pilot project to work hand-in-hand with residents and local government agencies in order to make neighborhoods safer, supported a renewed enforcement emphasis on hate crimes so that criminal acts of intolerance will be severely punished, developed a comprehensive strategy to improve the manner in which agencies handle cases involving the abuse of children,

launched a new community outreach program to reconnect the U.S. Attorney's Office with the citizens it serves, revitalized the Victim/Witness Assistance Program to better serve those individuals who are directly affected by crime, and developed "Operation Ceasefire," an initiative designed to reduce violent crime by getting guns out of the hands of criminals.

On April 14, 1997, President Clinton nominated Mr. Holder to be the Deputy Attorney General. He was confirmed by a Senate vote of 100 to 0 and was sworn in as Deputy Attorney General on July 18, 1997. The Honorable Eric H. Holder, Jr., was sworn in as the Deputy Attorney General of the United States on July 18, 1997, in a private ceremony. A public ceremony attended by Attorney General Janet Reno and other dignitaries was held on September 5, 1997. As Deputy Attorney General, Mr. Holder is responsible for the supervision of the day-to-day operation of the Department of Justice. He is now the highest ranking black person in law enforcement in the history of the United States.

Deputy Attorney General Holder has been active in the organization Concerned Black Men. This group seeks to help the youth of the District of Columbia with many of the problems they face, ranging from teenage pregnancy to sub-par academic achievement. Mr. Holder lives in Northwest Washington with his wife, Sharon Malone, who is a doctor in obstetrics and gynecology, and his children, Maya, Brooke and Eric.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

**JAMES E. JOHNSON**  
**UNDER SECRETARY FOR ENFORCEMENT**

James E. Johnson was sworn in as the Under Secretary of the Treasury for Enforcement on August 4, 1998.

As Under Secretary, he oversees the United States Customs Service, the United States Secret Service, the Bureau of Alcohol, Tobacco and Firearms, the Federal Law Enforcement Training Center, the Financial Crimes Enforcement Network, and the Office of Foreign Assets Control. He is the co-chair of the National Church Arson Task Force, which was created by the President to coordinate the federal law enforcement investigation of church fires.

Prior to this appointment, Mr. Johnson served as the Assistant Secretary of the Treasury for Enforcement from 1996 to 1998. In that capacity, he assisted in the oversight of Treasury's enforcement bureaus.

Before joining the Clinton administration, Mr. Johnson was the Deputy Chief of the Criminal Division in the United States Attorney's Office for the Southern District of New York. He served as an Assistant United States Attorney from 1990 to 1996, prosecuting various criminal actions including organized crime, tax, Medicare fraud and narcotics cases.

Mr. Johnson was a litigation associate at the New York law firm of Debevoise & Plimpton. He also served as law clerk to the Honorable Robert E. Keeton of the United States District for the state of Massachusetts.

In November 1994, he was detailed from the Justice Department to the Treasury Department where he served for four months as Assistant Director of the White House Security Review, the most comprehensive review of White House security ever undertaken.

Mr. Johnson graduated cum laude from both Harvard College and Harvard Law School. At Harvard College, he was elected First Class Marshal and awarded the Burr Prize given to the outstanding male scholar athlete of the Harvard College senior class.

Mr. Johnson was born in Montclair, New Jersey, and now resides in the Washington, D.C. metropolitan area. He is married and has two daughters.





## Department of Justice

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**JANET RENO** was sworn in as the nation's 78th Attorney General by President Clinton on March 12, 1993. From 1978 to the time of her appointment, Ms. Reno served as the State Attorney for Dade County, Florida. She was initially appointed to the position by the Governor of Florida and was subsequently elected to that office five times.

Ms. Reno was a partner in the Miami-based law firm of Steel, Hector & Davis from 1976 to 1978. Before that, she served as an assistant state attorney and as Staff Director of the Florida House of Representatives Judiciary Committee, after starting her legal career in private practice.

Ms. Reno was born and raised in Miami, Florida, where she attended Dade County public schools. She received her A.B. in Chemistry from Cornell University in 1960 and her LL.B. degree from Harvard Law School in 1963.



Kathryn McKay Turman

On July 5, 1998, Kathryn M. Turman was appointed Acting Director for the Office for Victims of Crime (OVC) in the U.S. Department of Justice.

Prior to joining OVC, she served as Chief of the Victim Witness Assistance Unit in the U.S. Attorney's Office. From 1993-94, Ms. Turman was a Senior Associate in the Criminal Justice Services Division of Public Administration Service in McLean, Virginia, where she directed a national training and technical assistance program to help communities organize multi-agency teams to handle child victim cases. Ms. Turman was the Director of the Missing and Exploited Children Program in the U.S. Department of Justice from 1991 to 1993. She served as special administrative assistant to the late Senator John Heinz from 1987 to 1991. She is the author of "Child Victims and Witnesses: A Guide for Criminal Justice Professionals," published by the Department of Justice, and "Recovery and Reunification of Missing Children," published by the Department of Justice and the National Center for Missing and Exploited Children. She is on the national board of the American Professional Society on the Abuse of Children as well as project advisory boards for several projects focusing on child victims. She served on the Washington, DC Child Death Review Team, the Regional Child Fatalities Review Council, the D.C. Children's Advocacy Center Steering Committee, and the D.C. Superior Court Family Violence Coordinating Council.



**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**MINI PLENARY FOR EXPERIENCED  
PERSONNEL**

**MONDAY, FEBRUARY 8, 1999**

**LESSONS LEARNED IN TRYING TO IDENTIFY, NOTIFY AND TRACK  
OKLAHOMA CITY BOMB VICTIMS FROM  
INCIDENT TO TRIAL  
(SESSION ONE)**

**OUT OF THE OKLAHOMA BOMB TRAGEDY CAME NEW LAWS AND  
LESSONS:**

**IDENTIFYING, NOTIFYING AND TRACKING VICTIMS OF A  
MASS CASUALTY CRIME DISASTER  
(SESSION TWO)**



## WORKSHOP AGENDA

**WORKSHOP TITLE: "OUT OF THE OKBOMB TRAGEDY CAME NEW LAWS & NEW LESSONS" - Identifying, Notifying & Tracking Victims of a Mass Casualty Crime Disaster**

Monday, February 8, 1999

Moderator: Patrick M. Ryan

U.S. Attorney, WD/OK

Prosecutor - United States v. Timothy McVeigh & Terry Lynn Nichols

First Workshop: 1:45 - 3:15 p.m.

Topic: "In a Mass Casualty Disaster, How Do We Know Who the Victims Are? & How Do We Take Care of Their Families in the Process?"

1. Sub-Topic: "Oklahoma City Bombing: The Medical Examiner's Office Perspective:"
  - 1) Recovery & Identification of Deceased Victims
  - 2) Family Center (where families were notified of recovery)
    - a) Its Creation, Organization & Operation
    - b) Family Assistance Act of 1996: Federal Protocol for Airline Disasters

Presenter: Mr. Ray L. Blakeney

Director of Operations

Office of the Chief Medical Examiner

Oklahoma City, Oklahoma

2. Sub-Topic: "A Spouse's Perspective on the Operation of the Family Center and Death Notifications"

Presenter: Mrs. Diane Leonard, Administrator

Critical Incident Workshops

Oklahoma City, Oklahoma

Wife of Secret Service Special Agent Donald Leonard

3. Sub-Topic: "Unforeseen Consequences of the Handling of Death Notifications: Effects on a Prosecution"

Presenter: K. Lynn Anderson

Assistant U.S. Attorney, WD/OK

(Detailed to EOUSA)

Second Session: 3:30 - 5:00 p.m.

**Topic: "Lessons Learned in Trying to Identify, Notify and Track  
OKBOMB Victims - From Incident through Trial"**

**1. Sub-Topic: "Obstacles & Have They Been Overcome?"**

**Presenters: Joan Gay  
Victim/Witness Specialist  
District of Kansas  
Wichita, KS**

**Gayla Stewart  
Victim/Witness Specialist  
Northern District of Oklahoma  
Tulsa, OK**

**2. Sub-Topic: "Creation of Database to Track Victims"**

**Presenter: Dahlia Lehman  
Victim/Witness Specialist  
Western District of Oklahoma  
Oklahoma City, OK**

**3. Sub-Topic: "Tracking Victims & Victim-Witnesses through Trial Process -  
In Denver & Oklahoma City"**

**Presenters: Dahlia Lehman  
Victim/Witness Specialist  
Western District of Oklahoma  
Oklahoma City, OK**

**(Closed Circuit Broadcast  
OKC)**

**K. Lynn Anderson  
Assistant U.S. Attorney  
Western District of Oklahoma  
Oklahoma City, OK**

**(Victims Attending Trial  
Denver)**

**Mary Anne Castellano  
Victim/Witness Specialist  
District of Colorado  
Denver, CO**

**(Witness Center - Denver)**

**Topic: "In Future Terrorist Disasters, New Opportunities for Cooperation  
to Assist Victims"**

**Presenter: Commander Joseph L. Hughart, MPH  
Deputy Director, Office of Federal Programs  
Agency for Toxic Substances and Disease Registry  
Center for Disease Control  
Atlanta, GA**



UNITED STATES CODE ANNOTATED  
TITLE 49. TRANSPORTATION  
SUBTITLE II—OTHER GOVERNMENT AGENCIES  
CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD  
SUBCHAPTER III—AUTHORITY

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Current through P.L. 105-220, approved 8-7-1998

§ 1136. Assistance to families of passengers involved in aircraft accidents

(a) **In general.**—As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—

(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

(2) designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) **Responsibilities of the Board.**—The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).

(c) **Responsibilities of designated organization.**—The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

(1) To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.

(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

(4) To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.

(5) To arrange a suitable memorial service, in consultation with the families.

(d) **Passenger lists.**—

(1) **Requests for passenger lists.**—

(A) **Requests by director of family support services.**—It shall be the responsibility of the director of family

support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

**(B) Requests by designated organization.**--The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

**(2) Use of information.**--The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

**(e) Continuing responsibilities of the Board.**--In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident--

(1) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

**(f) Use of air carrier resources.**--To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization's responsibilities under this section.

**(g) Prohibited actions.**--

(1) **Actions to impede the Board.**--No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) **Unsolicited communications.**--In the event of an accident involving an air carrier providing interstate or foreign air transportation, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 30th day following the date of the accident.

**(h) Definitions.**--In this section, the following definitions apply:

(1) **Aircraft accident.**--The term "aircraft accident" means any aviation disaster regardless of its cause or suspected cause.

(2) **Passenger.**--The term "passenger" includes an employee of an air carrier aboard an aircraft.

CREDIT(S)

1998 Electronic Update

(Added Pub.L. 104-264, Title VII, § 702(a)(1), Oct. 9, 1996, 110 Stat. 3265.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. House Report No. 104-714 and House Conference Report No. 104-848, see 1996 U.S. Code Cong. and Adm. News, p. 3658.

Applicability of Pub.L. 104-264

Except as otherwise specifically provided, Pub.L. 104-264 and the amendments made by Pub.L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub.L. 104-264, set out as a note under section 106 of this title.

Limitation on Statutory Construction

Nothing in Title VII of Pub.L. 104-264 to be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident, see section 705 of Pub.L. 104-264, set out as a note under section 41113 of this title.

CROSS REFERENCES

Plans to address needs of families of passengers, see 49 USCA § 41113.

49 U.S.C.A. § 1136

49 USCA § 1136

END OF DOCUMENT



MEMORANDUM OF UNDERSTANDING

BETWEEN THE DEPARTMENT OF JUSTICE  
AND THE  
NATIONAL TRANSPORTATION SAFETY BOARD

PERTAINING TO THE COORDINATION AND DELIVERY OF VICTIM SERVICES  
IN THE EVENT OF AN AVIATION DISASTER

I. PURPOSE

This Memorandum of Understanding (MOU) between the Department of Justice (DOJ) and the National Transportation Safety Board (NTSB) is part of a coordinated effort to improve the capacity of the federal government to address the needs of families of victims of domestic aviation disasters.

II. BACKGROUND

The tragic loss of TWA Flight #800 on July 17, 1996, demonstrated the great need for multiple agency coordination in providing comprehensive, efficient, and sensitive services to large numbers of victims and families of victims of a major aviation disaster. These services include providing accurate information about the crash and recovery efforts, assisting families who wish to travel to the crash site, and helping to provide appropriate victim services, including crisis counseling, victim compensation, and other needed mental health support.

Following the TWA tragedy, the White House directed NTSB to coordinate the roles of other federal agencies with responsibilities for victim services. Subsequently, the Aviation Disaster Family Assistance Act of 1996, signed by the President on October 9, 1996, established the responsibility of NTSB as "a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families." 142 Cong. Rec. H11303.

The Attorney General designated the Office for Victims of Crime (OVC) as the lead agency within DOJ to work with NTSB on a coordinated government protocol for aviation disasters. To ensure that the needs of crime victims are addressed in a sensitive and appropriate manner, OVC has developed this MOU in conjunction with other relevant DOJ components: the Federal Bureau of Investigation (FBI) and the Executive Office for United States Attorneys (EOUSA).

### III. GOALS

The goals of the Memorandum of Understanding are:

- A. To strengthen the capacity of the federal government to provide comprehensive, efficient, and sensitive services to victims and survivors, including families of victims, of domestic aviation disasters;
- B. To ensure the coordination of all available resources; and
- C. To specify the roles and responsibilities of DOJ and NTSB in the event that an aviation disaster, as defined by NTSB, is caused by criminal activity.

### IV. AUTHORITY

This MOU is entered into pursuant to: a) the Presidential Memorandum of September 9, 1996, Re: Assistance to Families Affected by Aviation and other Transportation Disasters; b) the authority granted NTSB by 49 U.S.C. § 1113(b)(1)(C) to use, when appropriate, available services, equipment, personnel, and facilities of a department, agency, or instrumentality of the United States Government on a reimbursable or other basis; c) the Aviation Disaster Family Assistance Act of 1996, Title VII of Public Law 104-264; d) the Victims of Crime Act of 1984, as amended, 42 U.S.C. §§ 10601- 10608; e) the Victim and Witness Protection Act of 1982, Public Law 97-291, reprinted at 18 U.S.C. §1512 note; and f) the 1995 *Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines)*.

### V. RESPONSIBILITIES

- A. Department of Justice
  - 1. DOJ recognizes NTSB as the coordinator of services to victims and their families in all aviation disasters, whether or not of criminal origin, pursuant to the Aviation Disaster Family Assistance Act of 1996.
  - 2. Following an aviation disaster which might have been caused by criminal activity, DOJ components OVC, FBI, and EOUSA agree to meet immediately with NTSB to coordinate efforts, including how to

address the informational needs of victims and their families, if and when the crash is determined to be caused by criminal activity.

3. If a crash has been determined to have been the result of criminal activity, DOJ will be responsible for the victim-witness notifications and services required under the Victims of Crime Act of 1984, as amended, the Victim and Witness Protection Act of 1982, other relevant statutes, and the *AG Guidelines*. In the case of a victim who is deceased, these statutes define the term "victim" to include a spouse, a legal guardian, a parent, a child, a sibling, another family member, or another person designated by the court. DOJ's responsibilities include:
  - a. identifying the victims of crime;
  - b. notifying crime victims of their rights under the Federal Crime Victims Bill of Rights, 42 U.S.C. §10606(b);
  - c. informing crime victims of the availability of state compensation and assistance programs, including emergency medical and social services, as well as public and private counseling, treatment, and support programs;
  - d. assisting crime victims in contacting the providers of victim services;
  - e. informing crime victims of their right to restitution, compensation, or other relief; and
  - f. notifying crime victims of the status of the criminal investigation and the criminal proceedings.
4. DOJ, through OVC, agrees to assist NTSB, as requested, with preplanning a response protocol, including:
  - a. providing trainers for or assisting in the development of training materials for NTSB response teams;

- b. assisting in the development of "train the trainer" curricula for airlines and airport personnel; and
  - c. collaborating in the development of an informational brochure for distribution to family members of victims or surviving victims, to inform them of (i) the roles of each federal agency involved in the aftermath of an aviation disaster; (ii) the rights of victims under federal law; and (iii) the services, both federal and state, public and private, that may be available to them.
5. In criminal cases, DOJ, through OVC, agrees to assist NTSB, as requested, with on-site coordination of service providers and emergency responders, and where appropriate, to fund a community crisis response team or teams to provide community debriefings, as well as crisis and grief counseling.
  6. Because of the importance to victims' families of prompt and accurate identification, DOJ, through FBI, agrees to assist in the victim identification process through all reasonable means, whether or not the crash is determined to be the result of criminal activity.

**B. National Transportation Safety Board**

1. NTSB agrees to maintain close liaison and coordination with DOJ, through OVC, as it develops a protocol for responding to the needs of families of victims of aviation disasters.
2. Following a major domestic aviation disaster that might have been caused by criminal activity, NTSB agrees to contact DOJ immediately to ensure a coordinated response to the victims and their families.
3. If, during the investigation of an aviation disaster, FBI and NTSB determine that the crash was caused, in whole or in part, by criminal activity, NTSB will closely coordinate its family assistance services with DOJ and help DOJ's components meet their responsibilities for federal crime victim notification of rights and services under applicable law and the *AG Guidelines*.

4. As soon as possible after a crash has been determined to have been the result of criminal activity, NTSB will provide space, in the disaster field office set up by NTSB and/or the designated independent nonprofit agency, for DOJ personnel, including Victim-Witness Coordinators, to notify victims and surviving family members of their rights under federal law and the availability of state compensation and assistance programs.

## VI. CONTROL OF RESOURCES

Supervision and control of all DOJ resources and personnel will at all times be retained by DOJ.

## VII. IMPLEMENTATION

The conditions of this agreement become effective upon signing. This MOU will remain in effect until either party initiates action to dissolve the agreement, as evidenced by written notice effected by an authorized representative. Any amendments to the MOU shall be in writing and executed in the same manner as the original MOU.

  
\_\_\_\_\_  
Janet Reno  
Attorney General

  
\_\_\_\_\_  
James E. Hall  
Chairman, NTSB

JAN 22 1997

JAN 28 1997



**LETTER OF INTENT  
BETWEEN  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE EXECUTIVE OFFICE  
FOR UNITED STATES ATTORNEYS, AND THE OFFICE FOR VICTIMS OF CRIME**

This letter of intent sets forth the terms of a crisis response protocol that the Federal Emergency Management Agency (FEMA), the Executive Office for United States Attorneys (EOUSA), and the Office for Victims of Crime (OVC) have agreed to implement in the event of a future catastrophic federal crime, such as the Oklahoma City bombing.

**I. PURPOSE:**

The purpose of this letter of intent is to ensure that the three agencies coordinate their activities to the greatest extent possible in responding to a catastrophic federal crime to ensure that victims are notified of the range of services available to them, as well as their statutory rights as victims of crime.

**II. BACKGROUND:**

The bombing of the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995, demonstrated the great need for multiple agency coordination in providing comprehensive, timely, and efficient services to large numbers of victims of a major criminal catastrophe. While federal victim notification of rights and services is normally accomplished by a Victim-Witness Coordinator located at the federal law enforcement or the federal prosecutor's office, in cases involving many victims, close interagency cooperation is needed to ensure that all victims receive needed services and information regarding their rights.

**III. GOALS:**

The goals of this letter of intent are:

1. To strengthen the capacity for assisting victims of catastrophic federal crimes in coping with trauma and understanding their rights;
2. To strengthen the capacity to respond to the needs of crime victims in a more coordinated manner;
3. To provide for coordination of all available resources and enhance existing referral services;
4. To ensure that victims' needs and rights to privacy and confidentiality are fully respected.

#### **IV. RESPONSIBILITIES:**

All Agencies intend to:

1. Cooperate with each other to the extent necessary to accomplish the goals;
2. Designate a point of contact to work with other agencies in coordinating services;
3. Encourage coordination among the Catastrophic Disaster Response Group, FEMA Regional Offices, U.S. Attorneys' Victim-Witness Coordinators, State Compensation and Assistance Coordinators, and local service providers;
4. Provide for victim privacy and confidentiality.

The Federal Emergency Management Agency intends to:

1. Send an information letter to each Regional Director that conveys this agreement;
2. Provide space for a Victim-Witness Coordinator to work in the Disaster Field Office, in appropriate situations, to ensure timely coordination of services so that victims have immediate access to information regarding their rights and state-funded assistance services;
3. Distribute information sheets to victims prepared by Victim-Witness Coordinators, whenever possible, to assist victims in understanding the range of available services.

EOUSA intends to:

1. Coordinate the available resources to respond to the technical assistance needs for providing the services outlined in this letter of intent;
2. Provide information in the Disaster Field Office about victim rights and available services, if deemed appropriate, to those victims who request it;
3. Provide FEMA with informational sheets regarding victim rights and available services for distribution to victims who desire them.

OVC intends to:

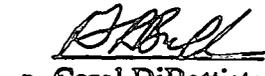
1. Coordinate planning and response issues with the Catastrophic Disaster Response Group representative, Department of Justice Security and Emergency Planning Office;

2. Provide training and technical assistance to FEMA and EOUSA representatives regarding victim rights and the services available in local communities;
3. Provide funding for requested crisis response teams that are approved to assist local communities after a major criminal disaster;
4. Assist EOUSA in providing materials to FEMA regarding victims' rights and local services available;
5. Coordinate the involvement of the Public Safety Officer's Benefit (PSOB) program and the Emergency Federal Law Enforcement (EFLEA) program of the Bureau of Justice Assistance (BJA), if deemed appropriate, when Public Safety Officers are direct victims or suffer incident stress, or the jurisdiction involved becomes eligible for EFLEA funding.

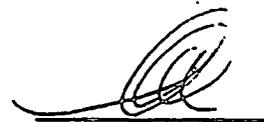
Signed this 19th day of April, 1996.



William C. Tidball  
Associate Director  
Response and Recovery  
FEMA



Carol DiBattiste  
Director  
EOUSA



Aileen Adams  
Director  
OVC



**LETTER OF INTENT BETWEEN THE OFFICE FOR VICTIMS OF CRIME,  
THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, AND  
THE AMERICAN NATIONAL RED CROSS**

This letter of intent sets forth the terms of a crisis response protocol that the Office for Victims of Crime (OVC), the Executive Office for United States Attorneys (EOUSA), and the American Red Cross have agreed to implement in the event of a future catastrophic federal crime, such as the Oklahoma City bombing.

**I. PURPOSE:**

The purpose of this letter of intent is to ensure that the three organizations coordinate their activities to the greatest extent possible in responding to a catastrophic federal crime to ensure that victims are notified of the range of services available to them, as well as their statutory rights as victims of crime.

**II. BACKGROUND:**

The bombing of the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995, demonstrated the great need for multiple agency coordination in providing comprehensive, timely, and efficient services to large numbers of victims of a major criminal catastrophe. While federal victim notification of rights and services is normally accomplished by a Victim-Witness Coordinator located at the federal law enforcement or the federal prosecutor's office, in cases involving many victims, close interagency cooperation is needed to ensure that all victims and families, as appropriate, receive needed services and information regarding their rights.

In delivering disaster services, the American Red Cross adheres to the Fundamental Principles of the International Red Cross Movement which are Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity, and Universality. Red Cross services will be provided to those in need regardless of citizenship, race, religion, age, sex, or political affiliation. Red Cross assistance to disaster victims is not dependant upon a presidential or federal or state declaration but is provided regardless of the size of the catastrophe or disaster incident.

**III. GOALS:**

The goals of this letter of intent are:

1. To increase capacity for assisting victims of catastrophic federal crimes in coping with trauma and understanding their rights;
2. To increase capacity to respond to the needs of crime victims in a more coordinated manner;
3. To provide for coordination of all available resources and enhance existing services;

4. To ensure that victims' needs and right to privacy and confidentiality are fully respected.

#### **IV. RESPONSIBILITIES:**

All agencies intend to:

1. Cooperate with each other to the extent necessary to accomplish the above goals.
2. Designate a point of contact to work with other agencies in coordinating services.
3. Encourage coordination among the Red Cross chapter's designated Liaison, Victim-Witness Coordinators, State Compensation and Assistance Coordinators, and local service providers.
4. Provide for victim privacy and confidentiality.

OVC intends to:

1. Make available training and technical assistance to the Red Cross and EOUSA regarding victim rights and services for victims in local communities.
2. Provide crisis response teams to assist local communities after major criminal disasters.
3. Assist EOUSA in providing materials to the Red Cross regarding local services and victim's rights.

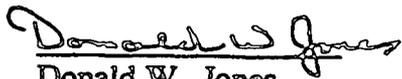
EOUSA intends to:

1. Commit the necessary personnel and resources to respond to the technical assistance needs for providing the services outlined in this letter of intent.
2. Provide a person to distribute information about victims services and rights in Red Cross service centers, if deemed appropriate and mutually agreed upon, to those victims who request it.
3. Provide the Red Cross with informational sheets to distribute regarding victim services and rights.

The Red Cross intends to:

1. Send an information letter to each state lead unit for Disaster Services that conveys this agreement, along with an information sheet describing the victim assistance and compensation resources available to victims through the Victim-Witness Coordinators in the U.S. Attorneys' Offices and through the State Compensation and Assistance programs supported by OVC federal funds.
2. Provide space, when requested and mutually deemed necessary, for a Victim-Witness Coordinator to work in Red Cross service centers to ensure timely coordination of services and ensure that victims have immediate access to information regarding their rights and state-funded assistance services.
3. Distribute to victims information sheets prepared by Victim-Witness Coordinators, whenever appropriate, to assist victims in understanding their rights and the range of available services.

Signed this 10th day of April 1996.

  
Donald W. Jones  
Vice President  
Disaster Services  
American Red Cross

  
Carol DiBattiste  
Director  
Executive Offices for  
U.S. Attorneys

  
Aileen Adams  
Director  
Office for Victims of Crime



## **OPPORTUNITIES FOR COOPERATION ON PROVIDING ASSISTANCE TO VICTIMS OF TERRORISM**

**CDR Joe Hughart, U.S. Public Health Service  
Agency for Toxic Substances and Disease Registry (ATSDR)  
Mailstop E-28  
1600 Clifton Road  
Atlanta, Georgia 30333  
telephone (404)639-0730 FAX (405) 639-0759  
E-Mail: [jxh8@cdc.gov](mailto:jxh8@cdc.gov)**

Federal agencies are currently developing plans and interagency agreements to cooperate in responding to the growing threat of domestic and international terrorism involving weapons of mass destruction. I would like to take a few minutes this morning to discuss potential opportunities for cooperation between law enforcement and public health agencies, and victims' rights organizations, in providing assistance to victims of terrorism involving weapons of mass destruction.

FBI statistics on domestic terrorism indicate that over 90% of the incidents involve the use of bombs or arson. Thus, weapons of mass destruction may include an explosive device alone, or one that may be coupled with a hazardous substance. Potential terrorist attacks involving hazardous substances include

- \* bombs attached to chemical storage and transportation assets
- \* ignition devices attached to flammable material storage tanks
- \* release of a toxic chemical or mixture of chemicals
- \* poisoning food, water, beverages, and drugs
- \* detonation of a nuclear device and/or releases of radioactive materials, and
- \* Intentional releases of infectious disease agents.

Other types of crimes involving hazardous substances where a collaborative effort may be beneficial to victims include illicit drug production, illegal disposal of hazardous wastes, and improper application of pesticides. Working together, the Agency of Toxic Substances and Disease Registry (ATSDR), U.S. Department of Justice law enforcement coordinators, and victims rights organizations could assist State and local agencies, and property owners, in evaluating health hazards posed by chemicals used to manufacture illicit drugs, in selecting cleanup methods, and in certifying that the property is safe for subsequent use. In 1990, ATSDR worked with State and local law enforcement agencies, environmental agencies, and community members to evaluate the health effects of illegal disposal of hazardous wastes in a California neighborhood where a family of five exposed to the waste chemicals in air and water all died of cancers that have been associated with exposure to the chemicals in toxicologic and epidemiologic studies. In 1997, ATSDR worked with other Federal, State and local agencies to assist victims exposed to methyl parathion applied in homes in violation of Federal pesticide application laws.

Concentrations of hazardous substances released into the environment change as the substances are carried by wind or water away from the point of release. There may be a lag period

of several seconds (in air) to several decades (in ground water) between the time of release and time of exposure. Both of these factors, time and distance, complicate the identification of victims of crimes involving hazardous substances. Working together, ATSDR, DOJ law enforcement coordinators, and State and local agencies could collaborate in collecting and evaluating information to determine who is, and who is not, a victim. Using state of the art computer systems, ATSDR can rapidly access, retrieve, store, and evaluate large amounts of environmental monitoring data, determine the extent of contamination and the number of people exposed to it using computer models and census data, and identify potential adverse health effects that may result from exposure. ATSDR can also conduct exposure investigations to collect biological samples (hair, blood, urine, etc.) from the victims to identify biological markers of exposure and effect. This information can be used to identify victims at greater risk of adverse health effects, such as children, the elderly, and persons with pre-existing diseases.

DOJ and ATSDR have mandated responsibilities in providing health and medical services to victims; DOJ has broad authority to provide funding for forensic medical examinations, while ATSDR's authority is limited to public health activities related to incidents involving hazardous substances. In the event of a terrorist attack involving a weapon of mass destruction, or one of the other crimes involving hazardous substances mentioned previously, ATSDR can provide health consultations to DOJ victim-witness program staff to assist in defining the appropriate medical examination method. ATSDR can also provide health education materials such as fact sheets to victims' rights organizations to assist in encouraging their cooperation with, and participation in, a forensic medical examination program. ATSDR's Medical Management Guidelines for Acute Chemical Exposures can assist health care providers in managing the patient from admission and discharge. The guidelines include Patient Information Sheets for several common chemicals that can be used by the health care provider and the victim to identify and plan for further health care after the emergency treatment phase.

In order to provide these services, DOJ needs a complete and accurate list of victims. This is particularly important if a chemical or radiological agent is released, because the latency period between exposure to a chemical or radionuclide and the onset of chronic diseases resulting from exposure may be years or even decades. Again, working together, a collaborative effort between DOJ's victim-witness program staff, victims' rights organizations, ATSDR, and State and local agencies could prove helpful in developing such a list. In 1990, ATSDR established the National Hazardous Substances Emergency Event Surveillance System, or HSEES. Whenever a hazardous substance is released in a State participating in the HSEES program, whether the release is an accident or intentional, information about resulting victims is collected by local public safety and health agencies, or by health care providers, and is transmitted electronically to ATSDR in Atlanta. The data is then used to determine whether further health investigations are needed, and whether the victims should be added to the ATSDR's National Exposure Registry. Information in the Registry is available to DOJ. Information may be provided to other agencies and to research organizations in accordance with the Privacy Act.

DOJ and ATSDR are authorized to provide training to State and local emergency responders on victim assistance issues. DOJ, ATSDR, and victims' rights organizations could cosponsor training for State and local law enforcement, public safety, and public health agencies on the

growing threat of terrorism involving weapons of mass destruction, and victim assistance activities under development to respond to it. ATSDR has provided human health threat analysis, mitigation, and prevention training on weapons of mass destruction to law enforcement and public safety agencies in Nevada and West Virginia at their request.

DOJ and ATSDR are authorized to provide emergency response and relief support to State and local emergency responders, and to victims of federal crimes; including crimes involving hazardous substances. ATSDR maintains a 24-hour emergency response center at telephone number (404) 639-0615, and can also be contacted through the ATSDR toll-free number at 888- 42A-tdsr or through the National Response Center for hazardous substance releases at 800-424-8802. Emergency response services include information about decontamination, cleanup, international disaster response, and responses to community health concerns and media inquiries. ATSDR and DOJ are currently working with each other, and other Federal agencies, to develop guidance on balancing the need to decontaminate victims and their property with the need to preserve evidence at crime scenes. That guidance will be released through the National Response Team for hazardous substances releases.

Finally, an intangible benefit of a cooperative effort is the opportunity to share the "heat" in the event of a major incident of terrorism involving weapons of mass destruction, or other major crime involving hazardous substances. A consortium of agencies and organizations with expertise in law enforcement, victim assistance, and public health could provide vital services to the American people in a time of great turmoil and suffering. As our clients, they deserve no less than our best efforts in providing that assistance.



## VICTIM'S OF CRIME ACT (VOCA)

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<i>42 U.S.C. 10601</i>	Sec. 1402. Crime victims fund
<i>42 U.S.C. 10602</i>	Sec. 1403. Crime victim compensation
<i>42 U.S.C. 10603</i>	Sec. 1404. Crime victim assistance
<i>42 U.S.C. 10603a</i>	Sec. 1404A. Child abuse prevention and treatment grants
<i>42 U.S.C. 10603b</i>	Sec. 1404B. Compensation and assistance to victims of terrorism or mass violence
<i>42 U.S.C. 10604</i>	Sec. 1407. Administrative provisions
<i>42 U.S.C. 10605</i>	Sec. 1411. Establishment of Office for Victims of Crime
<i>42 U.S.C. 10606</i>	Sec. 502. Victims' rights
<i>42 U.S.C. 10607</i>	Sec. 503. Services to victims
<i>42 U.S.C. 10608</i>	Sec. 235. Closed circuit televised court proceedings for victims of crime

The following version of VOCA is as reported online through Westlaw in the U.S. Code Annotated (USCA). In a few instances, the USCA version did not reflect changes to the statute which have occurred pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (PL 104-132) and the Omnibus Consolidated Appropriations Act, 1997 (PL 104-208), or reflects technical errors found in the original Act or statute. In an effort to provide a "correct" version of the statute, the following sections reflect changes made by the Office of the General Counsel, Office of Justice Programs, to the USCA version:

1402(d)(5) The Appropriations Act added the entire paragraph found at 1402(d)(5).

1402(e): The Appropriations Act amended to change the period during which grant may be spent from 2 years succeeding the years of award to "3" years succeeding the year of grant award.

- 1403(b)(6)(B) The Antiterrorism Act added, "are outside of the U.S. (If compensable crime is terrorism as defined in § 2331 of title 18 of the U.S. Code), or"
- 1403(d)(3) The Antiterrorism Act added, "crimes involving terrorism."
- 1404(a)(1) Technical error in the statute-- correct cite is 10601(d)(3)(B), not 10601(d)(2).
- 1404A Technical error in the statute-- correct cite is 10601(d)(2), not 10601(d)(2)(D).
- 1404B Technical error in the statute-- correct cite is 10601(d)(4)(B), not 10603(d)(4)(B).

## TIMS OF CRIME ACT

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U.S.C. 10601

### Sec. 1402. Crime Victims Fund

(a) Establishment. There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the "Fund").

(b) Fines deposited in Fund; penalties; forfeited appearance bonds.

Except as limited by subsection (c) of this section, there shall be deposited in the Fund--

(1) all fines that are collected from persons convicted of offenses against the United States except--

(A) fines available for use by the Secretary of the Treasury pursuant to--

(i) section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)); and

(ii) section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)); and

(B) fines to be paid into--

(i) the railroad unemployment insurance account pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.);

(ii) the Postal Service Fund pursuant to sections 2601(a)(2) and 2003 of Title 39 and for the purposes set forth in section 404(a)(8) of Title 39;

(iii) the navigable waters revolving fund pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and

(iv) county public school funds pursuant to section 3613 of Title 18;

(2) penalty assessments collected under section 3013 of Title 18;

(3) the proceeds of forfeited appearance bonds, bail bonds, and collateral collected under section 3146 of Title 18; and

(4) any money ordered to be paid into the Fund under section 3671(c)(2) of Title 18.

(c) Retention of sums in Fund; availability for expenditure without fiscal year limitation.

Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this chapter for grants under this chapter without fiscal year limitation.

(d) Availability for judicial branch administrative costs; grant program percentages. The Fund shall be available as follows:

(1) The first \$6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first \$3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of Title 18.

(2) the next \$10,000,000 deposited in the Fund shall be available for grants under section 10603a of this title.

(3) Of the remaining amount deposited in the Fund in a particular fiscal year--

(A) 48.5 percent shall be available for grants under section 10602 of this title;

(B) 48.5 percent shall be available for grants under section 10603(a) of this title; and

(C) 3 percent shall be available for grants under section 10603(c) of this title.

(4)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 10602(a)(1) of this title, the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed \$50,000,000.

(B) The emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 10603b of this title and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 10602 and 10603 of this title in years in which supplemental grants are needed.

(5) The Director may set aside up to \$500,000 of the reserve fund described in paragraph (4) to make supplemental grants to United States Attorney Offices to provide necessary assistance to victims of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, to facilitate observation of and / or participation by such victims in trial proceedings arising therefrom, including, without limitation, provision of lodging and travel assistance, and to pay such other, related expenses determined to be necessary by the Director.

(e) Amounts awarded and unspent.

Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for

which the grant is made at any time during the 3 succeeding fiscal years, at the end of which period, any remaining unobligated sums in excess of \$500,000 shall be returned to the Treasury. Any remaining unobligated sums in an amount less than \$500,000 shall be returned to the Fund.

(f) "Offenses against the United States" as excluding.

As used in this section, the term "offenses against the United States" does not include--

- (1) a criminal violation of the Uniform Code of Military Justice (10 U.S.C. 801 et seq.);
- (2) an offense against the laws of the District of Columbia; and
- (3) an offense triable by an Indian tribal court or Court of Indian Offenses.

(g) Grants for Indian tribes; child abuse cases

(1) The Attorney General, acting through the Director, shall use 15 percent of the funds available under subsection (d)(2) of this section to make grants for the purpose of assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve--

(A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

(B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

(2) As used in this subsection, the term "tribe" has the meaning given that term in section 450b(b) of Title 25.

42 U.S.C. 10602

Sec. 1403. Crime victim compensation

(a) Authority of Director; grants

(1) Except as provided in paragraph (2), the Director shall make an annual grant from the Fund to an eligible crime victim compensation program of 40 percent of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. Except as provided in paragraph (3), a grant under this section shall be used by such program only for awards of

compensation.

(2) If the sums available in the Fund for grants under this section are insufficient to provide grants of 40 percent as provided in paragraph (1), the Director shall make, from the sums available, a grant to each eligible crime victim compensation program so that all such programs receive the same percentage of the amounts awarded by such program during the preceding fiscal year other than amounts awarded for property damage.

(3) Not more than 5 percent of a grant made under this section may be used for the administration of the State crime victim compensation program receiving the grant.

**(b) Eligible crime victim compensation programs.**

A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if--

(1) such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for--

(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) funeral expenses attributable to a death resulting from a compensable crime;

(2) such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

(3) such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

(4) such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

(5) such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

(6) such program provides compensation to residents of the State who are victims of crimes occurring outside the State if--

(A) the crimes would be compensable crimes had they occurred inside that State; and

(B) the places the crimes occurred in are outside the U.S. (if compensable crime is terrorism as defined in § 2331 of title 18 of the U.S. Code), or are States not having eligible crime victim compensation programs;

(7) such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender;

(8) such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense;<sup>1</sup> and

(9) such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

(c) Exclusion from income for purposes of means tests

Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program

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<sup>1</sup>Section 234(a)(2) of Pub. L. 104-132-- "Application of Amendment," provided that: "Section 1403(b)(8) of the Victims of Crime Act of 1984, as added by paragraph (1) of this section [subsec. (b)(8) of this section], shall not be applied to deny victims compensation to any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office the United States Courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victim compensation programs that are sufficient to ensure that victim compensation is not denied to any person except as authorized by law."

using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.

(d) Definitions. As used in this section--

(1) the term "property damage" does not include damage to prosthetic devices, eyeglasses or other corrective lenses, or dental devices;

(2) the term "medical expenses" includes, to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses and other corrective lenses, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term "compensable crime" means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and includes crimes involving terrorism, driving while intoxicated, and domestic violence; and

(4) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

(e) Relationship to certain Federal programs.

Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay,--

(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

42 U.S.C. 10603

**Sec. 1404. Crime victim assistance**

(a) Grant authority of Director; chief executive of States; amount; insufficient funds

(1) Subject to the availability of money in the Fund, the Director shall make an annual grant from any portion of the Fund made available by section 10601(d)(3)(B) of this title for the purpose of grants under this subsection, or for the purpose of grants under section 10602 of this title but not used for that purpose, to the chief executive of each State for the financial support of eligible crime victim assistance programs.

(2) Such chief executive shall--

(A) certify that priority shall be given to eligible crime victim assistance programs providing assistance to victims of sexual assault, spousal abuse, or child abuse;

(B) certify that funds shall be made available for grants to programs which serve previously underserved populations of victims of violent crime. The Director, after consultation with State and local officials and representatives from private organizations, shall issue guidelines to implement this section that provide flexibility to the States in determining the populations of victims of violent crimes that may be underserved in their respective States;

(C) certify that funds awarded to eligible crime victim assistance programs will not be used to supplant State and local funds otherwise available for crime victim assistance; and

(D) provide such other information and assurances related to the purposes of this section as the Director may reasonably require.

(3) The amounts of grants under paragraph (1) shall be--

(A) the base amount to each State; and

(B) that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State's population in relation to the population of all States.

(4) If the amount available for grants under paragraph (1) is insufficient to provide the base amount to each State, the funds available shall be distributed equally among the States.

(5) As used in this subsection, the term "base amount" means--

(A) except as provided in subparagraph (B), \$500,000; and

(B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and the Republic of Palau, \$200,000, with the Republic of Palau's share governed by the Compact of Free Association between the United States and the Republic of Palau.

**(b) Eligibility of program; factors; limitation on expending of sums**

**(1) A victim assistance program is an eligible crime victim assistance program for the purposes of this section if such program--**

**(A) is operated by a public agency or a nonprofit organization, or a combination of such agencies or organizations or of both such agencies and organizations, and provides services to victims of crime;**

**(B) demonstrates--**

**(i) a record of providing effective services to victims of crime and financial support from sources other than the Fund; or**

**(ii) substantial financial support from sources other than the Fund;**

**(C) utilizes volunteers in providing such services, unless and to the extent the chief executive determines that compelling reasons exist to waive this requirement;**

**(D) promotes within the community served coordinated public and private efforts to aid crime victims; and**

**(E) assists potential recipients in seeking crime victim compensation benefits.**

**(2) Except as provided in paragraph (3), an eligible crime victim assistance program shall expend sums received under subsection (a) of this section only for providing services to victims of crime.**

**(3) Not more than 5 percent of sums received under subsection (a) of this section may be used for the administration of the State crime victim assistance program receiving such sums.**

**(c) Grants: purposes; distribution; duties of Director; reimbursement by Director**

**(1) The Director, shall make grants--**

(A) for demonstration projects and training and technical assistance services to eligible crime victim assistance programs; and

(B) for the financial support of services to victims of Federal crime by eligible crime victim assistance programs.

(2) Of the amount available for grants under this subsection--

(A) not more than 50 percent shall be used for grants under paragraph (1)(A); and

(B) not less than 50 percent shall be used for grants under paragraph (1)(B).

(3) The Director shall--

(A) be responsible for monitoring compliance with guidelines for fair treatment of crime victims and witnesses issued under section 6 of the Victim and Witness Protection Act of 1982 (Public Law 97-291);

(B) consult with the heads of Federal law enforcement agencies that have responsibilities affecting victims of Federal crimes;

(C) coordinate victim services provided by the Federal Government with victim services offered by other public agencies and nonprofit organizations; and

(D) perform such other functions related to the purposes of this title as the Director deems appropriate.

(4) The Director may reimburse other instrumentalities of the Federal Government and contract for the performance of functions authorized under this subsection.

(d) Definitions. As used in this section--

(1) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other territory or possession of the United States; and

(2) the term "services to victims of crime" includes--

(A) crises intervention services;

(B) providing, in an emergency, transportation to court, short-term child care

services, and temporary housing and security measures;

(C) assistance in participating in criminal justice proceedings; and

(D) payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are otherwise not reimbursed or paid;

(3) the term "services to victims of Federal crime" means services to victims of crime with respect to Federal crime, and includes--

(A) training of law enforcement personnel in the delivery of services to victims of Federal crime;

(B) preparation, publication, and distribution of informational materials--

(i) setting forth services offered to victims of crime; and

(ii) concerning services to victims of Federal crime for use by Federal law enforcement personnel; and

(C) salaries of personnel who provide services to victims of crime, to the extent that such personnel provide such services;

(4) the term "crises intervention services" means counseling to provide emotional support in crises arising from the occurrence of crime; and

(5) the term "chief executive" includes a person designated by a chief executive to perform the functions of the chief executive under this section.

42 U.S.C. 10603a

**Sec. 1404A Child abuse prevention and treatment grants**

Amounts made available by section 10601(d)(2)(D) and (d)(3) of this title for the purposes of this section shall be obligated and expended by the Secretary of Health and Human Services for grants under section 5103(d) of this title. Any portion of an amount which is not obligated by the Secretary by the end of the fiscal year in which funds are made available for allocation, shall be reallocated for award under section 10603(a) of this title, except that with respect to funds deposited during fiscal year 1986 and made available for obligation during fiscal year 1987, any unobligated portion of such amount shall remain available for obligation until September 30, 1988.

42 U.S.C. 10603b

**Sec. 1404B Compensation and assistance to victims of terrorism or mass violence**

(a) Victims of acts of terrorism outside the United States

The Director may make supplemental grants as provided in section 10603(a) of this title to States to provide compensation and assistance to the residents of such States who, while outside of the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(b) Victims of terrorism within the United States

The Director may make supplemental grants as provided in section 10601(d)(4)(B) of this title to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney's Offices for use in coordination with State victim compensation and assistance efforts in providing emergency relief.

42 U.S.C. 10604

Sec. 1407. Administrative provisions

(a) Authority of Director to establish rules and regulations.

The Director may establish such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Director under this chapter.

(b) Recordkeeping.

Each recipient of sums under this chapter shall keep such records as the Director shall prescribe, including records that fully disclose the amount and disposition by such recipient of such sums, the total cost of the undertaking for which such sums are used, and that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(c) Access of Director to books and records for purpose of audit and examination.

The Director shall have access, for purpose of audit and examination, to any books, documents, papers, and records of the recipient of sums under this chapter that, in the opinion of the Director, may be related to the expenditure of funds received under this chapter.

(d) Revealing research or statistical information; prohibition; immunity from legal proceedings; permission; admission of information as evidence.

Except as otherwise provided by Federal law, no officer or employee of the Federal Government, and no recipient of sums under this chapter, shall use or reveal any

research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this chapter. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding.

**(e) Discrimination prohibited.**

No person shall on the ground of race, color, religion, national origin, handicap, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this chapter.

**(f) Failure to comply with provisions; notice and hearing; power of Director.**

If, after reasonable notice and opportunity for a hearing on the record, the Director finds that a State has failed to comply substantially with any provision of this chapter or a rule, regulation, guideline, or procedure issued under this chapter, or an application submitted in accordance with this chapter or the provisions of any other applicable law, the Director shall--

(1) terminate payments to such State;

(2) suspend payments to such State until the Director is satisfied that such noncompliance has ended; or

(3) take such other action as the Director deems appropriate.

**(g) Report**

The Director shall, on December 31, 1990, and on June 30 every two years thereafter, report to the President and to the Congress on the revenue derived from each source described in section 10601 of this title and on the effectiveness of the activities supported under this chapter. The Director may include in such report recommendations for legislation to improve this chapter.

**(h) Maintenance of effort**

Each entity receiving sums made available under this chapter for administrative purposes shall certify that such sums will not be used to supplant State or local funds, but will be used to increase the amount of such funds that would, in the absence of Federal funds, be made available for these purposes.

(a) Office established within Department of Justice.

There is established within the Department of Justice an Office for Victims of Crime (hereinafter in this chapter referred to as the "Office").

(b) Appointment of Director; authority; restrictions.

The Office shall be headed by a Director (referred to in this chapter as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General for the Office of Justice Programs and shall have final authority for all grants, cooperative agreements, and contracts awarded by the Office. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under this chapter.

(c) Duties of Director. The Director shall have the following duties:

(1) Administering funds made available by section 10601 of this title.

(2) Providing funds to eligible States pursuant to sections 10602 and 10603 of this title.

(3) Establishing programs in accordance with section 10603(c) of this title on terms and conditions determined by the Director to be consistent with that subsection.

(4) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in activities related to crime victims.

(5) Such other functions as the Attorney General may delegate.

42 U.S.C. 10606

Sec. 502. Victims' rights

(a) Best efforts to accord rights.

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 in subsection (b) of this section.

(b) Rights of crime victims.

A crime victim has the following rights:

- (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 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.

(c) No cause of action or defense.

This section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b) of this section.

42 U.S.C. 10607

**Sec. 503. Services to victims**

(a) Designation of responsible officials

The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) of this section at each stage of a criminal case.

(b) Identification of victims

At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall--

- (1) identify the victim or victims of a crime;
- (2) inform the victims of their right to receive, on request, the services described in subsection (c) of this section; and
- (3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c) of this section.

(c) Description of services

(1) A responsible official shall--

(A) inform a victim of the place where the victim may receive emergency medical and social services;

(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained;

(C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

(D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of--

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) the arrest of a suspected offender;

(C) the filing of charges against a suspected offender;

(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 10606(b)(4) of this title, is entitled to attend;

(E) the release or detention status of an offender or suspected offender;

(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and

(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of—

(A) the scheduling of a parole hearing for the offender;

(B) the escape, work release, furlough, or any other form of release from custody of the offender; and

(C) the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense.

This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c) of this section.

(e) Definitions.

For the purposes of this section--

(1) the term "responsible official" means a person designated pursuant to subsection (a) of this section to perform the functions of a responsible official under that section; and

(2) the term "victim" means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including--

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) 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):

(i) a spouse;

(ii) a legal guardian;

(iii) a parent;

(iv) a child;

(v) a sibling;

(vi) another family member; or

(vii) another person designated by the court.

4. S.C. 10608

Sec. 235. Closed circuit televised court proceedings for victims of crime

(a) In general

Notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crime to watch criminal trial proceedings in cases where the venue of the trial is changed--

(1) out of the State in which the case was initially brought; and

(2) more than 350 miles from the location in which those proceedings originally would have taken place;

the trial court shall order closed circuit televising of the proceedings to that location, for viewing by such persons the court determines have a compelling interest in doing so and are otherwise unable to do so by reason of the inconvenience and expense caused by the change of venue.

(b) Limited access

(1) Generally

No other person, other than official court and security personnel, or other persons specifically designated by the court, shall be permitted to view the closed circuit televising of the proceedings.

(2) Exception

The court shall not designate a person under paragraph (1) if the presiding judge at the trial determines that testimony by that person would be materially affected if that person heard other testimony at the trial.

(c) Restrictions

(1) The signal transmitted pursuant to subsection (a) of this section shall be under the control of the court at all times and shall only be transmitted subject to the terms and conditions imposed by the court.

(2) No public broadcast or dissemination shall be made of the signal transmitted pursuant to subsection (a) of this section. In the event any tapes are produced in carrying out subsection (a) of this section, such tapes shall be the property of the court and kept under seal.

(3) Any violations of this subsection, or any rule or order made pursuant to this section, shall be punishable as contempt of court as described in section 402 of Title 18.

(d) Donations. The Administrative Office of the United States Courts may accept donations to enable the courts to carry out subsection (a) of this section.

(e) Construction

(1) Nothing in this section shall be construed--

(i) to create in favor of any person a cause of action against the United States or any officer or employees thereof, or

(ii) to provide any person with a defense in any action in which application of this section is made.

(f) Definition.

As used in this section, the term "State" means any State, the District of Columbia, or any possession or territory of the United States.

(g) Rules.

The Judicial Conference of the United States, pursuant to its rule making authority under section 331 of Title 28, may promulgate and issue rules, or amend existing rules, to effectuate the policy addressed by this section. Upon the implementation of such rules, this section shall cease to be effective.

(h) Effective date.

This section shall only apply to cases filed after January 1, 1995.



**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**WORKSHOP RESOURCE MATERIALS**

***TRACK ONE: CHILD VICTIMS***

THE FOLLOWING RESOURCE MATERIALS HAVE BEEN  
SUBMITTED BY THE PRESENTERS CONDUCTING  
WORKSHOPS IN THIS PARTICULAR TRACK.

ADDITIONAL MATERIALS MAY BE DISTRIBUTED AT THE  
WORKSHOPS THEMSELVES.



**Testimony of Attorney General Janet Reno  
Senate Foreign Relations Committee**

**October 1, 1998**

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM PLEASED TO APPEAR BEFORE THE COMMITTEE TODAY TO ADDRESS THE IMPORTANT TOPIC OF INTERNATIONAL PARENTAL KIDNAPPING. MR. CHAIRMAN, I WANT YOU TO KNOW HOW MUCH I APPRECIATE YOUR FOCUS ON THIS ISSUE FOR IT IS SO IMPORTANT THAT WE DO EVERYTHING WE REASONABLY CAN TO PROTECT OUR CHILDREN.

I WOULD ALSO LIKE TO THANK YOU, MR. CHAIRMAN, AND THE MEMBERS OF THE COMMITTEE FOR GOING FORWARD ON THE RECENT HEARING REGARDING THE MANY IMPORTANT LAW ENFORCEMENT TREATIES PENDING BEFORE YOU. WE BELIEVE THAT THESE TREATIES WILL SERVE CRITICAL UNITED STATES LAW ENFORCEMENT INTERESTS THROUGH THE EXTRADITION AND MUTUAL LEGAL ASSISTANCE MECHANISMS THEY ESTABLISH. MANY OF THOSE TREATIES CAN ALSO SERVE US IN THE TOPIC BEFORE YOU TODAY, THE INTERNATIONAL ABDUCTION OF A CHILD BY HIS OR HER PARENT.

I UNDERSTAND THE STATE DEPARTMENT HAS TRANSMITTED THE ANSWERS TO YOUR FOLLOW-UP QUESTIONS, AND WE HOPE THAT THE SENATE WILL RATIFY THESE TREATIES AS SOON AS POSSIBLE.

SOME OF THE MOST DIFFICULT AND CRITICAL CASES OUR LEGAL SYSTEM FACES ARE THOSE INVOLVING THE CUSTODY AND WELFARE OF A CHILD. WHEN A PARENT TAKES THE DRASTIC MEASURE OF REMOVING A CHILD AWAY FROM THE OTHER PARENT, THE CASES BECOME MORE COMPLEX AND HEARTBREAKING.

ADDRESSING THESE MATTERS IN THE INTERNATIONAL ARENA IS USUALLY AN EVEN MORE DIFFICULT TASK BECAUSE WE HAVE FACTORS TO CONSIDER WHICH WE MAY NOT BE ABLE TO CONTROL, DUE TO THE SOVEREIGNTY OF FOREIGN STATES. IN A DOMESTIC ABDUCTION OF A CHILD BY HIS OR HER PARENT, CIVIL ORDERS REGARDING CUSTODY ARE NOW BY LAW GRANTED FULL FAITH AND CREDIT FROM STATE TO STATE. MOREOVER, STATE AND FEDERAL CRIMINAL WARRANTS REACH ACROSS OUR INTERSTATE BOUNDARIES.

IN THE INTERNATIONAL ARENA, CUSTODY ORDERS ENTERED BY STATE COURTS IN THE UNITED STATES ARE NOT ENFORCEABLE OUTSIDE OF THE UNITED STATES. FURTHERMORE, STATE OR FEDERAL CRIMINAL WARRANTS REACH ONLY AS FAR AS OUR EXTRADITION TREATIES TAKE US AND AS FAR AS THE DOMESTIC LAW OF OUR EXTRADITION TREATY PARTNER PERMITS. IN BOTH CIVIL AND CRIMINAL PROCESS IN THESE INTERNATIONAL ABDUCTIONS, AS IN MANY MATTERS THAT EXCEED OUR BORDERS, THE REACH OF THE UNITED STATES IS ULTIMATELY LIMITED BY DECISIONS OF SEPARATE SOVEREIGN STATES AND THEIR INDEPENDENT JUDICIARIES.

ALTHOUGH THE DEPARTMENT OF JUSTICE DOES NOT PLAY A DIRECT ROLE IN THE CIVIL MECHANISMS FOR THE RECOVERY OF CHILDREN INTERNATIONALLY, WE ARE DEEPLY CONCERNED ABOUT THIS PROBLEM AND HOW WE CAN BEST SUPPORT THE DEPARTMENT OF STATE, WHICH HAS THE LEAD IN RECOVERING ABDUCTED CHILDREN. THUS I WANT TO SAY A FEW WORDS ABOUT THE CIVIL MECHANISMS FOR CHILD RECOVERY, BEFORE MOVING TO THE JUSTICE DEPARTMENT'S ENFORCEMENT AND PROGRAMMATIC ROLE IN INTERNATIONAL ABDUCTION CASES.

## II. CIVIL RECOVERY

THE UNITED STATES HAS LONG BEEN A LEADER IN CREATING MECHANISMS FOR THE RETRIEVAL OF CHILDREN

ABDUCTED INTERNATIONALLY. THE UNITED STATES AND CANADA WERE INSTRUMENTAL IN THE NEGOTIATION OF THE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, DONE AT THE HAGUE, OCTOBER 25, 1980 ("HAGUE CONVENTION".) THIS "HAGUE CONVENTION" PROVIDES FOR THE RETURN OF A CHILD ABDUCTED INTERNATIONALLY BY HIS OR HER PARENT, PURSUANT TO AN APPLICATION BY THE LEFT-BEHIND PARENT AND A SUBSEQUENT CIVIL LAWSUIT FILED IN THE COUNTRY WHERE THE CHILD IS LOCATED.

ACCORDING TO THE CONVENTION, A "HAGUE PROCEEDING" DOES NOT DECIDE CUSTODY; INSTEAD, IT SHOULD, IN MOST CASES, RESULT IN AN ORDER FOR THE "RETURN" OF THE CHILD SO THAT THE PARENTS MAY PURSUE THE RESOLUTION OF CUSTODY AND THE BEST INTERESTS OF THE CHILD IN A CIVIL COURT LOCATED WHERE THE CHILD RESIDED PRIOR TO THE ABDUCTION. IN THE FIRST TEN YEARS OF ITS OPERATION, PROCEEDINGS UNDER THE HAGUE CONVENTION HAVE RESULTED IN THE RETURN OF OVER 2000 CHILDREN TO THE UNITED STATES. TODAY, 50 COUNTRIES ARE PARTY TO THE CONVENTION.

THE DEPARTMENT OF STATE'S OFFICE OF CHILDREN'S ISSUES IS THE UNITED STATES' CENTRAL AUTHORITY FOR THE ADMINISTRATION OF THE HAGUE CONVENTION. THE DEPARTMENT OF JUSTICE SUPPORTS THIS OFFICE IN ITS ROLE AS THE CENTRAL AUTHORITY, AND COORDINATES WITH IT WHEN A CASE HAS BOTH CIVIL AND CRIMINAL ASPECTS. FURTHER, THE DEPARTMENT OF JUSTICE SUBSTANTIALLY FUNDS THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN ("NCMEC" OR "THE NATIONAL CENTER"). THE NATIONAL CENTER, UNDER A COOPERATIVE AGREEMENT WITH THE DEPARTMENT OF STATE, PERFORMS CERTAIN FUNCTIONS REGARDING CASES OF CHILDREN "ABDUCTED TO" THE UNITED STATES.

WHILE THE HAGUE CONVENTION HAS FACILITATED THE RETURN OF MANY CHILDREN TO THE UNITED STATES, AND WHILE IT IS A VAST IMPROVEMENT OVER THE LACK OF ANY INTERNATIONAL INSTRUMENT WHATSOEVER, IT DOES NOT GUARANTEE A SATISFACTORY RESULT IN EVERY CASE FOR EVERY PARENT. IMPLEMENTATION OF THE CONVENTION VARIES AMONG FOREIGN JURISDICTIONS. EVEN IN CASES IN WHICH A LEFT-BEHIND PARENT HAS TIMELY FILED AN APPLICATION, HIRED LEGAL COUNSEL, AND LITERALLY DONE EVERYTHING "RIGHT," THAT PARENT, AND THE UNITED STATES, MAY BE BITTERLY DISAPPOINTED WITH THE RESULT IN A PARTICULAR CASE.

AS A PROSECUTOR, I HAVE HAD THE EXPERIENCE OF A JUDGE OR JURY RETURNING A DECISION WITH WHICH I DID NOT AGREE, WHICH I BELIEVED WAS THE WRONG DECISION. IN THESE HAGUE CASES, AS WELL, THERE MAY BE SOME DECISIONS WHICH WE THINK ARE WRONG. ULTIMATELY THESE DECISIONS, BOTH IN THE UNITED STATES AND ABROAD, ARE MADE BY INDEPENDENT JUDICIARIES IN INDEPENDENT SOVEREIGN STATES.

THAT REALITY, HOWEVER, OFFERS LITTLE COMFORT TO THE LEFT-BEHIND PARENTS WHO HAVE SUFFERED THE FRUSTRATION AND ANGUISH OF LOSING CONTACT WITH A BELOVED CHILD--EITHER IN SITUATIONS IN WHICH THE WHEREABOUTS OF THE CHILD ARE UNKNOWN, OR IN SITUATIONS IN WHICH THE WHEREABOUTS ARE KNOWN, BUT ACCESS IS LIMITED OR DENIED ENTIRELY. MY HEART GOES OUT TO THOSE PARENTS.

THE DEPARTMENT OF JUSTICE WILL CONTINUE TO WORK WITH THE DEPARTMENT OF STATE IN ANY WAY IT CAN TO SUPPORT EFFORTS UNDER THE HAGUE CONVENTION. FURTHER, IN COUNTRIES THAT ARE NOT PARTY TO THE HAGUE CONVENTION, OUR RESOURCES ARE, THERE TOO, COMMITTED TO ASSIST THESE CHILDREN AND THE LEFT-BEHIND UNITED STATES PARENTS.

III.

JUSTICE EFFORTS; CRIMINAL PROCESSES AND EXTRADITION; JUSTICE PROGRAMS

I WOULD NOW LIKE TO BRIEFLY OUTLINE THE JUSTICE DEPARTMENT'S ROLE IN THESE DIFFICULT CASES.

THE TERMS "PARENTAL KIDNAPING" AND "PARENTAL ABDUCTION" HAVE COME TO ENCOMPASS A VARIETY OF SCENARIOS INVOLVING SEPARATION BETWEEN A CHILD AND A LEFT-BEHIND PARENT OR OTHER PERSON WITH CUSTODIAL INTERESTS. THE FACT PATTERNS RANGE FROM A "WRONGFUL RETENTION" OR "OVERSTAY" OF LAWFUL VISITATION OR CUSTODY, TO AN IMPULSIVE TAKING, TO A KIDNAPING INVOLVING PREMEDITATED FRAUD OR VIOLENCE. OFTEN, PARTICULARLY IN WRONGFUL RETENTIONS OR OVERSTAYS, THE WHEREABOUTS OF THE PARENT AND CHILD ARE KNOWN; OTHER CASES INVOLVE LAYERS OF FALSE IDENTIFICATION, FALSE PASSPORTS AND A HELPFUL "UNDERGROUND."

IN ADDRESSING THESE CASES OF PARENTAL ABDUCTION, TWO MECHANISMS CAN BE CALLED UPON FOR TWO SEPARATE BUT RELATED ENDS: FIRST, THE HAGUE CONVENTION OR OTHER CIVIL MEANS FOR RECOVERY OF THE CHILD; AND, SECOND, CRIMINAL STATUTES FOR PROSECUTION OF THE OFFENDER.

THE DEPARTMENT OF JUSTICE CAN HAVE A MORE DIRECT ROLE ON THE CRIMINAL SIDE. WE ARE THE AGENCY CHARGED WITH THE INVESTIGATION AND PROSECUTION OF CRIMES UNDER THE INTERNATIONAL PARENTAL KIDNAPING CRIME ACT OF 1993 (IPKCA); WE ARE INVOLVED IN THE LOCATION AND APPREHENSION OF ABDUCTING PARENTS CHARGED WITH STATE OR LOCAL OFFENSES WHO ARE ALSO SUBJECT OF A FEDERAL WARRANT FOR UNLAWFUL FLIGHT TO AVOID PROSECUTION; AND, WITH THE DEPARTMENT OF STATE, WE ARE RESPONSIBLE FOR SECURING THE EXTRADITION OF OFFENDERS CHARGED UNDER EITHER STATE OR FEDERAL LAW.

MOST PARENTAL KIDNAPING OR INTERFERENCE WITH CUSTODY CASES ARE CHARGED UNDER STATE LAW. BY COMPARISON, THE NUMBER OF FEDERAL PROSECUTIONS INVOLVING THESE OFFENSES IS MUCH SMALLER. AT THIS TIME, OUR UNITED STATES ATTORNEYS' OFFICES HAVE 26 OPEN CASES INVOLVING PARENTAL KIDNAPING AND 66 MATTERS PENDING INVESTIGATION. THE FBI REPORTS HAVING OPENED 260 CASES UNDER THE FEDERAL INTERNATIONAL PARENTAL KIDNAPING CRIME ACT (IPKCA) SINCE ITS ENACTMENT IN 1993. IN ADDITION, FROM 1994 TO 1998, THE FBI OPENED OVER 800 CASES TO ASSIST IN LOCATING ABDUCTORS CHARGED UNDER STATE AND LOCAL STATUTES.

I WANT TO MAKE CLEAR THAT THE CRIMINAL PROSECUTION AND APPREHENSION OF ANY ABDUCTOR DOES NOT NECESSARILY RESULT IN THE RECOVERY OF THE CHILD. INDEED, THE CONGRESS, WHEN IT ENACTED THE FEDERAL PARENTAL KIDNAPING STATUTE, NOTED THAT THE HAGUE CONVENTION OUGHT TO REMAIN THE PREFERRED MEANS FOR CHILD RECOVERY.

TWO RECENT FEDERAL CASES ILLUSTRATE THIS POINT. IN BOTH THE AL-AHMAD PROSECUTION IN THE DISTRICT OF COLORADO AND THE AMER PROSECUTION IN THE EASTERN DISTRICT OF NEW YORK, FEDERAL PROSECUTORS APPREHENDED AND OBTAINED CONVICTIONS AGAINST THE ABDUCTING PARENT. HOWEVER, IN BOTH CASES, THE

CHILDREN REMAIN IN THE MIDDLE EAST WITH EXTENDED FAMILY WHILE THE ABDUCTOR SERVES THE SENTENCE IMPOSED. AGAIN, IN BOTH THESE CASES, THE DEPARTMENT OF STATE ENDEAVORS TO ASCERTAIN THE WELFARE AND WHEREABOUTS OF THE CHILDREN AND TO ASSIST THOSE LEFT BEHIND.

PROBLEMS WITH EXTRADITION MAY BE ANOTHER REASON THAT CRIMINAL CASES ARE NOT PURSUED. EXTRADITION IS NOT AN OPTION IN ALL PARENTAL KIDNAPING CASES. MANY OLDER "LIST" STYLE EXTRADITION TREATIES--TREATIES FROM AN ERA WHEN ABDUCTION OF A CHILD BY HIS OR HER PARENT WAS NOT RECOGNIZED AS A CRIME--ARE NOT INTERPRETED TO ENCOMPASS THIS OFFENSE. FURTHER, SOME COUNTRIES WILL NOT EXTRADITE THEIR NATIONALS. FINALLY, SOME COUNTRIES DO NOT RECOGNIZE SUCH AN ABDUCTION AS A CRIME AT ALL.

WITH THE HELP OF THIS COMMITTEE, WE CAN MAKE PROGRESS IN ADDRESSING THESE PROBLEMS. THE EXTRADITION TREATIES PENDING BEFORE THE COMMITTEE WILL ALLOW FOR EXTRADITION FOR PARENTAL KIDNAPING WHENEVER BOTH COUNTRIES RECOGNIZE THE OFFENSE AS A CRIME. THIS COMMITTEE ALSO TOOK THE LEAD IN CRAFTING LEGISLATION--S.1266--TO ADDRESS THE PROBLEM OF THE LIMITED INTERPRETATION OF TERMS UNDER OUR OLDER "LIST" TREATIES. WE APPRECIATE YOUR CONTINUED SUPPORT IN ENSURING THAT OUR EXTRADITION TREATIES WILL ENCOMPASS THE OFFENSE OF PARENTAL KIDNAPING TO THE FULLEST EXTENT POSSIBLE.

IN ADDITION TO ENFORCEMENT EFFORTS, THE DEPARTMENT OF JUSTICE SUPPORTS THE RECOVERY OF CHILDREN INTERNATIONALLY ON A PROGRAMMATIC BASIS. OUR OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, KNOWN AS OJJDP, SERVES A LARGER AGENDA INVOLVING THE WELFARE OF MISSING AND EXPLOITED CHILDREN, INCLUDING FUNDING MANY ACTIVITIES OF THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN. OJJDP FUNDS TRAINING OF LAW ENFORCEMENT, PROSECUTORS, AND JUDGES ON DOMESTIC MISSING CHILDREN CASES, RESEARCH PROJECTS, AND THE DISTRIBUTION OF INFORMATION REGARDING THE PREVENTION OF AND RESPONSE TO PARENTAL ABDUCTIONS.

IN ADDITION, OJJDP AND THE OFFICE FOR VICTIMS OF CRIME HAVE ESTABLISHED A FUND TO ASSIST PARENTS WITH TRAVEL COSTS WHEN THEY RECOVER THEIR CHILDREN. THESE FUNDS, ARE ADMINISTERED BY OJJDP IN COORDINATION WITH THE NATIONAL CENTER AND THE OFFICE OF CHILDREN'S ISSUES. BEGINNING THIS YEAR, A REPRESENTATIVE OF THE OFFICE OF VICTIMS OF CRIME WILL BE PHYSICALLY LOCATED AT THE DEPARTMENT OF STATE, TO ASSIST THAT DEPARTMENT WITH UNITED STATES CITIZENS WHO ARE VICTIMS OF CRIME OVERSEAS, INCLUDING THESE CHILDREN.

#### IV. INTERAGENCY EFFORTS

MR. CHAIRMAN, WE HAVE BEEN WORKING HARD TO ADDRESS CONCERNS IN THIS AREA. IN JUNE 1997, OJJDP IN CONJUNCTION WITH THE NATIONAL CENTER HELD A PARENTS FOCUS GROUP TO IDENTIFY ISSUES AND NEEDS IN THIS AREA. WE OBTAINED INPUT AND RECOMMENDATIONS FROM STATE AND LOCAL LAW ENFORCEMENT AGENCIES TO IMPROVE THE HANDLING AND RESPONSE TO INTERNATIONAL ABDUCTION CASES THROUGH A NUMBER OF RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE EFFORTS.

IN JANUARY 1998, WE ALSO CREATED AN INTERAGENCY COMMITTEE TO SPECIFICALLY FOCUS ON INTERNATIONAL PARENTAL KIDNAPING AND HOW WE CAN BETTER RESPOND TO THE VICTIMS IN THESE CASES, BOTH THE LEFT-BEHIND

PARENT AND THE ABDUCTED CHILD. THE COMMITTEE HAS RECEIVED INPUT FROM FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES IN ORDER TO MAKE RECOMMENDATIONS TO IMPROVE THE SERVICES AND SYSTEM RESPONSE TO PARENTS. AS PART OF THIS EFFORT COMMITTEE MEMBERS HAVE PARTICIPATED IN PARENT FOCUS GROUPS, ATTENDED WORKING GROUP MEETINGS, AND LISTENED DIRECTLY TO THE QUESTIONS AND NEEDS OF LEFT-BEHIND PARENTS. THE WORK OF THIS INTERAGENCY COMMITTEE IS ONGOING AND IS ADDRESSING THE FULL RANGE OF ISSUES, FROM EFFORTS TO EDUCATE LAWYERS, PROSECUTORS, LAW ENFORCEMENT AND JUDGES ON THE HAGUE CONVENTION AND INTERNATIONAL CHILD ABDUCTION CASES, THROUGH DÉTECTION AND RECOVERY, TO PROSECUTION AND PUNISHMENT. THE INTERCHANGE TO DATE HAS HELPED IN COORDINATION OF THE MANY AGENCIES--LOCAL, STATE, AND FEDERAL--WHICH MAY NEED TO BE INVOLVED IN ANY GIVEN CASE. A REPORT ON THE COMMITTEE'S ACTIVITIES AND RECOMMENDATIONS TO IMPROVE SERVICES AND RESPONSE TO PARENTS AFFECTED BY INTERNATIONAL ABDUCTIONS IS EXPECTED AFTER THE FIRST OF NEXT YEAR.

I STRONGLY BELIEVE THAT ASSISTANCE AND GUIDANCE WOULD BE OF GREAT BENEFIT BOTH TO LAW ENFORCEMENT PERSONNEL WHO MUST QUICKLY RESPOND THESE CASES AS WELL AS TO LEFT-BEHIND PARENTS IN INTERNATIONAL ABDUCTION CASES.

THEREFORE, I WILL BE ASKING THROUGH THE INTERAGENCY COMMITTEE THAT OJJDP, THE DEPARTMENT OF STATE, AND OTHER ENTITIES, REVIEW THE VALUABLE INTERNATIONAL PARENTAL CHILD ABDUCTION GUIDE RECENTLY RE-ISSUED BY THE DEPARTMENT OF STATE. THE GOAL OF THIS REVIEW IS TO ENSURE THAT IN ITS NEXT PUBLICATION IT IS MORE USER FRIENDLY AND INCLUDES INFORMATION PROVIDED BY THE PARENTS THEMSELVES. I WILL ALSO ASK THE COMMITTEE TO EXPLORE WAYS TO INCREASE THE CIRCULATION OF THIS GUIDE. I HAVE LEARNED HOW VALUABLE THIS TYPE OF INFORMATION CAN BE TO DESPERATE PARENTS. OJJDP'S FAMILY SURVIVAL GUIDE FOR PARENTS OF MISSING CHILDREN, BECAUSE OF ITS CONTENT, HAS BEEN ONE OF THE MOST POPULAR DOCUMENTS EVER PRODUCED BY THE DEPARTMENT OF JUSTICE. THE INTERNATIONAL PARENTAL CHILD ABDUCTION GUIDE, JOINTLY PRODUCED BY THE JUSTICE AND STATE DEPARTMENTS, IN CONJUNCTION WITH PARENTS, FEDERAL, STATE AND LOCAL LAW ENFORCEMENT AGENCIES, AND OTHER ORGANIZATIONS CONCERNED WITH MISSING CHILDREN, CAN BE A VITAL RESOURCE FOR A PARENT WHOSE CHILD HAS BEEN REMOVED FROM THE UNITED STATES.

V.

#### AREAS FOR RENEWED EFFORTS

WHILE I HAVE ALREADY DESCRIBED EFFORTS THAT ARE ONGOING IN THIS AREA, THE JUSTICE AND STATE DEPARTMENTS ARE, COLLECTIVELY, TAKING A HARD LOOK AT WHAT MORE WE CAN DO. I HAVE DISCUSSED THIS WITH SECRETARY ALBRIGHT.

AMONG THE MANY ISSUES WE ARE ADDRESSING IS THE FUNCTIONING OF THE HAGUE CONVENTION. WHILE ALL AGREE THAT THIS TREATY IS A VALUABLE TOOL FOR THE RECOVERY OF CHILDREN, WE ARE COMMITTED TO MAKING SURE IT WORKS EVEN MORE EFFECTIVELY. THIS TASK RESTS PRIMARILY WITH THE DEPARTMENT OF STATE. HOWEVER, THE JUSTICE DEPARTMENT CAN ASSIST IN THE EDUCATION AND TRAINING OF LAW ENFORCEMENT AGENTS, PROSECUTORS, PRACTITIONERS AND JUDGES, ALL OF WHOM MUST BECOME MORE FAMILIAR WITH THE HAGUE CONVENTION. THE OFFICE OF JUSTICE PROGRAMS AND OJJDP ARE EXAMINING HOW WE COULD EXPAND

## OUTREACH AND EDUCATION PROGRAMS TO TRAIN LAW ENFORCEMENT, PROSECUTORS, JUDGES, AND SOCIAL SERVICES ON INTERNATIONAL PARENTAL KIDNAPING.

TOGETHER WITH THE DEPARTMENT OF STATE, WE ARE REVIEWING HOW BEST TO FOCUS OUR EFFORTS ABROAD. OVER HALF OF ALL FAMILY ABDUCTIONS ARE TO COUNTRIES NOT PARTY TO THE HAGUE CONVENTION. WE NEED TO CONSIDER WHETHER THERE ARE OTHER COUNTRIES WE SHOULD ENCOURAGE TO JOIN THE CONVENTION. UNITED STATES LAW ENFORCEMENT OFFICIALS LOCATED OVERSEAS, PARTICULARLY OUR FBI LEGAL ATTACHES, CAN HELP TO EMPHASIZE TO THEIR FOREIGN COLLEAGUES THE SERIOUSNESS WITH WHICH THE UNITED STATES TAKES THESE CASES, AND THE NEED FOR EFFECTIVE RESPONSES IN LOCATING THE CHILDREN AND THE ABDUCTING PARENTS.

ANOTHER AREA FOR ATTENTION IS PREVENTION. EFFORTS MADE IN THE STATE AND LOCAL JURISDICTIONS AS TO THE TYPE OF ORDERS ENTERED REGARDING CUSTODY, THE DISSEMINATION OF INFORMATION REGARDING LEGAL AND PRACTICAL STEPS TO HELP PREVENT ABDUCTIONS, AS WELL AS ADDITIONAL MEASURES, SUCH AS SURRENDER TO THE FAMILY COURT OF BOTH U.S. AND FOREIGN TRAVEL DOCUMENTS FOR THE CHILDREN, WILL WELL SERVE AS A DETERRENT TO THESE ABDUCTIONS.

ALSO, WE NEED TO MANAGE THESE CASES MORE EFFECTIVELY ON AN INTERAGENCY BASIS AND EXPLORE WAYS TO IMPROVE OUR SYSTEMS FOR KEEPING COMPLETE AND ACCURATE STATISTICS. STATE DEPARTMENT PERSONNEL, FEDERAL AND STATE PROSECUTORS AND INVESTIGATORS, AND CHILD WELFARE AGENCIES NEED TO WORK TOGETHER AND BE BETTER INFORMED, SO WE MAKE TIMELY AND EFFECTIVE DECISIONS ABOUT THE CIVIL AND CRIMINAL REMEDIES IN THESE CASES, AND IN ORDER TO BETTER RESPOND TO THE LEFT-BEHIND PARENT.

MOREOVER, COORDINATION AT A WORKING LEVEL MUST BE SUPPORTED BY COORDINATION AT A POLICY LEVEL. SECRETARY ALBRIGHT AND I HAVE ASKED OUR SENIOR POLICY STAFF TO REVIEW SEVERAL POLICY ISSUES REGARDING INTERNATIONAL CHILD ABDUCTION. ONE ISSUE WE WANT TO REVIEW --TOGETHER WITH O.M.B. IF APPROPRIATE --IS THE LEVEL OF RESOURCES WE CAN AND SHOULD BE DEVOTING TO THESE CASES. WE ALSO NEED TO EXPLORE MAKING BETTER USE OF DIPLOMATIC INITIATIVES AND HOW WE AT JUSTICE CAN SUPPORT STATE IN THESE EFFORTS. WE ALSO NEED TO REVIEW, AT A SENIOR LEVEL, THE ROLE OF THE NATIONAL CENTER AND, IN PARTICULAR, CURRENT SUGGESTIONS TO EXPAND ITS ROLE IN PREVENTION, CASE MANAGEMENT, CASE PROCESSING, AND SUPPORT TO LEFT-BEHIND PARENTS.

## VI. CONCLUSION

THESE CASES PRESENT DIFFICULT CHALLENGES. THE JUSTICE DEPARTMENT IS COMMITTED TO CONTINUE AND TO IMPROVE ITS PARTNERSHIP WITH THE DEPARTMENT OF STATE, AND WITH STATE AND LOCAL AUTHORITIES, TO INSURE THAT EVERY CASE IS ADDRESSED EFFECTIVELY. WHILE THERE CAN BE NO GUARANTEES WE WILL HAVE THE DESIRED RESULT IN EVERY CASE, WE MUST ASSURE THAT WE HAVE DONE OUR BEST TO RECOVER CHILDREN WRONGFULLY SEPARATED FROM THEIR PARENTS, AND TO ENFORCE THE LAWS AND LAWFUL ORDERS OF OUR COURTS.

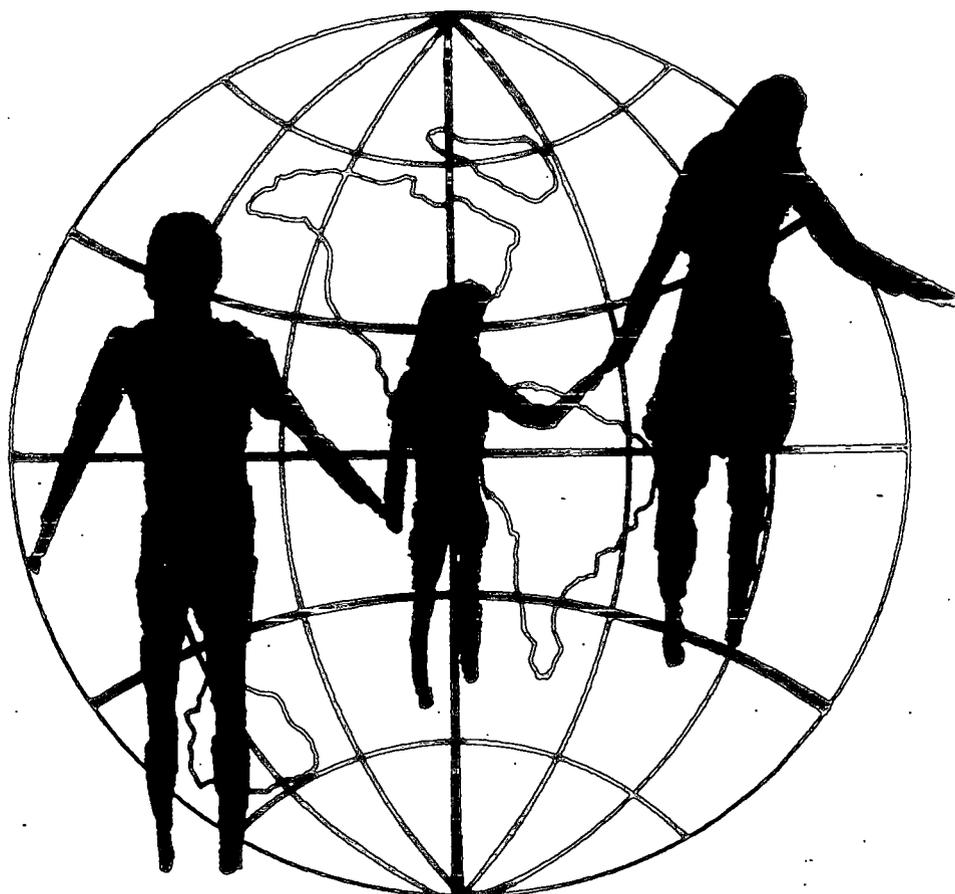
AGAIN, I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE CONCERNING THIS MOST IMPORTANT TOPIC.



United States Department of State  
*Bureau of Consular Affairs*



# International Parental Child Abduction



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## ABDUCTION — CHECKLIST FOR PARENTS

Your situation is difficult, but there are things that you can do. This list assumes that you know, or strongly suspect, that your child has been abducted abroad to a country that is *not* a party to the Hague Convention on International Child Abduction (see page 9). If the country is a party to the Hague Convention, read this booklet to determine if your situation meets the requirements of the Convention. If you have a Hague case, please submit the Application for Assistance Under The Hague Convention on Child Abduction at the end of this booklet.

If you do not have a Hague case, then please complete this checklist/report in detail and forward a copy to the Office of Children's Issues when you report the abduction of your child. It is critically important that you also continue to update our office on the status of any developments in your case. You should send us updated copies of this checklist when developments occur.

Name of child: \_\_\_\_\_  
LAST FIRST MIDDLE

Child is currently located: \_\_\_\_\_  
NAME OF COUNTRY

Date of child's birth: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
MONTH DAY YEAR

Place of birth: \_\_\_\_\_

Is the child a United States citizen? YES  NO

Child's U.S. passport number: \_\_\_\_\_

Your name: \_\_\_\_\_  
LAST FIRST MIDDLE

Address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

Relationship to child: \_\_\_\_\_

Abductor's name: \_\_\_\_\_  
LAST FIRST MIDDLE

Last known U.S. address: \_\_\_\_\_

Telephone numbers (U.S. and foreign): \_\_\_\_\_

Fax number (U.S. and foreign): \_\_\_\_\_

Abductor's relationship to child: \_\_\_\_\_

Legal relationship between parents:  Married  Divorced  Never Married  
 Separated with custody order  Separated with no custody order  
(Please submit marriage certificate and any divorce or custody orders.)

**1. Emergency Action — What to do Right Away**

- Is your child missing?  
If yes, have you reported the abduction to the National Center for Missing and Exploited Children (NCMEC)? (see page 5)  
Date you contacted NCMEC: \_\_\_\_\_  
NCMEC case officer: \_\_\_\_\_  
NCMEC case number: \_\_\_\_\_  
Status of NCMEC efforts to locate your child? \_\_\_\_\_  
\_\_\_\_\_

If no, please give exact location of child.

Country: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone, fax numbers and e-mail: \_\_\_\_\_  
\_\_\_\_\_

- What is the license plate number of a vehicle the abductor may use to transport the child? \_\_\_\_\_  
Have local law enforcement authorities entered that number into the National Crime Information Center (NCIC) computer? YES  NO

- What are the probable airlines and flight numbers the abductor may use to depart the U.S.? \_\_\_\_\_

- Have you filed a missing person report with your local police department? (see page 5)  
Date police report filed: \_\_\_\_\_  
Name of police officer: \_\_\_\_\_  
Address, e-mail, phone and fax numbers of police officer: \_\_\_\_\_  
\_\_\_\_\_

- Have you reported the abduction to the F.B.I.? YES  NO   
Date of report to F.B.I.: \_\_\_\_\_  
Name of F.B.I. agent: \_\_\_\_\_  
Address, e-mail, phone and fax numbers of agent: \_\_\_\_\_  
\_\_\_\_\_

- Have you obtained a decree of sole custody or one that prohibits your child from traveling without your permission? (see page 2) In most states, you can obtain such a decree even after a child is abducted. A custody decree in your favor is necessary for any legal action (except in Hague cases). Please submit copies of all orders. Dates of all custody orders: \_\_\_\_\_  
 \_\_\_\_\_  
 Names of courts in which orders were issued: \_\_\_\_\_  
 \_\_\_\_\_  
 Address, e-mail, phone and fax numbers for court (if known): \_\_\_\_\_  
 \_\_\_\_\_
- Have you requested a search of U.S. passport issuance files? Has your child's name been entered in the U.S. passport name check system? (see page 3)  
 Date U.S. passport lookout entered: \_\_\_\_\_  
 Passport case number: \_\_\_\_\_
- If your child is a dual national, have you informed the embassy and consulates of the foreign country of your custody decree and asked them not to issue a foreign passport to your child? (see page 3)  
 Country contacted: \_\_\_\_\_  
 Date foreign embassy contacted: \_\_\_\_\_  
 Name of official contacted: \_\_\_\_\_
- If your child is only a U.S. citizen but the other parent has close ties to a particular country, have you informed the embassy and consulates of that country of your custody decree and asked them not to issue a visa to your child? (see page 3)  
 Country contacted: \_\_\_\_\_  
 Date foreign embassy contacted: \_\_\_\_\_  
 Name of official contacted: \_\_\_\_\_
- Have you asked the Department of State's Office of Children's Issues (CI) to initiate a welfare and whereabouts (W/W) search for your child overseas? (see page 5)  
 Country in which W/W requested: \_\_\_\_\_  
 Date written request submitted to CI: \_\_\_\_\_
- Do you have a valid passport in case you need to travel overseas?  
 Your passport number: \_\_\_\_\_  
 Is this a U.S. passport: YES  NO   
 If not U.S., what country: \_\_\_\_\_  
 Date passport issued: \_\_\_\_\_  
 Date passport expires: \_\_\_\_\_  
 Place passport issued: \_\_\_\_\_  
 (Make a copy of your passport information page, in case you need to submit it.)

## 2. The Search

- Have you obtained certified copies of your custody decree from the court that issued it? You may need to furnish proof of your custody rights at various stages in your search and recovery effort. (Once you have received them, please submit copies to CI.)
- Have you obtained a copy of the National Center for Missing and Exploited Children's publication, *Family Abduction: How to Prevent an Abduction and What to Do If Your Child Is Abducted?* (see page 6)
- Have you tried to establish contact with relatives or friends of the abducting parent? (see page 6) If so, please list their names, addresses, telephone and fax numbers and the dates contacted: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Have local law enforcement authorities asked the Federal Parent Locator Service (FPLS) to search for the abducting parent? (see page 7)  
If yes, date FPLS search conducted: \_\_\_\_\_  
Who conducted search (name, organization, address, telephone and fax numbers): \_\_\_\_\_  
Results of search: \_\_\_\_\_  
\_\_\_\_\_
- Have you contacted the principal of your child's school and asked to be informed of requests for transfer of your child's school records? (see page 7)
- Have you contacted the registrar of official records to see if they can block the issuance of a birth certificate for your child?
- Have you prepared a poster of your child? (see page 7)  
If yes, date poster prepared: \_\_\_\_\_  
Poster prepared by whom: \_\_\_\_\_
- Have you asked local law enforcement authorities to ask the U.S. Postal Inspection Service to put a 'mail cover' on addresses in the U.S. to which the abductor might write? (see page 7)  
Date of 'mail cover': \_\_\_\_\_  
Name address, telephone and fax numbers of investigator doing cover: \_\_\_\_\_  
\_\_\_\_\_

- Have you asked local law enforcement authorities to help you obtain information from telephone and credit card companies on the whereabouts of the abductor? (see page 7) YES  NO   
If yes, please give the date this was done, the contact information for the person who did it and the results of the search: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Have you contacted the Office of Victims Assistance? (see page 20)  
YES  NO   
If yes, please provide CI with details of who you contacted, and the assistance that were, or were, not able to provide: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### 3. After Your Child Has Been Located Abroad

- Have you retained the services of a foreign attorney? (see page 13)  
Date attorney retained: \_\_\_\_\_  
Name of attorney: \_\_\_\_\_  
Address, e-mail, telephone and fax numbers for attorney: \_\_\_\_\_  
\_\_\_\_\_

Date of court hearing abroad: \_\_\_\_\_

- Have you sent certified authorized copies of the custody decree, court orders, state and federal warrants, as well as copies of state custody and parental child abduction laws and the Federal Parental Kidnapping Prevention Act to the foreign attorney? (see page 14)

Date sent: \_\_\_\_\_  
Please list the specific documents sent: \_\_\_\_\_  
\_\_\_\_\_

- Have you read Part VI of this booklet, "Other Solutions"?  
(see page 18)

### 4. Legal Proceedings: Possible Criminal Remedies

- Is parental child abduction a crime in the state where your child resides or was abducted? YES  NO

- Has a state warrant been issued for the arrest of the abductor?  
(see page 15)

If yes, date issued: \_\_\_\_\_  
Exact name of criminal offense: \_\_\_\_\_  
\_\_\_\_\_

(Please submit copy of warrant)

- Has a Federal warrant been issued for the arrest of the abductor?  
(see page 15)  
If yes, date issued: \_\_\_\_\_  
Exact name of criminal offense (i.e., Unlawful Flight to Avoid  
Prosecution (UFAP) or International Parental Kidnapping Crime Act  
(IPKCA)): \_\_\_\_\_

\_\_\_\_\_  
(Please submit copy of warrant)

- Have the child and the abductor's names been entered in the NCIC  
computer? (see page 15)  
If yes, date entered in NCIC: \_\_\_\_\_  
NCIC case numbers: \_\_\_\_\_  
Name and contact information for who entered them in NCIC: \_\_\_\_\_

- Is it possible or useful to take legal action against agents or accom-  
plices to the abduction? (see page 15)  
Have accomplices been charged: YES  NO   
If yes, please provide the names of accomplices and the exact charge:

- Have law enforcement officials contacted INTERPOL to have the  
abductor and child entered into their systems? (see page 16)  
If yes, date contacted INTERPOL: \_\_\_\_\_  
INTERPOL case number: \_\_\_\_\_

- If the abductor is a U.S. citizen, have you considered asking U.S. law  
enforcement officials to have his or her U.S. passport revoked?  
(see page 15)  
If this action was taken, date passport was revoked: \_\_\_\_\_

- Would extradition of the abductor, if possible, be effective in your  
case? (see page 16)  
Has the U.S. Department of Justice requested extradition of the  
abductor? YES  NO   
If yes, from what country was extradition requested: \_\_\_\_\_  
Status of extradition request: \_\_\_\_\_

## INTRODUCTION

Parental child abduction is a tragedy. When a child is abducted across international borders, the difficulties are compounded for everyone involved. This pamphlet is designed to assist the adult most directly affected by international child abduction, the left-behind parent.

The Department of State considers international parental child abduction and the welfare and protection of U.S. citizen children taken overseas to be a very important, serious matter. We place the highest priority on the welfare of children who have been victimized by international abductions.

The Department of State's Office of Children's Issues (CI) is designated to provide assistance to the victims of international parental child abduction. Since the late 1970's, we have been contacted in the cases of approximately 11,000 American children who were either abducted from the United States or prevented from returning to the United States by one of their parents.

You, as the deprived parent, must direct the search and recovery operation yourself. Because it can be a bewildering experience, we have prepared a checklist for you and put it at the front of this booklet. When you report an abduction case to CI you should include a copy of this completed checklist. In order for us to provide the best service, we need to be informed of any developments in the case. This booklet, discusses what the Department of State can and cannot do to help you (see page 4). In addition, because we are only part of the network of resources available to you, we mention other avenues to pursue when a child or children have been abducted across international borders. Your case is unique, and we hope that you find the information here useful.

If you have any further questions, please call us at 202-736-7000. You may also fax us at 202-647-2835, or write to us at:

Office of Children's Issues  
CA/OCS/CI, Room 4811  
Department of State  
Washington, D.C. 20520-4818.

You can receive additional information by dialing up the State Department's Bureau of Consular Affairs' automated fax system at 202-647-3000 (from your fax) or by visiting our site on the Internet at <http://travel.state.gov>.

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July 1997

## PART I- PREVENTION

### HOW TO GUARD AGAINST INTERNATIONAL CHILD ABDUCTION

#### How Vulnerable is Your Child?

You and your child are most vulnerable when your relationship with the other parent is broken or troubled; the other parent has close ties to another country; and the other country has traditions or laws that may be prejudicial to a parent of your gender or to aliens in general.

#### Cross-cultural Marriages: Should You or Your Child Visit the Country of the Other Parent?

Many cases of international parental child abduction are actually cases in which the child traveled to a foreign country with the approval of both parents but was later prevented from returning to the United States. While these cases are not abductions, but wrongful retentions, they are just as troubling to a child. Sometimes the marriage is neither broken nor troubled, but the foreign parent, upon returning to his or her country of origin, decides not to return to the U.S. or to allow the child to do so. A person who has assimilated a second culture may find a return to his or her roots traumatic and may feel a pull to shift loyalties back to the original culture. A person's personality may change when he or she returns to the place where he or she grew up.

In some traditional societies, children must have their father's permission and a woman must have her husband's permission to travel. If you are a woman, to prevent your own or your child's detention abroad, find out about the laws and traditions of the country you plan to visit or to allow your child to visit, and consider carefully the effect that a return to his roots might have on your husband. The Office of Children's Issues has several country flyers that provide some general information. For detailed advice in your specific case, you may wish to contact an attorney in that country. We can provide you with lists of attorneys in countries around the world.

#### Precautions That Any Vulnerable Parent Should Take

In international parental child abduction, an ounce of prevention is worth a pound of cure. Be alert to the possibility and be prepared—keep a list of the addresses and telephone numbers of the other parent's relatives, friends, and business associates both here and abroad. Keep a record of important information on the other parent, including these numbers: passport, social security, bank account, driver's license, and auto license. In addition, keep a written description of your child, including hair and eye color, height, weight, and any special physical characteristics. Take color photographs of your child every six months. If your child should be abducted, this information could be vital in locating your child.

The National Center for Missing and Exploited Children (NCMEC at telephone 1-800-843-5678 ), in addition, suggests that you teach your child to use the telephone; practice making collect calls; and instruct him or her to call home immediately if anything unusual happens. If you feel your child is vulnerable to abduction, get professional counseling. Do not merely tell a friend or relative about your fears.

### **The Importance of a Custody Decree**

Under the laws of many American states and many foreign countries, if there is no decree of custody prior to an abduction, both parents are considered to have equal legal custody of their child. If you are contemplating divorce or separation, or are divorced or separated, or even if you were never legally married to the other parent, obtain a decree of sole custody or a decree that prohibits the travel of your child without your permission or that of the court as soon as possible. If you have or would prefer to have a joint custody decree, make certain that it prohibits your child from traveling abroad without your permission or that of the court.

### **How to Draft or Modify a Custody Decree**

A well-written custody decree is an important line of defense against international parental child abduction. NCMEC, in its publication *Family Abduction: How to Prevent an Abduction and What to Do If Your Child is Abducted*, has several recommendations to help prevent the abduction of your child if your spouse is a legal permanent resident alien or a U.S. citizen with ties to a foreign country. For instance, it may be advisable to include court-ordered supervised visitation and a statement prohibiting your child from traveling without your permission or that of the court. If the country to which your child might be taken is a member of the Hague Convention on International Child Abduction (see page 8), the custody decree should state that the parties agree that the terms of the Hague Convention apply should an abduction or wrongful retention occur. The American Bar Association (ABA) also suggests having the court require the alien parent or the parent with ties to a foreign country to post a bond. This may be useful both as a deterrent to abduction and, if forfeited because of an abduction, as a source of revenue for you in your efforts to locate and recover your child. For further prevention information, you should contact the NCMEC at the address on page 20.

### **How a Custody Decree Can Help**

Obtain several *certified* copies of your custody decree from the court that issued it. Give a copy to your child's school and advise school personnel to whom your child may be released.

### **U.S. Passports**

From the Department of State, you may learn whether your child has been issued a U.S. passport. You may also ask that your child's name be entered into the State Department's passport name check system. This will enable the Department to notify

you or your attorney if an application for a U.S. passport for the child is received anywhere in the United States or at any U.S. embassy or consulate abroad. If you have a court order that either grants you sole custody or prohibits your child from traveling without your permission or the permission of the court, the Department may also refuse to issue a U.S. passport for your child. The Department may not, however, revoke a passport that has already been issued to the child.

To inquire about a U.S. passport or to have your child's name entered into the name check system, mail or fax your request to:

Office of Passport Policy and Advisory Services  
Passport Services, Suite 260  
1111 19th Street, N.W.  
Washington, D.C. 20522-1705

Tel. (202) 955-0377  
Fax (202) 955-0230

With your request, include your child's full name or names, date of birth, place of birth, and the address and telephone number(s) where you may be contacted. If there is a court order relating to the custody or travel of the child, include a complete copy.

#### *Foreign Passports — the Problem of Dual Nationality*

Many U.S. citizen children who fall victim to international parental abduction possess dual nationality. While the Department of State will make every effort to avoid issuing a U.S. passport if the custodial parent has provided a custody decree, the Department cannot prevent embassies and consulates of other countries in the United States from issuing their passports to children who are also their nationals. You can, however, ask a foreign embassy or consulate not to issue a passport to your child. Send the embassy or consulate a written request, along with certified complete copies of any court orders addressing custody or the overseas travel of your child that you have. In your letter, inform them that you are sending a copy of this request to the U.S. Department of State. If your child is *only* a U.S. citizen, you can request that no visa for that country be issued in his or her U.S. passport. No international law requires compliance with such requests, but some countries may comply voluntarily.

## PART II

### WHAT THE STATE DEPARTMENT CAN AND CANNOT DO WHEN A CHILD IS ABDUCTED ABROAD

When a U.S. citizen child is abducted abroad, the State Department's Office of Children's Issues (CI) works with U.S. embassies and consulates abroad to assist the child and left-behind parent in a number of ways. Despite the fact that children are taken across international borders, child custody disputes remain fundamentally private legal matters between the parents involved, over which the Department of State has no jurisdiction. If a child custody dispute cannot be settled amicably between the parties, it often must be resolved by judicial proceedings in the country where the child is located.

#### *WHAT THE STATE DEPARTMENT CAN DO:*

- In cases where the Hague Convention on the Civil Aspects of International Child Abduction applies (see Part IV), assist parents in filing an application with foreign authorities for return of the child;
- In other cases, attempt to locate, visit and report on the child's general welfare;
- Provide the left-behind parent with information on the country to which the child was abducted, including its legal system, family laws, and a list of attorneys there willing to accept American clients;
- In all cases, provide a point of contact for the left-behind parent at a difficult time;
- Monitor judicial or administrative proceedings overseas;
- Assist parents in contacting local officials in foreign countries or contact them on the parent's behalf;
- Provide information concerning the need for use of federal warrants against an abducting parent, passport revocation, and extradition from a foreign country to effect return of a child to the U.S.;
- Alert foreign authorities to any evidence of child abuse or neglect.

#### *WHAT THE STATE DEPARTMENT CANNOT DO:*

- Intervene in private legal matters between the parents;
- Enforce an American custody agreement overseas (U.S. custody decrees are not automatically enforceable outside of U.S. boundaries);
- Force another country to decide a custody case or enforce its laws in a particular way;
- Assist the left-behind parent in violating foreign laws or reabduction of a child to the United States;
- Pay legal or other expenses;
- Act as a lawyer or represent parents in court;
- Translate documents

## PART III

### HOW TO SEARCH FOR A CHILD ABDUCTED ABROAD

#### Where to Report Your Missing Child

1. If your child has been abducted, file a missing person report with your local police department and request that your child's name and description be entered into the "missing person" section of the National Crime Information Center (NCIC) computer. This is provided for under the Missing Children's Act of 1982 (see page 21). The abductor does not have to be charged with a crime when you file a missing person report. In addition, through INTERPOL, the international criminal police organization, your local police can request that a search for your child be conducted by the police in the country where you believe your child may have been taken. You may be able to achieve all of the above even if you do not have a custody decree.
2. Contact the National Center for Missing and Exploited Children (NCMEC) at 1-800-THE LOST/1-800-843-5678. With the searching parent's permission, the child's photograph and description may be circulated to the media in the country you believe the child may have been taken.

At the same time that you report your child missing, you should contact a lawyer to obtain a custody decree if you do not already have one. In many states, a parent can obtain a temporary custody decree if the other parent has taken their child.

3. Request information about a possible U.S. passport and have your child's name entered into the U.S. passport name check system (see page 2). A U.S. passport for a child under 18 years expires after 5 years. If you do not know where your child is, but information about the child is in the name check system, it may be possible to locate him or her through the passport application process. All U.S. passport agencies and almost all U.S. embassies and consulates are on-line with the name check system.
4. The Department of State, when requested to do so, may conduct welfare and whereabouts visits for American citizens abroad. The Office of Children's Issues communicates such requests to the U.S. embassy or consulate responsible for the area to which you believe your child has been abducted. Your signed letter containing the following information can be faxed to us at 202-647-2835:
  - child's full name (and any aliases),
  - child's date and place of birth,
  - child's passport number, date, and place of issuance,
  - copies of any court orders or police reports;

and on the abductor:

- full name (and any aliases),
- date and place of birth,
- passport number, date, and place of issuance,
- occupation,
- probable date of departure,
- flight information,
- details of ties to a foreign country, such as the names, addresses, and telephone numbers of friends, relatives, place of employment, or business connections there.

*Note: Please enclose a completed copy of the checklist, located at the front of this booklet, with your letter.*

A consular officer overseas, working with this information, will try to confirm the location of your child. The consular officer may also request information from local officials on your child's entry or residence in the country. Unfortunately, not every country maintains such records in a retrievable form, and some countries may not release such information.

We may also ask you for photographs of both your child and the abducting parent because these are often helpful to foreign authorities trying to find a missing child.

### **The Search and Recovery—a Basic Guide**

It is possible that none of the institutions mentioned (the police, the NCMEC, or the Department of State) will succeed in locating your child right away and you will need to carry out the search on your own. As you search, you should, however, keep these institutions informed of your actions and progress.

This booklet attempts to cover the international aspects of your search and recovery effort, but for other information, you should have a more basic guide. The National Center for Missing and Exploited Children publishes *Family Abduction: How to Prevent an Abduction and What to Do If Your Child Is Abducted*. For a copy, call 1-800-843-5678 (or 703-235-3900), or write the NCMEC at: 2101 Wilson Boulevard, Suite 550; Arlington, VA 22201. This publication guides you through the U.S. legal system, helps you organize your search, and supplies a list of local support groups. We have relied heavily on the NCMEC guide for the following list of suggestions.

### **Further Steps to Take in Your Search**

- One of the best ways to find your child overseas is through establishing friendly contact with relatives and friends of the other parent, either here or abroad. You may have more influence with such persons than you suspect, and their interest in your child's welfare may lead them to cooperate with you.

- Under the U.S. Department of Health and Human Services, the Office of Child Support Enforcement maintains the Federal Parent Locator Service (FPLS). The primary purpose of this service is to locate parents who are delinquent in child support payments, but the service will also search for parental abductors when requested to do so by an authorized person. Generally speaking, an authorized person is a state court judge, police officer, prosecutor, or other state official seeking to enforce a child custody order.

Using the abductor's social security number, the FPLS searches the records maintained by such federal agencies as the Internal Revenue Service, Veterans Administration, Social Security Administration, Department of Defense, and the National Personnel Records Center and Department of Labor records. An abductor who has had a connection with any of the above might, even from abroad, renew a connection with one of them. To learn how to access the services of the FPLS, contact your local or state Child Support Enforcement office. These offices are listed under government listings in your telephone directory.

- To obtain information on requests that may have been made by the abductor to your child's school for the transfer of your child's records, you can contact the principal of the school. You will need to give the school a certified copy of your custody decree.
- You can find out from the National Center for Missing and Exploited Children how to prepare a poster on your child. A poster may assist foreign authorities in attempting to locate your child.
- You can ask your local prosecutor to contact the U.S. Postal Inspection Service to see if a 'mail cover' can be put on any address that you know of in the United States to which the abductor might write.
- It may be possible for local law enforcement authorities to obtain, by subpoena or search warrant, credit card records that may show where the abductor is making purchases. Check with state and local authorities to see what can be done. In the same manner, you can try to obtain copies of telephone company bills of the abductor's friends or relatives who may have received collect calls from the abductor.

## PART IV

### ONE POSSIBLE SOLUTION: THE HAGUE CONVENTION

The most difficult and frustrating element for most parents whose child has been abducted abroad is that U.S. laws and court orders are not usually recognized in the foreign country and therefore are not directly enforceable abroad. Each sovereign country has jurisdiction within its own territory and over persons present within its borders, and no country can force another to decide cases or enforce laws within its confines in a particular way.

The increase in international marriages since World War II increased international child custody cases to the point where 23 nations, meeting at the Hague Conference on Private International Law in 1976, agreed to seek a treaty to deter international child abduction. Between 1976 and 1980, the United States was a major force in preparing and negotiating the Hague Convention on the Civil Aspects of International Child Abduction. The Convention came into force for the United States on July 1, 1988, and applies to abductions or wrongful retentions between party countries that occurred on or after that date. In the United States, federal legislation, the International Child Abduction Remedies Act (P.L. 100-300), was enacted to implement the Convention in this country.

The United States actively encourages other countries to become party to the Hague Abduction Convention. As of January 1, 1997, the Convention is also in effect between the United States and:

Argentina	Former Yugoslav Republic	Netherlands
Australia	of Macedonia	New Zealand
Austria	France	Norway
Bahamas	Germany	Panama
Belize	Greece	Poland
Bosnia-Herzegovina	Honduras	Portugal
Burkina Faso	Hungary	Romania
Canada	Iceland	St. Kitts & Nevis
Chile	Ireland	Slovenia
Colombia	Israel	Spain
Croatia	Italy	Sweden
Cyprus	Luxembourg	Switzerland
Denmark	Mauritius	United Kingdom
Ecuador	Mexico	Venezuela
Finland	Monaco	Zimbabwe

Other countries are working toward ratification. Contact the Office of Children's Issues—address on page 20) to learn if additional countries have joined.

If your child has been abducted to a country that is *not* party to the Convention, see page 13, *Legal Solutions in Countries Not Party to the Hague Convention*.

## What Is Covered by the Convention

The Hague Convention is a private civil legal mechanism available to parents seeking the return of, or access to, their child. As a private civil law mechanism, the parents, not the governments, are parties to the legal action.

The countries that are parties to the Convention have agreed that, subject to certain limited exceptions and conditions outlined below, a child who is habitually resident in one country that is a party to the Convention and who is removed to or retained in another country that is party to the Convention in breach of the left-behind parent's custody rights shall be promptly returned to the country of habitual residence. The Convention also provides a means for helping parents to exercise visitation rights abroad.

There is a treaty obligation to return an abducted child below the age of 16 if application is made within one year from the date of the wrongful removal or retention, unless one of the exceptions to return apply. After one year, the court may still be obligated to order the child returned unless the person resisting return demonstrates that the child is settled in the new environment. A court may refuse to order a child returned if there is a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation in his or her country of habitual residence. A court may also decline to return the child if the child objects to being returned and has reached an age and degree of maturity at which the court can take account of the child's views. Finally, the return of the child may be refused if the return would violate the fundamental principles of human rights and freedoms of the country where the child is being held. These exceptions have been interpreted narrowly by courts in the United States and by some other countries party to the Convention.

## How to Invoke the Hague Convention (see diagram on page 12)

You do *not* need to have a custody decree to invoke the Convention. However, to apply for the return of your child, you must have been actually exercising a "right of custody" at the time of the abduction, and you must not have given permission for the child to be removed or, in the case of a retention, to be retained beyond a specified, agreed-upon period of time. The Convention defines "rights of custody" as including "rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence." This "right of custody" may arise from operation of law as well as an order of custody. If there was no court order in effect at the date of the abduction, custodial rights are provided in the statutes of most states.

You may apply for the return of your child or the ability to exercise your visitation rights. You can also ask for assistance in locating your child and for information on your child's welfare.

Each country that is a party to the Convention has designated a Central Authority to carry out specialized duties under the Convention. You may submit an application to the U.S. Central Authority, directly to the Central Authority of the country where the child is believed to be held, or you may file directly with the foreign court. The Central Authority for the United States is the Department of State's Office of Children's Issues (CI).

An application should be submitted as soon as possible after an abduction or wrongful retention has taken place. As stated above, there is a time factor of one year involved. If no custody decree exists for the left-behind parent, submit the application anyway. Detailed instructions to invoke the Hague Convention are found in Part VIII, page 24. Copies of the application form are at the end of this booklet.

### **The Role of the U.S. Central Authority**

The Office of Children's Issues will review your application to ensure that it is complete and that your request complies with the requirements of the Convention. If it does, we will forward it to the foreign Central Authority and work with that authority until your case is resolved. If the abducting parent does not voluntarily agree to the return of your child, you may be required to retain an attorney abroad to present your case under the Hague Convention to the foreign court. If you need to retain an attorney abroad, see *Using the Civil Justice System—How to Proceed* on page 13.

The Department of State cannot act as an agent or attorney in your case.

- We can, however, help in many other ways. We can give you information on the operating procedures of the Central Authority in the country where your child is believed to be located.
- We can help you obtain information concerning the wrongfulness of the abduction under the laws of the state in which the child resided prior to the abduction.
- At your request, we can ask for a status report six weeks after court action commences in the other country.

The responsibilities of the Central Authority for the Hague Abduction Convention are set forth in Articles 7-12 and 21 of the Convention. Although article 7(f) of the Convention and 22 C.F.R. 94.6(d) and (h) refer to legal proceedings under the Convention, they do not assign the U.S. Central Authority a direct role in such proceedings. Indeed, under 22 C.F.R. 94.4, the U.S. Central Authority is prohibited from acting as an agent or attorney in legal proceedings arising under the Convention. The U.S. Central Authority was not intended to be and has never been a party to such proceedings.

The U.S. Central Authority's role in proceedings in the U.S. under the Convention is that of an active facilitator. We seek to promote cooperation among the relevant

parties and institutions and act as a source of information about proper procedures under the Convention and the contents and status of applications for assistance. The Central Authority in the country where your child is located, however, has the primary responsibility of responding to your application.

The Office of Children's Issues works with the applicant and the other Central Authority to facilitate communication between the parties involved and work toward an expeditious resolution of the matter. While the specific operation and procedures under the Convention differ in each country party to the treaty, we stand ready to monitor all cases in which assistance is sought and help applicants understand the process.

### Good News Plus a Note of Caution for Applicants Under the Hague Convention

The Hague Convention on International Child Abduction is a success story. It has improved the likelihood and speed of return of abducted or wrongfully retained children from countries that are party to the Convention. The Convention's increasing success is encouraging more countries to become party to the Convention. Thirty-five countries have joined since the United States became the 10th country in July 1988. In addition, the reputation of the Hague Convention is such that, when an abducting or retaining parent learns that a Hague application has been filed, he or she may be more likely to return the child voluntarily. The majority of Hague cases still, however, require the applying parent to retain an attorney in the country where the child is located to petition that judiciary for return.

A note of caution: Criminal charges may have a distorting effect on the operation of the Hague Convention and may even prove counterproductive. With the Hague Convention, the emphasis is on the swift return of a child to his or her place of habitual residence where the custody dispute can then be resolved, if necessary, in the courts of that jurisdiction. As a rule, therefore, it is advisable to await the outcome of return proceedings under the Convention before deciding whether to initiate criminal proceedings against the other parent. Some courts have denied return of children solely because the taking parent would be arrested if they accompanied the child home. Many of these courts, U.S. and foreign, have held that the arrest of the parent would expose the child to psychological harm (Article 13(b)).

### Children Abducted to the United States

The Hague Convention also applies to children abducted to the U.S., provided the case meets the requirements of the Hague and the child's country of habitual residence is a signatory to the Hague Convention.

As of September 5, 1995, by agreement between the National Center for Missing and Exploited Children (NCMEC), the Department of State, and the Department of Justice, applications seeking return of or access to children in the United States are processed by the NCMEC.

# OUTGOING HAGUE APPLICATION

Left behind parent/attorney contacts  
State Department/U.S. Central Authority

Hague Application sent to inquirer

Hague application received by U.S. Central Authority

Includes:

- court decisions or state law to establish right of custody
- translations
- photo
- application signed and dated

U.S. Central Authority reviews and forwards to foreign Central Authority

Foreign Central Authority process through their internal system

Clarification of legal fees:  
Legal Aid Assistance -  
Free or Set fee

Voluntary return

Court hearing

Court orders return

Court denies return

Appeal

Court orders

Denial sustained

## PART V

### LEGAL SOLUTIONS IN COUNTRIES NOT PARTY TO THE HAGUE CONVENTION

If your child has been abducted to a country that is *not* a party to the Hague Convention, you can seek legal remedies against the abductor, in the United States and abroad, from both the civil and criminal justice systems. The family court system from which you get your custody decree is part of the civil justice system. At the same time you are using that system, you can also use the criminal justice system consisting of the police, prosecutors, and the FBI. We will discuss each system in turn.

**Application for assistance under the Hague Convention should only  
be submitted when the Convention applies.**

#### Using the Civil Justice System

##### *How To Proceed*

In addition to obtaining a custody decree in the United States, you must use the civil justice system in the country to which your child has been abducted.

The Office of Children's Issues (CI) can provide information on the customs and the legal practices in the country where your child is. We can also give you general information on how to serve process abroad or obtain evidence from abroad, and on how to have documents authenticated for use in a foreign country. You may write or telephone CI for information sheets, such as: *Retaining a Foreign Attorney*, and *Authentication (or Legalization) of Documents in the United States for Use Abroad*.

To obtain authoritative advice on the laws of a foreign country or to take legal action in that country, you should retain an attorney there. U.S. consular and diplomatic officers are prohibited by law from performing legal services (22 C.F.R. 92.81). We can, however, provide you with a list of attorneys in a foreign country who speak English, who may be experienced in parental child abduction or family law, and who have expressed a willingness to represent Americans abroad. U.S. embassies and consulates abroad prepare these lists. Cautionary note: Attorney fees can vary widely from country to country. The fee agreement that you make with your local attorney should be put into writing as soon as possible to avoid a potentially serious misunderstanding later.

Although officers at U.S. embassies and consulates cannot take legal action on behalf of U.S. citizens, consular officers may be able to assist in communication problems with a foreign attorney. Consular officers can sometimes inquire about the status of proceedings in the foreign court, and they will coordinate with your attorney to ensure that your rights as provided for by the laws of that foreign country are respected.

Once you retain a foreign attorney, send him or her a certified copy of your custody decree and/or state and federal warrants regarding the abducting parent which have been authenticated for use abroad. (See our authentication flyer.) Also send copies of your state's laws on custody and parental kidnapping and the Federal Parental Kidnapping Prevention Act and copies of reported cases of your state's enforcement of foreign custody decrees under Section 23 of the Uniform Child Custody Jurisdiction Act.

### ***What Are Your Chances of Enforcing Your U.S. Custody Order Abroad?***

Just as a foreign court order has no direct effect in the U.S., a custody decree issued by a court in the United States has no binding legal force abroad, although it may have persuasive force in some countries. Courts decide child custody cases on the basis of their own domestic relations law. This may give a "home court" advantage to a person who has abducted a child to the country of his or her origin. You could also be disadvantaged if the country has a cultural bias in favor of a mother or a father. A U.S. custody decree may, however, be considered by foreign courts and authorities as evidence and, in some cases, it may be recognized and enforced by them on the basis of comity (the voluntary recognition by courts of one jurisdiction of the laws and judicial decisions of another). Your chances of having your U.S. court order enforced depend, to a large degree, upon the tradition of comity that the legal system of the country in question has with the U.S. legal system. CI can give you some information on these traditions.

### **Using the Criminal Justice System: What Are the Risks?**

Law enforcement authorities in the United States and abroad may be valuable sources of information and assistance. However, formal resort to the criminal justice system (filing of charges, issuance of an arrest warrant, transmission of an extradition request to a foreign government under an applicable treaty, and criminal prosecution) should be considered carefully. As noted on page 11, this is especially true if the other country concerned is a party to the Hague Convention. You should be aware that while you may have a degree of control over the ongoing civil procedures, you may not be able to effect the pursuit of criminal actions once charges are filed. Check with the police and prosecutor to determine if your wishes would be considered in the criminal action.

Your decision on whether or not to try to utilize the criminal justice system depends upon the circumstances of your case. You should also realize that neither extradition nor prosecution of the abductor guarantees the return of your child and may in some cases complicate, delay, or ultimately jeopardize return of your child.

Presumably, your overriding interest is to obtain the return of your child. That is not the primary responsibility of the prosecutors. When the criminal justice system becomes involved in a case, there are several interests at stake, some of which may be in conflict: the interests of the child, the interests of each parent/guardian and other immediate family members, the interests of the civil justice system in a stable and workable custody arrangement, and the interests of the criminal justice system in apprehending, prosecuting, and punishing those who have violated criminal laws of their jurisdiction in connection with a parental child abduction.

Another factor to consider is the possible reaction of the abductor to the filing of criminal charges and the threat of ultimate prosecution and punishment. Although some individuals might be intimidated enough to return the child (with or without agreement by the prosecutors to the condition that the charges be dropped), others might go deeper into hiding, particularly if they are in a country where they have family or community support. If an abductor is ultimately brought to trial, how far are you willing to go in pursuing criminal prosecution? Unless you are prepared to testify in court against the abductor, you should not pursue criminal prosecution. A final factor to consider is the effect on the child of seeing the abducting parent prosecuted and perhaps incarcerated, with you playing an active role in that process.

### *The Steps To Take in Case You Decide to Use the Criminal Justice System*

Once have decided to pursue criminal remedies, you or your attorney may contact your local prosecutor or law enforcement authorities to request that the abducting parent be criminally prosecuted and that an arrest warrant be issued, if provided for by your state law. In some states, parental child abduction or custodial interference is a misdemeanor; however, in most states it is a felony. If you are able to obtain a state warrant, the local prosecutor can contact the F.B.I. or your the U.S. Attorney to request the issuance of a Federal Unlawful Flight to Avoid Prosecution (UFAP) warrant for the arrest of the abductor. The Federal Parental Kidnapping Prevention Act of 1980 provides for the issuance of this warrant (see page 21).

Furthermore, the International Parental Kidnapping Crime Act (IPKCA) of 1993 (H.R. 3378) makes it a Federal offense to remove a child from the United States or retain a child (who has been in the United States) outside the United States with intent to obstruct the exercise of parental rights (custody or visitation). An unlawful retention after the date of enactment could violate the statute, even though the actual removal of the child occurred before the date of enactment. The F.B.I. is responsible for investigating the IPKCA. Once a warrant has been issued for the abductor's arrest, ask local law enforcement authorities or the F.B.I. to enter the abductor's name in the "wanted persons" section of the National Crime Information Center (NCIC) computer and the INTERPOL system.

### *Prosecution of Agents or Accomplices of the Abductor*

Find out if your state has laws that allow legal action to be taken against agents or accomplices to an abduction. Consider whether such actions would be useful in learning your child's whereabouts or compelling the return of your child.

### *Implications of an Arrest Warrant for a U.S. Citizen*

If the abducting parent is a U.S. citizen and the subject of a federal arrest warrant, the F.B.I. or U.S. Attorney's office can ask the Department of State, Passport Services, to revoke the person's U.S. passport. This may or may not be a burden to an abducting parent who, as a dual national, may also carry a foreign passport. However, an abducting parent who is only a U.S. citizen becomes an undocumented alien in a foreign country if his or her U.S. passport is revoked. Some countries may deport undocumented aliens or at least make it difficult for them to remain in the country.

For a U.S. passport to be revoked, the F.B.I. or U.S. Attorney must send a request for such action and a copy of the Federal warrant to the Department of State's Office of Passport Policy and Advisory Services (telephone 202-955-0377). The regulatory basis for revocation of passports is found in the Code of Federal Regulations: 22 C.F.R. 51.70, et seq.

In certain circumstances you may decide that revoking the abducting parent's passport will not achieve the desired result. For example, if you know the location of the other parent, there may be a possibility of negotiation and a settlement or, at least, the possibility of communication with your child. Also, if the abducting parent is threatened with passport revocation, he or she might choose to flee with your child again.

#### *Implications of a Warrant for a Non-U.S. Citizen*

Even if the abductor is not a U.S. citizen, the existence of a Federal warrant is important. Such a warrant may encourage the abducting parent to return the child voluntarily, especially if he or she has business or other reasons to travel to the United States. The warrant also serves to inform the foreign government that the abduction of the child is a violation of U.S. law and that the abductor is a federal fugitive. An arrest warrant is also necessary if you wish to have authorities seek extradition of the abductor.

#### *The Possibility of Extradition*

The U.S. Department of Justice is responsible for pursuing extradition of wanted persons. Through INTERPOL and other international links, national law enforcement authorities in many countries regularly cooperate in the location and apprehension of international fugitives. Extradition, the surrender of a fugitive or prisoner by one jurisdiction for criminal prosecution or service of a sentence in another jurisdiction, is rarely a viable approach in international child abduction cases. Extradition is utilized only for criminal justice purposes in cases that prosecutors believe can be successfully prosecuted due to the sufficiency of the evidence, which would presumably include your testimony. Moreover, it must be remembered that extradition does not apply to the abducted or wrongfully retained child, but only to the abductor. There is no guarantee that the child will be returned by foreign authorities in connection with extradition of the alleged wrongdoer. Threatened with impending extradition, abducting parents in other countries have hidden the child or children with a friend or relative in the foreign country.

Another reason that extradition may not be useful is that the offenses of parental child abduction or custodial interference are covered by only a few of the extradition treaties now in force between the United States and more than 100 foreign countries. Most of these treaties contain a list of covered offenses and were negotiated before international parental child abduction became a widely recognized phenomenon. With respect to these older treaties, there was thus no intent on the part of the negotiators to cover such conduct, and it cannot therefore be validly argued that parental child abduction is a covered extraditable offense, even if the language used in the list of

offenses covered by a given treaty appears somewhat broad (e.g., "abduction" or "kidnapping" or "abduction/kidnapping of minors").

In negotiating more modern extradition treaties, the United States has tried to substitute a "dual criminality" approach for a rigid list of extraditable offenses, or at least has tried to combine the two. Under an extradition treaty with a dual criminality provision, an offense is covered if it is a felony in both countries. Accordingly, if the *underlying conduct* involved in parental child abduction or custodial interference is a felony in both the U.S. and foreign jurisdictions involved, then that conduct is an extraditable offense under an extradition treaty based on dual criminality.

Despite the fact that parental child abduction may be covered by certain extradition treaties, you should be aware of potential difficulties in utilizing them, apart from the possible counterproductive effects already discussed. Specifically, nearly all civil law countries (in contrast with common law countries like the United States, United Kingdom, Canada, Australia) will not extradite their own nationals. Nearly all the nations of Latin America and Europe are civil law countries. Whatever the terms of any applicable extradition treaty, experience has also shown that foreign governments are generally reluctant at best (and often simply unwilling) to extradite anyone (their own citizens, U.S. citizens, or third country nationals) for parental child abduction. For extradition to be possible, therefore:

—the local and/or Federal prosecutor must decide to file charges and pursue the case, and you probably must be prepared to testify in any criminal trial;

—there must be an extradition treaty in force between the United States and the country in question;

—the treaty must cover the conduct entailed in parental child abduction or custodial interference;

—if the person sought is a national of the country in question, that country must be willing to extradite its own nationals; and,

—the country in question must be otherwise willing to extradite persons for parental child abduction/custodial interference (i.e., not refuse to do so for "humanitarian" or other policy reasons).

#### *The Possibility of Prosecution of an Abductor in a Foreign Country*

A final possibility in the area of criminal justice is prosecution of the abductor by the authorities of the foreign country where he or she is found. In many countries (not the United States), nationals of the country can be prosecuted for acts committed abroad under the "nationality" basis for criminal jurisdiction, if the same conduct would constitute a criminal offense under local law. U.S. law enforcement authorities can request such a prosecution and forward the evidence that would have been used in a U.S. prosecution. U.S. witnesses may, of course, have to appear and testify in the foreign proceeding. Like the courses of action discussed above, this approach may be counterproductive and will not necessarily result in the return of the child.

## **PART VI**

### **OTHER SOLUTIONS: SETTLING OUT OF COURT**

#### **Promoting Communication Between Parents and Children**

Legal procedures can be long and expensive. You may have greater success working in the area of negotiation with the abducting parent. In some cases, friends or relatives of the abductor may be able to help you establish amicable relations with the abductor and may be willing to help mediate a compromise. A decrease in tension might bring about the return of your child, but, even if it does not, it can increase your chances of being able to visit the child and participate in some way in the child's upbringing. Sometimes compromise and some kind of reconciliation are the only solution.

#### **Obtaining Information on Your Child's Welfare**

If your child has been found you can request that a U.S. consular officer visit the child. If the consul succeeds in seeing your child, he or she will send you a report on your child's health, living conditions, schooling, and other information. Sometimes consular officers are also able to send you letters or photos from your child. If the abducting parent will not permit the consular officer to see your child, the U.S. embassy or consulate will request the assistance of local authorities, either to arrange for such a visit or to have the appropriate local official make a visit and provide a report on your child's health and welfare. Contact the Office of Children's Issues (CI) to request such a visit.

#### **Working With Foreign Authorities**

In child abduction cases, consular officers routinely maintain contact with local child welfare and law enforcement officers. If there is evidence of abuse or neglect of the child, the U.S. embassy or consulate will request that local authorities become involved to ensure the child is protected. This may mean removal of your child from the home for placement in local foster care.

#### **The Question of Desperate Measures/Reabduction**

Consular officers cannot take possession of a child abducted by a parent or aid parents attempting to act in violation of the laws of a foreign country. Consular officers must act in accordance with the laws of the country to which they are accredited. The Department of State strongly discourages taking desperate and possible illegal measures to return your child to the United States. If you are contemplating such desperate measures, you should read the information available from the National Center for Missing and Exploited Children (NCMEC) about the emotional trauma inflicted on a child who is a victim of abduction and reabduction. The NCMEC advises against reabduction not only because it is illegal, but also because of possible psychological harm to the child.

Attempts to use self-help measures to bring an abducted child to the United States from a foreign country may endanger your child and others, prejudice any future judicial efforts you might wish to make in that country to stabilize the situation, and result in your arrest and imprisonment in that country. In imposing a sentence, the foreign court will not necessarily give weight to the fact that the would-be abductor was the custodial parent in the United States or otherwise had a valid claim under a U.S. court order (e.g., failure of the foreign parent to honor the terms of a joint custody order).

If you do succeed in leaving the foreign country with your child, you, and anyone who assisted you, may be the target of arrest warrants and extradition requests in the United States or any other country where you are found. Even if you are not ultimately extradited and prosecuted, an arrest followed by extradition proceedings can be very disruptive and disturbing for both you and your child.

Finally, there is no guarantee that the chain of abductions would end with the one committed by you. A parent who has reabducted a child may have to go to extraordinary lengths to conceal his or her whereabouts, living in permanent fear that the child may be reabducted again.

**PART VII**  
**REFERENCE**

**Directory — Where to Go for Assistance**

**Consular Assistance:**

Office of Children's Issues (CI) ..... 202-736-7000  
Overseas Citizens Services ..... fax 202-647-2835  
Department of State ..... fax-on-demand 202-647-3000  
2201 C Street, N.W., Room 4817  
Washington, D.C. 20520-4818  
Internet address: <http://travel.state.gov>

**U.S. Passport Restrictions:**

Office of Passport Policy and Advisory Services ..... 202-955-0377  
Passport Services, Suite 260 ..... fax 202-955-0230  
Department of State  
1111 19th Street, N.W.  
Washington, D.C. 20522-1705

**For General Technical Assistance:**

National Center for Missing and Exploited Children (NCMEC) ..... 703-522-9320  
2101 Wilson Boulevard, Suite 500 ..... fax 703-235-4067  
Arlington, VA 22201  
Internet address: <http://www.missingkids.org>

24-hour hot line for emergencies ..... 1-800-THE-LOST  
TTD 1-800-826-7653

**For ABA Publications:**

American Bar Association (ABA) ..... 312-988-5555  
750 North Lake Shore Drive  
Chicago, IL 60611

**Federal Parent Locator Service (FPLS):**

Note: The FPLS can be accessed through local and state Child Support Enforcement offices. The names of those offices are available in telephone books and from the address below.

Department of Health and Human Services ..... 202-401-9267  
Office of Child Support Enforcement  
Federal Parent Locator Service (FPLS)  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447

**Office of Victims of Crime (OVC):**

U.S. Department of Justice ..... 1-800-627-6872  
633 Indiana Ave., N.W.  
Washington, D.C. 20531  
Internet address: <http://ncjrs.aspensys.org/ovchome.htm>

## **Uniform State and Federal Laws on Custody, Parental Child Abduction, and Missing Children**

The Uniform Child Custody Jurisdiction Act of 1968 (UCCJA) is now the law, with some variations, in every state and the District of Columbia. The Act is intended to eliminate nationwide the legal incentives for interstate forum-shopping and child-snatching by parents, and to encourage communication, cooperation and assistance between state courts in the resolution of interstate child custody conflicts.

Section 23 of the UCCJA expressly provides that the general policies of the Act extend to the international arena. It further provides that custody decrees made in other countries by appropriate judicial or administrative authorities will be recognized and enforced in this country provided reasonable notice and opportunity to be heard were given to the affected persons.

The Parental Kidnapping Prevention Act of 1980 (PKPA) (P.L. 96-611; 28 U.S.C. 1738A, 1738A Note; 18 U.S.C. 1073 Note; 42 U.S.C. 653-55, 663) requires the appropriate authorities of every state to enforce and not modify custody and visitation orders made by courts exercising jurisdiction consistent with standards set by the Act; authorizes the Federal Parental Locator Service to act on requests from authorized persons to locate the absconding parent and children who have been abducted or wrongfully retained; and expressly declares the intent of Congress that the Fugitive Felon Act applies to state felony cases involving parental kidnapping and interstate or international flight to avoid prosecutions. The state prosecutor may formally present a request to the local U.S. Attorney for a Federal Unlawful Flight to Avoid Prosecution (UFAP) warrant.

The Missing Children's Act of 1982 (P.L. 97-292; 28 U.S.C. 534) provides for the entry of the names of missing children in the National Crime Information Center (NCIC). Since the enactment of P.L. 97-292, parents can ask their local police to enter their children's names into the NCIC computer and they can verify from the police or, if necessary, from the FBI that the names of their children are in the system.

The Missing Children's Assistance Act of 1984 (P.L. 98-473; 42 U.S.C. 5771 et. seq.) authorized the establishment of a national clearinghouse (now the National Center for Missing and Exploited Children) to:

- Provide technical assistance to local and state governments, public and private nonprofit agencies, and individuals in locating and recovering missing children;
- Coordinate public and private efforts to locate, recover, or reunite missing children with their legal custodians;
- Operate a national toll-free hotline through which individuals can report information on the location of missing children or request information on procedures for reuniting children with their legal custodians;
- Disseminate information on innovative and model missing children's programs, services, and legislation;
- Provide technical assistance to law enforcement agencies, state and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of missing and exploited children's cases.

National Child Search Assistance Act (P.L. 101-647; 42 U.S.C. 5779, 5780) passed as part of the Crime Control Act of 1990, requires federal, state, and local law enforcement to enter reports of a missing child less than 18 and unidentified persons in the National Crime Information Center (NCIC). It provides for update of records with additional information within 60 days of the original entry, and it provides for close liaison between law enforcement and the National Center for Missing and Exploited Children for the exchange of information and technical assistance in missing children cases.

International Parental Kidnapping Crime Act of 1993  
(P.L.103-173; 18 U.S.C. 1201)

## Reading List

*This list is intended to give some idea of the relevant literature, but you should not regard it as complete or authoritative.*

Atwood, "Child Custody Jurisdiction and Territoriality," 52 *Ohio St. L.J.* 369 (1991)

Charlow, "Jurisdictional Gerrymandering and the Parental Kidnapping Prevention Act," 25 *Fam. L.Q.* 299 (1991)

Copertino, "Hague Convention on the Civil Aspects of International Child Abduction: An Analysis of its Efficacy," 6 *Conn. J. Int'l L.* 715 (1991)

Crawford, "Habitual Residence of the Child as the Connecting Factor in Child Abduction Cases: A Consideration of Recent Cases," 1992 *Jurid. Rev.* 177

Crouch, "Use, Abuse, and Misuse of the UCCJA and PKPA," 6 *Am. J. Fam. L.* 147 (1992)

Davis, "The New Rules on International Child Abduction: Looking Forward to the Past," 3 *Aust'l J. Fam. L.* 31 (1990)

De Hart, *International Child Abduction: A Guide to Applying the 1988 Hague Convention, with Forms* (A publication of the Section of Family Law, American Bar Association) (1993)

Edwards, "The Child Abduction Agony," 140 *New L.J.* 59 (1990)

Evans, "International Child Abduction," 142 *New L.J.* 232 (1992)

Frank, "American and International Responses to International Child Abductions," 16 *N.Y.U. J. Int'l L. & Pol.* 415 (1984)

Girdner, "Obstacles to the Recovery and Return of Parentally Abducted Children," 13 *Children's Legal Rts J.* 2 (1992)

Greif, *When Parents Kidnap, The Families Behind the Headlines*

Hilton, "Handling a Hague Trial," 6 *Am. J. Fam. L.* 211 (1992)

Hoff, *Parental Kidnapping, How to Prevent an Abduction and What to Do If your Child Is Abducted* (A publication of the National Center for Missing and Exploited Children. To order, see page 6, no charge.)

Kindall, "Treaties - Hague Convention on Child Abduction - Wrongful Removal - Grave Risk or Harm to Child" 83 *Am. J. Int'l L.* 586 (1989)

Marks, "Fighting Back. The Attorney's Role in a Parental Kidnapping Case," 64 *Fla. B.J.* 23 (1990)

Murray, "One Child's Odyssey Through the Uniform Child Custody Jurisdiction and Parental Kidnapping Prevention Acts," 1993 *Wis. L. Rev.* 589

Oberdorfer, "Toward a Reasoned Response to Parental Kidnapping," 75 *Minn. L. Rev.* 1701 (1991)

Pfund, "The Hague Convention on International Child Abduction, the International Child Abduction Remedies Act, and the Need for Availability of Counsel for All Petitioners," 24 *Fam. L.Q.* 35 (1990)

Rutherford, "Removing the Tactical Advantages of International Parental Child Abductions under the 1980 Hague Convention on the Civil Aspects of International Child Abductions," 8 *Ariz. J. Int'l & Comp. L.* 149 (1991)

Sagatun, "Parental Child Abduction: The Law, Family Dynamics, and Legal System Responses," 18 *Journal of Crim. Just.* (1990)

Sharpless, "The Parental Kidnapping Prevention Act: Jurisdictional Considerations Where There are Competing Child Custody Orders," 13 *J. Juv. L.* 54 (1992)

Shirman, "International Treatment of Child Abduction and the 1980 Hague Convention," 15 *Suffolk Transnat'l L.J.* 222 (1991)

Stotter, "The Light at the End of the Tunnel: The Hague Convention on International Child Abduction Has Reached Capitol Hill," 9 *Hastings Int'l and Comp. L. Rev.* 285 (1986)

Stranko, "International Child Abduction Remedies," *The Army Lawyer* 28 (Department of the Army pamphlet 27-50-248, July 1993)

*Family Advocate, A Practical Journal of the American Bar Association Family Law Section*, Spring 1987. (Special issue on divorce law around the world and international parental child abduction.)

*Family Advocate, A Practical Journal of the American Bar Association Family Law Section*, Spring 1993. (Special issue on international family law.)

*Family Law Quarterly*, Spring 1994. (Special issue on international family law.)

"The Hague International Child Abduction Convention and the International Child Abduction Remedies Act: Closing Doors to the Parent Abductor," 2 *Transnat'l Law* 589 (1989)

"The Hague Convention on International Child Abduction: A Practical Application," 10 *Loy. L.A. Int'l & Comp. L.J.* 163 (1988)

"International Child Abduction and the Hague Convention: Emerging Practice and Interpretation of the Discretionary Exception," 25 *Tex. Int'l L.J.* 287 (1990)

"International Parental Child Abduction: The Need for Recognition and Enforcement of Foreign Custody Decrees," 3 *Emory J. Int'l Dispute Resolution* 205 (1989)

"More Than Mere Child's Play: International Parental Abduction of Children," 6 *Dick. L. Rev.* 283 (1988)

"You Must Go Home Again: Friedrich v. Friedrich, The Hague Convention and the International Child Abduction Remedies Act," 18 *N.C. J. Int'l L. & Com. Reg.* 743 (1993)

## U.S. Government Documents on the Hague Convention

Department of State notice in the *Federal Register* of March 26, 1986, pp. 10494-10516.

Senate Treaty Doc. 99-11, 99th Congress, 1st Session.

For the legislative history of the International Child Abduction Remedies Act, Public Law 100-300, see S.1347 and H.R. 2673, and H.R. 3971-3972, 100th Congress, and related hearing reports.

## PART VIII

### INSTRUCTIONS FOR COMPLETING HAGUE CONVENTION APPLICATION

To invoke the Hague Convention, submit two completed forms (one original and one copy), plus two copies of your supporting documents. The application form may be photocopied. Type or print all information. Furnish as much of the information called for as possible, using an additional sheet of paper if you need more space. If you have further questions about the form, you may wish to refer to the text of the Convention. You may also call the Office of Children's Issues (CI) at 202-736-7000.

It is advisable to have some of the supporting documents translated into the official language of the requested country. Translations speed up the overall process. Foreign attorneys and judges act more favorably with such documents. Ask CI for more information about supporting documents.

You may fax your Hague application to CI, fax number 202-647-2835. Send originals and supporting documents by mail, express mail, or courier service to: CA/OCS/CI, Room 4811, Department of State, Washington, D.C. 20520-4818. *Be sure to sign and date the application.*

#### Checklist and Instructions for Completing the Hague Application

##### Information Block

##### Details Needed

#### I. Identity of Child and Parents

---

Child's Name	- The child's full name: last name, first, middle.
Date of Birth	- Month/Day/Year.
Place of Birth	- City/State/Country.
Address	- Child's address in the country of habitual residence before the abduction or removal.
U.S. Social Security No.	- If known. A nine-digit number: 000-00-0000.
Passport/Identity Card	- Issuing country and passport or I.D. number.
Nationality	- Include all nationalities of the child.
Height	- Feet and inches.
Weight (and Sex)	- Pounds. Please also include sex of child in this block.
Color of Hair	- Child's hair color.
Color of Eyes	- Include color photo, if available.
<i>Father</i> Name	- Full name of father, including alternative spellings of family names.
	- of father.
Date of Birth	- of father.
Place of Birth	- of father. Include all nationalities.
Nationality	- of father.

**Information Block (cont.)**

**Details Needed**

- Occupation - of father. Issuing country and number.
- Passport/Identity Card - of father. Include zipcode as well as telephone and fax numbers for work and home .
- Current Address and Tel. - of father.
- U.S. Social Security No. - of the father before the abduction or retention.
- Country of Habitual Residence

**Mother**

- Name - Full name of mother of child, including maiden name.
- Date of Birth - of mother.
- Place of Birth - of mother.
- Nationality - of mother. Include all nationalities.
- Passport/Identity Card - of mother. Issuing country and number.
- Current Address and Tel. - of mother. Include zipcode as well as telephone and fax numbers for work and home.
- Occupation - of mother.
- U.S. Social Security No. - of mother.
- Country of Habitual Residence - of the mother before the abduction or retention.

- Date and Place of Marriage and Divorce - Indicate dates and location of marriage and divorce of the parents of the child. It is important to clearly state the marital status at the time of the abduction or retention.

**II. Requesting Individual or Institution**

This section is for information concerning the person or institution applying for the return of the child to the United States.

- Name - Provide the full name of the person or institution asking for the child to be returned.
- Nationality - of the requester.
- Occupation - of the requester (if a person).
- Current Address and Tel. - of requester. Include home, work and fax number.
- Passport/Identity Card - of requester (if a person).
- Country of Habitual Residence - of requester (if a person).
- Relationship to Child - of requester.
- Name, Address, and Tel. of Legal Adviser, if Any - Include zipcode as well as telephone and fax numbers.

### III. Information Concerning the Person Alleged to Have Wrongfully Removed or Retained Child

The information about the abducting parent is needed to assist in locating the child. Please provide all requested information and any additional facts that may help find the child.

- |   |  |
|---|--|
| Name  | - Full name of parent who has abducted or wrongfully retained the child.   |
| Known Aliases   | - of the abductor. Any other names the abductor may use.   |
| Date of Birth   | - of the abductor  |
| Place of Birth  | - of the abductor  |
| Nationality   | - of the abductor. Include all nationalities   |
| Occupation, Name and Address of Employer  | - of the abductor since the removal. Provide any employment information that may be helpful in locating the abductor, such as names, addresses and telephone numbers of relatives and or friends of the abducting parent who could help locate child(ren). |
| Passport/Identity Card  | - of the abductor. Country and number.   |
| U.S. Social Security No.  | - of the abductor.   |
| Current Location or Last Known Address  | - of the abductor in the country where the child was taken.<br>Note: NOT IN THE U.S.   |
| Height  | - of the abductor.   |
| Weight  | - of the abductor.   |
| Color of Hair   | - of the abductor.   |
| Color of Eyes   | - of the abductor. Include photo, if available.  |
| Other Persons With Possible Additional Information Relating to the Whereabouts of Child | - Provide the name, address and telephone numbers of anyone in the country to which the child was taken who could give the Central Authority in that country information on the child's location.  |

### IV. Time, Place, Date, and Circumstances of the Removal or Retention

Provide the date, to the best of your knowledge, that the child left the U.S. or when the wrongful retention began. Include the place from which the child was taken. Describe the legal relationship existing between you and the abducting parent when the child was removed. What were the circumstances when the removal or retention occurred?

Did the other parent take the child during a scheduled visitation? Did the other parent take the child for what you believed would be a short visit and then inform you that they were staying? Did they purchase round-trip air tickets to show that they intended to return? Had you and your family moved to the other country, and then you decided to return to the United States?

Take this opportunity to tell your story. Try to anticipate what claims the other parent may make and provide your explanation.

*Do not limit yourself to the space provided on the form. Additional pages may be attached to fully narrate the circumstances. However, please be concise.*

#### V. Factual or Legal Grounds Justifying Request

Provide information and documentation establishing that you had, and were exercising, a right of custody under the Hague Convention at the time of the child's removal. Generally, a right of custody is created by a custody order, when parents are divorced, or by operation of state law, when parents are still married when the child is taken. As stated on page 8, the Convention defines "rights of custody" as including "rights relating to the care of the child and, in particular, the right to determine the child's place of residence." Thus, you may have a "right of custody" under the Convention even if you do not have court-ordered joint or sole custody of the child.

**- IMPORTANT -**

If there is no applicable court order, please provide a copy of the state statute or case law that establishes your right of custody at the time of the child's removal. This provision is sometimes found in the estate and wills section of the state code. Remember, you are not attempting to show that you would have an equal right to obtain custody in a subsequent custody proceeding, but that you had and were exercising a right of custody when the child was taken.

*Do not wait to get a custody order before filing a Hague application.*

#### VI. Civil Proceeding in Progress, If Any

Indicate any civil action (in the U.S. or abroad) that may be pending (i.e., custody, divorce). Name court and hearing dates.

## VII. Child Is to Be Returned To:

- |   |   |
|---|---|
| Name  | - of person to whom child will be returned.   |
| Date of Birth                                       | - of person to whom child will be returned.   |
| Place of Birth                                      | - of person to whom child will be returned.   |
| Address   | - of person to whom child will be returned.   |
| Telephone Number(s)                                 | - of person to whom child will be returned.   |
| Proposed Arrangements<br>for Return Travel of Child | - Provide exact means by which you propose that the<br>child return to the U.S., if this is ordered.<br>Would you travel to pick up the child?<br>Is the child old enough to travel by him or herself?<br>Do you have someone who could return with the<br>child?<br>Be specific. |

## VIII. Other Remarks

State here whether you are applying for return or access under the Convention. You should include here any additional information that you believe may be pertinent to the Hague application.

## IX. Documents Attached

Check boxes of items enclosed.

*Sign and date the application.*



**UNITED STATES DEPARTMENT OF STATE**  
**APPLICATION FOR ASSISTANCE UNDER THE**  
**HAGUE CONVENTION ON CHILD ABDUCTION**

OMB NO. 1405-0078  
 EXPIRES: 8-31-95  
 Estimated Burden - 1 Hour\*

SEE PRIVACY STATEMENT ON REVERSE

**I. IDENTITY OF CHILD AND PARENTS**

CHILD'S NAME (LAST, FIRST, MIDDLE)			DATE OF BIRTH	PLACE OF BIRTH	
ADDRESS (Before removal)			U.S. SOCIAL SECURITY NO.	PASSPORT/IDENTITY CARD COUNTRY: NO.:	NATIONALITY
HEIGHT	WEIGHT	COLOR OF HAIR		COLOR OF EYES	
FATHER			MOTHER		
NAME (Last, First, Middle)			NAME (Last, First, Middle)		
DATE OF BIRTH	PLACE OF BIRTH		DATE OF BIRTH	PLACE OF BIRTH	
NATIONALITY	OCCUPATION	PASSPORT/IDENTITY CARD COUNTRY: NO.:	NATIONALITY	OCCUPATION	PASSPORT/IDENTITY CARD COUNTRY: NO.:
CURRENT ADDRESS AND TELEPHONE NUMBER			CURRENT ADDRESS AND TELEPHONE NUMBER		
U.S. SOCIAL SECURITY NO.			U.S. SOCIAL SECURITY NO.		
COUNTRY OF HABITUAL RESIDENCE			COUNTRY OF HABITUAL RESIDENCE		
DATE AND PLACE OF MARRIAGE AND DIVORCE, IF APPLICABLE					

**II. REQUESTING INDIVIDUAL OR INSTITUTION**

NAME (Last, First, Middle)		NATIONALITY	OCCUPATION
CURRENT ADDRESS AND TELEPHONE NUMBER			PASSPORT/IDENTITY CARD COUNTRY: NO.:
COUNTRY OF HABITUAL RESIDENCE			
RELATIONSHIP TO CHILD	NAME, ADDRESS, AND TELEPHONE NO. OF LEGAL ADVISER, IF ANY		

**III. INFORMATION CONCERNING THE PERSON ALLEGED TO HAVE WRONGFULLY REMOVED OR RETAINED CHILD**

NAME (Last, First, Middle)		KNOWN ALIASES	
DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	
OCCUPATION, NAME AND ADDRESS OF EMPLOYER		PASSPORT/IDENTITY CARD COUNTRY: NO.:	U.S. SOCIAL SECURITY NO.
CURRENT LOCATION OR LAST KNOWN ADDRESS IN THE U.S.			
HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES

OTHER PERSONS WITH POSSIBLE ADDITIONAL INFORMATION RELATING TO THE WHEREABOUTS OF CHILD  
(Name, address, telephone number)

IV. TIME, PLACE DATE, AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION

V. FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST

VI. CIVIL PROCEEDINGS IN PROGRESS, IF ANY

VII. CHILD IS TO BE RETURNED TO:

NAME (LAST, FIRST MIDDLE)	DATE OF BIRTH	PLACE OF BIRTH
ADDRESS		TELEPHONE NUMBER

PROPOSED ARRANGEMENTS FOR RETURN TRAVEL OF CHILD

VIII. OTHER REMARKS

IX. DOCUMENTS ATTACHED (PREFERABLY CERTIFIED)

<input type="checkbox"/> DIVORCE DECREE	<input type="checkbox"/> PHOTOGRAPH OF CHILD	<input type="checkbox"/> OTHER _____
<input type="checkbox"/> CUSTODY DECREE	<input type="checkbox"/> OTHER AGREEMENT CONCERNING CUSTODY _____	

SIGNATURE OF APPLICANT AND/OR STAMP OF CENTRAL AUTHORITY	DATE	PLACE
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PRIVACY ACT STATEMENT

This information is requested under the authority of the International Child Abduction Remedies Act, Public Law 100-300. The information will be used for the purpose of evaluating applicants' claims under the Hague Convention on the Civil Aspects of International Child Abduction, locating abducted children, and advising applicants about available legal remedies. Without the requested information, U.S. authorities may be unable effectively to assist in locating abducted children.



**UNITED STATES DEPARTMENT OF STATE**  
**APPLICATION FOR ASSISTANCE UNDER THE**  
**HAGUE CONVENTION ON CHILD ABDUCTION**

OMB NO. 1405-0076  
 EXPIRES: 9-31-95  
 Estimated Burden - 1 Hour\*

SEE PRIVACY STATEMENT ON REVERSE

**I. IDENTITY OF CHILD AND PARENTS**

CHILD'S NAME (LAST, FIRST, MIDDLE)			DATE OF BIRTH	PLACE OF BIRTH	
ADDRESS (Before removal)			U.S. SOCIAL SECURITY NO.	PASSPORT/IDENTITY CARD COUNTRY: NO.:	NATIONALITY
HEIGHT	WEIGHT	COLOR OF HAIR		COLOR OF EYES	
FATHER			MOTHER		
NAME (Last, First, Middle)			NAME (Last, First, Middle)		
DATE OF BIRTH	PLACE OF BIRTH		DATE OF BIRTH	PLACE OF BIRTH	
NATIONALITY	OCCUPATION	PASSPORT/IDENTITY CARD COUNTRY: NO.:	NATIONALITY	OCCUPATION	PASSPORT/IDENTITY CARD COUNTRY: NO.:
CURRENT ADDRESS AND TELEPHONE NUMBER			CURRENT ADDRESS AND TELEPHONE NUMBER		
U.S. SOCIAL SECURITY NO.			U.S. SOCIAL SECURITY NO.		
COUNTRY OF HABITUAL RESIDENCE			COUNTRY OF HABITUAL RESIDENCE		
DATE AND PLACE OF MARRIAGE AND DIVORCE, IF APPLICABLE					

**II. REQUESTING INDIVIDUAL OR INSTITUTION**

NAME (Last, First, Middle)	NATIONALITY	OCCUPATION
CURRENT ADDRESS AND TELEPHONE NUMBER		PASSPORT/IDENTITY CARD COUNTRY: NO.:
COUNTRY OF HABITUAL RESIDENCE		
RELATIONSHIP TO CHILD	NAME, ADDRESS, AND TELEPHONE NO. OF LEGAL ADVISER, IF ANY	

**III. INFORMATION CONCERNING THE PERSON ALLEGED TO HAVE WRONGFULLY REMOVED OR RETAINED CHILD**

NAME (Last, First, Middle)	KNOWN ALIASES		
DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	
OCCUPATION, NAME AND ADDRESS OF EMPLOYER	PASSPORT/IDENTITY CARD COUNTRY: NO.:	U.S. SOCIAL SECURITY NO.	
NEXT LOCATION OR LAST KNOWN ADDRESS IN THE U.S.			
HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES

**OTHER PERSONS WITH POSSIBLE ADDITIONAL INFORMATION RELATING TO THE WHEREABOUTS OF CHILD**  
(Name, address, telephone number)

**IV. TIME, PLACE DATE, AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION**

**V. FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST**

**VI. CIVIL PROCEEDINGS IN PROGRESS, IF ANY**

**VII. CHILD IS TO BE RETURNED TO:**

NAME (LAST, FIRST MIDDLE)

DATE OF BIRTH

PLACE OF BIRTH

ADDRESS

TELEPHONE NUMBER

PROPOSED ARRANGEMENTS FOR RETURN TRAVEL OF CHILD

**VIII. OTHER REMARKS**

**IX. DOCUMENTS ATTACHED (PREFERABLY CERTIFIED)**

DIVORCE DECREE

PHOTOGRAPH OF CHILD

OTHER \_\_\_\_\_

CUSTODY DECREE

OTHER AGREEMENT CONCERNING CUSTODY \_\_\_\_\_

SIGNATURE OF APPLICANT AND/OR STAMP OF CENTRAL AUTHORITY

DATE

PLACE

**PRIVACY ACT STATEMENT**

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**UNITED STATES DEPARTMENT OF STATE**  
**APPLICATION FOR ASSISTANCE UNDER THE**  
**HAGUE CONVENTION ON CHILD ABDUCTION**

OMB NO. 1405-0076  
 EXPIRES: 8-31-95  
 Estimated Burden - 1 Hour\*

SEE PRIVACY STATEMENT ON REVERSE

**I. IDENTITY OF CHILD AND PARENTS**

CHILD'S NAME (LAST, FIRST, MIDDLE)			DATE OF BIRTH	PLACE OF BIRTH	
ADDRESS (Before removal)			U.S. SOCIAL SECURITY NO.	PASSPORT/IDENTITY CARD COUNTRY: NO.:	NATIONALITY
HEIGHT	WEIGHT	COLOR OF HAIR		COLOR OF EYES	
FATHER			MOTHER		
NAME (Last, First, Middle)			NAME (Last, First, Middle)		
DATE OF BIRTH	PLACE OF BIRTH		DATE OF BIRTH	PLACE OF BIRTH	
NATIONALITY	OCCUPATION	PASSPORT/IDENTITY CARD COUNTRY: NO.:	NATIONALITY	OCCUPATION	PASSPORT/IDENTITY CARD COUNTRY: NO.:
CURRENT ADDRESS AND TELEPHONE NUMBER			CURRENT ADDRESS AND TELEPHONE NUMBER		
U.S. SOCIAL SECURITY NO.			U.S. SOCIAL SECURITY NO.		
COUNTRY OF HABITUAL RESIDENCE			COUNTRY OF HABITUAL RESIDENCE		
DATE AND PLACE OF MARRIAGE AND DIVORCE, IF APPLICABLE					

**II. REQUESTING INDIVIDUAL OR INSTITUTION**

NAME (Last, First, Middle)	NATIONALITY	OCCUPATION
CURRENT ADDRESS AND TELEPHONE NUMBER		PASSPORT/IDENTITY CARD COUNTRY: NO.:
COUNTRY OF HABITUAL RESIDENCE		
RELATIONSHIP TO CHILD	NAME, ADDRESS, AND TELEPHONE NO. OF LEGAL ADVISER, IF ANY	

**III. INFORMATION CONCERNING THE PERSON ALLEGED TO HAVE WRONGFULLY REMOVED OR RETAINED CHILD**

NAME (Last, First, Middle)	KNOWN ALIASES		
DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	
OCCUPATION, NAME AND ADDRESS OF EMPLOYER	PASSPORT/IDENTITY CARD COUNTRY: NO.:	U.S. SOCIAL SECURITY NO.	
CURRENT LOCATION OR LAST KNOWN ADDRESS IN THE U.S.			
HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES

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IV. TIME, PLACE DATE, AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION

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VI. CIVIL PROCEEDINGS IN PROGRESS, IF ANY

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NAME (LAST, FIRST MIDDLE)	DATE OF BIRTH	PLACE OF BIRTH
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PROPOSED ARRANGEMENTS FOR RETURN TRAVEL OF CHILD

VIII. OTHER REMARKS

IX. DOCUMENTS ATTACHED (PREFERABLY CERTIFIED)

<input type="checkbox"/> DIVORCE DECREE	<input type="checkbox"/> PHOTOGRAPH OF CHILD	<input type="checkbox"/> OTHER _____
<input type="checkbox"/> CUSTODY DECREE	<input type="checkbox"/> OTHER AGREEMENT CONCERNING CUSTODY _____	

SIGNATURE OF APPLICANT AND/OR STAMP OF CENTRAL AUTHORITY	DATE	PLACE
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This information is requested under the authority of the International Child Abduction Remedies Act, Public Law 100-300. The information will be used for the purpose of evaluating applicants' claims under the Hague Convention on the Civil Aspects of International Child Abduction, locating abducted children, and advising applicants about available legal remedies. Without the requested information, U.S. authorities may be unable effectively to assist in locating abducted children.

NATIONAL  
CENTER FOR



**MISSING &  
EXPLOITED  
CHILDREN**

# National Center for Missing and Exploited Children

As the nation's resource center for child protection, the National Center for Missing and Exploited Children (NCMEC) spearheads national efforts to locate and recover missing children and raises public awareness about ways to prevent child abduction, molestation, and sexual exploitation. A private, nonprofit organization established in 1984, NCMEC operates under a Congressional mandate and works in cooperation with the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention in coordinating the efforts of law enforcement, social service agencies, elected officials, judges, prosecutors, educators, and the public and private sectors to break the cycle of violence that historically has perpetuated these needless crimes against children.

NCMEC is a national voice, mobilizer, and advocate for those too young to vote or speak up for their own rights—our children. We are working to make our children's childhoods safer ones.

In the thirteen short years NCMEC has been in existence, we have had an impressive impact on the fight to end child victimization. Through March 1997 NCMEC has played a role in the recovery of more than 35,000 children, worked more than 56,000 cases involving missing and exploited children, and handled more than 1 million telephone calls through our national toll-free Hotline 1-800-THE-LOST/1-800-843-5678. We have circulated millions of photographs of missing children, trained more than 140,000 law enforcement officers nationwide, in Canada, and the United Kingdom and printed more than 13 million award-winning publications. And yet, there is much more to be done.

## Children at Risk

As a society our efforts to prevent crimes against children have not kept pace with the increasing vulnerability of our young citizens. In May 1990 the U.S. Department of Justice released a study reporting that annually there are as many as

- 114,600 attempted abductions of children by nonfamily members.
- 4,600 abductions by nonfamily members reported to police.
- 300 abductions by nonfamily members where the children were gone for long periods of time or were murdered.
- 354,000 children abducted by family members.
- 450,700 children who ran away.
- 127,100 children who were thrown away.
- 438,200 children who were lost, injured, or otherwise missing.

## "A Strong, Loud Voice for Children"

In 1990 NCMEC merged with the Adam Walsh Child Resource Center. John and Revé Walsh—founders of the organization and parents of 6-year-old Adam who in 1981 was abducted and murdered in Florida—called upon the new organization to become "a strong, loud voice for children." Today NCMEC is truly a national organization with its headquarters in Arlington, Virginia; the Adam Walsh Children's Fund, based in Florida, focusing upon special projects to reach millions of children and families with positive, nonfearful child safety programs, including the state-of-the-art curriculum, *KIDS AND COMPANY*; and branch offices operating in California, Florida, New York, and South Carolina providing hands-on assistance to families of missing children, advocating legislative changes to better protect children, conducting an array of prevention and awareness programs, and motivating citizens to become personally involved in child protection issues.

To learn more about the missing and exploited child issue and ways that you can join the chorus of voices around the country speaking out to better assist and protect our children, please review our list of publications. From child safety information to detailed information on how to investigate a missing and exploited child case, NCMEC offers literature on various aspects of these serious problems found in the United States today.

## BOOKS

Single copies of each book are available free of charge. The price for each book, when ordering multiple copies, is listed with the NCMEC Order Number.

### *An Analysis of Infant Abductions*

Written in conjunction with the Federal Bureau of Investigation, Office of Juvenile Justice and Delinquency Prevention within the U.S. Department of Justice, and University of Pennsylvania School of Nursing, this book presents the findings from interviews and record reviews of various nonfamily offenders who abducted 119 children younger than 6 months of age between 1983 and 1992. The findings include a classification of infant abduction designed for law enforcement in the investigation and apprehension of a suspect and a clinical classification designed for mental health clinicians in the assessment and diagnosis of an abductor and in the treatment of the victim family. 62 pp.  
(NCMEC Order #66 - First copy free, each additional copy \$3)

### *Child Molesters: A Behavioral Analysis*

Produced in cooperation with the FBI Academy, *Child Molesters* is an investigative tool for law enforcement officers and child protection professionals handling cases of child sexual exploitation. The practitioner will learn valuable investigative strategies, the characteristics of a pedophile, and the difficulties often encountered in sexual exploitation cases. Criminal justice professionals will benefit from the chapter on establishing probable cause through expertise when applying for search warrants in cases of child molestation. For the researcher, a list of additional reading is found at the end of the text. 76 pp.  
(NCMEC Order #70 - First copy free, each additional copy \$3)

### *Child Molesters Who Abduct:*

#### *Summary of the Case in Point Series*

Written in conjunction with the Federal Bureau of Investigation, Office of Juvenile Justice and Delinquency Prevention within the U.S. Department of Justice, and University of Pennsylvania School of Nursing, this book examines and reports on case histories of serial child molesters and abductors while offering insights for professionals in law enforcement, the court system, healthcare, and corrections/probation on the backgrounds, behavior, and techniques of such offenders in order either to prevent their crimes or identify and stop them more quickly. 116 pp.  
(NCMEC Order #65 - First copy free, each additional copy \$3)

### *Child Sex Rings: A Behavioral Analysis*

Produced in cooperation with the FBI Academy, *Child Sex Rings* will help the criminal justice professional handling cases of child sexual exploitation understand the dynamics and types of child sex rings and ritualistic abuse. Investigators will benefit from the investigative techniques and protocols for handling child sex ring cases, insights into offender strategies, and guidelines on corroborating evidence. References and additional readings on child sexual exploitation and ritualistic abuse are also presented. 80 pp.  
(NCMEC Order #72 - First copy free, each additional copy \$3)

### *Children Traumatized in Sex Rings*

Developed in conjunction with the University of Pennsylvania School of Nursing, this handbook provides the child-care practitioner with important guidelines in dealing with the child victim of sexual exploitation. Issues covered include an overview of child sexual abuse and exploitation, a description of the different kinds of sex rings, guidelines for the physical and mental assessment of the child victim, interviewing techniques, and legal considerations. Included in the text are actual drawings made by the children in the study. 56 pp.  
(NCMEC Order #71 - First copy free, each additional copy \$3)

### *Family Abduction*

Produced in cooperation with the American Bar Association, this fourth edition (which was formerly titled *Parental Kidnapping*) contains step-by-step information for parents who have experienced a family abduction—whether domestic or international. The handbook guides parents through the civil and criminal justice systems, explains the laws that will help them, outlines prevention methods, and provides suggestions for aftercare following the abduction. In addition, *Family Abduction* thoroughly details search and recovery strategies and contains valuable advice for attorneys, prosecutors, and family court judges handling these difficult cases. 128 pp.  
(NCMEC Order #75 - English-language version  
NCMEC Order #67 - Spanish-language version  
First copy free, each additional copy \$5)

***Female Juvenile Prostitution: Problem and Response***

Developed in conjunction with the Office of Juvenile Justice and Delinquency Prevention and Office for Victims of Crime within the United States Department of Justice along with the Paul and Lisa Program, Public Administration Service, the University of Pennsylvania School of Nursing, and the WHISPER Program, this handbook provides case histories of former juvenile prostitutes, information on establishing a community program to help victims of child prostitution, and a case study of one such program. Included in the text are sample forms for executing a program to help victims of child prostitution. 88 pp.

(NCMEC Order #68 - First copy free, each additional copy \$3)

***For Healthcare Professionals: Guidelines on Prevention of and Response to Infant Abductions***

Researched and written by NCMEC's vice president and chief operating officer who is an expert in the field of infant abductions, this fourth edition is useful to maternal/child-care nurses, healthcare security administrators, law enforcement officials, public relations officers, and parents. It recommends actions to be taken to prevent an infant abduction from a healthcare facility or home and outlines the steps to be taken if an abduction occurs. 76 pp.

(NCMEC Order #05 - First copy free for individuals. First 10 copies free for facilities. Each additional copy \$3)

***Missing and Abducted Children:  
A Law Enforcement Guide to Case  
Investigation and Program Management***

Authored by a team of 38 professionals from local, state, and federal agencies, this guide outlines a standard of practice for law enforcement officers handling missing child cases whether runaways, throwaways, family/nonfamily abductions, or when the circumstances of the disappearance are unknown. It describes—step-by-step with definitive checklists—the investigative process required for each of these types of cases and offers a wealth of resources to assist an investigator. 232 pp.

(NCMEC Order #74 - First copy free, each additional copy \$10)

***My 8 Rules for Safety: Multilingual Child Safety and Prevention Tips***

List of eight safety tips for children in the following languages: Albanian, Amharic, Arabic, Armenian, Bulgarian, Cambodian, Czech, English, Farsi, Haitian Creole, Hmong, Hungarian, Lao, Pashto, Polish, Romanian, Russian, Slovak, Somali, Spanish, Tigrinya, Ukrainian, and Vietnamese. 32 pp.

(NCMEC Order #69 - Free in limited quantities)

***Nonprofit Service Provider's Handbook***

Written by a consortium of nonprofit service providers dealing with families of missing and exploited children, this handbook was created to help existing nonprofit organizations survive and budding organizations learn from the experiences of their peers. Nonprofit service providers will find a complete guide for building the organization—choosing a Board of Directors, raising funds, working with law enforcement, advocating legislation, dealing with the media, producing publications, and much more. The needs of missing and exploited children and their families are extensively covered, and the appendix includes 25 sample forms. 88 pp.

(NCMEC Order #79 - First copy free, each additional copy \$5)

***Recovery and Reunification of Missing Children:  
A Team Approach***

Written in cooperation with the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention's Missing and Exploited Children Comprehensive Action Program, this guide was designed to educate and assist professionals who bear the primary responsibility of recovering and reuniting missing children with their families. It offers "best practice" guidelines and training tips for returning a recovered child to his or her family and discusses the dynamics of criminal victimization involved in a child abduction. 52 pp.

(NCMEC Order #64 - First copy free, each additional copy \$3)

***A Report to the Nation***

NCMEC assessment of state legislative accomplishments made regarding missing and exploited child issues and an action agenda of recommended policies. 52 pp.

(NCMEC Order #80 - First copy free, each additional copy \$3)

***Selected State Legislation***

Now in its third edition, this book has been used by tens of thousands of child advocates and legislators throughout the country as a guide to the most effective state laws to protect children. The text includes legislation pertaining to the child victim/witness in the courtroom, licensing and criminal history information on those working with children and court-appointed advocates, and parental kidnapping statutes. Of particular interest to legislators are the criteria for drafting legislation and model state legislation. 132 pp.

(NCMEC Order #76 - First copy free, each additional copy \$5)

## BROCHURES

Unless otherwise indicated, up to 50 copies of each brochure are available free of charge. NCMEC charges 10 cents per copy for each brochure ordered in excess of the 50 free copies.

### *Child Protection*

Prevention information for parents and children.

English-language version (NCMEC Order #01)

Spanish-language version (NCMEC Order #02)

### *Child Safety on the Information Highway*

Safety tips for families whose children use computer online services.

(NCMEC Order #03)

### *For Camp Counselors*

Information on detecting and reporting child sexual abuse and exploitation.

(NCMEC Order #40)

### *For Law Enforcement Professionals*

Information on NCMEC resources available to assist law enforcement in the investigation of missing and exploited child cases.

(NCMEC Order #53)

### *KIDS AND COMPANY: Together for Safety*

For use by school educators and civic leaders this brochure *describes* a comprehensive personal safety curriculum for Grades K-6 that can be used in both school and community group settings. The program provides children with skills, information, self-confidence, and support that will enhance their self-esteem and help prevent abduction and abuse.

(NCMEC Order #25 - First 10 copies free)

### *My 8 Rules for Safety*

Safety tips poster for children.

English-language version (NCMEC Order #28)

Haitian Creole-language version (NCMEC Order #42)

Spanish-language version (NCMEC Order #29)

Braille version (NCMEC Order #27)

### *National Center for Missing and Exploited Children*

The general information brochure you are currently reading that contains a list of all NCMEC publications, information on the missing and exploited child issue, and highlights of NCMEC operations.

(NCMEC Order #21 - Free in limited quantities)

### *Tips to Help Prevent the Abduction and Sexual Exploitation of Your Children*

Summary of general safety tips in all NCMEC brochures. Available in Braille ONLY.

Braille version (NCMEC Order #13)

### *Just in Case...Series*

*Just in Case...Finding Professional Help in Case Your Child is Missing or the Victim of Sexual Abuse or Exploitation*

Advice on how to find professional help for children who have been kidnapped or sexually exploited.

English-language version (NCMEC Order #30)

Spanish-language version (NCMEC Order #43)

Vietnamese-language version (NCMEC Order #44)

*Just in Case...You Are Considering Daycare*

Information on choosing daycare and preventing sexual abuse and exploitation.

English-language version (NCMEC Order #07)

Spanish-language version (NCMEC Order #35)

*Just in Case...You Are Considering Family Separation*

Tips on preventing parental kidnapping.

English-language version (NCMEC Order #08)

Spanish-language version (NCMEC Order #09)

Vietnamese-language version (NCMEC Order #45)

*Just in Case...You Are Dealing with Grief*

*Following the Loss of a Child*

Guidelines on a healthy approach to the grieving process.

English-language version (NCMEC Order #10)

Spanish-language version (NCMEC Order #46)

*Just in Case...You Are Using the Federal Parent Locator Service*

Information on finding the abductor and child in parental kidnapping cases.

English-language version (NCMEC Order #11)

Spanish-language version (NCMEC Order #47)

*Just in Case...You Need a Babysitter*

Information on finding a babysitter and safety tips.

English-language version (NCMEC Order #12)

Spanish-language version (NCMEC Order #14)

*Just in Case...Your Child Is a Runaway*

Tips on preventing runaway incidents.

English-language version (NCMEC Order #15)

Spanish-language version (NCMEC Order #16)

Vietnamese-language version (NCMEC Order #48)

*Just in Case...Your Child Is Missing*

Five steps to prepare in case your child might someday be missing.

English-language version (NCMEC Order #17)

Spanish-language version (NCMEC Order #18)

Vietnamese-language version (NCMEC Order #49)

*Just in Case...Your Child Is Testifying in Court*

Advice on helping children testify effectively.

English-language version (NCMEC Order #19)

Spanish-language version (NCMEC Order #50)

*Just in Case...Your Child Is the Victim of Sexual Abuse or Exploitation*

Warning signs and steps to take in the event of child sexual abuse or exploitation.

English-language version (NCMEC Order #20)

Spanish-language version (NCMEC Order #51)



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The National Center for Missing and Exploited Children's 24-hour, toll-free telephone line 1-800-THE-LOST (1-800-843-5678) is open for those wishing to report information on missing or exploited children and is available in the United States, Canada, and Mexico. The TDD hotline is 1-800-826-7653, and the NCMEC business number is 703-235-3900. The NCMEC facsimile number is 703-235-4067. The NCMEC web site is <http://www.missingkids.com>. NCMEC's toll-free number when dialing from the United Kingdom is 0-800-962587.

To receive information on the services offered by our NCMEC branches and the Children's Fund, please contact them directly.

**NCMEC/CA**  
18111 Irvine Boulevard, Suite C  
Tustin, California 92780-3403  
714-508-0150 (telephone)  
714-508-0153 (facsimile)

**NCMEC/FL**  
9176 Alternate A1A, Suite 100  
Lake Park, Florida 33403-1445  
561-848-1900 (telephone)  
561-848-0308 (facsimile)

**NCMEC/NY**  
249 Highland Avenue  
Rochester, New York 14620-3036  
716-242-0900 (telephone)  
716-242-0717 (facsimile)

**NCMEC/SC**  
1234 St. Andrews Road  
Columbia, South Carolina 29210-5827  
803-750-7055 (telephone)  
803-750-1459 (facsimile)

**Adam Walsh Children's Fund**  
9176 Alternate A1A, Suite 200  
Lake Park, Florida 33403-1445  
561-863-7900 (telephone)  
561-863-3111 (facsimile)

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National Center for  
Missing and Exploited Children  
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Arlington, VA 22201-3052

## Impact on Children of International Abduction

ABSTRACT: Little is known about the effects on children of crossing international borders during a parental abduction. This presentation, drawn from a sample of 371 searching parents (over half of whom have recovered and 21% of whose children were taken outside the U.S.), will examine the impact on the children of spending some time overseas.

Geoffrey L. Greif, DSW  
Associate Professor  
School of Social Work  
University of Maryland at Baltimore

What happens to children whose parents abduct them and they are taken overseas? Recent estimates of the total number of child snatchings undertaken by family members in the U.S. have reached 350,000 annually (Finkelhor, Hotaling, & Sedlak, 1990; 1991). As a result, mental health practitioners, law enforcement officers, and policy makers are faced with a phenomenon of significant proportions. Parental abduction comprises by far the largest proportion of the child kidnapping problem, while stranger abduction is estimated to occur less than 5,000 times a year (Finkelhor et al., 1990). Despite the number of people potentially involved, little is known generally about the effects on the children of being kidnapped by one parent and denied contact with the other. Even less is known about the subset of children who cross international borders.

Parental abductions occur within the context of failed adult relationships. A parent snatches a child either as a marital or nonmarital relationship is breaking up, or within a period of time ranging from a few days to a few years afterward. Child custody disputes and marital breakups tear at the fabric of the family, placing children and sometimes parents in impossible situations to

which there rarely are resolutions that satisfy everyone. At the far end of the divorce continuum are those relationship problems or custody disputes that include a kidnapping and other illegal acts. Defining parental abduction broadly to include any unauthorized taking or retaining of a child, the vast majority of incidents is resolved within a few days, usually after either an officer of the court, a police office, or a lawyer has contacted the abducting parent, or after the abducting parent returns the child without legal intervention (Greif & Hegar, 1993). Finkelhor et al. (1990), who offer more specific definitions of abduction estimate that 10 percent of abductions last longer than a month. In these longer term situations, abductors and children are often in hiding or only their general whereabouts are known to the searching parent. For children that are missing for a lengthy period of time, life may take on a different character than for those who merely spend a few extra days with one parent.

#### Our Research: Overseas Issues and the Impact on the Children

We [Greif and Hegar (1991, 1993; Hegar & Greif, 1991a, 1991b)] compiled a sample of 371 searching parents, nearly half of whom had recovered their children, by enlisting the assistance of 15 missing children's organizations throughout the United States and Canada. The organizations mailed eight page questionnaires in 1989 to parents who had approached them for help in locating their children.

Approximately 21% of the children were reportedly taken abroad with Central America, Canada, Mexico, Moslem countries, South America, and the United Kingdom the most frequently chosen destinations. By comparison, those children taken out of state but remaining in the US were most apt to go to Florida, California, and Texas which may say more about the idiosyncratic nature of our sample than anything else. Among those taken abroad; we found that there was a much greater likelihood of their being recovered from Hague than non-Hague countries (84% vs. 43%). Finally, among abducting parents, 85% of those born in the U.S. stayed in the U.S. and 15% went overseas. This stands in stark contrast to abductors who were not born in the U.S. Of foreign-born abductors, only 43% stayed in the U.S. while 57% went abroad.

What do we know about the impact on children? We begin with abducted children in general and can then move to those who go overseas. Home life for the total sample of children prior to the abduction was described as chaotic, thus placing the children at risk for psychological problems even before the abduction. Domestic violence was present in 54% of the relationships (Greif & Hegar, 1991). The abductor's substance abuse (15%) or emotional problems (16%) were blamed for the breakup in a significant percentage of the relationships, and abduction was threatened in advance of the actual event in almost half of the situations (Hegar & Greif, 1991a).

Some children who were recovered were described by the recovering parents as having been physically abused (23%), sexually abused (7%), and both physically and sexually abused (5%).

Children were also exposed to a range of other abusive behaviors (being screamed at, threatened, and witness to adult to adult fighting, etc.) The age of the children may affect how they experience abduction. Older children may suffer differently than younger children if, for example, they blame themselves for not contacting the searching parent when they have the capacity to telephone. A sense of guilt for having not made such a contact may emerge. On the other hand, younger children may be abducted at a time when crucial developmental bonds are being formed with the searching parent. Such a break may result in serious emotional problems at the time or in the future (Greif & Hegar, 1993).

Overall functioning was believed to have declined in more than half of the children between the time they were taken and the time they were returned to the searching parent. This finding is offered with caution, though, as parental assessment of pre-abduction functioning appeared to be unrealistically high. Similarly, assessment of post-abduction functioning could be affected by a parent's desire to characterize the child's situation as negative in order to show how badly the child was treated when missing. Behavior at home was the most problematic area with grades, school behavior, and health showing a smaller decline. Three-quarters believed that the abduction had some negative effect that persisted. With time, a majority (approximately 66%) of the children had been seen for psychological counseling (Greif & Hegar, 1993).

(For other information relevant to children, please see Greif & Hegar, 1992; Hatcher, Barton, & Brooks, 1992; Janvier et al,

1990; Sagatun & Barrett, 1990).

### Summary of Possible Experiences of Children

In summarizing the literature, children who were abducted by the other parent have been noted to have experienced some of the following during the abduction:

1. being physically, sexually, emotionally abused, and neglected
2. being snatched in a violent manner
3. being trained to be secretive (having name changed, downplaying school accomplishments to avoid notoriety, etc.)
4. avoiding police and other authority figures
5. questioning the abductor about the whereabouts of searching parent
6. being told the searching parent is dead, does not love the child, is a bad person, etc.
7. taking an overly protective role toward abductor
8. witnessing the abductor being chased by police, handcuffed and jailed
9. being placed in a foster home following abuse, neglect, or the jailing of the abductor and
10. in rare instances being murdered by an emotionally disturbed abductor.

Children who have been recovered have been noted to experience problems in the following areas:

1. bedwetting
2. interrupted sleep
3. clinging behavior and thumbsucking
4. fear of windows and doors (having been trained to avoid them)
5. extreme fright
6. grief and rage about parental abandonment
7. depression

In addition, children may experience:

8. rejection of the offending parent
9. anger at the searching parent for not finding them sooner
10. difficulty re-entering the family upon return, especially if a step-parent and new children are present
11. being emotionally caught in on-going battles between parents (and, sometimes, courts) upon recovery
12. wanting to return to the abducting parent after recovery because of the excitement of life on the run (including not going to school, playing "cops and robbers," etc.) or because of loyalty or a greater bond with the offender
13. the feeling of being a financial burden to the parent who recovers (some parents have spent more than \$100,000 to get child back which places family in financial hole)

Children who are apt to have the most difficulty are those who are missing for long periods of time, are maltreated, and are separated from the parent with whom they had the strongest bond (Greif & Hegar, 1993).

From interviewing both abductors and searching parents who have been involved in overseas abductions, the following points about the impact on the children of going overseas can be made and should be considered in addition to the points made above. In other words, an international abduction would hold the possibility of having an additive effect:

1. moving to a new or foreign culture during a time of high familial stress can make adaptation to that culture more problematic;

2. it is likely that with such a move, the children will also be cut off from even the abductor's extended family, which is less likely to happen if there is a domestic abduction - in a significant minority of cases, parents of abductors have contact with their grandchildren while on the run;

3. enrollment in a foreign country's schools as well as contact with a new society's culture could add to the stress of hiding in general and of being cut off from the searching parent;

4. going to a foreign country would give an increased sense of isolation to the child as well as to the parent who is not returning to his country of origin. Thus, the possibility of an unhealthy bond being formed between parent and child would be increased. The strangeness of the situation may make the child miss the searching parent even more and add to his sense of disorientation. The ability to communicate with others because of language barriers can add to this sense of isolation;

5. when returning to the abductor's native country, if the children are compelled to adopt a new culture, problems may arise over

loyalty issues to the searching parent;

6. during the first few days and possibly weeks away, the children have to cope with jet lag, new time zones, and food that may be beyond any prior experiences.

Taken together, overseas abductions place children clearly at additional risk for what we know already can be the negative impact of abductions.

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- ⊗ List the child in a passport look-out database to alert the custodial parent to an application for a U.S. passport
- ⊗ Alert foreign authorities to any evidence of child abuse or neglect

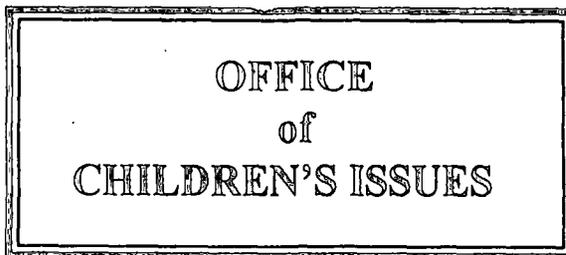
**CANNOT DO:**

- ◆ Reabduct the child
- ◆ Help a parent to violate host country laws
- ◆ Pay legal expenses or court fees
- ◆ Act as a lawyer or represent parents in court
- ◆ Give refuge to a parent involved in a re-abduction



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January 1997

U.S. DEPARTMENT OF STATE



OFFICE OF  
**CHILDREN'S ISSUES**



Overseas Citizens Services  
 Bureau of Consular Affairs

The Office of Children's Issues formulates, develops and coordinates policies and programs and provides direction to foreign service posts on international parental child abduction and international adoption. It also fulfills U.S. treaty obligations relating to the abduction of children.

### ***INTERNATIONAL ADOPTION***

The Office of Children's Issues coordinates policy and provides information on international adoption to the public. In 1996, U.S. citizens adopted over 11,300 foreign born children. Because adoption is a private legal matter within the judicial sovereignty of the nation where the child resides, the Department of State cannot intervene on behalf of an individual U.S. citizen in foreign courts. We offer general information and assistance regarding the adoption process in over 60 countries.

#### **WHAT THE STATE DEPARTMENT**

##### **CAN DO:**

- Provide information about international adoption in countries around the world
- Provide general information about U.S. visa requirements for international adoption
- Make inquiries of the U.S. consular section abroad regarding the status of a specific adoption case and clarify documentation or other requirements
- Ensure that U.S. citizens are not discriminated against by foreign authorities or courts

##### **CANNOT DO:**

- ◆ Become directly involved in the adoption process in another country
- ◆ Act as an attorney or represent adoptive parents in court
- ◆ Order that an adoption take place or that a visa be issued



### ***INTERNATIONAL ABDUCTION***

Since the late 1970's, the Bureau of Consular Affairs has taken action in over 8,000 cases of international parental child abduction. We also have provided information in response to thousands of additional inquiries pertaining to international child abduction, enforcement of visitation rights and abduction prevention techniques. The Office of Children's Issues works closely with parents, attorneys, other government agencies and private organizations in the United States to prevent international abductions.

Forty-four countries (including the United States) have joined the Hague Convention on the Civil Aspects of International Child Abduction. The Convention discourages abduction as a means of resolving a custody matter, by requiring (with few exceptions) that the abducted child be returned to the country where he/she resided prior to the abduction. In 1996, this office received approximately 700 applications under the Hague Convention. About half involved children abducted from the United States to other countries. Most of the cases involved Mexico, Canada, the United Kingdom, Germany and France.

There are still many countries, however, where the Hague Convention has not been accepted. In the event of an abduction to a non-Hague country one option for a left-behind parent is to obtain legal assistance in the country of the abduction and follow through a court action. Of non-Hague countries, the largest number of cases involved children abducted to Egypt, Japan, Jordan, the Philippines, and Saudi Arabia.

#### **WHAT THE STATE DEPARTMENT**

##### **CAN DO:**

- In cases where the Hague Convention on the Civil Aspects of International Child Abduction applies, assist parents in filing an application with foreign authorities for return of the child
- In other cases, through our Embassies and Consulates abroad, attempt to locate, visit and report on the child's general welfare
- Provide the left-behind parent with information on the country to which the child was abducted, including its legal system, family laws, and a list of attorneys there willing to accept American clients
- In all cases, provide a point of contact for the left-behind parent at a difficult time
- Monitor judicial or administrative proceedings overseas
- Assist parents in contacting local officials in foreign countries or contact them on the parent's behalf



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# Vanished Children's Alliance

Studies indicate that there are approximately 354,100 family abductions each year in the United States. Many of these abductions continue for weeks, months, and often years. An abduction can be a traumatic event and have long term impact on children and their families. The successful location, recovery, and reunification of an abducted child will provide the greatest opportunity for that child's healing and positive future. The information provided in this brochure is designed to assist parents and guardians in the immediate and short term reunification process.

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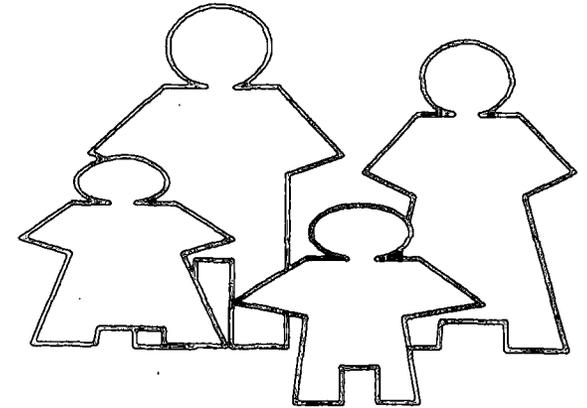
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These tips are adapted from *Initial and Ongoing Reunification Tips for Parents* by Georgia K. Hilgeman, Executive Director, Vanished Children's Alliance, copyright 1995. For a complete list, please call VCA at one of the phone numbers listed above.

## REUNIFICATION OF ABDUCTED CHILDREN



## A GUIDE FOR PARENTS AND GUARDIANS

The Vanished Children's Alliance is a national nonprofit organization dedicated to the prevention, location, recovery and reunification of missing and abducted children.

## The Reunification

- \* Prior to the reunion, have an experienced mental health professional assist in meeting the child and explaining to him or her what has happened and what will happen next.
- \* Limit the number of people at the reunification. Avoid including extended family, friends, and media at the initial reunion.
- \* Whenever possible reunifications should not occur in the presence of the abductor.
- \* When meeting your child, remain as calm as possible and speak in a soothing voice. Loud emotional outbursts could additionally frighten the child.
- \* Situate yourself to be at eye level with your child. This puts him or her on an equal level with you and is a form of empowerment.
- \* Physical contact should proceed slowly and carefully. Hugs, kisses, and pats on the back could scare him or her.
- \* Bring past photographs of the child and you together, and a past favorite toy that the child might remember.
- \* Do not disparage the abductor in front of the child. Focus on the child and how the child is feeling.

## Arriving Home

- \* Show the child around the house, including where he or she will sleep, and where important articles are.
- \* Insulate the child from numerous people. Try and spend some individual and special time with the child
- \* Be careful what you say to the child or in the presence of the child about the abductor or the abduction events.
- \* Establish clear, loving boundaries. Encourage your child and give positive reinforcement for good behavior.
- \* Recognize that the child may initially be compliant and could later need to express some independence by acting out and testing limits.
- \* Whenever possible, give the child some choices for acquiring an improved sense of control (i.e. Would you like a soft drink? What kind? Would you like it in the can or in a glass?)
- \* There are many ways to communicate the anger that you are probably feeling about what has happened. Be aware that your child may feel responsible for what has happened to him or her, as well as feeling that he or she has caused your pain.

## Ongoing Adjustment

- \* Involve your child and family in individual or family therapy.
- \* Ensure your child's safety. The child may fear reabduction (i.e. in the front yard, to and from school, when seeing the abductor in court).
- \* Allow your child to speak about his or her experiences and to share both positive and negative feelings he or she had while missing. If your child expresses a positive feeling or experience about or with the abductor, it is not a reflection on you.
- \* When your child attends school, inform the school of safety concerns. Provide the school with a copy of your custody order, inquire about the school's release and office check-in policy. Insure that the school has an established school call back program.
- \* Ask neighbors to advise you if any people or cars seem to be monitoring your residence, your child's school, or play areas.
- \* Make sure your child knows his or her correct name, address, phone number, and your full name. Have your child photographed and fingerprinted.
- \* Make sure you have copies of your custody order that are certified and domesticated in the state you are residing.

# Vanished Children's Alliance

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National Offices:

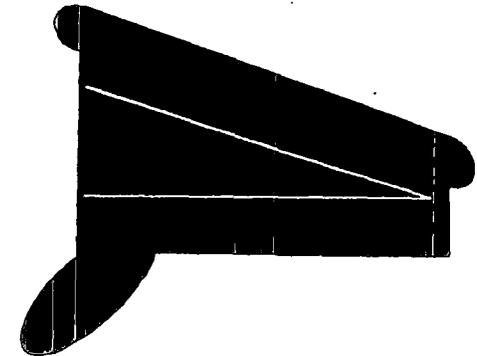
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## REUNIFICATION OF ABDUCTED CHILDREN



## A GUIDE FOR LAW ENFORCEMENT

The Vanished Children's Alliance is a national nonprofit organization dedicated to the prevention, location, recovery and reunification of missing and abducted children.

## Preparation

- \* Ensure that the child's physical safety is the first priority.
- \* Avoid disclosing the actual location of the child to the custodial parent prior to recovery. Families are emotionally impacted when their children are missing and could place themselves and their children in danger by inappropriately acting on lead information.
- \* Coordinate individuals who will be involved in the reunification effort. Plan on including an experienced child psychologist or mental health professional, or a victim/witness advocate.
- \* Ascertain exactly where the child will be placed after being recovered. If necessary, contact social services for temporary shelter care until the custodial parent arrives.
- \* Suggest that the custodial parent bring past photographs of himself or herself with the child, and a favorite toy or possession that the child is familiar with and might remember.
- \* The recovery and the reunification are separate efforts. Plan to pick the child up THEN reunify the custodial parent with the child. A trained professional will need to meet with the child and the parent separately then facilitate the initial reunification.

## Reunification

- \* If possible, pick up the child from school or a day care center rather than from the home. Have a school counselor or other trained professional explain to the child what has happened and what will happen next.
- \* Avoid arresting the abducting parent in the presence of the child.
- \* Prior to the custodial parent meeting with the child, have a trained professional meet with him or her and explain how the recovery went, the physical and emotional status of the child, what the child's living conditions were, and what the child was told or led to believe about him or her.
- \* Take the child to a quiet place to be reunited with the custodial parent. Ideally, reunions should take place in a private, comfortable setting as opposed to an interrogation room, office or lobby.
- \* Limit the people present at the reunification. The abducting parent should not be present, nor should multiple family members or well-wishers.
- \* The media should not be at the scene of the recovery or the reunification. Too many people present could overwhelm the child.
- \* Whenever possible, give the child some choices for acquiring an improved sense of control (i.e. Would you like a soft drink? What kind? Would you like it in the can or in a glass?)

## Adjustment

- \* Caution should be exercised with questioning the child about abduction events. Consider how to successfully accomplish this without further traumatizing the child.
- \* Follow up with the family within 72 hours of the homecoming. Determine the child's progress and obtain other pertinent information the child may have shared that could enhance the criminal case.
- \* Recommend the child be involved in individual or family therapy to assist in the adjustment and resolution of past events.
- \* The recovered child may act withdrawn, hostile or out of control. Be sensitive to the fact that the child is probably very scared and is reacting in the only way he or she knows how to respond. Often abducted children bond with their abductors and may initially not want to be returned to their custodial parent.
- \* Discuss safety concerns with the custodial parent. Suggest that they provide the child's school with a copy of the custody order and inquire about the school's visitor check-in and release policies and if the school has a school call-back program.
- \* Remember, your approach and skill in this area makes a difference in a child's life. Be prepared, so the difference you make is a positive one.



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## PREVENTION OF FAMILY ABDUCTIONS

- Have updated photos of child(ren) and parent, child's fingerprints, and birth certificate. (Keep copies in a separate location.)
- Teach your child your full phone number and address, and the phone number of a friend or family member.
- If parent or child has been issued a passport, list passport numbers and countries they are issued to.
- List all driver's license numbers and automobile registrations, serial numbers and vehicle models.
- List all credit cards, bank accounts, stocks, retirement accounts, and social security numbers.
- List all magazine and other subscriptions, including account numbers.
- Know names, addresses and phone numbers of all relatives and friends.
- Watch for significant changes in child's behavior (depression, acting out, being secretive, asking lots of questions regarding custody issues, sudden talk of taking a trip, etc.)
- Watch for signs of parental alienation (talking negatively about you, discouraging visitations, unhealthy collusion with child.)
- Make sure your child knows you love them, will always love them, and that this will always be their home.
- Make sure you have a custody/visitation order which is enforceable.
- Treat child support and visitation as separate items.

### High Risk Situations/Custody Battles:

- Try to get supervised or no visitation, depending on the risk involved.
- Have your attorney suggest that the other parent post a large bond - if they flee, they forfeit the money.
- Obtain a restraining order prohibiting the removal of your child from the area, state, or country.
- If child is a dual national, write the foreign embassy and consulate and provide them with a certified copy of your custody order. Ask that they not issue a passport or visa for your child.
- Contact the Office of Passport Services and ask them not to issue a passport for your child: (202)955-0377. Follow this up by sending a copy of your custody order.
- Prepare a detailed narrative of your entire relationship. Write about all significant events including education, assets, places of residence, country of origin, health problems ~ prescriptions needed regularly, income and expenses, children's history, etc.
- Educate child on calling home to say good-bye before leaving on any trip with other parent.
- Obtain affidavits from school teachers, friends, neighbors, pediatrician, etc., to support your relationship with your child(ren).
- If the other parent has a history of spousal or child abuse, mental illness, drug use, etc., obtain affidavits, as well as reports from social services, and police departments which demonstrate this.
- Personally accompany your child to and from school, if necessary. If this is not possible, make sure they know they are not to go with the other parent, unless they hear from you that it is okay. Have them practice what to do if the situation arises.
- Make sure your child knows how to make a collect call (practice with them) and when to dial 911.
- In high risk situations, advise your child's school, day care providers, your friends, family members, neighbors and anyone else involved in your child's life, that you are concerned about a kidnapping. Make sure the school has a copy of your custody order, and they know not to release your child to anyone but you.
- If the potential abductor lives in another state, make sure you file a certified copy of your custody order with the family court clerk in the county where they live.
- Get the police or prosecutor involved. They can call the potential abductor and advise them of the law. They can also take the child into protective custody, when necessary, to prevent an abduction.



*Vanished Children's Alliance*

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## Reunification Tips for Law Enforcement

by Georgia K. Hilgeman, M.A., Agency Founder & Executive Director

The impact of child abductions on children and their families cannot be underestimated or minimized.

The ramifications of ineffective and unplanned reunifications are often severe and long-lasting.

Therefore, it's imperative that law enforcement, and other service providers, familiarize themselves with the reactions and consequences of this form of child abuse and victimization. This knowledge can only improve the effective and timely location, recovery, and reunification of abducted children with their legal guardians.

### Consider the Following Suggestions to Facilitate The Successful Recovery and Reunification of Abducted Children.

- Establish and implement a community-based, multidisciplinary team approach and plan for responding to recoveries and reunifications of abducted children.
- Obtain training on effective recovery and reunification methods for all team members and staff. The utilization of experts as trainers is essential.
- Have all necessary legal documents.
- The recovering parent may also be served with legal documents, thereby creating a jurisdictional issue which may result in lengthy and costly litigation.
- Bring a notarized, written consent from the parent authorizing the child to receive medical treatment if necessary.
- If the recovering parent is not present and it's believed the child might remember this parent, take a video or audio tape of the child interacting with the parent so law enforcement can better facilitate the recovery. This may help reduce the child's fear. Past photographs of the child with the searching parent, along with several of the child's favorite toys, might also help calm the child.
- If this is a "long-distance" recovery, consider calling the left-behind parent so the child can talk to the parent. Tell the child what is happening.
- When feasible, recoveries and reunifications should not occur in the presence of the abductor or the accomplice.
- If the recovery takes place at school, the officer should consider having a neutral person present, such as the child's teacher or principal. If the child is old enough, give the child the option of having a support person. This may lessen the trauma to the child.
- The recovering parent and family should never be given the actual location of the child prior to recovery. Families are emotionally impacted when their children are missing; when parents act inappropriate on lead information, they place their families and others in danger.
- Always ensure the child's physical safety.
- Have a mental health professional, trained in reunification techniques, available for on-call consultation. This individual should be available to meet with the child and explain what has happened and what will happen next. This person should help prepare the child for the reunion and diffuse some of the child's fear and confusion.
- Take the child to a safe place where s/he will be reunited with the recovering parent. These reunions should take place in a private, comfortable setting, as opposed to an interrogation room, busy office, or lobby.
- If necessary, contact social services for temporary shelter care until the parent with verified custody or the law enforcement investigator from the originating jurisdiction arrives. Temporary shelter placement should be used only in emergencies. The fewer transitions the child experiences after the recovery, the better.
- The recovered child may act withdrawn, hostile, or out of control. Be sensitive to the fact that he/she is probably scared and reacting in the only way he/she knows how. However, establish reasonable boundaries.
- It's important to help the child regain a sense of control over his/her life. Whenever possible, give the child the ability to make a choice (i.e. "Would you like to sit in this chair or that chair?" or "Would you like something to drink? A Coke or a Sprite?").
- The recovering parent should plan to be reunited with the child away from other family members and well-wishers. Reunification can be a frightening time, and care should be taken so as not to overwhelm the child with too many people.
- The media should not be invited to the recovery or reunification. Should they appear on the scene, establish clear boundaries and be prepared to handle the situation. The media's direct involvement at this time could frighten the child. This is a very personal moment for the reunited family and their privacy should be respected.
- Provide parents with a copy of VCA's "Helpful Suggestions for Parents Recovering Their Abducted Children." Discuss these suggestions with the parent(s).

**RISK FACTORS AND PREVENTIVE INTERVENTIONS  
FOR CUSTODY VIOLATIONS AND PARENTAL ABDUCTION**

Table 1 of 2

<b>RISK PROFILE</b>	<b>PRIOR THREAT OR ACTUAL ABDUCTION</b>	<b>SUSPICIOUS-DISTRUSTFUL WITH SOCIAL SUPPORT</b>	<b>PARANOID DELUSIONAL</b>
<p><b><u>BEHAVIORAL INDICATORS</u></b></p> <p><b>COMMON TO ALL PROFILES:</b> (1) Parent dismisses value of parent for child; (2) child is very young or vulnerable to influence, and (3) family and social support is usually provided to abductor.</p>	<p>Spoken threats to take child, history of hiding child, refusing visits, snatching child back and forth.</p> <p>Parent has no financial or emotional ties to area.</p> <p>Resources to survive in hiding or help from others to do so; has liquidated assets, maximum withdrawal of credit.</p>	<p>Parent has fixed belief that child is abused, molested, neglected &amp; that authorities will not take charges seriously and dismiss it as unsubstantiated. Others support parent and concur.</p> <p>Repetitive allegations, increasing hostility and distrust between parents.</p>	<p>Flagrantly paranoid, irrational behavior &amp; allegations; history of hospitalizations for mental illness; delusions of mind control.</p> <p>Bizarre forms of domestic violence, boundary confusion between parent and child.</p> <p>Murder/suicide threats.</p>
<p><b><u>INTERVENTIONS</u></b></p> <p><b>GENERAL PRINCIPLE:</b> More restrictive measures curtailing parents' freedoms are warranted where (1) the risks for abduction are greater; (2) the obstacles to the recovery of the child are more substantial, and (3) the potential harm to the child is more extensive.</p>	<p>Obtain certified copy of custody/visitation order, explicit access and jurisdiction specified.</p> <p>Obtain restraining order prohibiting leaving area without permission.</p> <p>Flag passports, school, medical, birth records.</p> <p>Supervise visits or electronic surveillance.</p> <p>Post bonds.</p> <p>Educate older children, provide family counseling and mediation of impasse.</p>	<p>Undertake a timely, thorough investigation of allegations; inform concerned social network; coordinate all professionals involved to share perspectives and conclusions.</p> <p>Temporary supervised visits to protect abused child or falsely accused parent. If investigation is inconclusive, appoint coparenting counselor-arbitrator to provide counseling, rebuild trust and monitor situation.</p> <p>Therapy for child.</p>	<p>Assess lethality</p> <p>Emergency ex parte hearing for psychiatric screening; appoint legal representation for child and deluded parent.</p> <p>Suspend visits or supervise with high security. Temporary custody to other parent or to third party. Adult psychiatric treatment and child therapy.</p>

**RISK FACTORS AND PROTECTIVE INTERVENTIONS  
FOR CUSTODY VIOLATIONS AND PARENTAL ABDUCTION**

Table 2 of 2

<u>RISK PROFILE</u>	SOCIOPATH	FOREIGNER WITH TIES TO HOMELAND	DISENFRANCHISED WITH FAMILY SOCIAL SUPPORT ELSEWHERE
<p><u>BEHAVIORAL INDICATORS</u></p> <p><b>COMMON TO ALL PROFILES:</b> (1) Parent dismisses value of parent for child; (2) child is very young or vulnerable to influence, and (3) family and social support is usually provided to abductor.</p>	<p>Multiple arrests and convictions; blatant contempt of court orders.</p> <p>Stalking, threats of domestic violence, manipulation and control; vexatious litigation.</p> <p>Relationships are self-serving, exploitive, self-aggrandizing.</p>	<p>See "Prior Threats or Actual Abduction." Dissolution of mixed cultural marriage; idealizes own family, homeland and culture and depreciates American culture. Rescinds and dismisses child's mixed heritage.</p> <p>Separation and divorce are severe loss/humiliation.</p> <p>Homeland offers more emotional/financial support. Acute time is at divorce. Especially high risk for non-Hague countries of origin.</p>	<p>Severe economic hardship, low education, never married.</p> <p>Ethnic minorities, language barriers and cultural beliefs regarding custody contrary to legal norms.</p> <p>Domestic violence victim; alienated from major social institutions.</p> <p>Has family/social support in another geographic area.</p>
<p><u>INTERVENTIONS</u></p> <p><b>GENERAL PRINCIPLE:</b> More restrictive measures curtailing parents' freedoms are warranted where (1) the risks for abduction are greater; (2) the obstacles to the recovery of the child are more substantial, and (3) the potential harm to the child is more extensive.</p>	<p>Obtain appropriate restraining orders.</p> <p>Engage decisive use of court authority; explicit court orders, rapid sanctions for contempt, fines/jail.</p> <p>Suspend or supervise access and resume unsupervised visits contingent on conforming behavior.</p>	<p>See "Prior Threats or Actual Abduction."</p> <p>Post bonds to ensure return from visiting homeland; hold passport and monitor airlines.</p> <p>Obtain mirror custody orders with country of origin; inform kin of consequences of aiding custody violation.</p> <p>Culturally sensitive divorce counseling, including child's need for both parents and both cultural identities. Provide emotional/financial support.</p>	<p>Provide access to legal services, pro se clinics and translation assistance. Inform, refer and advocate regarding community services.</p> <p>Provide culturally sensitive divorce and custody counseling/mediation.</p> <p>Educate parent and social network regarding abduction laws.</p>



**Vanished Children's Alliance**

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## Ongoing Reunification Tips for Parents

by Georgia K. Hilgeman, M.A., Agency Founder & Executive Director

### After the Initial Homecoming...

1. The child may be compliant initially, but will later need to express some independence by acting out and testing the limits.
2. Establish clear, loving boundaries.
3. Encourage the child and give him/her positive reinforcement for good behavior.
4. The consequences for inappropriate behavior should be discussed with the child in advance and should not include physical punishment. The consequences might include time out or the removal of toys/privileges for a period of time. Consequences should also be employed in a calm manner and followed through completely. The child should never feel that a parent's love is conditional or that the child's behavior could impact that love.
5. Involve the child and family members in individual or family therapy. Interview therapists and select one who has a positive track record in working with missing or abducted children, abused children, or victims of crime. Check with the local Victim Witness program or the Vanished Children's Alliance for referrals. Verify if the victim parent, child, or family qualifies for state victim compensation to cover some or all of the therapy costs.
6. When the child attends school, inform the school of safety concerns. Provide the school with a copy of the custody order, if applicable. Determine the school's release policy, adult office check-in policy, and ensure that the school has a school call-back program.
7. Ask the neighbors to advise the parent(s) or other family members about people or cars that appear to be monitoring the family's residence, the child's school, or play areas.
8. Parents should ensure the necessary custody orders for the child(ren) are current and that several file-endorsed copies are readily available at all times.
9. Have the child photographed and fingerprinted and keep a current, completed VCA Child Identification Sheet (see page 17) on hand in a safe location at HOME.
10. It is very likely that, at some point, the child will have contact with the abducting parent. If it appears that this may occur, seek supervised visitation and/or require the abducting parent to post a sizeable bond.
11. Make sure the child knows his/her full name, parent's name, address, telephone number and an adult the child can go to for help.
12. Parents can communicate their feelings of anger about the situation in many different ways, especially through verbal communication (tone of voice) and body language. Be aware, however, that young children are naturally self-centered; they are the center of their universe, so they may feel responsible for things that happen around them. Consequently, children may assume the blame for what has happened to them; and they may also feel that they have caused their parent's/family's anger or pain.
13. Many parents live day to day, hoping and dreaming of the recovery of their child(ren). This fantasy often includes a scenario where the family lives happily ever after once they are reunited. However, the reality is that most children do not return as the same child. Just as the parent has been changed by the experience, so has the abducted child...perhaps even more. Although the child is now home, the clock cannot be turned back. Instead a "new normal" must be established.
14. It is difficult to assess the long-term ramifications of abduction on children. Each case is different, spanning the entire spectrum of recovery scenarios. Some children and families may experience positive reconstruction of their lives, while others suffer from Post Traumatic Stress Disorder. Consequently, parents are encouraged to acquire the appropriate family intervention services early in the reunification process to reduce the likelihood of long-term negative consequences.
15. Allow the child to speak about the ordeal and encourage the sharing of both positive and negative experiences while missing. Remember, if the child expresses a positive feeling or experience about the abductor, it's not a reflection on the reunited family. In the long run, by allowing open and honest communication, parents will serve as a catalyst to the child's healing.
16. Develop a support system for the parent and family members, even after the child returns home. Parenting is a big job and no one is superhuman! It's not selfish for parents to take care of themselves. On the contrary, by modeling self-care and self-respect, the child may also develop these characteristics. If parents model victim or martyrlike behavior, children are also likely to view themselves as victims. Parents must remember they cannot change the past, but they can change how they view the situation, thus creating a brighter, more optimistic future.

For additional information, contact VCA at (408)296-1113.

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## Initial Reunification Tips for Parents

by Georgia K. Hilgeman, M. A., Agency Founder & Executive Director

A child has been missing and is about to be or has been reunited with his or her parent(s). Below are some suggestions to assist the family with the changes they may experience. Keep in mind this is meant to be a guide ~ no two children or families react in the same way.

### What to Do When Initially Reunited with Your Abducted Child

1. Prior to the reunion, have an experienced mental health professional assist in meeting the child. Explain what has happened and what will happen next. The therapist should help prepare the child for the reunion.
2. When feasible, reunification should not occur in the presence of the abductor and/or the accomplice(s).
3. Parents and family members should remain as calm as possible and speak in a soothing voice. Loud, emotional outbursts could further frighten the child.
4. Physical contact with the child should proceed slowly and carefully, as hugs, kisses, or pats on the back might scare the child.
5. Parents should situate themselves so they are at eye level with the child. This puts the child on an equal level with the parents and is a form of empowerment for the child.
6. Do not belittle or ridicule the abductor in front of the child. Separate the deed of an abduction from the abductor. Focus on how the child is doing and how he/she feels about the situation.
7. Let the child know what will occur next. Maybe the child and victim parent will be going home together or law enforcement will speak with the child and the family.
8. If the child asks what is going to happen to the abductor, explain that the abductor is probably going to have to go to court and tell the judge why s/he took the child. Tell the child that right now this person is safe. Parents can then redirect the conversation by saying they are happy to see the child and they will keep the child informed about the abductor's situation as they find out new information.
9. If possible, limit the number of people at the reunification. Avoid extended family, friends, and the media at the initial reunion.
10. The child should be reassured that his/her parents understands that the child might be afraid, but everything will be okay because his/her parents loves the child and will protect him or her.
11. Bring past photographs of the child, pictured with his/

her parent(s) and perhaps bring a past favorite toy that the child might remember. Make both items available to the child when the time seems right.

12. Whenever possible, give the child some choices that will improve his/her sense of control (i.e. Would you like a soft drink? What kind? In the can or in a glass?)
13. Allow the child to express his/her feelings within certain limits; children should not be allowed to put themselves or others in danger. For example, the child may appear frozen, which usually indicates fright or numbing, or the child may demonstrate one or more of the following behaviors; crying, screaming, laughing, giggling, fighting, hitting, pulling, biting, urinating, defecating or complying. Remember, most of these behaviors are normal reactions To an abnormal situation.
14. The child should immediately have a physical exam.

### When the Family Goes Home

1. Show the child around the house and explain where s/he will sleep and where important articles can be found.
2. Shield the child from large numbers of people. Try to spend some individual, special time with the child so s/he will adjust to the new situation with greater ease.
3. Parents should be careful about what they say to the child or in the presence of the child (i.e. on the phone or to someone else) about the events surround the abduction or the abductor.
4. When well-wishers are allowed, set boundaries and time limits for them; also establish acceptable statements that can be made in the presence of the child so s/he does not become confused or upset.
5. Parents should remember to interact positively with the other children in the family and with their partner or spouse. Unspoken jealousies can begin here.
6. Ensure the child's safety. The child may fear reabduction so take special precautions when the child is playing in the front yard, going and/or coming home from school, and when the child sees the abductor in court.
7. Respect the child's need for physical or emotional space or to follow or cling to the parent for security.

# **FORENSIC INTERVIEWING OF CHILD VICTIMS**

**February 9, 12, 1999**

**Kimberly L. Poyer MSW, LCSW**

**Jacqueline O'Reilly MSW**

**Child Interview Specialists**

**United States Attorney's Office**

**Washington, DC**

- I. **Creating a child focused practice**
  
- III. **Developmental considerations when interviewing children**  
**Understanding development is critical in the assessment of child abuse cases**
  - Cognitive development**
  - Language development**
  - Moral development**
  - Sexual development**
  - Social development**
  
- III. **Forensic interviewing of children**
  - Rapport building**
  - Developmental assessment**
  - Bolstering to reduce suggestibility**
  - Assessment of competency and credibility**
  - Eliciting information**
  - Closure**
  
- IV. **The use of different media**
  - Anatomically detailed dolls**
  - Anatomically detailed drawings**
  - Figure drawing**
  
- V. **Problem interviews**
  - Recantation**
  - Fantastical elements in disclosures**
  - Very young children**

**FORENSIC INTERVIEWING OF CHILD VICTIMS**  
**KIMBERLY L. POYER, LCSW**

**INTERVIEWER**

Whoever is most qualified to talk with a child  
Degrees are less important than an ability to make a child feel comfortable and able to disclose  
Have your game plan and logistics prepared ahead of time

**LOCATION**

Interview rooms that are child friendly  
A quiet place away from the confusion  
Child sized furniture if available  
Don't interview in an office where you sit behind the desk  
Don't interview in a place where there is a chance for interruption or a lot of chaos  
Try to interview the child at a time that coincides with their "biological clock"  
Put your pager on vibrate  
Don't answer the phone during the interview

**RECORDING**

Sound quality has always been the #1 technical problem  
With video, always have a secondary audio backup  
Pretest all equipment  
Trained interviewers should be used if you record  
Mistakes last forever  
Every word, gesture, movement can be analyzed  
Not a substitute for live testimony  
Rarely admissible in court

**HOW MANY IN THE INTERVIEW**

Multiple people overwhelm and intimidate a child  
If it's hard to say to one stranger, imagine how they feel if there several are in there!!  
If you have another person in the room, introduce them in the beginning and keep them quiet until the end of the interview  
Your assistant can ask a few questions to cover **only** some thing you may have missed

**EQUIPMENT**

Two comfortable chairs that are appropriate for child's age not yours  
Small table  
Separate monitor room where other parties can observe  
Video recorder and back-up audio (preferably in the observation room)  
Date and time generator on video equipment  
Clock

**PROPS**

Dolls??Toys??Drawings??Doll House??Anatomical drawings??  
Rule #1 don't make the room look like FAO Schwartz  
Your props will depend on your game plan

## **BOLSTERING TO REDUCE SUGGESTIBILITY**

- \*This should be done with all children
- \*Present guidelines to help the child understand that they are not allowed to guess or approximate their answers
- \*Explain that some questions may be asked twice but that the interviewer is not looking for a different answer
- \*All people can be suggestible if questioned inappropriately, coercively, or in a suggestive manner

## **ELICITING INFORMATION**

- \*Information should be gathered by questioning with the most open-ended techniques that are developmentally possible for the child
- \*A questioning continuum should be followed when eliciting information
- \*The types of questions used and information needed are tailored to each individual interview

## **AGE-INAPPROPRIATE LANGUAGE**

### **Long, complex question**

When you were with your cousin in the park that has the lake your mom took you to, what did he do to you?

### **Passive voice**

Were you hurt by him?

### **Confusing pronouns**

What did he do to her?

### **Double negatives**

Didn't mom tell you not to go there?

### **Complex verbs**

It may have been...

### **Hypothetical**

If you want to stop, then tell me.

## **DEVELOPMENTALLY SENSITIVE LANGUAGE**

### **Several short questions**

Where did mom take you that day? What room were you in? What happened at the park?

### **Active voice**

Did she touch you?

### **Clear use of names**

What did Tony do with Kate?

### **Single negatives**

Did Sue tell you not to go there?

### **Short words**

Point to...

### **Simple verbs**

Was it...

### **Direct**

Are you tired? Do you want a break?

## **CLOSURE**

- \*Allow the child to ask you questions
- \*If a child has become upset during the interview, this is the time to help them regain their composure
- \*Give the child an opportunity to express questions, worries, or concerns about the interview
- \*Thank the child for participating in the interview process rather than for providing a disclosure of abuse
- \*Dispel any misperceptions that may have arisen during the interview
- \*Give the child permission to return at a later date if they remember more information

### **Substance Abuse**

1. Does anyone at your house drink alcohol...beer...whiskey?
2. How many times a week does \_\_\_ drink?
3. Does this happen a lot or every once in awhile?
4. How does \_\_\_ act when they drink?
5. Does \_\_\_ ever fall down?
6. Does \_\_\_ ever get mad...hurt anyone...drive a car...have an accident...fall asleep?
7. Are there any drugs at your house? Do you know which ones?
8. What happens when they use them?
9. Who uses them?
10. Where does the money for them come from? Do you know?

### **Prostitution**

1. Does your mom have lots of boyfriends?
2. Do you know those men that come to your house?
3. Does \_\_\_ ever give your mom money?
4. What does your mom do when she goes out?

### **Criminal Activity**

1. Does anyone ever get in trouble with the police? What for?
2. Did the police ever come to your house?
3. Did \_\_\_ ever get arrested...go to jail...go to court?
4. Did anybody in your house ever steal anything? What? What happened next?

### **Mental Illness**

1. Does \_\_\_ ever act strange...funny...crazy...in a way that scares you?
2. What does \_\_\_ do?
3. Can \_\_\_ take care of you when they are acting strange?
4. Does \_\_\_ ever talk to things or people who aren't in the room?

### **Care Questions**

1. Who takes care of you?
2. How do they do it?
3. Are there things you like/dislike about how they do this?
4. Who puts you to bed?
5. Who cooks?
6. What meals do you eat...what do you eat?
7. Are there any times when there is no food? What do you do then?
8. When \_\_\_ isn't there who takes care of you...is there someone you can call...how long are you alone?

## INTERVIEWING SEXUALLY ABUSED CHILDREN REFERENCES

Kimberly L. Poyer MSW, LCSW

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**PREPARING KIDS FOR COURT & COURT FOR KIDS**

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**I. PRE-TRIAL MOTION PRACTICE**

- 1. **Defense/Prosecution discovery.**
- 2. **Protective orders.**
- 3. **Restricting defense presentation to only relevant matters.**
- 4. **Trial briefs.**
  - 1. **How examination will be conducted with child witness**
  - 2. **Developmental education about child witness.**
  - 3. **Language education.**
- 5. **Use of other crimes evidence (charged or uncharged).**
- 6. **Speedy trial.**
- 7. **Appropriate use of experts.**
  - 1. **Preclude evidence of prior sexual conduct**
  - 2. **Preclude inappropriate use of mental health experts.**
  - 3. **Preclude improper use of particular expert.**

**2. PREPARING THE CHILD FOR THE COURTROOM EXPERIENCE**

- 1. **Preparation for the Child**
  - 1. **Background information**
    - (1) **Prior reports (police/social services)**
    - (2) **History, culture, routine and disabilities**
    - (3) **Age and stage of development**
    - (4) **Emotional adjustment**
    - (5) **Situational-case factors**
  - 2. **Speak with Therapist/Social Services Worker/Teacher**
    - (1) **Facilitate communication with child**
    - (2) **Assess family support network**
  - 3. **Setup**

- (1) Private place (don't re-create abuse scene)
- (2) Aids (crayons, paper, dolls, drawings)
- (3) Toys
- (4) Duration
- (5) Video equipment

- 2. Court school programs.
  - 1. Informational videos.
  - 2. Coloring and reading books/games.
  - 3. Play acting.
  - 4. Field trip.
- 3. Building a relationship of trust.
- 4. Linguistics.
- 5. Prosecutors pre-trial meeting with child to discuss trial.
  - 1. Preparation for testimony, including cross-examination.
    - (1) ground rules - questions
    - (2) tell truth
    - (3) answer out loud
  - 2. Assess for coaching and/or pre-existing knowledge
  - 3. Competency
  - 4. Talking about the maltreatment
    - (1) child's lack of motive to lie/report
    - (2) dates
    - (3) other individuals
    - (4) disclosure
      - (1) aftermath
  - 5. Visiting the courtroom.
  - 6. Hospital visit/medical exam.
- 6. Advocates role in preparing kids for court
- 7. Closure of preparation
  - 1. Reinforcement of child
  - 2. Explain what happens next
  - 3. Recantation
  - 4. Child's questions
- 3. **ALTERNATIVES TO TRADITIONAL COURTROOM SETTING AND ENVIRONMENT**

1. Alter or change courtroom to accommodate child witnesses.
2. Schedule regular and multiple recesses.
3. Schedule a time certain during the day for child to testify.
4. Allowing support people to accompany the child.

4. ALTERNATIVES TO TRADITIONAL TESTIMONY

1. Technological advances.
  1. Closed circuit television.
  2. Video deposition.
  3. The use of video in general.
2. Hearsay exceptions for child witnesses.
3. Relaxed evidentiary rules when dealing with children.



# **Child Abuse—Identification and Reporting**

**National Symposium on Victims of Federal Crime  
Friday, February 12, 1999 (10:45 AM – 12:15 PM)**

**Kent P. Hymel, MD; LtCol, USAF Medical Corps  
USAF Medical Consultant for Child Abuse  
The Armed Forces Center for Child Protection  
National Naval Medical Center, Bethesda, Maryland**

## ***Introduction***

In the last 30 years, the medical community has witnessed a virtual explosion of information regarding the objective medical diagnosis of child maltreatment. Using an extensive collection of color slides that demonstrate inflicted pediatric injuries, we will explore many "red flag" medical findings concerning child maltreatment. In addition, attendees will be provided with an extensive list of medical diagnoses that have been confused with child abuse.

## **I. "Red Flag" Medical Findings Concerning for Child Maltreatment**

### **A. History**

1. **Conflicting history between caregivers, between caregiver and child, or over time**
2. **Significant delay in seeking medical care**
3. **History of repetitive injuries**
4. **Absent, unavailable, or disinterested caregiver(s)**
5. **History inconsistent with estimated age of injury**
6. **History inconsistent with force or mechanism required to produce observed injury**
7. **History inconsistent with developmental age and capability of victim (or reported abusive sibling)**
8. **Fatal injuries unexplained or attributed to indoor accidental fall**

### **B. Physical examination**

1. **Multiple injuries (e.g., fractures of different ages or multiple points of impact)**
2. **Multiple mechanisms of injury (e.g., bruises and burns)**
3. **Multiple injuries at various stages of healing**
4. **Specific injuries highly suspicious for child maltreatment (see examples below)**
5. **Signs of concurrent medical, hygienic, and/or nutritional neglect**

### **C. Bruises, Abrasions, and Lacerations**

1. **Extensive**
2. **Patterned (i.e., resembling known object)**
3. **In the genital-anal region**
4. **Centrally located on the trunk**
5. **Multiple ages**
6. **In pre-ambulatory infants**
7. **In sites the child cannot easily reach**
8. **In sites other than those injured in accidental falls by ambulatory children (i.e., in sites other than knees, shins, elbows, forehead)**
9. **In sites not overlying bony prominences**
10. **Specific bruises suspicious for child maltreatment (i.e., pinch marks, slapped check, belt or strap marks, earlobe injury, vertical gluteal cleft bruises, electric cord marks, rope burn, gag marks, bizarre shape)**

- D. Burns**
1. Circumferential configuration
  2. Uniform depth
  3. In sites the child cannot easily reach
  4. Scalding second- or third-degree burn lacking splash marks
  5. Dry contact burn in unusual area (i.e., soles, dorsum of hand, back, perineum)
  6. Dry contact burn which reflects the pattern of heated object
  7. Specific burns suspicious for child maltreatment (i.e., dunking, doughnut, stocking-glove, cigarette)
- E. Fractures**
1. Multiple fractures in different stages of healing
  2. Specific fractures highly concerning or suspicious for child maltreatment (i.e., metaphyseal, rib, acromion, vertebral body, vertebral spinous process, proximal humerus, sternal, or spiral fractures in pre-ambulatory child)
- F. Abdominal injuries**
1. Clinical presentation of unexplained shock, peritonitis, anemia, recurrent bloody or bilious emesis
  2. Abdominal wall bruises
  3. Significant delay in seeking medical care
  4. Specific intra-abdominal injuries suspicious for child maltreatment in absence of severe accidental injury (i.e., ruptured liver or spleen, intestinal perforation, duodenal hematoma, intraperitoneal hemorrhage, rhabdomyolysis)
- G. Head injuries**
1. Clinical presentation of unexplained respiratory distress, apnea, irritability, lethargy, hypotonia, seizures, coma, vomiting or poor feeding when infectious, metabolic, or toxic causes are excluded
  2. Facial bruises, abrasions, and/or lacerations at multiple sites, of multiple ages, involving earlobe(s), in pre-ambulatory infant, not overlying bony prominences, and/or patterned (e.g., slap mark)
  3. Periorbital ecchymoses not secondary to accidental forehead trauma (e.g. acute "black eyes" with tenderness and/or swelling)
  4. Specific skull fracture(s) suspicious for child maltreatment (i.e., multiple, bilateral, nonparietal, comminuted, depressed, stellate, growing, or diastatic)
  5. Retinal, subdural, or subarachnoid hemorrhage in absence of history of motor vehicle accident or severe (outdoor) fall
  7. Fatal head trauma in absence of history of motor vehicle accident or severe (outdoor) fall
- H. Genital/Anal**
1. Findings independently specific/diagnostic of sexual abuse
    - a. Evidence of ejaculation
    - b. Specifically sexually transmitted diseases (i.e., syphilis not acquired perinatally, gonorrhea not acquired perinatally, HIV not acquired perinatally or intravenously)
    - c. Fresh genital or anal injuries in the absence of an adequate accidental explanation (e.g., lacerations, abrasions, contusions, transections, avulsions, hematomas, ecchymoses, petechiae, bite marks)
    - d. An enlarged hymenal opening for age with associated findings of hymenal disruption in the absence of an adequate or surgical explanation
  2. Findings consistent with sexual abuse: history and other investigations may be important in the diagnosis
    - a. Other sexually transmitted diseases not acquired perinatally (i.e., *Trichomonas*, *Chlamydia*, condylomata acuminatum, Herpes simplex virus)

- b. Hymenal disruptions (i.e., posterior or lateral angular concavities--notches/clefts, transections, absence, decrease in amount, scars)
- c. Specific anal changes (i.e., anal scars or tags outside the midline, dilation >15 mm without stool in the ampulla, irregularity of the anal orifice after complete dilation)
- d. Marked dilation of the hymenal opening persisting in different examination positions

I. Other

- 1. Bathtub drowning of children under age 5 years
- 2. Abandoned children
- 3. Chronic failure-to-thrive
- 4. Ingestions of alcohol or drugs
- 5. Suspected Munchausen Syndrome by Proxy
- 6. Unexplained infant death or recurrent acute life-threatening events
- 7. Multiple sudden infant deaths (SIDS) in the same family

III. Differential Diagnosis

A. Sexual abuse

- 1. Dermatologic conditions: lichen sclerosis; diaper dermatitis; pinworms; poor hygiene; bubble bath; *Candida*; nonabusive bruising; seborrheic, atopic, or contact dermatitis; lichen simplex chronicus; lichen planus; psoriasis
- 2. Congenital conditions: labial fusion, hemangioma, midline defects, prominent medial raphe, linea vestibularis, perianal hyperpigmentation, midline anal skin tags
- 3. Injuries: straddle injury, splitting injury, female circumcision, hair tourniquet, seat belt or motor vehicle accident injury to genitalia, excessive masturbation, tampon injury (rare)
- 4. Anal conditions: Crohn's disease, postmortem anal dilation, chronic constipation, rectal prolapse, hemolytic uremic syndrome, rectal tumor
- 5. Infections: streptococcal vaginitis, perianal cellulitis, perinatally acquired warts, varicella
- 6. Urethral conditions: prolapse, caruncle, hemangioma, sarcoma, papilloma, polyps, sarcoma botryoides, ureterocele

B. Bruising and integumentary injuries

- 1. Folk medicine practices: coining, spooning, cupping
- 2. Mongolian spots
- 3. Bleeding disorders: hemophilia, disseminated intravascular coagulation, hemolytic uremic syndrome, vitamin K deficiency, (e.g. liver disease), idiopathic thrombocytopenic purpura, von Willebrand's disease
- 4. Henoch-Schönlein purpura, erythema multiforme, erythema nodosum, hypersensitivity vasculitis
- 5. Dye, ink, or other stains
- 6. Hemangioma or veins
- 7. Phytodermatitis from lemons, limes, celery, or parsnips
- 8. Aspirin or warfarin toxicity
- 9. Type I Ehlers-Danlos disease
- 10. Meningococemia
- 11. Normal accidental bruising
- 12. Eczema, tinea corporis or capitis, granuloma annulare, pityriasis rosea
- 13. Allergic periorbital swelling
- 14. Alopecia areata
- 15. Self-inflicted injuries: childhood depression, mental retardation, Cornelia De Lange syndrome, Lesch-Nyhan syndrome, temper tantrums, rhythmic behaviors, seizures

**C. Burns**

1. Car seat or seat belt burn
2. Epidermolysis bullosa, staphylococcal scalded skin syndrome
3. Folk medicine practices: cupping, moxibustion
4. Impetigo
5. Chemical burns
6. Congenital indifference to pain
7. Chilblains
8. Herpes
9. Fixed drug eruption
10. Mechanical abrasion
11. Accidental burn

**D. Intracranial bleeding (and/or parenchymal brain injury)**

1. Congenital defect/variation: aneurysm, arterio-venous malformation, chronic subdural hematoma of infancy, destructive brain lesions of fetal onset, middle fossa arachnoid cyst, encephalocele, galactosemia, metabolic acidosis/inborn error of metabolism
2. Brain tumor, acute leukemia, chemotherapy, laser irradiation
3. Bleeding diathesis: hemorrhagic disease of the newborn, hemophilia, disseminated intravascular coagulation, hemolytic uremic syndrome, vitamin K deficiency (e.g., liver disease), idiopathic thrombocytopenic purpura, von Willebrand's disease, anticoagulant therapy, sickle cell disease, alpha thalassemia
4. Folk medicine: treatment for "fallen fontanelle"
5. Acquired: meningitis, superior sagittal sinus thrombosis, Spat apoplexy, obstructive hydrocephalus, meningeal fibrosis secondary to ventriculo-peritoneal shunt, complication of subdural tap/spinal anesthesia, severe lead poisoning, maternal prenatal alcohol/cocaine abuse, intraventricular hemorrhage with/without secondary porencephaly
6. Vasculitis, Systemic lupus erythematosus, Kawasaki's disease
7. Trauma: forceps delivery, vacuum extraction, breech delivery, break dancing, prenatal maternal blunt abdominal trauma, missile wounds, complication of accidental skull fracture (e.g., epidural hematoma), posttraumatic cerebral atrophy, complex accidental fall (e.g., stairway fall in baby walker or in arms of an adult), severe neonatal abdominal compression
8. Connective tissue disease (secondary to platelet dysfunction and capillary fragility associated with collagen defect): Osteogenesis imperfecta, Moya Moya, Marfan's syndrome
9. Long term dialysis (secondary to renal failure, hypertension, and/or anticoagulant therapy)
10. Mannitol or Surfactant therapy (secondary to rapid brain volume changes?)

**E. Eye hemorrhage**

1. Motor vehicle accident
2. Subconjunctival hemorrhage: bleeding disorder, Valsalva effect, hypertension, birth trauma
3. Periorbital ecchymosis: bleeding disorder, metastatic neuroblastoma, basilar skull fracture, forehead trauma
4. Anterior chamber hyphema: accidental trauma, forceps delivery, juvenile xanthogranulomatosis
5. Retinal hemorrhage: meningitis, hypertension, endocarditis, sepsis, vasculitis, bleeding disorder, thoracic compression and hypoxia, birth trauma, aneurysm

**F. Fractures**

1. Skeletal dysplasia: osteogenesis imperfecta, infantile cortical hyperostosis (Caffey's disease), skeletal anomalies associated with chromosomal disorders
2. Infections: congenital syphilis, osteomyelitis
3. Nutritional and metabolic bone disease: rickets, scurvy, secondary hyper-

parathyroidism, mucopolidosis II, Menke's kinky hair syndrome (copper deficiency)

4. Newborn: obstetric trauma (cephalohematoma, clavicular fracture), prematurity
5. Drug-induced skeletal reactions: methotrexate osteopathy, prostaglandin therapy, hypervitaminosis A
6. Neuromuscular disease: congenital insensitivity to pain, congenital spinal defects (scoliosis, meningocele), cerebral palsy
7. Accidental trauma (toddler's fracture)
8. Neoplasm (leukemia)
9. Cardiopulmonary resuscitation (rare rib fractures), "passive exercise," stress fracture, physical therapy
9. Suboptimal radiographic study



**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**WORKSHOP RESOURCE MATERIALS**

***TRACK TWO: WHITE COLLAR  
CRIME***

**THE FOLLOWING RESOURCE MATERIALS HAVE BEEN  
SUBMITTED BY THE PRESENTERS CONDUCTING  
WORKSHOPS IN THIS PARTICULAR TRACK.**

**ADDITIONAL MATERIALS MAY BE DISTRIBUTED AT THE  
WORKSHOPS THEMSELVES.**



# Fraud Victims' Issues

## Cutting Edge Prevention Programs, Intervention and Assistance Strategies, and New Federal Resources to Assist Criminal Justice Professionals and Victims of Fraud

*A* deeper appreciation by allied professionals of the emotional, financial and sometimes physical impact of fraud may help fraud victims receive more sensitive treatment by criminal justice system personnel. It is essential that victim advocates and allied professionals work together to understand the full range of fraud victims' losses and needs (emotional, physical, and financial), and available resources as they collaborate to better assist victims participate throughout the criminal justice process. This understanding will help drive new victim assistance services by all allied professionals and promote healing and justice for victims of economic violence.

This session will showcase the newest fraud prevention and prosecution initiatives (Fraud Prevention Initiative, Operation Double Barrel), the newest intervention and assistance strategies (model/best practices for effective victim advocacy and collaboration with criminal justice professionals from U.S. Attorneys' Offices), and newest tools (Fraud Victim Assistance Resource Kit developed by Police Executive Research Forum and DOJ Ad Hoc Working Group - including guidebook, video, law enforcement pamphlet and court handbook) and innovative uses of federal funds (Victims of Crime Act VOCA victim assistance funds), to improve your programs and your effectiveness in identifying and handling fraud victims' needs.

### *Presenters:*

Debbie Deem  
Victim-Witness Coordinator  
U.S. Attorney's Office  
Central District of California  
U.S. Department of Justice

Laura Federline  
Program Coordinator  
Office for Victims of Crime  
Office of Justice Programs  
U.S. Department of Justice

Jonathan Rusch  
Senior Litigation Counsel  
for Fraud Prevention  
Criminal Division  
U.S. Department of Justice





Office of the Attorney General  
Washington, D. C. 20530

May 6, 1998

MEMORANDUM FOR THE HEADS OF DEPARTMENT COMPONENTS

FROM:

THE ATTORNEY GENERAL

SUBJECT:

Fraud Prevention Initiative

All of us who have been involved in the civil or criminal investigation and prosecution of fraud cases deeply appreciate the vital role that the Department plays in pursuing white-collar criminals and bringing them to justice. I believe, however, that the law enforcement community and the governmental agencies with which they work should place greater emphasis on the importance of fraud prevention in the overall mission of law enforcement.

Preventing fraudulent conduct before it occurs advances two of the main purposes of the criminal law: deterring future criminal conduct and protecting the public from dangerous offenders. Indeed, the mark of truly successful fraud enforcement is its effectiveness not only in apprehending those who have already violated the law, but also in preventing others from committing future acts of fraud. Federal prosecutors and agents, because of their experience and perspectives, are familiar with those portions of the public and private sectors that are particularly susceptible to fraud. Through their investigations, they obtain a wealth of information about how criminals operate fraudulent schemes--including whom they target, what weaknesses they look for, and what steps can be taken to prevent future fraudulent schemes. Unlike individual victims of fraud, members of the law enforcement community can use their experience and existing resources to help detect similarities between various types of fraudulent schemes and identify systemic conditions that encourage criminals to perpetrate fraud.

We, at the Department, should use these experiences and perspectives, as well as the opportunities we have to inform the public about our enforcement efforts, to prevent fraudulent activities. A greater emphasis on fraud prevention reinforces the traditional mission of law enforcement in combating fraud, since a primary goal of enforcement activity is to prevent the occurrence of future crimes.

Moreover, aggressive prevention programs can facilitate and enhance the success of law enforcement initiatives. For example,

prevention programs that sensitize certain segments of the population to particular frauds not only reduce the risk that people will be victimized by fraudulent conduct, but also increase the probability that individual citizens will recognize the signs of potential criminal activity and report this information to the appropriate investigative agencies. Finally, successful fraud prevention efforts that are well publicized and lead to a reduction in crime also enhance the reputation of law enforcement in the eyes of the public and increase public support for traditional law enforcement activities.

Because I believe that we can do more to harness our collective knowledge and experiences in a systematic approach to fraud prevention, I am announcing today the creation of an initiative at the Department of Justice. This Fraud Prevention Initiative will have four principal components: (1) expansion of Systemic Weakness Reporting to all areas of fraud; (2) modification of the Department's Website, and promotion of other public awareness programs to educate consumers about fraud and assist them with reports of fraudulent schemes; (3) promotion of "Exemplary Practices in Fraud Prevention" at all offices; and (4) establishment of an Attorney General's Award to recognize achievements in fraud prevention.

#### 1. *Systemic Weakness Reporting*

To ensure that the Fraud Prevention Initiative has the benefit of the widest possible range of information and suggestions, I am expanding a policy that I instituted last year in the area of health care fraud. At that time, I required prosecutors and investigators in health care cases to report any systemic weaknesses they discovered in health care benefit programs that failed to prevent, detect or minimize losses due to fraud, waste, abuse or mismanagement. Starting today, this obligation will now extend to prosecutors and agents investigating all types of fraudulent activity. In this way, I hope to encourage all components and offices in the Department to lend their expertise and experience to prevent fraudulent activity before it occurs. Attached to this memorandum is a sample form to use in reporting possible systemic weaknesses to the Department of Justice through the appropriate supervisory channels. The Criminal Division, Fraud Section, will determine which reports identify issues of national significance, refer the reports to the appropriate departments, agencies or industries for corrective action, and follow up with departments or agencies to ensure that program changes are implemented.

**2. Use of the Department's Website and Other Educational Efforts to Enhance Fraud Prevention**

A number of agencies in the enforcement community have been using the "information superhighway" of the Internet to educate potential targets of fraud and prevent them from being victimized in the first place. Both the Securities and Exchange Commission (SEC) and the Federal Trade Commission, for example, have used Websites on the Internet to inform the public about recently discovered fraudulent practices in the marketplace and the common indicators of fraud. These sites are cross-linked with other Webpages in order to provide one-stop access to all relevant information and to direct citizen complaints and referrals to the appropriate investigative offices.

To give citizens the greatest possible access to information about the fraudulent schemes we investigate, I have authorized the Department of Justice to modify its Website and make it more informative to people with questions about various types of fraud, such as securities, health care, and telemarketing fraud. In addition to providing useful information to consumers about how to identify and avoid fraud, the site will provide links to several federal, state and local agencies that have expertise in combating certain types of fraud. For example, under the telemarketing fraud heading, the Webpage will list some of the standard practices that fraudulent telemarketers use to solicit customers, and will provide telephone numbers or direct connections for complaints or reports of fraud to state Better Business Bureaus. Because the Department's Website receives approximately 500,000 visitors every week, it provides an excellent vehicle for reaching out to consumers and alerting them to the dangers of fraud.

In addition, the Department will continue to increase public education about fraud through cooperative relationships with the public and private sector entities that have access to the mass media. Providing updates and bulletins about fraudulent activity to entities such as the National Association of Attorneys General and the American Association of Retired Persons can greatly enhance prevention and enforcement efforts by spreading information about frauds and their indicators to a wider and more diverse audience. Along with the Department's Website, these efforts can warn potential victims about their susceptibility to fraud and educate them about how to avoid such dangers.

**3. Exemplary Practices in Fraud Prevention**

Some members of the law enforcement community, often in conjunction with the private sector, have taken a proactive approach towards fraud prevention by reaching out directly to the

communities most at risk from fraud. Many of these programs can be replicated by other offices that are experiencing similar problems with fraudulent crime without significant expenditures of personnel or resources. As an example, since December 1996, the Federal Bureau of Investigation, the Postal Inspection Service, the National Association of Attorneys General, and several other partners from the public and private sector have been combining their resources and experiences with telemarketing fraud to conduct "reverse boiler rooms." Staffed by members of these various agencies and companies and armed with phone lists seized from several fraudulent telemarketing operations, these "reverse boiler rooms" have called approximately 8,600 potential telemarketing fraud victims and advised them about the dangers of fraudulent telephone solicitations and how to avoid becoming a victim of such schemes. In another project, the Securities and Exchange Commission has conducted several "town meetings" throughout the United States in order to educate consumers about the dangers of fraud in the stock market. Often hosted by the Chairman of the SEC, these town meetings provide an excellent opportunity to explain deceptive and confusing stock market schemes, and to publicize the efforts of the SEC against such kinds of fraud.

In a follow-up memorandum, I will be providing detailed information about these and other Exemplary Practices in Fraud Prevention, and asking you to consider implementing these or similar programs in your office or region. The follow-up memorandum will include guidance on how to carry on these programs and information on where to turn for more assistance or information. These Exemplary Practices in Fraud Prevention are excellent examples of how law enforcement can effectively combat fraud through prevention, and I ask every component and office to consider whether enforcement efforts could benefit from the employment of prevention programs that are best suited to attack fraud problems in your areas.

#### **4. Attorney General's Award for Successful Fraud Prevention**

To encourage offices and components to devise their own fraud prevention efforts, and to recognize those who successfully identify systemic fraud problems or implement effective fraud prevention programs, I am creating an Attorney General's Award for Successful Fraud Prevention. As with many other annual Awards, this honor will be available to attorneys, agents, and employees within the Department of Justice, as well as to teams comprised of various Department personnel. With this Award, I hope to motivate attorneys and agents involved in fraud investigations to use their experiences and creativity to develop successful strategies and programs to prevent fraud.

To coordinate the various aspects of this Initiative, Jonathan J. Rusch, a Senior Litigation Counsel in the Fraud Section of the Criminal Division, will serve as Special Counsel for Fraud Prevention. You may enlist Mr. Rusch's assistance in your efforts to institute Exemplary Practices in your district, discuss with him the specific fraud problems your office or component is encountering, and convey to him your ideas for implementing appropriate program changes. Mr. Rusch will also monitor and periodically report, through the Attorney General's Council on White-Collar Crime, on the progress of the Initiative and the preventative solutions we have developed in response to your systemic weakness reports. Mr. Rusch can be contacted by telephone at (202) 514-7027, by e-mail at CRM20.PO(JRUSCH), and by fax at (202) 514-7021.

I urge every member of the Department to consider how to make the best use of his or her position within the law enforcement community to prevent fraud from victimizing the citizens of this Nation. If law enforcement approaches the task of fraud prevention with the same vigor that it employs when pursuing and prosecuting those who have already committed fraud, I am confident that we can significantly reduce the incidence of fraud and its debilitating effects.

Attachment

### Report of Possible Systemic Weakness

Please complete this form and submit it to your Criminal Chief, Section Chief, or Special Agent in Charge, who will then forward it to Jonathan J. Rusch, Fraud Section, Criminal Division, U.S. Department of Justice, P.O. Box 28188, McPherson Station, Washington, DC 20038, Fax No. (202) 514-7021.

Name and Title: \_\_\_\_\_

Office: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Please state your opinion as to the nature of the systemic weakness you believe you have discovered in the course of your investigation, and address, if possible, the following issues: the scope of the problem; the statutes, regulations, or industry practices that contributed to the problem; estimates of the number of victims involved and regions affected; the nature and status of the investigation which uncovered the systemic weakness; and the way in which the systemic weakness was discovered. Also, please state your opinion as to any advice or recommendation that the Criminal Division should provide to the affected agencies or industries concerning the systemic weakness, as well as any possible "fixes." Please attach additional pages if necessary.

# Federal Probe of Telemarketing Fraud Nabs Nearly 1,000

By MICHAEL J. SNIFFEN  
Associated Press

A 2½-year federal and state investigation in which undercover agents taped telephone solicitations has produced criminal charges against nearly 1,000 telemarketers, Attorney General Janet Reno announced yesterday.

More than 40 telemarketers were arrested and more than 20 sites searched by agents yesterday alone, Reno told a news conference.

Operation Double Barrel was

"the most extensive operation ever directed at dishonest telemarketing," Reno said.

FBI agents, retired agents and senior citizens recruited by the American Association of Retired Persons posed as previous victims, who frequently are contacted again by telemarketers in "reload" scams. They recorded the calls for evidence.

"Now each time a telemarketer picks up the phone, they are taking a risk. When telemarketers call, we have often answered," Reno said.

"But we cannot become complacent. We've got to see what they get into next."

Since Double Barrel began in July 1996, 795 people have been charged with federal crimes, including wire and mail fraud, money laundering and racketeering, and 194 others have been charged with state crimes in 14 states. An additional 394 people have been sued in civil actions.

Federal convictions have resulted in some prison sentences as long as 14 and 20 years.

The investigation was joined by 20 U.S. attorney's offices, 21 FBI field offices, 35 state attorneys general, the Postal Inspection Service, the Federal Trade Commission, the Securities and Exchange Commission and the Commodity Futures Trading Commission.

"Our reach is now national in scope," said Georgia Attorney General Thurbert Baker. "But to say we've cured the problem would be a misstatement."

"I believe we are having a significant impact," said deputy assistant

FBI director Ted Jackson, noting that the probe reached into 38 states.

The operation grew out of an earlier, smaller effort, Operation Senior Sentinel, which ended in 1995. Senior Sentinel was the first undercover effort directed at telemarketing fraud. It investigated 180 telemarketing "boiler rooms" concentrated in Buffalo, Las Vegas and Chattanooga, Tenn., and convicted 598 individuals.

Jonathan Rusch, Justice Department special counsel for fraud prevention, explained that "those who were not arrested then moved into smaller-scale, more mobile operations, like investment scams and 'recovery rooms.'"

"Recovery room" operations tell victims of previous scams they can obtain refunds if they pay a fee. Often these crooks pose as FBI, IRS or Customs agents.

Reno described one in which a telemarketer called a previous vic-

tim pretending to be an FBI agent trying to catch the earlier telemarketer. The counterfeit agent mailed a phony court order to the victim purporting to authorize a wiretap of the victim's telephone.

Next, the crook called back using a different voice and promised to recover the victim's loss for a 10 percent fee, Reno said.

In a third call, the crook again posed as an FBI agent and urged the victim to send the money so the telemarketer could be caught red-handed.

"Anyone who calls you, tells you

they're from the FBI, and asks you to pay a fee so they can get your money back, is lying," Reno said. "No federal or state law enforcement agency will ever charge fraud victims a dime when they try to get money back for victims."

AARP president-elect Tess Canja said 56 percent of telemarketing victims are elderly, often active, outgoing and well-educated.

"They are very trusting," Canja said. Her group trains people to spot illegitimate pitches and hang up.

12/18/98





U.S. Department of Justice

Office of Justice Programs

Office for Victims of Crime

Washington, D.C. 20531

JAN 1999

Dear Colleague:

Within the federal criminal justice system professionals are beginning to recognize that victims of fraud and economic crime often have similar needs as victims of violent crime. Due to the unique work of federal victim advocates and the on-going collaboration between the Executive Office for United States Attorneys (EOUSA) and the Office for Victims of Crime (OVC), we've come to recognize the legitimate concerns of this often neglected victim population and more fully understand their particular needs. It is for these reasons OVC is pleased to provide the enclosed new resources and up-to-date information about a variety of projects, publications, and on-going activities that have been undertaken to advance fraud victims' rights and needs and help you further assist victims of fraud.

First, in response to comments from the field, the Victims of Crime Act (VOCA) Victim Assistance Program Guidelines were revised April 22, 1997, to allow state VOCA grantees to fund program services that assist victims of financial exploitation and fraud. While this information has been shared with all VOCA Administrators, other victim assistance professionals may not yet be familiar with the changes that affect assistance to victims of fraud. We expect that soon fraud victims and advocates will begin to see an increase in VOCA-funded victim assistance services and resources available to them. Federal Victim/Witness Coordinators can obtain a copy of the new VOCA Victim Assistance Program Guidelines and a list of VOCA-funded victim assistance programs by visiting OVC's Website at <[www.ojp.usdoj.gov/ovc](http://www.ojp.usdoj.gov/ovc)>. Go to the "Help for Victims" box and click on the "State by State" icon located on the left-hand side of the screen for a list of current VOCA-funded victim assistance programs. For a copy of the new VOCA Victim Assistance Program Guidelines, go to the "State Compensation and Assistance" box and click on the "Guidelines" icon located on the left-hand side of the screen.

In addition, OVC has developed a sample 15-minute electronic slide presentation that explains fraud victims' needs generally and the new VOCA Victim Assistance Program Guideline provisions. This full-color presentation is available on diskette from OVC to help you educate the field and expand the reach of VOCA-funded programs to assist victims of fraud. If you are interested in receiving one copy of this educational training tool for your office, please contact Ms. Deborah Kaufman at OVC's Resource Center. Ms. Kaufman can be reached on her direct line at 301/519-5309, or toll free at 1-800-627-6872.

Second, OVC has worked over the past three years with the Police Executive Research Forum and a variety of talented individuals from EOUSA's LECC/Victim-Witness and Financial Litigation Staffs, non-profit organizations, United States Attorneys' Offices, Federal Law Enforcement Training Center, Federal Bureau of Investigation, United States Postal Inspection Service, and other law enforcement and victim assistance representatives from within the Justice

Department, to create resources that would further assist you to expand your programs and provide more comprehensive services for victims of fraud. The enclosed resource package includes a generic law enforcement brochure, which provides answers to frequently asked questions about financial fraud and includes assistance contact information, a more comprehensive handbook for victims who are participating in the criminal case, and a 20-minute educational video and companion desk reference/resource guidebook to help Coordinators enhance and expand victim services. Both the handbook and the brochure are provided as master print copies in the resource kit.

If you wish to customize the documents with local or district-specific information, you may also wish to obtain the materials electronically from OVC's Website at [www.ojp.usdoj.gov/ovc/](http://www.ojp.usdoj.gov/ovc/). Go to the "Information Resources" box and click on the "Fraud" icon. The resources are available in various formats. In addition, multiple copies of the printed documents and the video, as well as the enclosed telemarketing fraud fact sheet, are available from OVC's Resource Center by calling 1-800-627-6872. Please refer to the appropriate title and catalog numbers when ordering (i.e., NCJ# 170593 for the video "*Victims of Fraud: Beyond Financial Loss*", NCJ# 170594 for the resource guide "*Providing Services to Victims of Fraud: Resources for Victim/Witness Coordinators*", NCJ# 172830 for the handbook "*Roles, Rights and Responsibilities*", and BC# 000599 for the brochure "*Information for Victims and Witnesses Who Report Fraud Crimes*").

Finally, many of you may know that a federal demonstration project on white collar crime victimization was funded by OVC and became operational earlier this year through a reimbursable agreement with EOUSA and the U.S. Attorney's Office for the Northern District of California in San Francisco. This demonstration site is intended to provide innovative services to victims of white collar crimes by enhancing prosecutive efforts in the early identification of defendant asset and the return of such assets to victims after conviction. The program also developed a brochure providing information on the restitution process, including collection efforts taken on behalf of victims by the federal government. For more information about these promising practices or the sample restitution brochure you may wish to contact Ms. Jennifer Mullane, EOUSA's LECC/Victim-Witness Program, at 202/616-6792.

I hope that these resources will aid you in your efforts to assist victims of fraud and to improve the response of federal criminal justice personnel to the rights and needs of this special crime victim population.

Sincerely,



Kathryn M. Truman  
Acting Director

Enclosures

cc: J. Birschbach, OVC Resource Center  
K. Lesnak/J. Mullane, LECC/Victim-Witness Staff, EOUSA

## Additional Assistance and Support

### National Credit Reporting Agencies

Equifax ..... 800-525-6285  
P.O. Box 740256  
Atlanta, GA 30374

Experian, Inc. .... 800-682-7654  
P.O. Box 949  
Allen, TX 75013

Trans Union Corporation ..... 800-680-7289  
P.O. Box 6790  
Fullerton, CA 92834

To find local credit reporting agencies, consult your local Better Business Bureau or phone directory.

### Credit Counseling Services

National Foundation for Consumer Credit . 800-388-2227

For additional credit counseling services near you, contact your local Better Business Bureau.

### Support Services

American Association of Retired Persons ..... 202-434-2277

Community Elder Care Locator ..... 800-677-1116

Neighbors Who Care ..... 800-NWC-7770

U.S. Dept. of Housing and Urban Development, Office of the Elderly and Handicapped ..... 202-755-5318

### National Hotlines to Report or File

#### Complaints of Fraudulent Practices

National Association of Securities Dealers 800-289-9999

#### National Consumer League Fraud Information

Hotline ..... 800-846-7661

National Fraud Information Center ..... 800-876-7060

National Insurance Consumer Help Line ... 800-942-4242

Securities and Exchange Commission..... 800-SEC-0330

### Social Security Administration

Fraud Hotline ..... 800-269-0271

U.S. Dept. of Health and Human Services, Office of the Inspector General ..... 800-HHS-TIPS

U.S. Postal Service Crime Hotline ..... 800-654-8896

The information above is only a partial list of reporting agencies. Please call the Federal Government Information Center (800-688-9889) for a list of additional government reporting and licensing agencies.

### State and Local Reporting and Licensing Agencies

Please refer to your local phone directory to obtain these numbers. Some agencies provide victims with additional avenues for financial recovery, such as administrative hearings and reparation boards.

### Important Case-Related Information

Investigative Agency \_\_\_\_\_

Case Agent \_\_\_\_\_

Phone ( ) \_\_\_\_\_

Report Number \_\_\_\_\_

#### Victim/Witness Coordinator

Name \_\_\_\_\_

Phone ( ) \_\_\_\_\_

This project was supported by Cooperative Agreement No. 96-VR-GX-K002, awarded by the Office for Victims of Crime, Office of Justice Programs, U. S. Department of Justice, to the Police Executive Research Forum. Points of view are those of the grantee and do not necessarily represent the official position or policies of the U.S. Department of Justice. The Office for Victims of Crime is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, and Office of Juvenile Justice and Delinquency Prevention.

U.S. Department of Justice  
Office of Justice Programs  
Office for Victims of Crime

# Information for Victims and Witnesses Who Report Fraud Crimes



**F**ederal law enforcement professionals are concerned about victims and witnesses of financial crimes. As a victim or witness, you probably have questions about how your case will be investigated, what services and information will be available to you, and how you can begin to cope with your financial losses. This brochure was designed to provide you with general information to answer these common concerns.

### **What can I do about my financial loss?**

The first thing you should do is collect and save all paperwork that directly relates to your loss. If an arrest is made and a conviction is obtained, the judge will consider requiring the offender to pay you for your losses (called restitution).

Some losses are tax deductible. Because tax laws are complicated, consult a qualified tax advisor or the Internal Revenue Service to see if your losses qualify.

Finally, if you believe the fraud perpetrator has assets, you may be able to recover some losses through a civil lawsuit. Contact your state or local bar association for the names of attorneys who specialize in this area of law to determine if your case is appropriate for civil action.

If you have additional questions about recovering your financial losses, contact the victim/witness coordinator at the phone number provided.

### **What if I am contacted by anyone other than criminal justice professionals about my case?**

Although this rarely happens, if you receive harassing or other improper phone calls, mail, or actions from anyone as a result of your cooperation in the investigation of your case, contact your case agent immediately. Federal law provides for extra penalties for harassment or other threats against victims and witnesses.

If you are contacted by an individual claiming he or she can help you recover your losses, ask for the name of the person and the agency he or she claims to represent. Then contact your case agent or victim/witness coordinator immediately so he or she can help you verify the legitimacy of the individual or agency. Many fraud artists use this ploy to further victimize known victims, often using the names of official-sounding federal agencies.

### **How will I receive information about my case?**

Federal crime victims have been granted a number of rights throughout their participation in the federal criminal justice system. As your case proceeds, each of your rights will be explained to you. Specifically, during the investigation of the case, you have the right to:

- Be treated with fairness and with respect for your dignity and privacy
- Be reasonably protected from the accused offender
- Be notified of court dates
- Be present at court hearings
- Speak with the government's attorney
- Learn of the offender's conviction, sentence, and imprisonment
- Seek restitution

Some of these rights may only be available if your case is accepted for prosecution. To learn more about your rights, and at what stage in the justice process, you are eligible to receive them, please contact your victim/witness coordinator or case agent.

If you ask to be kept informed about the status of your case, you will receive periodic updates from the case agent or victim/witness coordinator.

The investigation of a possible fraud crime is often complex, especially if it involves several law enforcement agencies and many victims. Your case is important, and the professionals involved want to give it all the attention it deserves. If you have questions about how your case is progressing, contact your case agent or victim/witness

coordinator. It is important to keep your system representatives advised of any change in your address or contact information.

If an arrest is made, you will be notified as soon as possible. Victim/witness coordinators can answer your questions, describe your rights, and explain your role in the justice process.

### **Why do I feel the way I do?**

Victims of financial crime experience varying degrees of emotional trauma. You may feel some or all of the following:

- Anger, resentment, and a sense of betrayal toward the offender for taking advantage of you
- Frustration with criminal justice professionals
- Shame, embarrassment, and guilt if you feel you contributed to your victimization
- Fear for your financial security
- Increased concern about your personal safety or that of your family

Some victims find it helpful to seek the services of a counseling professional, clergy member, or advocacy organization. Contact your victim/witness coordinator if you need help in locating such services.

### **What can I do to address financial or credit problems?**

If your losses were severe and you are unable to meet your financial obligations, your credit rating may be affected. Consider some of these options:

- Contact your creditors immediately. Creditors will often work with you to reduce or modify your payments.
- Consult a nonprofit consumer credit counseling service, which may be able to negotiate new payment arrangements or consolidate or reduce payments or interest.
- Submit a written statement to local and national credit reporting agencies about your victimization.



Office for Victims of Crime

# OVC Fact Sheet

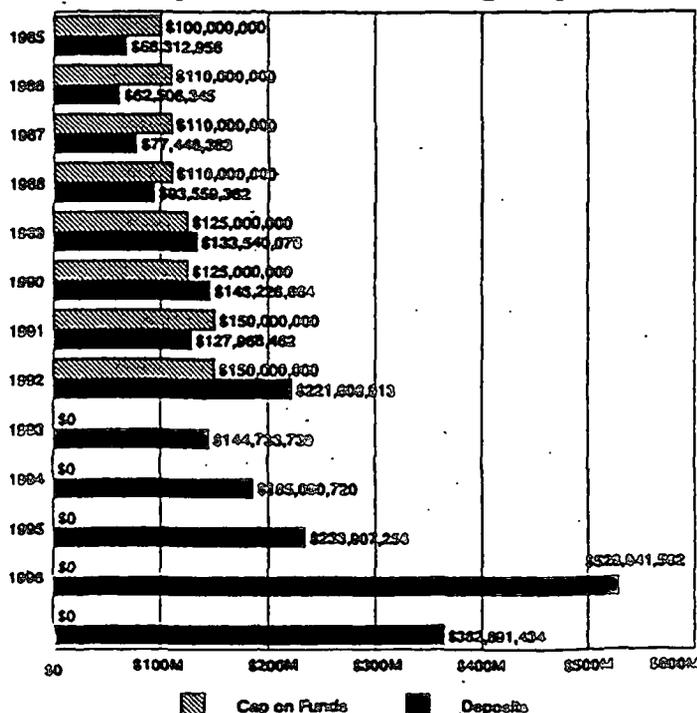
Advocating for the Fair  
Treatment of Crime Victims

## Victims of Crime Act Crime Victims Fund

The Crime Victims Fund was established by the Victims of Crime Act of 1984 (VOCA) and serves as a major funding source for victim services throughout the country. Each year, millions of dollars are deposited into this Fund from criminal fines, forfeited bail bonds, penalty fees, and special assessments collected by U.S. Attorneys' Offices, U.S. Courts, and the Bureau of Prisons. These dollars come from offenders convicted of Federal crimes not from taxpayers.

Fund deposits into the Fund fluctuate from year to year. The following chart depicts deposits into the Fund from 1985 through 1997.

**Crime Victims Fund  
Deposits and Funding Caps**



### Crime Victims Fund Deposits Available for Victims' Programs

In 1996, deposits totaled more than \$528 million dollars, primarily due to one case which resulted in a \$340 million fine. Deposits in 1997 reached the second highest level in the history of the Fund and will be available for crime victims' programs during FY98.

### How are Fund deposits disbursed?

The first \$10 million is used to improve the investigation and prosecution of child abuse cases. The \$10 million is divided between the U.S. Department of Health and Human Services (\$8.5 million) and OVC (\$1.5 million). The portion administered by OVC is used exclusively to help Native Americans improve the investigation and prosecution of child abuse cases, particularly child sexual abuse.

The remaining Fund deposits are distributed in the following ways:

- 48.5 percent to State compensation programs.
- 48.5 percent to State assistance programs.
- 3 percent for discretionary funds to support demonstration projects, training, and other assistance to expand and improve the delivery of services to crime victims.

### Victim Compensation

#### What is crime victim compensation?

Crime victim compensation is a direct reimbursement to, or on behalf of, a crime victim for the following crime-related expenses:

- Medical costs.
- Mental health counseling.

- Funeral and burial costs.
- Lost wages or loss of support.

Other compensable expenses may include eyeglasses or other corrective lenses, dental services and devices, prosthetic devices, and crime scene clean-up.

### **What is a crime victim compensation program?**

Every State administers a crime victim compensation program. These programs provide financial assistance to victims of both Federal and State crimes. Although each State compensation program is administered independently, most programs have similar eligibility requirements and offer a comparable range of benefits. Maximum awards generally range from \$10,000 to \$25,000.

The typical State compensation program requires victims to report crimes within 3 days and to file claims within a fixed period of time, usually 2 years. Most States can extend these time limits for good cause. If other financial resources are available, such as private insurance, compensation is paid only to the extent that the collateral resource does not cover the loss.

### **Which States receive VOCA compensation grants?**

All 50 States, the District of Columbia, and the U.S. Virgin Islands receive VOCA compensation grants.

A State is eligible to receive a VOCA compensation grant if it meets the criteria set forth in VOCA and OVC's Program Guidelines. Examples of such criteria include providing services for Federal crime victims and assisting victims who are victimized within the State when the victim resides in another State. Under the 1996 Antiterrorism Act, States must also provide compensation to residents who are victims of terrorist acts within or outside the United States.

The formula for VOCA compensation grants to States is based on a percentage of State payments to crime victims in a previous year.

## **Victim Assistance**

### **What is victim assistance?**

Victim assistance includes, but is not limited to, the following services:

- Crisis intervention.
- Counseling.
- Emergency shelter.
- Criminal justice advocacy.
- Emergency transportation.

Throughout the nation, there are approximately 10,000 organizations that provide these and other services to crime victims. Nearly 2,800 of those organizations receive some VOCA funds.

### **Which States receive VOCA victim assistance grants?**

All States and Territories receive an annual VOCA victim assistance grant. Each State, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico receive a base amount of \$500,000. The territories of the Northern Mariana Islands, Guam, and American Samoa each receive a base amount of \$200,000. Additional funds are distributed based on population.

States competitively award VOCA funds to local community-based organizations that provide services directly to victims of crime.

### **How do States determine which organizations will receive VOCA grants?**

Each State has discretion to determine which organizations will receive funding based upon the VOCA victim assistance guidelines and the needs of crime victims within the State. Most States make awards on a competitive basis.

VOCA assistance funds may be used only for direct services to crime victims. Services such as offender rehabilitation, criminal justice improvements, and crime prevention activities cannot be supported with VOCA assistance funds.

## **Discretionary Funds**

### **What are discretionary funds?**

The purpose of the discretionary grant program is to improve and enhance the quality and availability of victim services. Each year, OVC develops a Program Plan which identifies the training and technical assistance and demonstration initiatives to be funded on a competitive basis in the coming year.

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### **How are the discretionary funds used?**

At least half of all discretionary grant funds are dedicated to improving the response to Federal crime victims.

Initiatives include the following:

- Training Federal criminal justice system personnel on victims' issues.
- Developing materials that help Federal victims understand their rights and available services.
- Supporting programs that establish and expand existing services for Federal crime victims.

The remaining discretionary funds support a variety of nationwide initiatives such as follows:

- Developing training curricula.
- Training victim services and criminal justice professionals.
- Working to raise the awareness of victims' rights and needs throughout the country.
- Identifying and disseminating promising practices in victim services.
- Supporting and evaluating demonstration programs.

### **For Further Information**

More information about the Office for Victims of Crime is available through the following sources:

- OVC ..... 202-307-5983
- OVC Web Site..... <http://www.ojp.usdoj.gov/ovc/>
- OVC Resource Center ..... 800-627-6872
- OVC Resource Center Web Site ..... <http://www.ncjrs.org>



**Fraud Victims' Needs and  
Allowable Use of Federal  
Victims of Crime Act (VOCA)  
Victim Assistance Funds**

**New Ways to Enhance Service  
Delivery to Victims of Fraud  
and Financial Exploitation**

## Fraud Victims' Needs and Allowable Use of Federal Victims of Crime Act (VOCA) Victim Assistance Funds

New Ways to Enhance Service Delivery to Victims of Fraud and Financial Exploitation

### OBJECTIVE #1

- ✓ To learn about recent changes to VOCA Victim Assistance Program Guidelines allowing VOCA dollars to be used to assist victims of financial exploitation

### OBJECTIVE #2

- ✓ To understand how fraud and financial exploitation harm victims and their families

### OBJECTIVE #3

- ✓ To explore other ways of assisting victims of financial crime, besides providing victim notification services

### Common Types of Fraud

- ✓ Telemarketing (phone solicitation of phony goods or services)
- ✓ Mail, Wire & Bank
- ✓ Health Care
- ✓ Investment (pension, trust fund fraud, etc.)
- ✓ Credit Card, Check (identity fraud)
- ✓ Embezzlement
- ✓ Pyramid & Advanced Fee Schemes
- ✓ Other (mortgage loans, home repair, etc.)

### Victim Impact

- ✓ Emotional
- ✓ Physical
- ✓ Financial

## Emotional Impact of Fraud Victims Report:

- ✓ Shattered trust and confidence due to betrayal (spiritual as well)
- ✓ Depression (sense of personal violation, loss, social stigma, alienation from others)
- ✓ Feelings of guilt, anger, shame, fear
- ✓ Isolation from family and friends (separation or divorce)

## Emotional Impact of Fraud Victims Also Report:

- ✓ Cognitive feelings of anxiety (frustration or helplessness - criminal justice system may add to the hurt or help heal)
- ✓ Other emotional injury (fluctuates given the degree and length of deceit/manipulation used, personal support systems, loss suffered, and extent to which other families and friends were drawn into the fraud scheme)

## Physical Impact Victims Report:

- ✓ Loss of appetite
- ✓ Problems sleeping
- ✓ High blood pressure, strokes, heart problems and other stress-related disorders
- ✓ Loss of concentration
- ✓ Use of alcohol/drugs to "cope"
- ✓ Suicides or attempted suicides

## The Financial Impact of Fraud/Economic Exploitation Some of the Effects

- ✓ Guardianship/conservatorship, loss of financial independence (real or diminished sense of future)
- ✓ Major quality of life changes (loss of home, business, family inheritance, etc., for both victim and family members)

## The Financial Impact of Fraud/Economic Exploitation Some of the Effects

- ✓ Negative credit or no credit - Stigma of bankruptcy
- ✓ "Total" economic loss generally not recouped in criminal or civil restitution awards

## Factors That May Affect Victims' Ability to "Recover"

- ✓ Age, health status and future earnings potential
- ✓ Perceived powerlessness as a result of the victimization
- ✓ Degree to which trust was violated and amount of manipulation used in the fraud scheme
- ✓ Availability of information and/or resources
- ✓ Offender accountability
- ✓ Being believed and/or having to prove the degree of "substantial" financial loss

## Effects of Health Care Fraud Economic/Physical

- ✓ Loss of coverage for necessary care
- ✓ Medical health care benefits reduced or eliminated (possibly resulting in death or serious disability)
- ✓ Harm incurred by unnecessary medical procedures or prescriptions (i.e. unnecessary cataract surgery for Medical benefits)

## Other Effects of Health Care Fraud Economic/Physical

- ✓ Frustrations in dealing with medical, criminal justice and regulatory agencies
- ✓ Credit damage, bankruptcy, sale of homes, loss of children' college funds etc., to pay hospital and other necessary health care costs
- ✓ Civil court/collection agency hassles

## The Office for Victims of Crime Responds Programs and Services

Office for Victims of Crime

## VOCA Victim Assistance Fund Guidelines (Revised April 22, 1997)

Allows for VOCA-funded Services for  
Victims of Financial Fraud and  
Economic Exploitation

Office for Victims of Crime

## Victims of Crime Act of 1984 42 U.S.C. 10601 et. seq.

- ✓ VOCA established the Crime Victims Fund (major funding source for victim services throughout the country - approx. 3,000 programs nationally)
- ✓ Deposits from criminal fines, forfeited bail bonds, penalty fees, and special assessments of federal offenders
- ✓ Not from taxpayers
- ✓ Collected by United States Attorneys' Offices, U.S. Courts, and Bureau of Prisons

Office for Victims of Crime

## Crime Victim Fund Deposits Come from both Corporations and Individuals

- ✓ 1996 deposits totaled more than \$528 million (Daiwa Bank - large banking scandal case resulted in \$340 million fine)
- ✓ Deposits in 1997 reached over \$362 million (second highest level in the history of the Fund), and deposits in 1998 reached over \$324 million
- ✓ Funds originate primarily from defendants convicted of financial crimes, not violent crimes

Office for Victims of Crime

## VOCA Victim Assistance Funds

- ✓ All States and Territories receive annual VOCA victim assistance formula grants
- ✓ Each receives a base dollar amount
- ✓ Additional funds are distributed on a population basis
- ✓ States competitively award VOCA funds to local community-based organizations that provide services to victims of crime

## VOCA Guidelines Define "Services" as Efforts That:

- ✓ Respond to the emotional and physical needs of crime victims
- ✓ Assist victims stabilize their lives after a victimization
- ✓ Help victims understand and participate in the criminal justice system
- ✓ Provide victims with a measure of safety and security

## New VOCA Victim Assistance Guidelines Encourage States to:

- ✓ Fund New Services or Expand Programs to Serve Victims of Fraud and Economic Exploitation

## New VOCA Victim Assistance Guidelines Expand Definitions:

- ✓ Expands "Victims" to include victims of financial crimes
- ✓ Expands "Elder abuse" to include economic exploitation and fraud
- ✓ Expands "previously undeserved" priority areas to include victims of economic exploitation and fraud

## VOCA Victim Assistance Grant Funds May Support Direct Services for Fraud Victims Such As:

- ✓ Immediate Health and Safety
- ✓ Mental Health Assistance/Support Groups
- ✓ Respite Care and Serving Victims with Disabilities

## And May Support New Community Programs & System Enhancements for Fraud Victims:

- ✓ Credit Counseling Advocacy or Other Special Services
- ✓ Restitution Advocacy
- ✓ Public Presentations - that are designed to identify victims & provide services
- ✓ Advanced Technologies

### **Immediate Health and Safety (VOCA Guidelines Section IV.E.1.a.)**

- ✓ **Services for immediate emotional and physical needs (excluding medical care), such as:**
  - » Crisis Intervention
  - » Counseling Hotlines
  - » Emergency Food & Clothing and Providing for Transportation and Shelter

### **Mental Health Assistance/Support Groups (VOCA Guidelines Section IV.E.1.b.)**

- ✓ **Counseling to understand or deal with their victimization and to stabilize their lives after the experience, such as:**
  - Individual Counseling
  - Exploitation/Fraud Support Groups
  - Therapy (Family members are also eligible)

### **Respite Care and Serving Victims with Disabilities**

**(VOCA Guidelines Sections IV.E.1.c. and IV.E.2.d.)**

- ✓ **Caring for a child or dependent adult so victim can attend court**
- ✓ **Purchasing Braille equipment for the blind or TTY/TTD machines for the deaf**
- ✓ **Making minor building improvements so services are more accessible to victims with disabilities**

### **Credit Counseling Advocacy or Other Special Services (VOCA Guidelines Section IV.E.1.f.)**

- ✓ **Assist victims manage practical problems created by the victimization, such as:**
  - » Acting in behalf of victims with other service providers, creditors or employers

### **Restitution Advocacy (VOCA Guidelines Section IV.E.1.c.)**

- ✓ **Restitution advocacy can include:**
  - » Cost of purchasing, developing printing & distributing restitution/ information
  - » Meetings with groups of fraud victims and their families i.e., town hall
  - » Formal programs to discuss the restitution process (one-day restitution clinics, restorative justice workshops, victim impact panels, etc.)

### **Public Presentations (VOCA Guidelines Section IV.E.2.k.)**

- ✓ **To identify fraud victims and provide or refer them to needed services**
  - » Public Forums (community centers, nursing homes, schools, churches, etc.)
  - » Costs can include presentations material, brochures and newspaper notices about the event (Radio & TV.)

**Advanced Technologies  
(VOCA Guidelines Section IV.E.2.f.)**

- √ To improve the ability to reach and serve fraud victims
  - » Computer equipment needs to enhance services to fraud victims (new or existing systems)
  - » Can cover cost of installation, cost of training staff to use equipment, and cost of supplies

**For More On VOCA, Victim Assistance Program Guidelines, Fraud Victims' Issues, and the Office for Victims of Crime**

- √ Call OVC at: **202-307-5983**
- √ Visit OVC's Web Site at:  
**<http://www.ojp.usdoj.gov/ovc/>**
- √ Call OVC's Resource Center at:  
**1-800-627-6872**
- √ Visit the Resource Center Web Page at: **<http://www.ncjra.org>**





August 1998

Office for Victims of Crime

# OVC Fact Sheet

Advocating for the Fair  
Treatment of Crime Victims

## Telemarketing Fraud Prevention, Public Awareness, and Training Activities

Everyday, thousands of Americans receive unsolicited phone calls from telemarketers selling a variety of products and services. Although the many of telemarketers represent legitimate businesses, many do not. Unscrupulous telemarketers are successful at swindling consumers out of millions of dollars. Unfortunately many criminal efforts are aimed at elderly senior citizens who do not have time to replenish their savings and who may be devastated by the financial losses.

Congress has appropriated money to implement programs designed to prevent telemarketing fraud and to improve services for elderly telemarketing fraud victims. Through these appropriated monies, OVC funded four innovative projects designed to prevent and intervene in telemarketing fraud schemes that target elderly citizens.

### Elder Financial Exploitation Prevention Program

Oregon Senior and Disabled Services Division  
Oregon State Department of Human Resources  
500 Summer Street, NW  
2nd Floor, Salem, OR 97310-1015  
Contact Person: Aileen Kaye  
503-945-6399 or Fax No: 503-947-5044

This project is comprised of two principal phases. One phase provides training and information for bank personnel so that they can quickly spot potential fraud, address the issue, and alert law enforcement officers. The Oregon Bankers Association, the Senior and Disabled Services Division, the U.S. Attorney, U.S. Postal Inspection Service, American Association of Retired Persons, and law enforcement have joined together to train bank

personnel in how to recognize signs of elder financial exploitation and to report suspected abuse.

The second phase creates services for elderly fraud victims. The Senior and Disabled Services Division, other State agencies, and private organizations with expertise in fighting fraud will work together to create a reverse boiler room to identify high risk seniors and target assistance directly to them using trained volunteers. The volunteers will be carefully screened, trained, and carry State identification before they are permitted to work with the seniors.

### A Telemarketing Fraud Project for Latino Elderly

National Hispanic Council on Aging  
2713 Ontario Road, NW, Washington, D.C. 20009  
Contact Person: Marta Sotomayor, Ph.D.  
202-265-1288 or Fax No. 202-745-2522

This project is designed to increase Latino elderly's awareness of telemarketing fraud through education and the coordination of prevention and intervention services. Two groups will be selected from geographical areas with large Latino populations and high numbers of immigrants who present socioeconomic characteristics that place them at high risk for telemarketing fraud. Two groups will enable comparisons and the development of models to be replicated in other settings with different Latino elderly populations. The project, at the local level, will be hosted by the National Hispanic Council on Aging network members who will provide support and ensure continuity upon completion of the project by receiving training as senior peer counselors.

## Operation Fraudstop: A Partnership to Reduce Telemarketing Fraud and Assist Victims

National Sheriffs' Association  
1450 Duke Street, Alexandria, VA 22314  
Contact Person: Terri Hicks  
703-836-7827 or Fax No. 703-519-8567

The National Sheriffs' Association is coordinating OPERATION FRAUDSTOP with a variety of agencies that have expertise in fighting crimes against the elderly. This is a campaign to make it difficult for swindlers to succeed with their illegal activities via the telephone and to provide education and assistance to telemarketing fraud victims, especially seniors. This program will capitalize on existing partnerships and programs such as community policing and TRIAD as well as employ resources to include the media, various publications, and private corporations such as Radio Shack and Wal\*Mart. The project will be pilot-tested on both coasts. The States of Maryland, Montana, Virginia, and Washington represent the sites for the initial phase of the project, with plans to replicate the best program elements and strategies nationwide.

## Telemarketing Fraud Prevention, Public Awareness, and Training Activities

Baltimore County Department of Aging  
611 Central Avenue, Towson, MD 21204  
Contact Person: Arnold Appel  
410-887-2108 or Fax No. 410-887-2149

The Baltimore County Department of Aging will write, produce, and distribute a booklet aimed at preventing telemarketing and telephone fraud. There will be two sections, one dealing with telemarketing fraud and the other with telephone fraud (theft of service).

The booklet will be produced in print suitable for a senior audience. The Baltimore Sunday edition of *The Sunpaper* will use the booklet as an insert at their cost. The Baltimore County Department on Aging's Senior Information and Assistance Service, which reaches more than 30,000 seniors each year, also will distribute the booklet. The right to reproduce the booklet will be made available to national organizations that wish to distribute it to their members. Sponsors from the private sector will be sought and invited to distribute the booklet through their organizations as well.

## For Further Information

More information about the Office for Victims of Crime is available through the following sources:

OVC ..... 202-307-5983  
OVC Web Site..... <http://www.ojp.usdoj.gov/ovc>  
OVC Resource Center ..... 800-627-6888  
OVC Resource Center Web Site ..... <http://www.ncjrs.org>

FS000214

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Office of Justice Programs  
Office for Victims of Crime  
Washington, D.C. 20531  
Official Business  
Penalty for Private Use \$300

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Permit No. G-91

Telemarketing Fraud Prevention, Public Awareness, and Training Activities

OVC Fact Sheet

## RESOURCES WHICH MAY BE HELPFUL

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For additional questions, please contact the  
Victim/Witness Assistance Program, U.S. Attorney's  
Office, Los Angeles, California: 1-888-228-0315

National Eldercare Locator Hotline:  
1-800-677-1118

California Crime Victim Resource Center:  
1-800-VICTIMS

National Center for Victims of Crime:  
703-276-2880

National Organization for Victim Assistance:  
202-232-6682

National Fraud Information Center:  
1-800-876-7060

California Dept. Real Estate Recovery Fund:  
916-227-0789

Privacy Rights Clearinghouse:  
619-298-3396

Consumer Credit Counseling Center:  
1-800-388-CCCS

U.S. Clerk of Court- Los Angeles, CA- 213-894-3535,  
312 N. Spring St., Rm G-8, Los Angeles, CA 90012  
.....www.cadc.uscourts.gov

U.S. Clerk of Court - Santa Ana, CA - 714-836-2468  
751 West Santa Ana Blvd. Rm 101, Santa Ana, CA 92701

U.S. Clerk of Court - Riverside, CA - 909-276-6170  
4100 Main St. 137-A, Riverside, CA 92501

## U.S. ATTORNEY'S OFFICE CENTRAL DISTRICT OF CALIFORNIA

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# Understanding The Restitution Process In A Federal Criminal Case

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1998



## Explanation of Losses Subject to Restitution

Many victims are interested in how they can be repaid for their financial losses suffered as a result of a crime. This brochure provides an overview of that process. The Mandatory Restitution Act of 1996 established procedures for determining the amount of restitution to which a victim may be entitled. Information on procedures for restitution for crimes which occurred before the Act was passed, (April 24, 1996) is also included.

The Act provides that 'identified' victims may be entitled to an order of restitution for certain losses suffered as a result of the commission of an offense as part of the criminal sentence imposed on the defendant, or as part of a plea agreement. Victims may be either individuals or businesses.

It is important to begin keeping a record of all expenses incurred as a result of the crime, so this information can be used in determining what costs may be ordered by a Judge to be repaid by a defendant if convicted.

For further information on any issue discussed in this brochure, contact the Victim Witness Assistance Program of the U.S. Attorney's Office.

## Requesting Restitution

Under federal law, in many types of federal crime, it is mandatory for a defendant to pay restitution for cases occurring after April 24, 1996. For most crimes committed prior to this date, Judges have more discretion on whether to order restitution.

Unfortunately, as a practical matter, a defendant who has no money or potential to make money may be unlikely to ever make meaningful restitution to the victims of a crime.

If a defendant pleads guilty or is found guilty at trial, available information on each identified victim's loss, usually obtained by the case agent during the investigation, will be provided to the U.S. Probation Office by the U.S. Attorney's Office. A presentence probation officer is assigned to investigate the background of a defendant, and prepare a presentence report for the Judge, recommending the most appropriate sentence.

Identified victims whose losses are included in the counts of conviction or as part of a plea agreement will also have the opportunity to request restitution and explain their losses in a Declaration of Victim Loss Statement. This statement is provided to victims to complete by the US. Probation Officer, after a defendant has been convicted at trial or has pleaded guilty. Victims should consider closely the types of restitution allowable, as it is often limited, and may not include damages for such things as pain and suffering. Victims should provide receipts or other verification where possible.

## **Describing the Impact of the Crime**

In addition, after a conviction, victims will also be asked to complete a Victim Impact Statement. This statement allows victims the opportunity to report on various consequences of the offense, including financial, social, psychological and/or medical. The Victim Impact Statement provides an important way for the Judge to consider losses and harm as a result of the crime.

## **Restitution Available To Any Eligible Victim**

In any case, at sentencing, the Judge may order reimbursement to a victim for verified lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

## **Special Categories of Victim Restitution**

Victims of crimes such as telemarketing, child exploitation, interstate domestic violence and sexual assault, may be eligible for the full amount of the identified victims' losses.

## **Physical Injury as a Result of the Crime**

For an offense resulting in physical injury to a victim, the Court may order: payment equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care; payment equal to the cost of necessary physical and occupational therapy and rehabilitation; and/or reimbursement to the victim for income lost as a result of the offense.

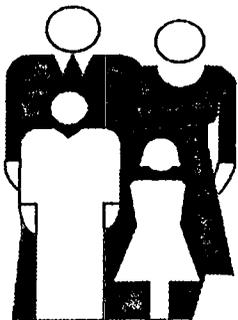
## **Restitution for Financial Loss**

In most fraud cases, restitution may be ordered where victims of the offense of conviction have suffered the loss of money or some negotiable instrument (investor fraud offenses or offenses involving the misuse of stolen credit cards), or the damage or loss of property. The Court may order a defendant to pay an amount equal to each victim's actual losses, usually the value of the principle or property fraudulently obtained.

## **Provisions Regarding Allowable Restitution**

In most cases, attorney fees, and tax penalties are not included in court ordered restitution. The Court may order the return of property or money to a victim or to someone a victim chooses. The Court may also order restitution to persons other than victims of a convicted offense, if agreed to in a plea agreement.

A court may decline to order restitution if it finds that determining restitution in a case is too complex.



In most cases, if the victim consents, the Court may order the defendant to make restitution by performing "service" instead of money, or to make restitution to a person or organization designated by the victim.

In addition, a victim may at any time assign his/her own interest in restitution payments to the Crime Victims Fund, through the U.S. Treasury. This fund provides funding to assist crime victim assistance and compensation programs throughout the U.S.

## **How Does a Victim Begin Receiving Money?**

For cases, in which the crimes were committed after April 24, 1996, the U.S. Clerk of Court is charged with the collection and distribution of restitution as any payment becomes available. For crimes committed prior to that date, the U.S. Attorney's Office, Financial Litigation Unit (FLU) or the U.S. Clerk of Court may be responsible, depending on the District.

If you are awarded restitution, simply keep the U.S. Clerk of Court informed of where you live and if your address changes. Any restitution payment owed will be forwarded to you as it becomes available.

The U.S. Attorney's Office, Financial Litigation Unit (FLU) is charged with enforcing orders of restitution. In the Central District of California, in cases in which a restitution order is made, the Financial Litigation Unit (FLU) of the U.S. Attorney's Office will file a lien on behalf of identified victims.

The FLU unit will pursue various means to enforce restitution, as the judgment and its resources permit, on behalf of identified victims for 20 years from the filing date of the Judgment, (plus the time period of actual incarceration) or until the death of the defendant. While a defendant is under the supervision of a probation officer, that probation officer will also monitor and ensure appropriate restitution is paid, where possible.

## **Can Victims File a Lien Against a Defendant?**

A victim may also choose to request the U.S. Clerk of Court to issue an Abstract of Judgment certifying that a judgment has been entered in a victim's favor in the amount specified in the Judgment. A victim may then file this with the Recorder's Office for any county in which it is believed the defendant has assets, in the state in which a defendant was convicted in federal court. Upon its recording, the Abstract of Judgment becomes a lien upon the property of the defendant in that county/state in the same manner as a state court judgment. Victims should consult with a private attorney for specific information.

## **Additional Restitution Provisions**

An order of restitution is not dischargeable in bankruptcy.

Under the Act, if an identified victim discovers further losses after a judgment has been filed, that victim has 60 days after discovery of the losses, to petition the Court for an amended restitution order. This order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitution.

After a Judge has imposed a restitution order, the U.S. Attorney or an identified victim may later make a motion to the Court if he/she discovers a material change in the defendant's economic circumstances that affect his or her ability to pay restitution. Victims with such information should contact the U.S. Attorney's Office.

The U.S. Attorney's Office is required to certify to the Court that victims who are owed restitution are notified about such material changes. Upon receipt of such notification, the Court has the discretion to adjust the defendant's payment schedule or require payment in full, as the interests of justice require.

## **Other Available Remedies**

Victims of violent crimes may be eligible for victim compensation which can often pay for medical and psychological costs, loss of income or support, or funeral expenses related to the crime.

In some cases, victims of fraud crimes may be able to seek some recovery through a regulatory agency. In some cases, a victim may also wish to file a civil action or file in small claims court against a defendant to recoup losses caused by the crime. For advice on the wisdom of such a suit, you should consult with a private attorney of your choice, or the Small Claims Court in the county in which the crime occurred. There is usually a statute of limitations which limits the time in which a civil suit can be filed.

## **What If I Expect Damages from a Civil Suit or Receive Compensation from Other Sources?**

If a victim has received compensation from insurance, disability, the Crime Victims' Compensation Fund, or any other source with respect to a loss, the Court shall order that restitution be paid to the person/company who provided or is obligated to provide the compensation. However, the restitution order shall provide that all restitution is payable to actual victims first.

Any amount paid under restitution shall be reduced by any amount later recovered as compensatory damages for the same loss in any related civil proceeding.

## RESOURCES FOR VICTIMS OF FINANCIAL FRAUD

- National Fraud Information Center ..... 1-800-876-7060  
*For reporting telemarketing and computer related fraud.....* <http://www.fraud.org>
- National Foundation for Consumer Credit ..... 1-800-388-CCCS  
(Consumer Credit Counseling Center) ..... <http://www.nfcc.org>  
*Assistance with credit problems providing free money management and debt counseling and assistance with creditors.*
- Eldercare Locator ..... 1-800-677-1116  
*National hotline identifying community resources to assist elderly persons.*  
..... <http://www.ageinfo.org/elderloc>
- National Victim Center ..... 1-800-394-2255  
*National advocacy for victims of all crimes* ..... <http://www.nvc.org>
- Federal Trade Commission ..... 202-FTC-HELP  
*To report consumer complaints on a variety of business frauds* ..... 1-202-382-4357  
<http://www.ftc.gov>
- National Association of Securities Dealers, Inc ..... 1-800-289-9999  
*Investigates complaints on securities brokers* ..... [www.nasdr.com](http://www.nasdr.com)
- Office of Investor Education and Assistance ..... 202-942-7040  
Securities and Exchange Commission ..... <http://www.sec.gov/>  
*Resource on investor questions, and investigates complaints against brokers or an unfair sales practice.*
- Commodities Reparation Fund ..... 202-418-5250  
U.S. Commodity Futures Trading Commission ..... <http://www.cftc.gov/cftc>  
*For complaints involving licensed commodities futures trading professionals.*
- National Futures Association ..... 1-800-676-4NFA  
<http://www.nfa.futures.org/menu.html>  
*Investigates complaints on futures and options trading investments, provides disciplinary information on brokers*
- U.S. Postal Inspection Service Crime Hotline ..... 800-654-8896  
*Tips on avoiding fraud crimes, and how to report mail related fraud crimes* . <http://www.usps.gov/>
- National Insurance Crime Bureau ..... 1-800-TEL-NICB  
*To report property fraud committed against an insurance company*
- U.S. Dept. Of Health and Human Services ..... 1-800-HHS-TIP  
*To report medicare fraud* ..... 1-800-447-8477  
<http://www.medicare.gov/fraudabuse.html>
- Social Security Administration Fraud Hotline ..... 1-800-269-0271  
*To report misuse of social security number, fraud, or a forged check.*

- Privacy Rights Clearinghouse ..... 619-298-3396  
*Provides information on identity fraud* ..... <http://www.privacyrights.org>
- California Dept. Real Estate Recovery Fund ..... 916-227-0789  
*For victims defrauded by licensed California real estate brokers, acting within the scope of their license, provides recovery fund* ..... <http://www.dre.cahwnet.gov/>
- California Dept. Real Estate ..... 916-227-0864  
*Provides information on past complaints filed on licensed brokers.* . <http://www.dre.cahwnet.gov/>
- California Department Corporations ..... 916-445-7205  
*Mandated to regulate the offer and sale of securities, investment advisors, broker-dealers, health care plans and various financial transactions. Investors defrauded should file a complaint. Provides information on recent enforcement actions and tips on avoiding financial fraud.*  
 ..... <http://www.corp.ca.gov/>
- California Dept. Insurance ..... 1-800-927-4357  
*Information and source to file complaints for insurance related fraud.* <http://www.insurance.ca.gov>
- California Crime Victim Resource Center ..... 1-800-VICTIMS  
*Information on victim services throughout California as well as information on enforcing restitution orders.* ..... <http://www.ocjp.ca.gov/vctmresrc.html>
- Council of Better Business Bureaus, Inc ..... 703-276-0100  
*Information on complaints against businesses and charities and mediate complaints with businesses.* ..... <http://www.bbb.org/about/aboutCouncil.html>
- National Charities Information Bureau.. ..... 800-501-NCIB  
*Helps consumers make wise decisions in making charitable contributions* ... <http://www.give.org>

**To have your name removed from many mailing lists and phone lists, (frequently used by telemarketers), contact these agencies in writing.**

Mail Preference Service  
 Direct Marketing Association  
 PO Box 9008  
 Farmingdale, NY 11735

Telephone Preference Service  
 Direct Marketing Association  
 PO Box 9014  
 Farmingdale, NY 11735

**Credit Reporting Agencies:** To request credit reports or report fraudulent activity.

Equifax ..... 800-685-1111  
 Experian ..... 800-397-3742  
 Trans Union ..... 800-888-4213

<http://www.equifax.com/>  
<http://www.experian.com/>  
<http://www.transunion.com/>

Also, state Attorney General Offices, County Legal Aid Associations, consumer protection agencies and some county or state bar associations (for elders) may have programs which may assist victims of fraud schemes, or provide information on avoiding scams.



**Victim/Witness Information Telephone Number:**

In order to remain available and responsive to all Victims and Witnesses in the Bureau of Prisons' Victim/Witness Notification Program, a toll-free number has been established. The toll-free number is 1-800-359-3267. Victims and Witnesses may also use this toll-free number to obtain information about the offender's status or about any notification they have received.

Occasionally, inmates are transferred between Bureau of Prisons institutions for adjustment purposes, population balance or other sound correctional reasons. Victims and Witnesses are not routinely notified of these internal system transfers. Any Victim/Witness may learn the location of any confined inmate by calling or writing the Bureau of Prisons Inmate Locator System.

U.S. Department of Justice  
Federal Bureau of Prisons  
320 1 st Street NW  
Room 536  
Washington DC 20534  
202-307-3126

# Victim/Witness Notification Program



This publication describes the Bureau of Prisons Mission and the Victim/Witness Notification Program, and is designed to be helpful to individuals who are victims of or witnesses to crimes. The Bureau of Prisons will ensure innocent victims have their rights upheld, their dignity and privacy respected, and are treated with fairness as described in law and 42 U.S.C. Section 10606(b).

## **The Bureau of Prisons Mission:**

The mission of the Bureau of Prisons is to protect society by confining offenders in the controlled environment of prisons and community-based facilities that are safe, humane, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

The Bureau of Prisons is able to carry out this mission because of our strong values, goals, and a clear understanding of our responsibilities. These mission objectives include the punishment, deterrence, incapacitation and rehabilitation of inmates. Punishment includes restriction of liberty and other rights for an established period of time through incarceration and supervision. Deterrence attempts to prevent others from committing similar crimes. Incapacitation isolates offenders to protect society. Rehabilitation attempts to change behavior patterns to diminish criminal propensities.

The Bureau of Prisons operates over 90 facilities in order to provide a balanced set of confinement and program options for the U.S. District Courts. These facilities have several different security levels to appropriately house a broad spectrum of offenders.

## **Victim and Witness Provisions**

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, as well as the Attorney General's Guidelines for Victim and Witness Assistance set forth procedures to be followed in responding to the needs of crime victims and witnesses. A major component of these directives mandates all law enforcement agencies ensure victims and witnesses are advised of the significant stages in the criminal justice process.

## **Victim/Witness Notification Program**

The Bureau of Prisons implemented the Victim and Witness Notification Program in April 1984. This program established procedures to be followed in responding to a request from a victim or witness who wishes to be notified regarding a specific inmate's release or release-related activities. The Bureau manages the Victim and Witness Notification Program to meet the needs of qualifying individuals who request information from the U.S. Attorney in the district in which the prosecution occurred. The designated Victim/Witness Coordinator of that U.S. Attorney Office forwards this request to the Bureau of Prisons.

After it is confirmed that the offender is in federal custody, the request is forwarded to the Warden of the institution where the inmate is confined. The victim or witness will then be notified in writing by the Warden of the inmate's location and of all significant release related activities. The Warden is the responsible official who shall make a reasonable and diligent effort to ensure the letter and the spirit of the law is fulfilled.

*The release related activities include the following:*

**RELEASE** - Before an inmate finishes serving the sentence imposed by the Court, the victim/witness will be notified of the date of release, the city and state of destination and if applicable the supervising U.S. Probation Office.

**ESCAPE** - The victim/witness will be notified by telephone of the date and time of an inmate's escape as soon as possible after an escape is discovered. Once the inmate is apprehended, the Victim/Witness will be advised of the apprehension and the location of the inmate.

**FURLOUGH** - Should an inmate be approved for an unescorted trip to the community, the victim/witness will be notified of the beginning and ending dates, as well as the specific locations of the furlough. Furloughs ordinarily occur within the inmate's final year of confinement. Only inmates who meet minimum level security standards are considered for furloughs.

**TRANSFER TO A COMMUNITY CORRECTIONS CENTER** - Upon verification that an inmate has been approved for transfer to a Community Corrections Center (halfway house), the victim/witness will be advised of the name and location of the facility, the date of transfer and the tentative date the inmate is scheduled for release from the halfway house. Transfers to halfway houses ordinary occur three to six months prior to the inmate's final release date to the community. The halfway house is usually in an area near the offender's expected area of release.

**PAROLE HEARINGS** - Victims and witnesses are notified of and may appear in person or provide a written statement to the United States Parole Commission if the inmate is eligible for parole and is receiving an in-person parole hearing.

**DEATH** - If an inmate dies during incarceration, the victim/witness will be notified of the date of death.



**United States  
Department of Justice**

**Federal Victim/Witness  
Coordinators:  
Antitrust Division**

**Chicago Field Office**

LINDA F. IRVIN  
209 S. LaSalle Street  
Suite 600  
Chicago, IL  
60604-1204  
(312) 353-5559  
(312) 353-1046 Fax

**Cleveland Field Office**

SUSAN M. VANEK  
55 Erieview Plaza  
Suite 700  
Cleveland, OH  
44114-1816  
(216) 522-4338  
(216) 522-7214 Fax

**Philadelphia Field Office**

MARIE A. STEEL  
The Curtis Center,  
Suite 650 West  
170 S Independence  
Mall West  
Philadelphia, PA  
19106-2424  
(215) 597-0224  
(215) 597-8838 Fax

**New York Field Office**

VICTORIA E. LAKE  
26 Federal Plaza  
Box 10-0101  
New York, NY  
10278-0140  
(212) 264-0679  
(212) 264-7453 Fax



**San Francisco Field Office**

CHARLIE A. JOLIVETTE  
450 Golden Gate Avenue  
Room 10-0101, P.O. Box 36046  
San Francisco, CA  
94102-3478  
(800) 447-5738  
(415) 436-6666  
(415) 436-6683 Fax

**Dallas Field Office**

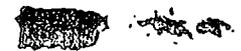
DONNA L. CLANTON  
1601 Elm Street  
Suite 4950  
Dallas, TX  
76201-4717  
(214) 880-9439  
(214) 880-9451 Fax

**Atlanta Field Office**

RAYMOND L. MEUSE  
75 Spring Street SW  
Suite 1176  
Atlanta, GA  
30303-3308  
(404) 331-7100  
(404) 331-7110 Fax

**Washington DC Section**

VICKIE D. TOGANS  
Litigation I  
City Center Building  
Room 3519  
1401 h Street NW  
Washington, DC 20530  
(202) 305-1201  
(202) 514-6525 Fax



PUERTO RICO &  
U.S. VIRGIN ISLANDS



**Receipt of Fines; Interim Provisions**

Section 9 of Pub.L. 100-185 provided that:

"(a) November 1, 1987, to April 30, 1988.—Notwithstanding section 3611 of title 18, United States Code [this section], a person who, during the period beginning on November 1, 1987, and ending on April 30, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.

"(b) May 1, 1988, to October 31, 1988.—(1) Notwithstanding section 3611 of title 18, United States Code [this section], a person who during the period beginning on May 1, 1988, and ending on October 31, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment in accordance with this subsection.

"(2) In a case initiated by citation or violation notice, such person shall pay the fine or assessment (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(17) of title 28, United States Code [section 604(a)(17) of Title 28, Judiciary and Judicial Procedure].

"(3) In any other case, such person shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984."

**Legislative History**

For legislative history and purpose of Pub.L. 98-473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 101-647, 1990 U.S. Code Cong. and Adm. News, p. 6472; Pub.L. 104-132, 1996 U.S. Code Cong. and Adm. News, p. 924.

**§ 3612. Collection of unpaid fine or restitution**

(a) **Notification of receipt and related matters.**—The clerk or the person designated under section 604(a)(18) of title 28 shall notify the Attorney General of each receipt of a payment with respect to which a certification is made under subsection (b), together with other appropriate information relating to such payment. The notification shall be provided—

(1) in such manner as may be agreed upon by the Attorney General and the Director of the Administrative Office of the United States Courts; and

(2) within 15 days after the receipt or at such other time as may be determined jointly by the Attorney General and the Director of the Administrative Office of the United States Courts.

If the fifteenth day under paragraph (2) is a Saturday, Sunday, or legal public holiday, the clerk, or the person designated under section 604(a)(18) of title 28, shall provide notification not later than the next day that is not a Saturday, Sunday, or legal public holiday.

(b) **Information to be included in judgment; judgment to be transmitted to Attorney General.**—(1) A judgment or order imposing, modifying, or remitting a fine or restitution order of more than \$100 shall include—

(A) the name, social security account number, mailing address, and residence address of the defendant;

(B) the docket number of the case;

(C) the original amount of the fine or restitution order and the amount that is due and unpaid;

(D) the schedule of payments (if other than immediate payment is permitted under section 3572(d));

(E) a description of any modification or remission;

(F) if other than immediate payment is permitted, a requirement that, until the fine or restitution order is paid in full, the defendant notify the Attorney General of any change in the mailing address or residence address of the defendant not later than thirty days after the change occurs; and

(G) in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, or the appropriate entity of the court, by means of a form to be provided by the Attorney General or the court, of any change in the victim's mailing address while restitution is still owed the victim. The confidentiality of any information relating to a victim shall be maintained.

(2) Not later than ten days after entry of the judgment or order, the court shall transmit a certified copy of the judgment or order to the Attorney General.

(c) **Responsibility for collection.**—The Attorney General shall be responsible for collection of an unpaid fine or restitution concerning which a certification has been issued as provided in subsection (b). An order of restitution, pursuant to section 3556, does not create any right of action against the United States by the person to whom restitution is ordered to be paid. Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

(1) A penalty assessment under section 3013 of title 18, United States Code.

(2) Restitution of all victims.

(3) All other fines, penalties, costs, and other payments required under the sentence.

(d) **Notification of delinquency.**—Within ten working days after a fine or restitution is determined to be delinquent as provided in section 3572(h), the

**§ 3555. Order of notice to victims**

The court, in imposing a sentence on a defendant who has been found guilty of an offense involving fraud or other intentionally deceptive practices, may order, in addition to the sentence that is imposed pursuant to the provisions of section 3551, that the defendant give reasonable notice and explanation of the conviction, in such form as the court may approve, to the victims of the offense. The notice may be ordered to be given by mail, by advertising in designated areas or through designated media, or by other appropriate means. In determining whether to require the defendant to give such notice, the court shall consider the factors set forth in section 3553(a) to the extent that they are applicable and shall consider the cost involved in giving the notice as it relates to the loss caused by the offense, and shall not require the defendant to bear the costs of notice in excess of \$20,000.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

**HISTORICAL AND STATUTORY NOTES**

**Effective Date**

Section effective on the first day of first calendar months beginning thirty-six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

**Legislative History**

For legislative history and purpose of Pub.L. 98-473, see 1984 U.S. Code Cong. and Adm. News, p. 3182.

**ADDRESS CHANGE (CONFIDENTIAL)**

If your address needs to be updated, please fill out this page and mail to:

Victim/Witness Assistance Center  
U.S. Attorney's Office  
312 North Spring Street, Room 1312  
Los Angeles, CA 90012

or fax this to: (213) 894-2744

United States v. \_\_\_\_\_ Case Number: \_\_\_\_\_

*The address and telephone contact information provided below will only be provided to the United States Attorneys Office. If the defendant is convicted, it will be provided to the presentence probation officer. This page will be released to the defense attorney and to the Court only if a court order is signed by the Judge.*

I understand that I will need to notify the US Attorney's Office Victim/Witness Assistance Program if my address changes.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Please print:

Name: \_\_\_\_\_

(Secondary Address) - In the event we cannot reach you at your primary address

Address: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (home) \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: (work) \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

email: \_\_\_\_\_

**Please Return This Change of Address Form If You Move:**

It is the responsibility of each victim/witness to notify the U.S. Attorney's Office, the Bureau of Prison or the District Clerk of Court, of any change in a mailing address if restitution was ordered, or if you are registered the Bureau of Prisons. The Victim/Witness Assistance Program will do this on your behalf, if you return this completed form to:

Victim/Witness Assistance Program

U.S. Attorney's Office

312 N. Spring St. Rm 1312

Los Angeles, CA 90012

Phone: 1-888-228-0315

Fax: 213-894-2744

U.S. v. \_\_\_\_\_

Case Number: \_\_\_\_\_

Bureau of Prison #: \_\_\_\_\_ (Used to assist in the location of a defendant while incarcerated.)

This is to report an address change for this case, in regards to:

\_\_\_\_\_ Bureau of Prison release related information.  
(If the defendant is serving federal prison time, and I did not previously request this information, I would like to register at this time.)

\_\_\_\_\_ Restitution that was awarded to me (or my company).

Old address:

New address:

New Phone number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ (Please print)

Date: \_\_\_\_\_

# DRAFT

It is incumbent upon responsible officials to ~~ensure foster cooperation among that~~ all components of the Department of Justice ~~cooperate with each other~~ to the maximum extent possible in providing victims the services defined under Federal law, ~~to which they are legally entitled~~. In many instances where certain duties and responsibilities overlap, ~~duplicative services are not required~~, ~~although the~~ responsible officials should promote ~~must take all steps necessary to require~~ coordination and inter-agency teamwork. ~~Accordingly~~, At each stage in the performance of services, the transition of responsibility from one component of the Department of Justice to the next must, of necessity, include a sharing of information (in many cases prior to the actual turning over of responsibility). In this way, gaps in notification and other services are eliminated and crime victims receive uniform rather than fragmented treatment, starting from the initial investigation and continuing throughout their entire involvement with the Federal criminal justice system.

Moreover, all components should ~~shall~~ work with appropriate components of other Federal agencies that investigate and prosecute violations of Federal law to assist them in providing these services to victims. ~~Justice Department components~~; ~~and shall~~ ~~should~~ also coordinate their victim-witness service efforts with State and local law enforcement officials who may be involved in the investigation, including tribal police officials in Indian Country, and victim assistance and compensation service providers.

## F. Victims' Rights and Services in Cases with Large Numbers of Victims

These AG Guidelines require Department of Justice investigators, prosecutors, and corrections officials to identify, protect, provide pertinent information to, and provide various types of assistance to crime victims. Individual and, whenever possible, personal contact with victims is recommended. While the methods for implementing these provisions are relatively straightforward in cases where the number of victims is limited, they can present challenges as the number of victims grows into the hundreds and thousands. In carrying out their obligations under the AG Guidelines in cases with large numbers of victims, responsible officials should use the means best calculated to achieve actual contact with and notice to victims.

### Commentary

*What constitutes a sufficient effort to identify, notify, and assist crime victims will necessarily vary with the facts of a particular violation, and a variety of techniques are available to enable Department personnel to effectuate appropriate notice and assistance to victims in a wide range of circumstances. What must be kept in mind at all times, however, is that the determination of what efforts are sufficient and what types of notice and assistance are appropriate depends largely on the anticipated needs of the crime victims and the selection of techniques reasonably calculated to provide actual notice to these victims, and much less on the absolute amount of effort or level of resources needed to provide this notice and assistance by Department personnel. Moreover, Department personnel should carefully evaluate the type of information relayed and the method of communicating the information to see that investigations are not compromised and victims' privacy*

*is not inadvertently invaded.*

*Identifying the nature of the harm suffered by crime victims is essential to determining the appropriate method of effectuating notice and providing assistance. Victims of violent crimes, for example, may have a high level of need for a wide range of victim services in almost every instance, and so in almost every instance a substantial effort to identify and personally contact victims of violent crime will be warranted, regardless of the number of victims involved. Indeed, FBI and United States Attorneys' offices should consider assessing the possibility of a large scale violent crime occurring within their jurisdictions, identifying the resources currently available to provide victim assistance (DOJ resources, other federal agencies such as FEMA, state and local agencies, volunteer groups such as the Red Cross) and those resources needed but not available, and developing contingency plans for contacting and providing assistance to mass crime victims should the need arise. As another example, victims of financial crimes such as telemarketing fraud often suffer significant (to them) harm and have a high degree of need for notice and referral services. Names and addresses of victims of financial crimes can often be obtained from defendants' records, and even in situations where thousands of victims exist it may be appropriate to send individual victims an initial notification letter informing them of the nature of the offense and assessing their interest in receiving future notice and consultation services. (In addition, defendants who have been convicted of offenses involving fraud may be ordered by the court to spend up to \$20,000 to provide notice to victims explaining the conviction pursuant to 18 U.S.C. § 3555.) Offices that frequently deal with cases involving large numbers of identifiable fraud victims may wish to develop the ability to conduct such mass mailings in-house, while offices that do not should be aware of the availability of independent contractors who are approved to handle sensitive government information and who can assist with the provision of such services when needed.*

*In other cases involving large numbers of victims, circumstances may suggest that the use of other methods to provide notice and assistance to the victims is appropriate. When a crime results in a large number of victims who likely have suffered significant harm and cannot be readily identified, but who reside in a limited geographic area, a well-publicized town meeting may be an effective way to identify victims, provide victims with notice and pertinent information, and consult with victims concerning the crime and the government's investigation. Still other cases may present the situation where a very large number of victims spread out over a large geographic area have likely suffered only minor (to them) financial losses. Under these circumstances, the use of representative victims, victim proxies (such as organizations that represent the interests of the victim class or actual class-action representatives) or even the general media may be the most appropriate method to provide victims with notice and information concerning the crime.*

*Other techniques beyond those mentioned above also exist that can, in certain situations, assist Department personnel to provide large numbers of victims with information concerning the ongoing status of an investigation, prosecution, or detention. For example, toll-free telephone numbers can be established that not only permit victims to call in and get recorded information concerning the status of a matter, but that actually call the victims to alert them to a change in status. With the increasing ability of individuals to access the Internet, web sites can be created that contain*

Re: American Land Liquidators  
National Listing Service

The case of United States v. Harvey Scott Baker, Cause No. H-96-158 is scheduled for trial on March 3, 1997 in United States District Court, Room 9-A of the Federal Courthouse located at 515 Rusk, Houston, Texas. Our Records indicate that you have an interest in this criminal case. Your attendance is not required unless you are subpoenaed.

A telephone recording will provide information regarding this case at (713) 567-9188. Your continued cooperation is appreciated.

**REQUEST FOR BUREAU OF PRISON RELEASE RELATED INFORMATION  
(OPTIONAL)**

To **Debbie Deem**  
Victim Witness Assistance Unit  
United States Attorney's Office  
312 N. Spring St. Rm 1312  
Los Angeles, CA 90012

Phone Number: 213-894-6786 or 888-228-0315 fax: 213-894-2744

United States v. \_\_\_\_\_

Case Number: \_\_\_\_\_ Bureau of Prison Registration Number: \_\_\_\_\_

I would like to receive notification of any prison release related information for this case. I understand that the defendant(s) will not know I am requesting this information and will not have access to my name or address. I also understand that I will not provide information about this program to the defendant, under penalty of being deleted from this program.

I understand that I will need to notify the US Attorney's Office Victim/Witness Assistance Program if my address changes.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Please print:

Name: \_\_\_\_\_

(If corporate or business victim)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ (Work)

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

*information concerning the progress of investigations and prosecutions (keeping in mind, of course, that any information that is not for public dissemination should not be posted on the Internet. Items that would normally be appropriate for a press release, such as dates for public court proceedings, are appropriate for the Internet.) Also, private groups that have within their membership a significant number of victims of a particular violation may have newsletters or other methods of informing their members that can be used to provide information about the ongoing progress of a case. Some victims themselves may be willing to assist with preparing and disseminating a newsletter or participating in a phone tree.*



**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**WORKSHOP RESOURCE MATERIALS**

***TRACK THREE: LEGAL ISSUES***

**THE FOLLOWING RESOURCE MATERIALS HAVE BEEN  
SUBMITTED BY THE PRESENTERS CONDUCTING  
WORKSHOPS IN THIS PARTICULAR TRACK.**

**ADDITIONAL MATERIALS MAY BE DISTRIBUTED AT THE  
WORKSHOPS THEMSELVES.**



# **MANDATORY VICTIMS RESTITUTION ACT**

**Financial Litigation Staff  
Executive Office for United States Attorneys  
December 30, 1998**

## **I. Restitution Background**

The Victim and Witness Protection Act, passed in 1982, was the first general federal victim restitution statute. Since then, there have been minor amendments to that law, but it was not until 1994, in the Violence Against Women Act, that Congress identified certain types of crimes subject to mandatory restitution, i.e., sexual abuse, sexual exploitation and other abuse of children, domestic violence and telemarketing.

The Mandatory Victims Restitution Act expands the scope of mandatory restitution. It also provides consolidated procedures for the issuance of restitution orders and enhances the post-conviction enforcement of restitution orders.

## **III. The Mandatory Victims Restitution Act**

On April 24, 1996, the Antiterrorism and Effective Death Penalty Act of 1996 was enacted. Title II of this legislation, the Mandatory Victims Restitution Act ("the Act"), significantly reforms restitution and alters the way that it is enforced. Most significantly for Financial Litigation Units, the Act requires that the Attorney General promulgate guidelines to ensure that "orders of restitution made pursuant to the amendments made by this subtitle are enforced to the fullest extent of the law." PL 104-132 section 209.

## **III. Imposition of Restitution**

### **A. Mandatory Restitution**

The Act now requires the court to order full restitution in certain cases. It creates a new 18 U.S.C. § 3663A, which requires the court to enter a restitution order for each defendant, without regard to the defendant's economic situation, who has been convicted or plead guilty to charges of:

- ⊙ A crime of violence (as defined in 18 U.S.C. § 16);
- ⊙ An offense against property under title 18, including any offense committed by fraud or deceit; or,
- ⊙ An offense described in section 1365, relating to tampering with consumer products, 18 U.S.C. § 3663A(c)(1)(A);

AND,

- There is an identifiable victim<sup>1</sup> or victims who have suffered a physical injury or pecuniary loss. 18 U.S.C. § 3663A(c)(1)(B).

The only exception to mandatory restitution for the above categories is for an offense against property if the court makes a finding that:

- the number of identifiable victims is so large as to make restitution impracticable; or,
- determining complex issues of fact related to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process. 18 U.S.C. § 3663A(c)(3).

Additionally, the four areas of mandatory restitution enacted under the Violence Against Women Act still exist. These are:

- Sexual abuse - 18 U.S.C. § 2248;
- Sexual exploitation and other abuses of children - 18 U.S.C. § 2259;
- Domestic violence - 18 U.S.C. § 2264; and,
- Telemarketing fraud - 18 U.S.C. § 2327.

Prior to the MVRA a conviction for failure to pay child support was considered to involve mandatory restitution for the unpaid child support obligations. 18 U.S.C. § 228. When the MVRA was enacted, however, the original provision of Section 228 was not amended. That section stated that "the court shall order restitution under section 3663." Unfortunately, Section 3663 became the discretionary provision for awards of restitution. Accordingly, a defendant's economic circumstances could arguably be considered by the court in determining whether to award past due support as restitution. Congress must have recognized the incongruity which was created by the MVRA for child support restitution, because the Deadbeat Parents Punishment Act of 1998 enacted effective June 24, 1998 (Pub. L. 105-187, 112 Stat. 618). That act amended 18 U.S.C. §228 to provide a new subparagraph (d) entitled "MANDATORY RESTITUTION" and providing, "Upon a conviction under this section, the court shall order restitution under section 3663A in an amount equal to the total unpaid support obligation as it exists at the time of sentencing." This change makes it clear that restitution is mandatory on a conviction for failure to pay child support.

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<sup>1</sup>The definition of "victim" is expanded by the new law to include those "proximately" harmed by as a result of the commission of the offense. 18 U.S.C. §§ 3663(a)(2) and 3663A(a)(2).

The procedures for issuing restitution under and of these mandatory restitution sections are now the same as for the general restitution statute and set forth in 18 U.S.C. § 3664.

## **B. Discretionary Restitution**

The general restitution statute, 18 U.S.C. § 3663, now states that the court "may order" restitution:

- ⊙ For any title 18 offense not covered by the new mandatory restitution provisions of 18 U.S.C. § 3663A(c);
- ⊙ For drug offenses under 21 U.S.C. §§ 841, 848(a), 849, 856, 861, and 863, as long as the victim is not a participant;
- ⊙ For air piracy offenses (unless they fall within the new mandatory restitution provisions of 18 U.S.C. § 3663A(c)); and,
- In any criminal case to the extent agreed to by the parties in a plea agreement.

In determining whether to award restitution in these cases, the court is required to consider:

- ⊙ The amount of the loss sustained by each victim as a result of the offense; and,
- The financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

Also, to the extent the court determines that the complication and prolongation of the sentencing process involved in ordering restitution outweighs the need to provide restitution to any victims, the court may decline to do so. 18 U.S.C. § 3663(a)(1)(B).

## **C. Other Restitution**

### **1. Restitution as a condition of probation**

Restitution can be ordered as a discretionary condition of probation and is not limited to the offenses set forth in 18 U.S.C. §§ 3663(a) or 3663A(c)(1)(A)(offenses for which mandatory or discretionary restitution applies). There still must be an identifiable victim(s) that has suffered physical injury or pecuniary loss (the requirement in 3663A(c)(1)(B)). 18 U.S.C. § 3663(b)(2).

### **2. Plea agreements - victims of non-conviction offenses**

The Act provides that the court shall order restitution to persons other than the victim of the offense if agreed to by the parties in a plea agreement. 18 U.S.C. § 3663A(a)(3).

#### **IV. Restitution Procedures**

Regardless of how restitution is imposed - as mandatory under new 3663A or the Violence Against Women Act provisions, as discretionary under 3663, or as a condition of probation - the procedures that must be followed are now all set forth in 18 U.S.C. § 3664, which has been substantially modified.

##### **A. Determining the Amount of Restitution**

###### **1. Presentence Report**

The probation officer is now required to include in the presentence report (or another report if a presentence report is not prepared):

- a. A complete accounting of losses to each victim;
- b. Restitution owed pursuant to a plea agreement; and,
- c. Information relating to the economic circumstances of each defendant. (To be obtained by an affidavit filed by the defendant with the probation officer pursuant to amended 18 U.S.C. § 3664(d)(3)).

###### **2. Exceptional circumstances**

If the number or identity of the victims cannot be ascertained, or other circumstances exist that make this requirement impracticable, the probation officer will inform the court. 18 U.S.C. § 3664(a).

###### **3. Prosecutor's Role**

Under the Act the probation officer may ask the prosecutor to provide a listing of the amounts subject to restitution no later than 60 days prior to sentencing. The attorney for the Government must first consult, "to the extent practicable", with all identified victims. 18 U.S.C. § 3664(d).

###### **4. Notice to Victims**

It is the probation officer's responsibility to provide notice to all identified victims of:

- the offense(s) of which the defendant was convicted;
- the amounts subject to restitution submitted to the probation officer;
- the opportunity of the victim to submit information to the probation officer concerning the amount of the victim's losses;

- the scheduled date, time, and place of the sentencing hearing;
- the availability of a lien in favor of the victims pursuant to subsection 3664(m)(1)(B); and,
- the opportunity of the victim to file with the probation officer a separate affidavit (provided by the probation officer) relating to the amount of the victim's losses subject to restitution. 18 U.S.C. § 3664(d)(2).

**5. Additional evidence**

After reviewing the probation officer's report, the court may require additional documentation or hear testimony. 18 U.S.C. § 3664(d)(4). These proceedings may be done in camera for privacy concerns and are governed only by Fed.R.Crim.P. 32(c), chapter 227 (sentences) and chapter 232 (miscellaneous sentencing provisions). 18 U.S.C. § 3664(c).

**6. Postponement of determination of loss**

If the victim(s) losses cannot be determined within 10 days of the sentencing hearing, the attorney for the government or the probation officer must inform the court and a date for final determination of the losses can be set for up to ninety days after the sentencing. 18 U.S.C. § 3664(d)(5). The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the government. 18 U.S.C. § 3664(e).

- 7. The court shall order restitution to each victim in the full amount of each victim's losses, without consideration of the economic circumstances of the defendant. 18 U.S.C. § 3664(f)(1)(A).**

For example, for discretionary restitution under 3663, the amount of the loss and the defendant's economic circumstances can be considered by the court on the issue of whether to award restitution, but once that decision is made, those considerations are irrelevant to the amount of restitution ordered.

**8. Additional Losses**

Even after a final determination of restitution, a victim may petition the court for an amended restitution order within 60 days after discovering additional losses. A showing of good cause for failure to include such losses in the initial claim is required before such an order can be granted. 18 U.S.C. § 3664(d)(5).

**9. Community Restitution in Drug Cases**

For drug offenses under 21 U.S.C. §§ 841, 848(a), 849, 856, 861, and 863, where the victim is not a participant 18 U.S.C. § 3663(c)(2)(A) requires the Sentencing Commission to issue guidelines for orders of restitution based on public harm. Amendments to the Sentencing Guidelines effective November 1, 1997, state that the court shall order community restitution after "taking into consideration the amount of public harm caused by the offense and other relevant factors..." USSG § 5E1.1(d)(effective Nov. 1, 1997). This permits the court broad discretion to determine an amount of community restitution. USSG § 8B1.1. The only express limitation is that the amount of restitution shall not exceed the amount of the fine imposed. 18 U.S.C. § 3663(c)(2)(B).

## **B. Payment Provisions**

### **1. Manner and schedule to be determined by court**

After the court determines the amount of restitution owed to each victim, the court must establish the manner and schedule according to which restitution is to be paid. 18 U.S.C. § 3664(f).

### **2. Options for payment**

After considering the economic circumstances of the defendant, the court may order payment of a single, lump sum, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. *Id.*

### **3. Preference for immediate payment**

Payment shall be made immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments. 18 U.S.C. § 3572(d)(1). And, if the court orders other than immediate payment, the length of time over which scheduled payments are made shall be the shortest time in which full payment can reasonably be made. 18 U.S.C. § 3572(d)(2).

### **4. Nominal payments**

If the "economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments," the court can order the defendant to make nominal periodic payments. §3664(f)(3)(B).

The one court to address the nominal payment provision of the MVRA albeit in dicta, interpreted it to permit a court to order less than full restitution if it finds that the defendant is financially incapable of making payment. U.S. v. Golino, 956 F. Supp. 359, 364-65 (E.D.N.Y. 1997). This appears to ignore the express language of 3664(f)(1)(A) and confuses the two distinct processes of setting the amount of restitution and then determining how payments are to be made.

5. **The court can set up different payment schedules for different victims. 18 U.S.C. § 3664(I).**

6. **Private, nonfederal victims must be paid prior to the United States when the United States is also a victim. 18 U.S.C. § 3664(I).**

7. **Defendant who receives substantial resources**

If an incarcerated defendant who is obligated to pay restitution or a fine receives "substantial resources from any source", the defendant is required to apply the value of the resources to any unpaid restitution or fine. 18 U.S.C. § 3664(n).

8. **Change in circumstances**

The defendant is required to notify the court and the Attorney General of any material change in economic circumstances which might affect his or her ability to pay restitution. Victims and the United States may also notify the court of any change in the defendant's economic condition. The Attorney General must then certify to the court that all of the victims have been notified of the change in the defendant's economic circumstances. After receiving this notification, the court may on its own or on motion of any party, adjust the repayment schedule. 18 U.S.C. § 3664(k).

9. **Payment in Community Restitution Cases**

Restitution based on public harm in drug cases (18 U.S.C. § 3663(c)) is disbursed to state entities:

65% to the state entity designated to administer crime victims assistance in the state where the crime occurred (18 U.S.C. § 3663(c)(3)(A));

35% to the state entity designated to receive federal substance abuse block grant fund (18 U.S.C. § 3663(c)(3)(B)).

## **V. Enforcement of Restitution**

### **A. Liability to pay**

The liability to pay a fine or restitution lasts twenty years plus any period of incarceration or until the death of the defendant. 18 U.S.C. § 3613(c). During that time a fine or restitution order must be enforced by the United States to the fullest extent of the law. s 209 of the Act.

### **B. Enforcement by the United States**

#### **1. General Provision**

The Act provides that an order of restitution may be enforced by the United States: in the manner provided for fines (chapters 227 and 229 of title 18)(like a civil judgment under federal or state law - 18 U.S.C. § 3613(a)); or by all other available and reasonable means. 18 U.S.C. § 3664(m)(1)(A)(I) and (ii).

#### **2. Enforcement like a fine - generally**

The fine statutes that provided for payment and collection of a fine (18 U.S.C. § 3611-3615) have been substantially rewritten. Some of the significant changes are:

- a. Payments for fines, restitution and special assessments must be made to the clerk of the court. 18 U.S.C. § 3611.
- b. Payments are now statutorily mandated to be applied in the following order:
  1. Special Assessments
  2. Restitution to all victims
  3. All other fines, penalties, costs and other payments required under the sentence. 18 U.S.C. § 3612(c).
- c. Delinquency and default penalties apply to restitution as well as fines. 18 U.S.C. §§ 3612(d) and (e); 3572(h) and (I).
- d. Interest accrues on restitution. 18 U.S.C. § 3612(f).
- e. A defendant can be resentenced under 18 U.S.C. § 3614 for knowingly failing to pay a fine or restitution.

### 3. The Lien

- a. An order of restitution is a lien in favor of the United States on all property and rights to property of the person fined as if it were liability for unpaid taxes. 18 U.S.C. § 3613(c).
- b. The lien arises on the entry of judgment and continues until satisfied, remitted or set aside, or for twenty years plus the period of incarceration or the death of the defendant. 18 U.S.C. § 3613(c).

### 4. Enforcement Procedures

Either state or federal procedures may be used to effect enforcement for restitution (or a fine). This allows the United States to enforce fines and restitution using the post-judgment procedures in the Federal Debt Collection Procedures Act, (FDCPA) 28 U.S.C. §§ 3203 - 3206. And, under federal law, criminal defendants have very limited property that is exempt from seizure.

Note: *The First Circuit case of U.S. v. Bongiorno, 105 F.3d 1027, reh'g en banc denied 110 F.3d 132 (1st Cir. 1997) held that the United States could not use the FDCPA to enforce a nonfederal restitution order imposed on a pre-Act case. This decision only applies to enforcement actions taken in the First Circuit, and should not impact enforcement for convictions after April 24, 1996, even in the First Circuit.*

### 5. Exempt property

The exempt property provisions of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3014, do not apply. 18 U.S.C. § 3613(a)(2). The only property that is exempt from enforcement under federal law for fines and restitution is some of the same property that is exempt from IRS levy for taxes. Specifically, the following:

- ⊙ Wearing apparel and school books. 26 U.S.C. § 6334(a)(1).
- ⊙ Fuel, provisions, furniture, and personal effects up to \$6,250. 26 U.S.C. § 6334(a)(2).
- ⊙ Books and tools of a trade, business, or profession up to \$3,125. 26 U.S.C. § 6334(a)(3).
- ⊙ Unemployment benefits. 26 U.S.C. § 6334(a)(4).
- ⊙ Undelivered mail. 26 U.S.C. § 6334(a)(5).
- ⊙ Certain annuity and pension payments. 26 U.S.C. § 6334(a)(6).
- ⊙ Workmen's compensation. 26 U.S.C. § 6334(a)(7).
- ⊙ Judgments for support of minor children. 26 U.S.C. § 6334(a)(8).

- Certain service-connected disability payments. 26 U.S.C. § 6334(a)(10).
- Assistance under Job Training Partnership Act. 26 U.S.C. § 6334(a)(12).

## **6. Garnishment**

The provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1673 apply. The procedures for garnishments under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3205, can be used.

## **B. Enforcement by the victim**

### **1. Some ambiguity**

The Act deletes the clear language of former § 3663(h)(2)(repealed) that allowed a victim to enforce an order of restitution "in the same manner as a civil judgment."

### **2. An Abstract of Judgment**

The new law entitles a victim named in the restitution order to an abstract of judgment that, upon registering, recording, docketing, or indexing in accordance with state law, is a lien on the property of the defendant located in the state to the same extent as a judgment in state court. 18 U.S.C. § 3664(m)(1)(B). The precise rights that this provides a victim will be subject to state law.

## **C. Effect of Default**

### **1. The new statute**

A new section has been added to the fine statutes, 18 U.S.C. § 3613A - Effect of Default. Upon a finding that the defendant is in default of a payment toward a fine or restitution, the court may:

- Revoke the defendant's probation or supervised release pursuant to 3565;
- Modify the terms of the defendant's probation or supervised release;
- Resentence a defendant under 18 U.S.C. § 3614;
- Hold the defendant in contempt of court;
- Enter a restraining order or injunction;
- Order the sale of property of the defendant;
- Accept a performance bond;
- Enter or adjust the defendant's payment schedule; or,

- Take any other action necessary to obtain compliance. 18 U.S.C. § 3613A(a)(1).

## 2. Standard

In determining what action to take, the court must consider the defendant's employment status, earning ability, financial resources, and willfulness in failing to comply with the order. 18 U.S.C. § 3613A(a)(2). Any default hearing that is held shall be held by a magistrate judge and, to the extent practicable, be conducted without removing an incarcerated defendant from prison. 18 U.S.C. § 3613A(b).

## VI. Effective Date

### A. The law

The Act states that the amendments that it makes "shall, to the extent constitutionally permissible, be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment..." 211 of the Act.

### B. Criminal Division Guidelines

The June 3, 1996, Criminal Division Memorandum to all federal prosecutors discusses in detail categories of ex post fact issues for provisions of the Act. Generally, the following rules apply to the changes to the restitution laws:

1. Any provisions of the Act for determining whether to impose restitution or the amount of restitution may be applied only prospectively, to offenses completed on or after April 24, 1996. (This includes mandatory restitution and community restitution, for example).
2. Any provision providing enforcement mechanisms or remedies for delinquencies in payment of restitution or criminal fines applies to cases in which the defendant is convicted on or after April 24, 1996, regardless of the offense date. (This includes benefiting from the narrow exemptions, using the FD CPA, and adding late payment penalties, for example).
3. Any other provision that does not affect the imposition or amount of restitution or criminal fine adversely from the defendant's standpoint applies to cases in which the defendant is convicted on or after April 24, 1996, regardless of the offense date. (Since interest affects the amount of restitution, interest accrues on restitution orders only when the offense date is on or after April 24, 1996, for example).

Additionally, the doubling of special assessments under the Act applies only to offenses committed on or after April 24, 1996.

**C. Caselaw on the Ex Post Facto Issue**

1. A number of courts have agreed with the Department of Justice's position regarding the ex post facto issue, usually stating so in a footnote in the decision.
  - a. United States v. Baggett, 125 F.3d 1319 (9th Cir. 1997)  
(Application of the MVRA had the potential to increase the amount of restitution the defendant would be required to pay, and so applying the mandatory provision would violate the Ex Post Facto Clause of the Constitution. However, application of the MVRA may not create such constitutional problems if the defendant was already subject to mandatory restitution under the Senior Citizens Against Marketing Scams Act of 1994 (SCAMS Act). The case was remanded to the district court to determine if SCAMS applied.)
  - b. United States v. Williams, 128 F.3d 1239 (8th Cir. 1997) (In dicta, the court stated that an order of restitution under the MVRA is punishment for application of the Ex Post Facto Clause. But, the Court held that a restitution order for the full amount of a victim's loss according to a plea agreement did not violate the Ex Post Facto Clause because the offense to which he plead occurred after the effective date of the act, even though the amount of restitution included in the loss calculation was a result of conduct which occurred prior to the effective date of the Act).
  - c. United States v. Siegel, 153 F.3d 1256, (11th Cir. 1998)  
("[R]estitution is a 'criminal penalty meant to have strong deterrent and rehabilitative effect.' [citations omitted].)
  - d. United States v. Edwards, 162 F. 3d 87, (3rd Cir. 1998) The Third Circuit reversed the district court's award of restitution in the full amount of the victim's loss where the offense of conviction occurred prior to the effective date of the MVRA. The Court held that mandatory restitution constituted a form of criminal punishment, and that retrospective application of the mandatory restitution provisions of the MVRA would violate the Ex Post Facto Clause.

- e. United States v. Sclafani, 996 F.Supp. 400 (D. N.J. 1998) (Application of the mandatory restitution provisions of the MVRA to offenses prior to its effective date was prohibited).
2. One circuit court has issued a reported decision which disagrees with the Department of Justice's position regarding ex post facto concerns.
    - a. United States v. Newman, 144 F. 3d 531 (7th Cir. 1998), where the court, in disagreeing with the Eighth Circuit Court of Appeals in United States v. Williams, 128 F.3d 1239 (8th Cir. 1997), held that restitution authorized under the Victim Witness Protection Act, and mandated under the MVRA, is not a criminal punishment for the purposes of invoking the Ex Post Facto Clause, so the mandatory imposition of restitution was upheld for an offense which occurred prior to April 24, 1996.
    - b. See also, United States v. Ledford, (Unpublished Decision) 1997 WL 659673 (6th Cir. Oct. 22, 1997) (Since full restitution was allowed under the Victim Witness Protection Act prior to the 1996 amendments, there was no ex post facto violation in applying the full restitution provisions of the MVRA amendments).

## VII. Caselaw

1. Constitutionality of MVRA under 5th, 7th, and 8th Amendments
  - United States v. Dean, 949 F Supp. 782 (D. Or. 1996), *aff'd* United States v. Dubose, 146 F.3d 1141, (9th Cir. 1998). The MVRA was upheld in light of defendants' challenges based on the Eighth Amendment's prohibitions against excessive fines, and cruel and unusual punishment; the Seventh Amendment's guaranty of a right to a jury trial; and the Fifth Amendment's guaranty of equal protection.
  - United States v. Williams, 128 F.3d 1239 (8th Cir. 1997). Defendant's claims under the Eighth Amendment were rejected as not ripe for review.
  - United States v. Butler, 137 F.3d 1371 (5th Cir. 1998). Defendant's claims under the Fifth and Eighth Amendments depend on speculation that he may be imprisoned because of indigence, and therefore were premature and not ripe for review, citing Williams.

## 2. **General Constitutionality of the MVRA**

- U.S. v. Kemp, 938 F. Supp.1554, (N.D.Ala. 1996). The court held the law unconstitutional“insofar as it applies to Kemp”without any particular legal analysis of the defendant’s constitutional challenges.

## 3. **General application of MVRA**

- In U.S. v. Golino, 956 F. Supp. 359, 364-65 (E.D.N.Y. 1997), the court interpreted the nominal payment provisions of the MVRA to permit a court to order less than full restitution if it finds that the defendant is financially incapable of making payment. This appears to ignore the express language of 3664(f)(1)(A) and confuses the two distinct processes of setting the amount of restitution and then determining how payments are to be made.
- United States v. Martinez, 978 F.Supp. 1442 (D. N.M 1997) Even though restitution was required under the MVRA for defendant's armed robbery of an Indian gaming casino, an award of restitution would have been "patently absurd" because the casinos were operating illegally. Therefore no restitution was ordered.
- United States v. Moore, 127 F.3d 635 (7th Cir. 1997) Restitution was imposed under the MVRA. Summary discussion of the court's proper accounting for defendant's financial circumstances in setting up payment schedules.
- United States v. Menza, 137 F.3d 533 (7th Cir. 1998) Restitution was ordered under the provisions of the MVRA. The court focused on determinations of the amount of the loss, and whether the losses were directly related to the offenses of conviction.

## 4. **Amount of the Restitution to be Paid**

- United States v. Crawford, 162 F. 3d-550, (9th Cir. 1998) As a matter of first impression in the Ninth Circuit, the court held that the burden is on the defendant to establish a right to a statutory offset against restitution under the Victim Witness Protection Act. Here, payment made by the defendant's insurer to the victim's family, after an automobile accident in which the defendant was driving and the victim was killed, did not entitle the defendant to an offset from the amount of mandatory restitution he owed under the Act, upon his resulting conviction for involuntary manslaughter. The defendant failed to present evidence that the insurance proceeds were intended to compensate for the same loss as that covered in the restitution order, namely, funeral expenses.



Office for Victims of Crime

# OVC Fact Sheet

Advocating for the Fair  
Treatment of Crime Victims

## The Federal Crime Victims Division

Through its Federal Crime Victims Division, the Office for Victims of Crime (OVC) is committed to ensuring that Federal crime victims' rights are protected and that they receive needed services through initiatives described in this fact sheet. Also, OVC coordinates victim services offered by the Federal Government and other public agencies.

### Native American Crime Victims Initiatives

The Victim Assistance in Indian Country Program (VAIC) makes awards directly to Indian tribes under Federal criminal jurisdiction to establish reservation-based victim assistance services in remote areas of Indian Country where there are limited services available for victims of crime. Since 1988, OVC has awarded over \$7.2 million which has been used to fund over 52 programs. Activities that are funded include hiring victim advocates, establishment of a 24-hour crisis hotline, recruitment of victim service volunteers, emergency transportation of victims, and provision of bilingual counseling services.

The Children's Justice Act (CJA) Partnerships for Indian Communities makes awards directly to federally recognized tribes so that they may determine methods of investigation, prosecution, and handling of child physical and sexual abuse cases that reduce trauma for child victims. A total of \$1.5 million is available annually for this program. Since CJA was established in 1989, more than 38 programs have been developed.

These programs have helped to make the following improvements: (1) training for multidisciplinary teams; (2) revision of tribal codes to address child sexual abuse; (3) establishment of child advocacy services for children who are involved in tribal court processes; (4) develop-

ment of protocols for reporting, investigating, and prosecuting child sexual abuse cases; (5) improved coordination that minimizes the number of child interviews; (6) improved case management and treatment services; and (7) hiring of specialized staff such as designated investigators and prosecutors to handle child victim cases.

### Federal Crime Victim Assistance Fund

In 1988, OVC established the Federal Crime Victim Assistance Fund to assist Federal victims in need of immediate assistance that was unavailable through any other source. Since that time, OVC has set aside funds each year to aid victims of Federal crime. These funds, administered by the Federal Crime Victims Division (FCVD), are made available to U.S. Attorneys' Offices and the FBI through reimbursable agreements. Federal Crime Victim Assistance funds have been used to provide crisis counseling, pay temporary shelter costs, cover travel for victims' participation in criminal justice proceedings, defray emergency medical treatment expenses, and hire interpreters for nonsubpoenaed victims. In addition to administering this fund, the FCVD also provides technical assistance and training in the field.

### Training and Technical Assistance

The Federal Crime Victims Division provides Federal criminal justice personnel with numerous training opportunities on effective intervention with Federal crime victims. The training includes programs on handling cases and the development of victim-witness policies and procedures for Federal criminal prosecutors, investigators, and Victim-Witness Coordinators. The Federal Crime Victims Division, in cooperation with the Federal

Law Enforcement Training Center, the FBI, and other Federal agencies, provides victim-witness training to over 70 different Federal law enforcement agencies nationwide.

Since 1984, the FCVD has worked with United States Attorneys and their staff to develop strategies and initiatives to assist them in complying with Federal crime victims' legislation and improving their response to tribal, military, and other Federal criminal justice personnel within their districts. Through the District Specific Training Initiative, FCVD has provided funding and personnel support for diverse conferences such as a Hostage Negotiation Training Conference; the Four Corners Indian Country Conference; Victim Assistance Conference for military and other Federal criminal justice personnel; and a nationwide domestic violence teleconference as well as providing scholarships for conference participants from remote areas.

Under the Children's Justice Act or Victim Assistance in Indian Country Grant Programs, comprehensive skills-building training and technical assistance is also provided to Indian tribes and tribal organizations.

The FCVD monitors Federal agency compliance with the *Attorney General Guidelines for Victim and Witness Assistance* for fair treatment of Federal crime victims and witnesses required by the Victim and Witness Protection Act of 1982 and other Federal statutes. Department of Justice components are required to report annually to the Attorney General, through OVC, on their "Best Efforts" in ensuring that the statutory rights were provided to Federal crime victims in the previous year.

## Information and Materials

The Federal Crime Victims Division prepares and disseminates information through the OVC Resource Center, regarding services to victims of Federal crime. FCVD has helped produce a number of information resources, including videotapes, brochures, and resource packages.

Some of these include the following:

- Resource Package for Children Required to Testify in Federal Court.
- B.J. Learns About Federal and Tribal Court a video.
- Financial Assistance for Crime Victims a video. Inside Federal Court a video.
- Bitter Earth: Child Sexual Abuse in Indian Country a video.
- White Collar Crime/Fraud Victim Resource Packages (available late 1997).
- After the Robbery: Crisis to Resolution a video.
- Young Once, Indian Forever a video. Justice for Victims a video.

## For Further Information

More information about the Office for Victims of Crime available through the following sources:

OVC ..... 202-307-5983  
OVC Web Site..... <http://www.ojp.usdoj.gov/ovc/>  
OVC Resource Center ..... 800-627-6872  
OVC Resource Center Web Site ..... <http://www.ncjrs.org>

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**Federal Crime Victims Division**

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U.S. Department of Justice  
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Office for Victims of Crime

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Office for Victims of Crime

# OVC Fact Sheet

Advocating for the Fair

Treatment of Crime Victims

## What is the Office for Victims of Crime?

The Office for Victims of Crime (OVC) was formed by the U.S. Department of Justice in 1983 and formally established by Congress in 1988 through an amendment to the Victims of Crime Act of 1984 (VOCA). The Office provides Federal funds to support victim assistance and compensation programs around the country and advocates for the fair treatment of crime victims. OVC administers formula and discretionary grants for programs designed to benefit victims, to provide training for diverse professionals who work with victims, and to develop projects to enhance victims' rights and services.

### OVC's Mission

The mission of OVC is to enhance the Nation's capacity to assist crime victims and to provide leadership in changing attitudes, policies, and practices to promote justice and healing for all victims of crime. OVC accomplishes its mission in many different ways: administering the Crime Victim's Fund, supporting direct services, providing training programs that reach diverse professionals across America, sponsoring demonstration projects with national impact, and publishing and disseminating materials that highlight promising practices in the effective treatment of crime victims that can be replicated throughout the country.

### Crime Victims Fund

A major responsibility of OVC is to administer the Crime Victims Fund, which is derived, not from tax dollars, but from fines and penalties paid by Federal criminal offenders. Nearly 90 percent of the money collected each year, \$363 million in 1997, is distributed to States to assist in funding their victim assistance and compensation programs. These programs are the lifeline services that help many victims to heal. Federal victim assistance funds help to support nearly 3,000 local victim services agencies such as domestic violence shelters, children's advocacy centers, and rape treatment programs. Compensation

funds provide reimbursement to victims for out-of-pocket expenses resulting from crime, including medical and mental health counseling costs, lost wages, and funeral expenses. Since 1988, OVC has distributed over \$2 billion to the States to support victim services and compensation.

### OVC-Sponsored Training

OVC sponsors training on a variety of victims' issues for many different professions, including victim service providers, law enforcement, prosecutors, the judiciary, the clergy, and medical and mental health personnel. Training on victim-witness issues is also provided for some 70 different Federal law enforcement agencies, such as the Federal Bureau of Investigation, the Department of Defense, and the National Park Service.

### OVC's Direct Services

OVC's mission includes providing direct services to people victimized on tribal or Federal lands, such as military bases and national parks. OVC maintains an emergency fund to provide victims of Federal crimes with needed services such as crisis counseling, temporary shelter, and travel expenses to court. The agency also sponsors victim assistance programs in Indian Country, including the establishment and training of multidisciplinary teams to handle child sexual abuse cases and provide comprehensive victim services.

### OVC's Discretionary Grants

Through discretionary grants, OVC has initiated many innovative projects that have had a national impact. For example, the OVC Training and Technical Assistance Center (TTAC) brings top experts to local communities at no cost. OVC has also funded important reports on civil legal remedies for victims, on model antistalking laws, on exemplary corrections programs that assist victims and train victim advocates, and on protocols for handling offenses on tribal lands. In addition, OVC has developed

numerous training curricula addressing subjects such as hate crimes, elder abuse, and the role of the clergy in assisting victims. Other OVC funded projects include videotapes that educate children about testifying in court and crisis response teams that assist communities following mass violence and victimization.

**OVC's Resource Center**

OVC established the OVC Resource Center (OVCRC), an information clearinghouse which provides current research findings, statistics, and literature on emerging victim issues. The OVCRC is a component of the National Criminal Justice Reference Service (NCJRS), the most comprehensive criminal justice library in the world. Through this resource, information is available 24 hours a day through the Internet and Fax-on-Demand.

**Training & Technical Assistance Center**

In an effort to expand and continue the activities begun under OVC's Trainers Bureau, OVC has established the OVC Training and Technical Assistance Center (TTAC). The TTAC serves as a centralized access point for information about OVC's training and technical assistance resources and will accomplish the following:

- Continue the work of OVC's Trainers Bureau by providing expert consultants, who specialize in crime victim related areas, to support training events of Federal, State, Tribal, and local agencies and special emphasis organizations that are involved in activities related to crime victims.
- Provide intensive on-site technical assistance to meet specific programmatic and administrative requirements of agencies offering services to crime victims.

- Provide rapid response to requesting communities (and Federal, State, Tribal, and local agencies responding for communities) affected by a major crisis involving multiple victims through the Community Crisis Response program.

- Organize, arrange, and facilitate national conferences, regional workshops, and meetings with diverse constituent groups, including State VOCA administrators and OVC discretionary grantees.

- Plan focus groups that develop action plans to respond to major emerging issues.

- Support Regional Coordination Initiative activities.

- Develop publications and other materials, such as brochures, briefing materials, and information packets on crime victim-related issues. This activity may include the adaptation and modification of existing materials to make them suitable for various user groups.

- Promote information sharing and networking opportunities for administrators and leaders of similar agencies in an effort to improve response to crime victims.

**For Further Information**

More information about the Office for Victims of Crime is available through the following sources:

- OVC ..... 202-307-5983
- OVC Web Site..... <http://www.ojp.usdoj.gov/ovc/>
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# CRIMINAL JURISDICTION IN INDIAN COUNTRY

## NORTHERN PLAINS TRIBAL JUDICIAL TRAINING INSTITUTE

**OVERVIEW:** Criminal jurisdiction in Indian country involves a mixture of federal, state and tribal law with jurisdiction dependent upon such factors as the race of the perpetrator and victim, as well as the situs of the crime. This outline reviews some of the pertinent issues relative to the question of who possesses jurisdiction over a perpetrator of a crime in Indian country.

### I. Definition of Indian country - 18 U.S.C. 1151

Indian country is legislatively defined by the United States Congress at 18 U.S.C. 1151 as:

**A. all lands within the limits of any Indian reservation notwithstanding the issuance of any patent, and including rights-of way running through Indian allotments This definition encompasses all lands within the exterior boundaries of a reservation even if the land is held in fee simple by a non-Indian entity or person. See *Solem v. Bartlett*, 465 U.S. 463(1984). Thus, if an Indian commits an offense within the exterior boundaries of the reservation tribal and federal jurisdiction would lie even if the crime occurred on fee land.**

**B. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof. A dependent Indian community is defined in the case law based upon four inquiries. See *United States v. South Dakota*, 665 F.2d 837, 839 (8th Cir. 1981); *United States v Driver*, 945 F.2d 1410 (8th Cir. 1991)**

**1. Whether U.S. retains title to land and the authority to regulate in area. Those communities located on trust land outside the reservation boundaries are considered dependent communities.**

**2. The nature of the area and the relationship of the inhabitants to an Indian tribe or to the federal government. A majority population of a particular Tribe residing in Indian Housing authority housing would be considered a dependent Indian community.**

**3. Cohesiveness of the community and its reliance upon federal services.**

**4. Whether the area has been set aside for the use of Indians. For example, the Sisseton Tribal Court has ruled that a county road that connects the town of Sisseton with the seat of tribal government is a dependent Indian community.**

**C. Rights of way running through Indian allotments - this includes state, county and unmaintained roads that run through**

Indian allotments even if the highway runs outside the exterior boundaries of the reservation. This may not, however, include land held in trust for the Tribe, never allotted, that lies outside the exterior boundaries of the reservation. See U.S. v. Stands, 105 F.3d 1565 (8th Cir. 1997)

## II. Definition of Indian

**A In General** - In most cases, in order for either a tribal or federal court to exercise jurisdiction over a person in a criminal matter two conditions have to be met.

1. Possess some Indian blood;
2. Be regarded as Indian by his or her community.

### B. Other Tests

1. Enrolled in federally-recognized tribe or other indicia of membership. See United States v. Broncheau, 597 F.2d 1260, 1263 (9th Cir. 1979)(enrollment not required for Indian to be considered member of Tribe.)
2. Adoption into Tribe is generally not sufficient to create Indian status. See United States v. Rogers, 45 U.S. (4How.) 567 (1846); but see Matter of Dependency and Neglect of A.L., 442 N.W.2d 233 (S.D. 1989)(Tribe's enrollment of white child sufficient to trigger application of Indian Child Welfare Act).

### C. St. Cloud Test

Under this test, adopted by the United States Court of Appeals for the Eighth Circuit in U.S. v. Lawrence, 51 F.3d 150 (8th Cir. 1995), the Court adopted the standard set out in St. Cloud v. United States, 702 F. Supp. 1456 (D.S.D. 1988) for a determination of who is an Indian (perpetrator and victim).

1. Tribal enrollment - generally is dispositive of issue.
2. Government recognition through receipt of benefits (IHS, BIA GA, commodities, etc.).
3. Enjoyment of the benefits of tribal affiliation.
4. Special recognition as Indian through residence on reservation and participation in social life.

These criteria should be examined in the totality to make the determination of whether a perpetrator or victim is Indian. However, even if the perpetrator meets the definition of Indian under these criteria, if he is a member of a terminated tribe, he is generally not considered "Indian" for purposes of federal jurisdiction. See St. Cloud; US v. Heath, 509 F.2d 16 (9th Cir. 1974).

**D. Duro v. Reina, 495 U.S. 676(1990) - Duro had held that tribal courts do not have the inherent authority to exercise criminal jurisdiction over non-member Indians. Congress legislatively repealed Duro in 1991 vesting tribal courts with the authority to prosecute non-member Indians to the same extent the federal courts exercise jurisdiction over Indians under the Major Crimes Act.**

### **III. TYPES OF CRIMES**

**In general, federal courts exercise jurisdiction over offenses committed in Indian country by Indians and against Indians under several federal statutes, including the Major Crimes Act, 18 U.S.C. 1153, the Indian Country Crimes Act, 18 U.S.C. 1152, and the Assimilative Crimes Act, 18 U.S.C. 13, which the Supreme Court has held applies to crimes that occur in Indian country. Williams v. United States, 327 U.S. 711 (1946). Tribal courts exercise concurrent jurisdiction over crimes prosecuted by the United States, except those crimes where the perpetrator is non-Indian, and other crimes defined by tribal code or the Code of Indian Offenses. State Courts can only exercise jurisdiction over crimes committed by one non-Indian against another in Indian country or a victimless crime committed by a non-Indian, except in Public Law 280 reservations where states exercise jurisdiction over violations of prohibitory statutes, not regulatory ones. See 18 U.S.C. 1162; 25 U.S.C. 1322.**

#### **A. Federal Court Jurisdiction**

**1. Major Crimes Act - 18 U.S.C. 1153 - As the result of Ex parte Crow Dog, 109 US 556 (1883), the United States enacted the Major Crimes Act to criminalize federally certain major crimes. Those crimes now include: murder, manslaughter, kidnapping, maiming, kidnapping, rape, involuntary sodomy, carnal knowledge of any female who has not attained age of 16, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglarly and robbery.**

**2. Concurrent jurisdiction of tribal courts - Tribal courts retain concurrent criminal jurisdiction over offenses covered by Major Crimes Act and double jeopardy does not apply to bar prosecution by federal court after tribal court prosecution. US. v. Wheeler, 453 U.S. 313 (1978). The same rule also may apply to a subsequent federal prosecution after a CFR court prosecution, but no case law on this. Nor does the United States' Attorney's internal Petite policy, directing the United States not to prosecute a person already prosecuted by another sovereign, bar the prosecution of an Indian in federal court for the same offense prosecuted in tribal**

court. See United States v. Lester, 992 F.2d 124 (8th Cir. 1993).

a. Uncounselled guilty plea in tribal court generally cannot be used as admission against interest in federal court prosecution, but counselled ones can. United States v. Ant, 882 F.2d 13 (9th Cir. 1991).

b. Time served on tribal court sentence not necessarily credited on federal sentence, but discretionary with Attorney General.

c. Tribal Court convictions not used under federal sentencing guidelines to determine category of offender, but can be used to enhance sentence. See US v. Gallaher, 29 F.3d 635 (9th Cir. 1994).

3. Assimilative Crimes Act, 18 U.S.C. 13 - permits federal prosecutions by assimilating state substantive law. See United States v. Norquay, 905 F.2d 1157 (8th Cir. 1990)(although burglary is to be punished under state law, federal courts are still permitted to apply the federal sentencing guidelines to determine appropriate sentence).

4. Indian Country Crimes Act, 18 U.S.C. 1152 - general laws of the United States applicable to federal enclaves apply in Indian country. This includes the Assimilative Crimes Act. Williams v. United States, 327 U.S. 711 (1946).

5. Death Penalty - Death penalty inapplicable to Indians committing criminal offense subject to death penalty in Indian country unless Tribe opts in to death penalty. 18 U.S.C. 3598. Indians, however, are subject to the death penalty for other federal offenses that carry the death penalty (assassination, espionage, etc.) Nor are recent legislative enactments expanding federal penalties for federal offenses applicable to Indian country unless Tribes opt in. See 18 U.S.C. 3559(c)(6) (three strikes law); 18 U.S.C. 5032 (juveniles under 13 tried as adults.)

6. Special federal criminal statutes - Some statutes, for example, 18 U.S.C. 1165(illegal for non-Indian to enter on Indian land for unauthorized hunting and fishing); 18 U.S.C. 1164 (destruction of reservation boundary); 25 U.S.C. 171(enter into land transaction without federal authority) apply specifically to non-Indians who enter Indian country.

B. State Court Jurisdiction - turns on question of whether state has been vested with criminal jurisdiction under federal law,

such as Pub. L. 280, or other special criminal federal statute, and on race of perpetrator and victim.

1. **General** - Absent some act of Congress, states have no jurisdiction to prosecute Indians for criminal offenses committed within Indian country or to prosecute non-Indians for criminal offenses committed against Indian victim in Indian country. *Washington v. Confederated Bands of Yakima Nation*, 439 U.S. 463 (1979); *State v. Kuntz*, 66 N.W.2d 531 (N.D. 1954); *State v. Greenwalt*, 663 P.2d 1178 (Mont. 1983); *State v. Larson*, 455 N.W.2d 600 (S.D. 1990).

2. **Liquor offenses** - one court has held that because Congress gave states and tribes the concurrent authority to regulate the introduction of liquor into Indian country, states can exercise criminal jurisdiction over criminal "liquor violations." *Fort Belknap Indian Community v. Mazurek*, 43 F.3d 428 (9th Cir. 1994). Tribes have civil authority to regulate liquor sales throughout Indian country, but no criminal jurisdiction to prosecute non-Indian violators. See *City of Timber Lake v. Cheyenne River Sioux Tribe*, 10 F.3d 554 (8th Cir. 1993). *Luke v. Mellette County*, 508 N.W.2d 6 (S.D. 1993).

3. **Non-Indian v. Non-Indian** - State courts have jurisdiction to prosecute this crime that occurs in Indian country or non-Indian victimless crime.

4. **Pub. L. 280**- 18 U.S.C. 1162; as amended, 25 U.S.C. 1322 et seq.- gave certain states mandatory criminal jurisdiction over crimes occurring in Indian country and gave other states option to exercise jurisdiction.

a. **Mandatory states** - California, Oregon, Nebraska(except Winnebagos and Omahas have been retroceded jurisdiction), Minnesota( with exception of Red lake),Wisconsin, and Alaska.

b. **Optional states** must comply with Pub. L. 280 and amend their state constitutions to accept jurisdiction. After enactment of Indian Civil Rights Act, 25 U.S.C. 1301 et seq., Tribes must affirmatively accept jurisdiction by tribal election. See *Kennerly v. District Court*, 400 U.S. 423 (1971). State cannot overrule prior state court precedent if effect is to vest state with jurisdiction after 1968 without tribal consent. See *Rosebud Sioux Tribe v. State of South Dakota*, 900 F.2d 1164 (8th Cir. 1990).

c. Tribal courts retain concurrent jurisdiction over criminal offenses with state courts.

d. States only obtained authority to enforce prohibitory laws in Indian country, not regulatory laws, such as gaming laws. See *California v. Cabazon Band of Indians*, 480 U.S. 202(1987); *Confederated Tribes of Colville Reservation v. Washington*, 938 F.2d 146 (9th Cir. 1991)(states have no authority to impose state regulatory traffic laws upon reservation-domiciled Indians). States cannot enforce mandatory insurance laws, et al, upon reservation Indians even in Pub. L. 280 states. Nor can states impose hunting and fishing regulatory laws upon reservation Indians.

e. Retrocession - Under Pub. L. 280, as amended, there is a provision found at 25 U.S.C. 1323 allowing a state to petition the United States to retrocede, or restore, tribal criminal or civil jurisdiction.

f. Special statutes - Congress has enacted special statutes, applicable to only certain tribes, vesting state courts with criminal jurisdiction over Indian country. See *State v. Hook*, 476 N.W.2d 565 (N.D. 1991)(North Dakota vested with criminal misdemeanor jurisdiction over Fort Totten Indian reservation).

**C. Tribal Court Jurisdiction - Tribal Courts have criminal jurisdiction over all Indians who commit criminal offenses within Indian country. This jurisdiction is concurrent with federal courts in non-Pub. L. 280 states and with state courts in Pub. L. 280 states. Tribal courts have exclusive criminal jurisdiction to prosecute violations of regulatory statutes in Pub. L. 280 states.**

1. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978)(Tribal courts have been necessarily divested of criminal jurisdiction over non-Indians). Note that *Oliphant* does not divest tribal court of authority over quasi-criminal actions such as protection order proceedings or mental commitments.

2. Indian Civil Rights Act - 25 U.S.C. 1301 et seq.- governs the rights of criminal defendants in tribal courts.

a. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)(exclusive remedy for violation of Indian Civil Rights Act in federal court is writ of habeas corpus challenging detention).

**b. Several Tribal Courts have held that ICRA waives immunity of tribal officials for suits in tribal court alleging violations of ICRA.**

**c. Federal Tort Claims remedy available for person aggrieved by tribal entity operating under 638 contract who violates ICRA.**

**d. No right to court-appointed counsel, but right to counsel of Defendant's choice if he pays. Tribe can require counsel to be member of tribal bar.**

**e. Punishment under ICRA now limited to one year and \$5,000.00 fine for each offense. 25 U.S.C. 1302 (7).**



September 1, 1998

**The Federal Domestic Violence Laws and the Enforcement of these Laws**

**by Margaret S. Groban  
Violence Against Women Act Specialist  
Executive Office for U.S. Attorneys  
Department of Justice**

In 1994, the Congress of the United States, as part of the Crime Bill, enacted legislation empowering the federal government to participate in the fight against domestic violence. This legislation, called the Violence Against Women Act ("VAWA"), recognized that "violence against women is a crime with far-reaching, harmful consequences for families, children and society." Domestic and Sexual Violence Data Collection, A Report to Congress under the Violence Against Women Act, 1 (NIJ Research Report 1996). To combat this violent crime problem, VAWA created federal domestic violence crimes to be prosecuted by the Department of Justice. Consistent with this federal initiative, the Crime Bill also amended the Gun Control Act to include domestic violence related crimes. Congress reaffirmed its commitment to fight domestic violence crimes by the enactment in the Fall of 1996 of additional federal domestic violence crimes in both VAWA and the Gun Control Act.

Historically, the federal government has generally lacked jurisdiction over many domestic violence crimes. These crimes, however, pose a serious problem in our communities. Accordingly, while domestic violence remains primarily a matter of state and local jurisdiction, both VAWA and the Gun Control Act provide federal tools to prosecute domestic violence offenders in certain situations involving firearms or interstate travel or activity.

This handout provides a concise summary of the federal offenses/statutes now available in both VAWA and the Gun Control Act to prosecute domestic violence offenders in the federal courts. It also provides a summary of selected prosecutions under each statute and a checklist of offenses. These statutes strive to achieve the Congressional goal to "treat[] violence against women as a major law enforcement priority, take[] aim at the attitudes that nurture violence against women, and provide[] the help that survivors need." S.Rep. No. 102-197, at 34-35 (1991). Through enforcement of these available laws <sup>1</sup>, the Department of Justice can and will assist state and local jurisdictions in their efforts to combat domestic violence.

I. The Violence Against Women Act

A. Interstate Travel to Commit Domestic Violence  
18 U.S.C. §2261

1) 18 U.S.C. §2261(a)(1)

It is a federal crime for a person to travel interstate (or leave or enter Indian country) with the intent to injure, harass or intimidate that person's intimate partner when in the course of or as a result of such travel the defendant intentionally commits a violent crime and thereby causes bodily injury. The law requires specific intent to commit domestic violence at the time of interstate travel. The term "intimate partner" includes a spouse, a former spouse, a past or present cohabitant (as long as the parties cohabitated as spouses), and parents of a child in common. The intimate partner definition does not include a girlfriend or boyfriend with whom the

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<sup>1</sup> The Federal Bureau of Investigation is the lead federal investigative agency for VAWA violations. The Bureau of Alcohol, Tobacco & Firearms is the lead federal investigative agency for Gun Control Act violations.

defendant has not resided unless protected by state law. There must be bodily injury for prosecution under this statute.

2) 18 U.S.C. §2261(a)(2)

It is also a federal crime to cause an intimate partner to cross state lines (or leave or enter Indian country) by force, coercion, duress or fraud during which or as a result of which, there is bodily harm to the victim. This subsection does not require a showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress or fraud. As in subsection 2261(a)(1), the defendant must intentionally commit a crime of violence during the course of or as a result of the travel and there must be bodily injury to the spouse or intimate partner.

B. Interstate Stalking  
18 U.S.C. §2261A

As of September 23, 1996, it is a federal crime to cross a state line with the intent to injure or harass another person, if in the course of or as a result of such travel, the defendant places such person in reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family. The law requires specific intent to violate this subsection at the time of interstate travel. "Immediate family" includes a spouse, parent, sibling, child or any other person living in the same household and related by blood or marriage. It is also a federal crime to "stalk," as it is defined in Section 2261A, within the special or maritime jurisdiction of the United States.

C. Interstate Travel to Violate an Order of Protection  
18 U.S.C. §2262

1) 18 U.S.C. §2262(a)(1)

This law prohibits interstate travel (or travel into and out of Indian country) with intent to violate a valid protection order that forbids credible threats of violence, repeated harassment, or bodily injury. To establish a violation of this statute, the Government must demonstrate that a person had the specific intent to violate the protection order at the time of interstate travel and that a violation actually occurred. This statute does not require an intimate partner relationship - although this relationship may be required by the state or other governmental body issuing the order - nor does it require bodily injury.

2) 18 U.S.C. §2262(b)(1)

It is also a federal crime to cause a spouse or intimate partner to cross state lines (or leave or enter Indian country) by force, coercion, duress or fraud during which or as a result of which, there is bodily harm to the victim in violation of a valid order of protection. This subsection does not require a showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress or fraud. The Government must also prove that a person intentionally injured an intimate partner in violation of a protection order during the course of or as a result of the forced or coercive travel. This subsection, unlike corollary Section 2262(a)(1), requires an intimate relationship between the parties.

The Department of Justice recognizes that under both §§ 2262(a)(1) and (a)(2), law enforcement may be unable to verify the validity of a protection order at the time of arrest. The national data center from which law enforcement and prosecutors will be able to verify instantaneously protection orders will be of enormous benefit to federal authorities in the prosecution of criminal cases under Section 2262. Until such time as this registry is in place and fully operational, consult with the United States Attorney in your district for guidance in these cases.

To assist in prosecution under Section 2262 it is necessary to examine the protection order currently used in your jurisdiction. For example, in Maine, the Protection-from-Abuse Order did not conform to the language of Section 2262 and made no provision for a judicial finding that the defendant posed a credible threat of violence, repeated harassment or bodily injury. To correct this statutory deficiency, the United States Attorney's Office in the District of Maine, with the support of key members of the state legislature, proposed legislation that would bring the State into conformity with the VAWA provisions.<sup>2</sup> The legislation received no opposition and passed the Legislature on May 30, 1997. The law went into effect on September 19, 1997.

D. Penalties

Penalties for violations of Sections 2261, 2261A and 2262 hinge on the extent of the bodily injury to the victim. Terms of imprisonment range from five years for bodily injury to life if the crime of violence results in the victim's death.

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<sup>2</sup> The legislation also brought the State into conformity with Section 922(g)(8) of the Gun Control Act. This statute will be discussed, infra.

## II. Firearm Offenses

### A. Possession of Firearm While Subject to Order of Protection 18 U.S.C. §922(g)(8)

It is illegal for a person to possess a firearm while subject to a court order restraining such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. The protection order must have been issued following an evidentiary hearing as to which the defendant had notice and an opportunity to appear. The protection order must also include a specific finding that the defendant represents a credible threat to the physical safety of the victim, or must include an explicit prohibition against the use of force that would reasonably be expected to cause injury. The statutory language of Section 922(g)(8), in addition to the language of Section 2262, provides additional justification for review of your jurisdiction's protection order to determine if it conforms with the federal requirements. Again, please refer any questions about the applicability of this statute to the United States Attorney's Office in your district.

### B. Transfer of Firearm to Person Subject to Order of Protection, 18 U.S.C. §922(d)(8)

It is also illegal to transfer a firearm to a person subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. A violation of Section 922(d)(8) must be knowing. Proof concerning knowledge on the part of the supplier may be difficult to establish absent a fully operational central registry for protection orders.

C. Official Use Exemption, 18 U.S.C. §925

The restrictions of Sections 922(d)(8) and (g)(8) do not apply to firearms issued by governmental agencies to a law enforcement officer or military personnel so long as the officer or military personnel is on duty. Personal firearms do not fall within this exemption nor may these personnel possess officially issued firearms when off duty.

D. Possession of Firearm After Conviction of Misdemeanor Crime of Domestic Violence, 18 U.S.C. §922(g)(9)

As of September 30, 1996, it is illegal to possess a firearm after conviction of a misdemeanor crime of domestic violence. This prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date. A qualifying misdemeanor domestic violence crime must have as an element the use or attempted use of physical force, or the threatened use of a deadly weapon. For example, a conviction for a misdemeanor violation of a protection order will not qualify, even if the violation was committed by a violent act, if the statute does not require the use or attempted use of physical force or the threatened use of a deadly weapon. Consult the United States Attorney's Office in your district to determine which misdemeanor convictions will qualify.

In addition, the statute contains due process requirements regarding counsel and jury trials. Absent compliance with these due process requirements, the misdemeanor conviction will not qualify as a domestic violence conviction for purposes of Section 922(g)(9). Moreover, a person may be able to possess a firearm if the conviction has been expunged or set aside.

E. **Transfer of Firearm to Person Convicted of a Misdemeanor Crime of Domestic Violence, 18 U.S.C. §922(d)(9)**

It is also illegal to transfer a firearm to a person convicted of a misdemeanor crime of domestic violence. A violation of Section 922(d)(9) must be knowing. Assistance in satisfying the knowledge requirement is provided by amendment of the Brady statement to require a purchaser of a firearm to state that he/she has not been convicted of a misdemeanor crime of domestic violence.

F. **Official Use Exemption**  
**18 U.S.C. §925**

The official use exemption does not apply to Sections 922(d)(9) and 922(g)(9). This means that law enforcement officers or military personnel who have been convicted of a qualifying domestic violence misdemeanor will not be able to possess or receive firearms for any purpose, including the performance of official duties. Additional questions about this statute should be referred to the United States Attorney and/or to the Alcohol, Tobacco & Firearm Office in your jurisdiction.

G. **Penalties**

The maximum term of imprisonment for a violation of Sections 922(d)(8), 922(g)(8), 922(d)(9), or 922(g)(9), is 10 years.

### III. Other Relevant Statutes

#### A. Full Faith and Credit to Orders of Protection 18 U.S.C. §2265

This civil law provides that a civil or criminal domestic protection order issued by a court in one state or Indian tribe shall be accorded full faith and credit by the court of another state or tribe, and is to be enforced as if it were the order of the court of the second state or tribe. This law applies to permanent, temporary and ex parte protection orders that comply with the statute's requirements. To comply, the protection order must have provided the defendant with reasonable notice and an opportunity to be heard, in a manner consistent with due process. This law does not apply to mutual protection orders if (a) the original respondent did not file a cross or counter petition seeking a protective order or (b) if such a cross or counter petition was filed, but the court did not make specific findings that each party was entitled to such an order.

#### B. Amendment of the Brady Statement 18 U.S.C. §922(s)

The Brady statement requirements were amended as of September 30, 1996, to include a statement that the recipient of the firearm has not been convicted in any court of a misdemeanor crime of domestic violence. The Brady statement still does not require that the firearm recipient state whether he/she is currently subject to a valid protection order. The recipient will be compelled to fill out, at the time of receipt of the firearm(s), an ATF form requiring certification that he/she is not subject to a valid protection order.

**C. Right of Victim to Speak at Bail Hearing**  
**18 U.S.C. §2263**

The victim of a VAWA crime has the right, a right that need not be exercised, to be heard at a bail hearing with regard to the danger posed by the defendant. In addition, depending upon the circumstances of the case, the United States Attorney's Office may move for pre-trial detention of the defendant.

**D. Other Victims' Rights**  
**42 U.S.C. 10606(b)**

All federal crime victims, including a domestic violence victim, have the following rights:

- The right to be treated with fairness and with respect for the victim's dignity and privacy.
- The right to be reasonably protected from the accused offender.
- The right to be notified of court proceedings.
- 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.
- The right to confer with attorney for the Government in the case.
- The right to restitution.
- The right to information about the conviction, sentencing, imprisonment, and release of the offender.

**E. Restitution**  
**18 U.S.C. §2264**

In a VAWA case, the Court must order restitution after conviction to reimburse the victim for the full amount of losses. These losses include costs for medical or psychological care, physical therapy, transportation, temporary housing, child care, lost income, attorney's fees, costs incurred in obtaining a civil protection order, and any other losses suffered by the victim as a result of the offense. In a conviction under the Gun Control Act, the Court may order restitution.

F. Self-Petitioning for Battered Immigrant Women and Children  
8 U.S.C. §1154

VAWA specifically provides that battered and abused spouses and children of citizens and lawful permanent residents may self-petition for independent legal residency. This statute prevents citizens or residents from using the residency process as a means to exert control over an alien spouse or child. This statute allows victims to remain in the United States independent of their abusive husbands/parents.

CONCLUSION

The federal domestic violence statutes provide powerful weapons for United States Attorney's Offices around the country to assist state and local law enforcement in their fight against domestic violence. Increased awareness of these federal laws will allow the Department of Justice to work in a collaborative manner with our state and local counterparts in our efforts to reduce one of our nation's most serious crime problems.

## SUMMARY OF FEDERAL DOMESTIC VIOLENCE PROSECUTIONS

### 1. Interstate Domestic Violence - 18 U.S.C. § 2261

#### A. 18 U.S.C. § 2261(a)(1)

It is a federal crime to cross state lines and injure an "intimate partner." The injury must be physical and the defendant must have intended to commit the crime when crossing the state line.

Example - United States v. Rita Gluzman (S.D. New York). The defendant was convicted of traveling from New Jersey to New York with her co-defendant to murder her estranged husband. The defendant brought the ax and hatchet with her to New York and these weapons were used to commit the murder. The District Court upheld the constitutionality of Section 2261. United States v. Gluzman, 953 F.Supp. 84 (S.D.N.Y. 1997). Gluzman was convicted after a trial and sentenced on April 30, 1997, to life without parole. On August 25, 1998, the Second Circuit affirmed the conviction and upheld the constitutionality of Section 2261 in United States v. Gluzman, 1998 WL 537551 (2nd Cir. 1998).

#### B. 18 U.S.C. § 2261(a)(2)

It is a federal crime to force or coerce an "intimate partner" to cross state lines if the force or coercion leads to physical harm to the victim.

Example - United States v. Christopher Bailey (S.D. West Virginia). Bailey severely beat his wife in their home in West Virginia. Despite a bleeding head wound he locked her inside the trunk of his car and drove to Kentucky. Several days later he brought her to a hospital in Kentucky. Because of the delay in treatment, Sonya Bailey is now in a permanent vegetative state. Bailey was convicted of kidnaping and interstate domestic violence and is now serving a life sentence. On May 2, 1997, the Fourth Circuit affirmed Bailey's conviction in United States v. Bailey, 112 F.3d 758 (4th Cir. 1997).

II. Interstate Stalking - 18 U.S.C. § 2261A (enacted September 23, 1996)

It is a federal crime to cross state lines to stalk or harass. There must be proof that the stalking placed the victim in reasonable fear of death or serious bodily injury.

Example - United States v. Robert Frank Stewart, Sr. (W.D. Texas). The indictment charged the defendant with traveling from Alabama to Texas to threaten and harass his ex-wife and grown sons and place them in reasonable fear of serious bodily injury. During the trial, the Government introduced evidence that the defendant had terrorized his family for years, creating a reasonable fear of serious bodily injury when he reappeared in Texas. On January 15, 1998, Stewart was convicted on four stalking counts. At sentencing on April 2, 1998, the Court upwardly departed and sentenced Stewart to the maximum penalty of five years per count. The sentences were ordered to run consecutively resulting in a twenty (20) year sentence.

III. Interstate Violation of a Protection Order - 18 U.S.C. § 2262

A. 18 U.S.C. § 2262(a)(1)

It is a federal crime to cross state lines and violate a Protection Order. The Protection Order must protect the victim against violent threats, repeated harassment or bodily injury. The defendant must have intended to violate the Protection Order when crossing the state line.

Example - United States v. Michael Casciano (N.D. New York). A Massachusetts Protection Order prevented the defendant from stalking or harassing his former girlfriend. When the victim moved to New York, Casciano followed and continued to stalk her and harass her on the telephone. In one night he called her approximately 40 times. Casciano was convicted after trial and sentenced to 37 months. The Second Circuit affirmed the conviction. United States v. Casciano, 124 F.3d 106 (2d Cir. Aug. 18, 1997).

B. 18 U.S.C. § 2262(a)(2)

It is a federal crime to force or coerce an "intimate partner" to cross state lines if the force or coercion leads to injury in violation of a valid Protection Order.

Example - United States v. William Romines (W.D. Virginia). Romines traveled from Virginia to the home of his estranged wife in Tennessee in violation of a Protection Order. He made death threats against his estranged wife and dragged her and their 2-year old son into a car. He was captured after a high speed chase in Virginia. The defendant was convicted after trial and was sentenced to 151 months. The Fourth Circuit, in an unpublished decision, affirmed the conviction on March 13, 1998.

#### IV. Firearm Offenses

##### A. 18 U.S.C. § 922(g)(8)<sup>3</sup>

It is a federal crime to possess a firearm while subject to a valid Protection Order. The Protection Order must state either that the defendant poses a threat to the physical safety of the victim or that the defendant is not allowed to use any force that would cause injury to the victim. Law enforcement officers are not subject to this law.

Example - United States v. Eric LaBohne (E.D. Pennsylvania). A Pennsylvania Protection Order prevented the defendant from harassing or threatening his estranged wife. In July 1997, the defendant shot at his estranged wife with a loaded semi-automatic pistol while she was working in a schoolyard where 25 pre-school children were playing. He pled guilty. On June 16, 1998, the Court upwardly departed and sentenced the defendant to a sixty-six (66) month term of imprisonment.

##### B. 18 U.S.C. § 922 (g)(9) (Enacted September 30, 1996)<sup>4</sup>

It is a federal crime to possess a firearm after conviction of a qualifying state misdemeanor crime of domestic violence.

Example - United States v. William Smith (N.D. Iowa). The Indictment charged Smith, who had been convicted of assaulting the mother of his child in 1994, with possession of a .380 caliber pistol after he shot the same victim with this pistol in 1996. On May 16, 1997, the District Court found that the defendant's prior assault conviction qualified as a domestic violence misdemeanor under Section 922(g)(9). United States v. Smith, 964 F.Supp. 286 (N.D. Iowa, May 16, 1997). The defendant pled guilty to the Section 922(g)(9) charge and was sentenced to 51 months..

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<sup>3</sup> It is also a federal crime to knowingly transfer or sell a firearm to a person subject to a valid Protection Order. 18 U.S.C. § 922(d)(8).

<sup>4</sup> It is also a federal crime to knowingly transfer or sell a firearm to a person convicted of a misdemeanor crime of domestic violence. 18 U.S.C. § 922(d)(9).

# CHECKLIST OF FEDERAL DOMESTIC VIOLENCE STATUTES/OFFENSES

## I. Domestic Violence Offenses

1. Interstate travel to commit domestic violence - 18 U.S.C. § 2261
2. Interstate stalking - 18 U.S.C. § 2261A
3. Interstate travel to violate a Protection Order - 18 U.S.C. § 2262

## II. Firearms Offenses

- a. Possession of a firearm while subject to a Protection Order - 18 U.S.C. § 922(g)(8)
- b. Transfer of a firearm to a person subject to a Protection Order - 18 U.S.C. § 922(d)(8)
- c. Possession of a firearm after conviction of a misdemeanor crime of domestic violence - 18 U.S.C. § 922(g)(9)
4. Transfer of a firearm to a person convicted of a misdemeanor crime of domestic violence - 18 U.S.C. § 922(d)(9)
- e. Official use exemption from firearms offenses (except §§ 922(d)(9) and 922(g)(9)) - 18 U.S.C. § 925(a)(1)

## III. Other Relevant Statutes

- a. Full Faith and Credit - 18 U.S.C. § 2265
- b. Brady statement - 18 U.S.C. § 922(s)
- c. Right of victim to be heard at bail hearing - 18 U.S.C. § 2263
- d. Other victims' rights - 18 U.S.C. § 10606(b)
- e. Restitution - 18 U.S.C. § 2264
- f. Self-Petitioning for battered immigrant women and children - 8 U.S.C. § 1154.



# FEDERAL DOMESTIC VIOLENCE LAWS

VIOLENCE AGAINST WOMEN ACT  
"VAWA"

GUN CONTROL ACT

# VAWA

- Interstate Domestic Violence - Section 2261
- Interstate Stalking - Section 2261A
- Interstate Violation of a Protection Order - Section 2262

## Interstate Domestic Violence

18 U.S.C. 2261(a)(1)

- It is a federal crime to cross state lines or enter or leave Indian country and injure an "intimate partner." The injury must be physical and the defendant must have intended to commit the crime when crossing the state line.

## Interstate Domestic Violence

18 U.S.C. 2261(a)(2)

- It is a federal crime to force or coerce an "intimate partner" to cross state lines or enter or leave Indian country if the force or coercion leads to physical harm to the victim.

## Interstate Stalking

18 U.S.C. 2261A (enacted September 23, 1996)

- It is a federal crime to cross state lines to stalk or harass another person. There must be proof that the stalking placed the victim in reasonable fear of death or serious bodily injury.
- The defendant must have intended to commit the crime when crossing the state line.

## Interstate Violation of a Protection Order

18 U.S.C. 2262(a)(1)

- It is a federal crime to cross state lines or enter or leave Indian country and violate a Protection Order. The Protection Order must protect the victim against credible violent threats, repeated harassment or bodily injury.
- The defendant must have intended to violate the Protection Order when crossing the state line.

## Interstate Violation of a Protection Order

18 U.S.C. 2262(a)(2)

- It is a federal crime to force or coerce an "intimate partner" to cross state lines or enter or leave Indian country if the force or coercion leads to injury in violation of a valid Protection Order.

## Gun Control Act

- Possession of a firearm while subject to a protection order - Section 922(g)(8)
- Possession of a firearm after conviction of a domestic violence misdemeanor - Section 922(g)(9)

## Firearm Offenses

18 U.S.C. 922(g)(8)

- It is a federal crime to possess a firearm and/or ammunition while subject to a valid qualifying Protection Order.
- Law enforcement officers are not subject to this law.

## 922(g)(8) Restrictions

Protection Order will qualify if it meets these requirements:

1. Order was issued after a hearing of which the defendant had actual notice and an opportunity to participate;
2. Order included a finding that the defendant poses a credible threat to the physical safety of the victim or the order prohibits the defendant from using any force that would cause injury to the victim.

## Firearm Offenses

18 U.S.C. 922(g)(9) (enacted September 30, 1996)

- It is a federal crime to possess a firearm after conviction of a qualifying state misdemeanor crime of domestic violence.
- This statute applies to law enforcement.
- Must be a "qualifying" misdemeanor.

## 922(g)(9) Restrictions

- To qualify:
- Misdemeanor under federal or state law.
- Misdemeanor had as an element the use or attempted use of physical force or the threatened use of a deadly weapon.
- Misdemeanor committed by current or former spouse, parent or guardian, by current or former cohabitant as spouse, parent or guardian, or by parent with the victim of a child in common.

## 922(g)(9) Restrictions

- Date of conviction must precede firearm possession.
- Due process requirements must be met.
- Does not apply if prior conviction was expunged, set aside or pardoned unless pardon or other relief expressly contained prohibition against firearm possession.

## Federal Investigators

- FBI is lead investigative agency on VAWA violations
- ATF is lead investigative agency on Gun Control Act violations

## Penalties

- Sections 2261, 2261A and 2262 Offenses  
5 years to life imprisonment depending on the seriousness of the bodily injury inflicted
- Section 922 Offenses  
Maximum 10 year sentence

## Other Relevant Statutes

- Pre-Trial Detention - 18 U.S.C. § 2263
- Restitution - 18 U.S.C. § 2264
- Full Faith and Credit - 18 U.S.C. § 2265
- Self-Petitioning for Battered Immigrant Spouses and Children - 8 U.S.C. § 1154

## Full Faith and Credit

18 U.S.C. 2265

- Protection Orders issued by the court of one State or Indian tribe shall be accorded full faith and credit by the court of another State or Indian tribe and enforced as if it were the order of the enforcing State or tribe.



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## 2265 Restrictions

Protection Order will qualify if:

- 1. Court had state or tribal jurisdiction over parties and subject matter.
- 2. The subject of the Order received reasonable notice and an opportunity to be heard. If *ex parte* Order, notice and opportunity to be heard are governed by state or tribal law.
- 3. The Order was issued to prevent violent or threatening acts or harassment against or contact with or physical proximity to another person.



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statute, etc., deemed a reference to United States magistrate judge appointed under section 631 of Title 28, see section 321 of Pub.L. 101-650, set out as a note under section 631 of Title 28.

#### Effective Date of 1996 Amendments

Amendment by section 604 of Pub.L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub.L. 104-294, set out as a note under section 13 of this title.

#### Effective Date

Section 9 of Pub.L. 97-291 provided that:

“(a) Except as provided in subsection (b), this Act and the amendments made by this Act [enacting sections 1512 to 1515, 3579, and 3580 of this title, amending sections 1503, 1505, 1510, and 3146 of this title and Rule 32 of the Federal Rules of Criminal Procedure, and enacting provisions set out as notes under sections 1501, 1512, and 3579 of this title] shall take effect on the date of the enactment of this Act [Oct. 12, 1982].

“(b)(1) The amendment made by section 2 of this Act [enacting provisions set out as a note under this section] shall apply to presentence reports ordered to be made on or after March 1, 1983.

“(2) The amendments made by section 5 of this Act [enacting sections 3579 and 3580 of this title] shall apply with respect to offenses occurring on or after January 1, 1983.”

#### Congressional Findings and Declaration of Purposes

Section 2 of Pub.L. 97-291 provided that:

“(a) The Congress finds and declares that:

“(1) Without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.

“(2) All too often the victim of a serious crime is forced to suffer physical, psychological, or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim.

“(3) Although the majority of serious crimes falls under the jurisdiction of State and local law enforcement agencies, the Federal Government, and in particular the Attorney General, has an important leadership role to assume in ensuring that victims of crime, whether at the Federal, State, or local level, are given proper treatment by agencies administering the criminal justice system.

“(4) Under current law, law enforcement agencies must have cooperation from a victim of crime and yet neither the agencies nor the legal system can offer adequate protection or assistance when the victim, as a result of such cooperation, is threatened or intimidated.

“(5) While the defendant is provided with counsel who can explain both the criminal justice process and the rights of the defendant, the victim or witness has no counterpart and is usually not even notified when the defendant is released on bail, the case is dismissed, a plea to a lesser charge is accepted, or a court date is changed.

“(6) The victim and witness who cooperate with the prosecutor often find that the transportation, parking facilities, and child care services at the court are unsatisfactory

and they must often share the pretrial waiting room with the defendant or his family and friends.

“(7) The victim may lose valuable property to a criminal only to lose it again for long periods of time to Federal law enforcement officials, until the trial and sometimes and [sic] appeals are over; many times that property is damaged or lost, which is particularly stressful for the elderly or poor.

“(b) The Congress declares that the purposes of this Act [see Short Title of 1982 Amendment note set out under section 1501 of this title] are—

“(1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process;

“(2) to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant; and

“(3) to provide a model for legislation for State and local governments.”

#### Federal Guidelines for Treatment of Crime Victims and Witnesses in the Criminal Justice System

Section 6 of Pub.L. 97-291, as amended Pub.L. 98-473, Title II, § 1408(b), Oct. 12, 1984, 98 Stat. 2177, provided that:

“(a) Within two hundred and seventy days after the date of enactment of this Act [Oct. 12, 1982], the Attorney General shall develop and implement guidelines for the Department of Justice consistent with the purposes of this Act [see Short Title of 1982 Amendment note set out under section 1501 of this title]. In preparing the guidelines the Attorney General shall consider the following objectives:

“(1) Services to victims of crime.—Law enforcement personnel should ensure that victims routinely receive emergency social and medical services as soon as possible and are given information on the following—

“(A) availability of crime victim compensation (where applicable);

“(B) community-based victim treatment programs;

“(C) the role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and

“(D) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

“(2) Notification of availability of protection.—A victim or witness should routinely receive information on steps that law enforcement officers and attorneys for the Government can take to protect victims and witnesses from intimidation.

“(3) Scheduling changes.—All victims and witnesses who have been scheduled to attend criminal justice proceedings should either be notified as soon as possible of any scheduling changes which will affect their appearances or have available a system for alerting witnesses promptly by telephone or otherwise.

“(4) Prompt notification to victims of serious crimes.—Victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims should, if such persons provide the appropriate official with a current address and telephone number, receive prompt advance notification, if possible, of—

“(A) the arrest of an accused;

“(B) the initial appearance of an accused before a judicial officer;

“(C) the release of the accused pending judicial proceedings; and

“(D) proceedings in the prosecution and punishment of the accused (including entry of a plea of guilty, trial, sentencing, and, where a term of imprisonment is imposed, a hearing to determine a parole release date and the release of the accused from such imprisonment).

“(5) Consultation with victim.—The victim of a serious crime, or in the case of a minor child or a homicide, the family of the victim, should be consulted by the attorney for the Government in order to obtain the views of the victim or family about the disposition of any Federal criminal case brought as a result of such crime, including the views of the victim or family about—

“(A) dismissal;

“(B) release of the accused pending judicial proceedings;

“(C) plea negotiations; and

“(D) pretrial diversion program.

“(6) Separate waiting area.—Victims and other prosecution witnesses should be provided prior to court appearance a waiting area that is separate from all other witnesses.

“(7) Property return.—Law enforcement agencies and prosecutor should promptly return victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it.

“(8) Notification to employer.—A victim or witness who so requests should be assisted by law enforcement agencies and attorneys for the Government in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or attorneys for the Government, is subjected to serious financial strain, should be assisted by such agencies and attorneys in explaining to creditors the reason for such serious financial strain.

“(9) Training by federal law enforcement training facilities.—Victim assistance education and training should be offered to persons taking courses at Federal law enforcement training facilities and attorneys for the Government so that victims may be promptly, properly, and completely assisted.

“(10) General victim assistance.—The guidelines should also ensure that any other important assistance to victims and witnesses, such as the adoption of transportation, parking, and translator services for victims in court be provided.

“(b) Nothing in this title shall be construed as creating a cause of action against the United States.

“(c) The Attorney General shall assure that all Federal law enforcement agencies outside of the Department of Justice adopt guidelines consistent with subsection (a) of this section.”

#### Legislative History

For legislative history and purpose of Pub.L. 97-291, see 1982 U.S. Code Cong. and Adm. News, p. 2515.

For legislative history and purpose of Pub.L. 99-646, see 1986 U.S. Code Cong. and Adm. News, p. 6139. See, also, Pub.L. 100-690, 1988 U.S. Code Cong. and Adm. News, p. 5937; Pub.L. 103-322, 1994 U.S. Code Cong. and Adm. News, p. 1801; Pub.L. 104-214, 1996 U.S. Code Cong. and Adm. News, p. 3041; Pub.L. 104-294, 1996 U.S. Code Cong. and Adm. News, p. 4021.

#### § 1513. Retaliating against a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is—

(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

(B) in the case of an attempt, imprisonment for not more than 20 years.

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined under this title or imprisoned not more than ten years, or both.

(d)<sup>1</sup> There is extraterritorial Federal jurisdiction over an offense under this section.

(e)<sup>1</sup> If the retaliation occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment which may be imposed for the offense under this section shall be the higher of that otherwise provided by law or the maximum term that

**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**WORKSHOP RESOURCE MATERIALS**

***TRACK FOUR: CORRECTIONS***

THE FOLLOWING RESOURCE MATERIALS HAVE BEEN  
SUBMITTED BY THE PRESENTERS CONDUCTING  
WORKSHOPS IN THIS PARTICULAR TRACK.

ADDITIONAL MATERIALS MAY BE DISTRIBUTED AT THE  
WORKSHOPS THEMSELVES.



# ATTORNEY GENERAL G

## INVESTIGATIVE COMPONENT

### RESPONSIBILITIES

#### • AT EARLIEST OPPORTUNITY

- (1) Identify victims (Art III.C.(1))  
(42 U.S.C. §10607(b)(1))
- (2) Assist victims in contacting sources for services listed in (3) below  
(Art III.D.(1)(d))  
(42 U.S.C. §10607(c)(1)(D))

#### • DURING INVESTIGATION

- (1) Arrange for reasonable protection (includes providing information on the remedies for intimidation & harassment) (Art III.D.(2))  
(42 U.S.C. §10607(c)(2))
- (2) Property (maintain property seized as evidence and return when no longer needed) (Art III.D.(5)) (42 U.S.C. §10607(c)(6))
- (3) Notify victims' employers and creditors upon request (Art IV.C) (Pub.L. 97-291 §6(a)(8))
- (4) Provide information and assistance for transportation, parking, translator services, and related services. (Art IV.E) (Pub.L. 97-291 §6(a)(10))

### NOTICE

- (3) Initial notice: Notify victims of:  
(Art III.C.(2)) (42 U.S.C. §10607(b)(2))
  - a) Right to receive services available under federal law (Art III.C.(2))(42 U.S.C. §10607(b)(2)).
  - b) VWC's name & phone number  
(Art III.C.(3))  
(42 U.S.C. §10607(b)(3))
  - c) Place to receive emergency medical & social services (Art III.D.(1)(a))  
(42 U.S.C. §10607(c)(1)(A))
  - d) Programs for counseling & support  
(Art III.D.(1)(c))  
(42 U.S.C. §10607(c)(1)(C))
  - e) Compensation & restitution & how to obtain (Art III.D.(1)(b))  
(42 U.S.C. §10607(c)(1)(B))

#### • NOTICE AND CONSULTATION REGARDING MAJOR CASE EVENTS

Status of investigation (Art III.D.(3)(a)) (Including decision not to prosecute) (42 U.S.C. §10607(c)(3)(A))	→	Arrest (Art III.D.(3)(b)) (42 U.S.C. §10607(c)(3)(B))
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#### • IN CERTAIN TYPES OF CASES

Domestic violence cases (USAO to appoint advocate)	→	Inform victim of right to make a statement about release (Art III.E.(3)(a)) (18 U.S.C. §2263)
Sex offense cases (USAO to appoint advocate)	→	Notify victim of right to have DOJ pay for 2 STD tests and counseling (Art III.E.(1)) (42 U.S.C. §10607(c)(7))
	→	DOJ pays for forensic medical examination (Art III.D.(6)) (42 U.S.C. §10607(c)(7))
Child abuse suspected	→	Reporter obligations (Art VII.B) (42 U.S.C. §13031(d))
Child victims and witnesses	→	See 18 U.S.C. §3509 – many specialized provisions
DOJ employees	→	Refer to Employee Assistance Program (Art IV.D)

### ADDITIONAL RESPONSIBILITIES IN CERTAIN TYPES OF CASES



# STANCE (1995 ED.)

NT

# CORRECTIONS COMPONENT

- (4) Make victim information available to probation officer (Art V)
- (5) Advocate victims' interests at sentencing (Art V)
- (6) Enforce restitution order by all available and reasonable means (Art III.E.(4))

Date of sentencing hearing & the sentence imposed (Art III.D.(3)(h)) (42 U.S.C. §10607(c)(3)(G))

- a) Opportunity to present victim impact statement in PSI (Art III.D.(3)(g)) (FRCrimP32(a)(4)(D))
- b) How to communicate with probation officer (Art V)
- c) Death penalty cases notify family of opportunity to address court (Art III.E.(3)(b)(iii))
- d) Inform victim of right to mandatory restitution and procedure to follow to obtain (see Art III.E.(4)) & (18 U.S.C. §§3663, 3663(a), *et seq.*)

• **NOTICE:**

- (1) General information about the corrections process (Art III.D.(7)) (42 U.S.C. §10607(c)(8))
- (2) Notify victim of offender release information including the scheduling of any release hearing, escape, work release, furlough or death of offender (Art III.D.(8)) (42 U.S.C. §10607(c)(5))

At sentencing, prosecutors must advocate to court for victims of violent crime and sexual abuse right to make a statement to the court or present any information regarding the sentence (Art III.D.(3)(i)) (FRCrimP32(c)(3)(E))

Reporter obligations (Art VII.B)

Refer to Employee Assistance Program (Art. IV.D)



# GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE

## PROSECUTIVE COMPONENT

- **DURING PROSECUTION**

- (1) At court proceedings provide a separate waiting area for victims (Art III.D.(4)) (42 U.S.C. §10607(C)(4))
- (2) Notify victims' employers and creditors upon request (Art IV.C) (Pub. L. 97-291§6(a)(8))
- (3) Provide information and assistance for transportation, parking, translator services and related services (Art IV.E) (Pub. L. 97-291§6(a)(10))

Release or detention status/diversion (Art III.D.(3)(c)) (42 U.S.C. §10607(c)(3)(E))

Filing or dismissal of charges (Art III.D.(3)(d)) (42 U.S.C. §10607(c)(3)(C))

Schedule for all public court proceedings and notice of schedule changes (Art III.D.(3)(e)) (NOTE: Victims have qualified right to be present) (Art II.A.(4)) (42 U.S.C. §10607(c)(3)(D))

Terms of any negotiated plea or trial verdict (Art III.D.(3)(f)) (42 U.S.C. §10607(c)(3)(F))

Ensure victim has opportunity to be heard regarding release (Art III.E.(3)(a)) (18 U.S.C. §2263)

Notify victim that defendant may be tested for HIV (Art III.E.(2)) (42 U.S.C. §14011)

Reporter obligations (Art VII.B)

Sec 18 U.S.C. §3509



**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**WORKSHOP RESOURCE MATERIALS**

***TRACK FIVE: MILITARY CRIME  
VICTIMS***

**THE FOLLOWING RESOURCE MATERIALS HAVE BEEN  
SUBMITTED BY THE PRESENTERS CONDUCTING  
WORKSHOPS IN THIS PARTICULAR TRACK.**

**ADDITIONAL MATERIALS MAY BE DISTRIBUTED AT THE  
WORKSHOPS THEMSELVES.**



**Federal Symposium  
February 8-12, 1999  
Shoreham Hotel  
Washington DC**

**Military Opening Remarks**

To Be Determined

**Military Track Seminars**

**Seminar 1: Assisting Victims of Military Crimes**

**Name:** BERNARD P. INGOLD (Lieutenant Colonel, U.S. Army)

**Title:** Deputy Director, Office of Legal Policy

**Organization/Agency:** Department of Defense

**Address:** 4000 Defense Pentagon, Washington DC 20301-4000

**Phone/Fax #:** 703-697-5947/703-693-6708

**Brief Description:** This seminar is designed to increase understanding of the programs established within the Department of Defense to assist victims of crime and to facilitate enhanced working relationships between Federal, state, and private employees representatives and Military Service providers. Includes a discussion of the rights of victims of Military crimes, a brief overview of the military justice system, a comparison of the programs in each Military Service, an overview of special compensation programs and services available to military crime victims, and identification of problem areas and issues with recommended solutions.

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**Seminar 2: Assisting Domestic Violence Victims**

**Presenter:** Ms. Cathy

**Title:** Director, Family Advocacy Program

**Organization/Agency:** Department of Navy

**Address:** Millington, Tennessee

**Phone/Fax #:** ,

**Brief Description:** This workshop is designed to increase knowledge of the specialized programs within the Department of Defense to prevent and respond to domestic violence. The workshop will discuss the nature of the problem of family violence within the military setting. It will review the role and responsibilities of commanders, victim witness coordinators, and other key players in the program. It will address the assistance provided to victims of domestic abuse under the FAP and discuss how the Family Advocacy Command Assistance Team can help in cases involving multiple out-of-home cases of child sexual abuse.

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**Seminar 3: Compensation Programs for Victims of Military Crimes**

**Presenters: Lieutenant Colonel Keith Roberts (Department of Air Force); Lieutenant Colonel Jackson (Department of Army); and Lieutenant Mark Myers (Navy)**

**Title: Panel Presentation**

**Organization/Agency: Department of Defense**

**Address: 4000 Defense Pentagon, Washington DC 20301-4000**

**Phone/Fax #: 703-697-5947/703-693-6708**

**Brief Description: This panel presentation will address the special compensation programs established for victims of child and spousal abuse. Military claims programs will be addressed with a specific emphasis on filing claims for property loss or damage resulting from crimes committed by military personnel. The workshop will explore working with state compensation programs to obtain compensation or services when they may not be available from the military crime victims.**

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**Seminar 4: Establishing an Effective Installation Program**

**Presenter: Ms. Rebecca C. Moody**

**Title: General Attorney, Civil Law Division**

**Organization/Agency: Office of the Staff Judge Advocate  
Warner Robins Air Logistics Center**

**Address: WR-ALC/JAC  
215 Page Road, Suite 186  
Robins AFB, GA 31098-1662  
Rebecca.moody@robins.af.mil**

**Phone/Fax: DSN 468-3961, ext 119  
COMM (912) 926-3961, ext 119  
FAX DSN 468-6541  
FAX COMM (912) 926-6541**

**Brief Description: This workshop is designed to provide attendees with the basics of establishing an effective V/WAP; with ideas on enhancing victim services beyond the minimum requirements of the law; and with guidance on how to improve accountability of domestic violence and sexual assault offenders.**

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**Workshop Title: Sexual Assault Victim Assistance (SAVI) Program**

**Presenter: LCDR C. K. Springle**

**Title of Presenter: SAVI Program Manager**

Organization/Agency U. S. Navy

Address: Commander Naval Personnel Command NPC 661F

5720 Integrity Drive

Millington, TN 38055-6610

Phone/Fax: (901) 874-4347 / (901) 874-2690

**Brief Description:** This seminar outlines the development of the only military program designed specifically to assist victims of sexual assault. The program includes historical background material, current program structure, obstacles to full implementation and vision for future development. SAVI is presented as a model for development of multidisciplinary victim assistance programs.

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## Department of Defense Agency Day

February 10, 1999

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**Plenary Session: Victim Trauma**

**Time: 0900 - 1030**

**Panel Presenters: CDR Mike Dineen (Bethesda Naval Hospital); Dr. Harry C. Holloway (Uniformed Services University of Health Science); and LTC Elspeth Cameron Ritchie, (Walter Reed Health Care System)**

**Brief Description:** This panel presentation will address trauma experienced by victims of crime and address the special circumstances of victims of violent sexual offenses and terrorism in the military setting. The workshop will discuss the typical traumatic reactions of crime victims, consider how these symptoms should be evaluated, and recommend techniques for improving the assistance provided to these victims. The workshop will explore improving the response to crimes.

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**Breakout Session: Military Service Victim and Assistance Programs.**

**Time: 1045-1215**

**Facilitators: Service Victim and Witness Coordinators: Lieutenant Colonel Keith Roberts (Air Force); Major Holly Coffey (Army); Lieutenant Mark Myers (Navy); Captain Andrew Metcalf (Marine Corps); and CDR Ruth Torres (Coast Guard)**

**Description:** The Military Service victim and witness coordinators will lead a discussion of procedures, problems, and initiatives for the attendees from each of the Military Services. Four separate breakout sessions will be held for DoD attendees (Marine Corps and Navy will attend one session). A reporter will record key discussion points and report to the final DoD plenary session.

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**Plenary Session: Working with Child Victims of Crime**

**Time: 1330 - 1430**

**Panel Presenters: LTC Nancy Slicner (US Air Force Office of Special Investigation)**

**Brief Description:** This presentation will address the special circumstances of assisting child victims in the military setting. The workshop will discuss the typical traumatic reactions of crime victims experienced by children, discuss methods for interviewing child victims, and recommend techniques for improving the assistance provided to these victims. The workshop will explore improving the response to crimes.

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**Breakout Session: Improving Victim and Assistance by Functional Area (4 separate sessions)**

**Time: 1445-1600**

**Facilitators: Peggy Yoder (Corrections); Tom Boley (Law Enforcement); Chaplain John McCrae (Chaplains); Lieutenant Mark Myer and LTC Keith Roberts (Legal)**

**Breakout Session 2 (1 and 1/4 hour-- Victim and Assistance Procedures and Problems By Functional Area. Separate sessions will be held for law enforcement, legal, corrections, and family/clinical service providers. Facilitators will lead a discussion of procedures, problems, and issues in these areas and identify best practices. A reporter will record discussion and provide report for final DoD plenary session.**

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**Plenary Session Improving Department of Defense Victim and Witness Assistance**

**Time: 1615 - 1700**

**Facilitator: LTC Ingold**

**Reporters from each breakout session will briefly report on the new initiatives, problems, and issues addressed by each breakout session. DoD attendees will discuss solutions to problems identified and recommend improvements to DoD victim and Witness Assistance Programs.**



# Assisting Victims of Military Crimes

Federal Symposium

February 1999

LTC Bernard Ingold

OSD-P&R-LP

## AGENDA Victim Assistance

- Introduction
- DoD Victim Assistance Program
- Military Service Programs
- Military Justice System
- Compensation for Crime Victims
- Issues and Initiatives

OSD-P&R-LP

## Changing Face of the Military

- **Before 1980**
  - » Drafted
  - » Single Tour
  - » Unmarried
  - » Male
- **Today**
  - » Volunteer
  - » Career
  - » Married
  - » Male & Female

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## Victims in the Military Justice System

- **Military Crime Victims Include:**
  - » Service members
  - » Dependents of Military Personnel
  - » Civilians
  - » Foreign Nationals
- **Services Assisted 55,000 Victims in 1997**
- **Crime Victim Participation & Rights May Differ from State and Federal Systems**

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## DoD Victim Assistance Program DODD 1030.1 and DODI 1030.2

- Implements requirements of Federal law
- Program under USD-P&R responsibility
- Requires DoD, Military Services, & installations to set up programs and Councils
- Requires officials to ensure victim rights are protected
- Forms developed to protect rights

OSD-P&R-LP

## Victim Bill of Rights DODD 1030.1

- Right to be treated with fairness and respect
- Right to be reasonably protected
- Right to be notified of proceedings
- Right to be present at proceedings
- Right to confer with attorney
- Right to available restitution
- Right to know outcome & release

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DoD Victim Witness Program Four Phases of Assistance			
<i>Initial Contact</i>	<i>Investigation</i>	<i>Prosecution</i>	<i>Incarceration</i>
Identify victim	Keep victim informed	Consult & provide notice proceedings	Provide confinement information
Provide information on rights	Protect from harassment	Secure waiting areas	Provide notice of parole hearings/ release
<b>DD Form 2701</b>		<b>DD Forms 2702/2703</b>	<b>DD Forms 2704/2705</b>
OSD-P&R-LP			

Victims Assistance Programs Army
<ul style="list-style-type: none"> <li>● Under The Judge Advocate General</li> <li>● Installation Based Programs</li> <li>● <b>Coordinator:</b> MAJ Holly Coffey; HQDA-CL; (703) 588-6744; (703) 588-0144; <a href="mailto:Coffeha@hqda.army.mil">Coffeha@hqda.army.mil</a></li> <li>● DA Reg. 27-10, Chapter 18 (24 June 1996)</li> </ul>
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## Victims Assistance Programs Air Force

- Under The Judge Advocate General
- Installation Based Programs
- **Coordinator:** LICol Keith Roberts; AFLSA/JAJ; (202) 767-1539; (202) 404-8755;  
[keith.roberts@af.pentagon.mil](mailto:keith.roberts@af.pentagon.mil)
- Dept. AF Instruction 51-201 (Sept 1996)

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## Victims Assistance Programs Navy

- Under The Chief BUPERS
- Regional Based Programs
- **Coordinator:** LT Mark Myers; Office of Legal Counsel PERS O6L1;  
(901) 874-2601; (901) 874-2601
- SECNAV INSTR. 5800.11A (16 June 1995) &  
OPNAVINSTR 5800.7 (30 April 1996)

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## Victims Assistance Programs Marine Corps

- Under the Legal Advisor to CMTD
- Installation Based Programs Patterned after Navy Programs
- **Coordinator:** CAPT Andrew Metcalf; CMC, HQMC JAI; (703) 614-9252; (703) 695-5111; [Ametcalf@notes.hqi.usmc.mil](mailto:Ametcalf@notes.hqi.usmc.mil)
- MC Order P5800.16 (Legal Admin Manual)

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## Victims Assistance Programs Coast Guard

- Under Family Life Office
- Regionally Based Programs
- **Coordinator:** CDR Ruth Torres, Family Life Office, (202) 267-1329
- Instruction in Coordination
- Special Related Programs

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## DoD Victim Assistance Related Special Programs

- Specialized Victim Assistance Programs
  - » Navy Sexual Assault Victim Intervention Program
  - » Family Advocacy Program
  - » SPRINT & FACAT Crisis Action Teams
- DoD Equal Opportunity Program
- Defense Incident-Based Reporting System
  - » Includes data on victim assistance
  - » Includes data on most military crimes

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## Military Justice System

- Military Justice System is Unique
  - » Based on Uniform Code of Military Justice
  - » Military has jurisdiction over crimes Off-Duty and Off Military Installations
  - » Services average 9,000 courts-martial and 98,000 disciplinary actions a year
- Crimes, Rights, and Procedures Differ

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## Victim Issues in the Military Justice System PreTrial

- Protection From Harassment
  - » Protective Orders
  - » Safety
- Right to Curtail Investigation and Trial
- Right to Notice and Attend Pretrial Proceedings
- Consultation on Pretrial Agreements

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## Victim Issues in the Military Justice System Procedural Rules

- Pretrial Rights
  - » Consult on pre-trial agreement negotiations
  - » Protection from harassment and abuse
- Rights at Trial
  - » Notice and information of proceedings
  - » Secure courtroom and waiting room
  - » Provide statement during sentencing
- Rights after Trial
  - » Information about sentence
  - » Notice of changes in confinement status

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### Victim Issues in the Military Justice System Trial

- Notice and information about proceedings
- Secure courtroom and waiting room
- Attend the trial (unless a witness)
- Provide statement during sentencing
- Limits on cross examination questioning
- Information about the outcome

OSD-P&R-LP

### Victim Issues in the Military Justice System Post-Trial

- Information about sentence
- Notice of convening authority action
- Notice of changes in confinement status
  - » Release
  - » Transfer
- Notice and right to participate in clemency and parole proceedings

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## Victim Assistance in the Military Issues

- Enforcing Civilian Protective Orders
- Restitution
- Determinate Sentencing
- Sentencing Release Policies
- Assisting Victims Overseas

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## Victim Issues in the Military Justice System Recent Developments

- Rape and Carnal Knowledge Updated
- Stalking Punishable by Court-Martial
- Military Rules of Evidence Improvements
- Registration of Convicted Sex Offenders
- New Life Without Parole Sentence
- Potential New Developments
  - » DNA Samples of Convicted Offenders
  - » Expanded Overseas Jurisdiction

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## Victim Assistance in the Military Initiatives

- DoD Victim Witness Resource Manual
- DoD Victim Witness Web-Page
- DoD Family Advocacy Center
- Navy: Video Tape of Sex Offenders
- Army: Victim Information Network (VINE)
- Interagency Response to Terrorism
- Crisis Response to Multiple Victim Incidents

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## DoD Victim and Witness Program Compensation for Victims

- Article 139, UCMJ property claims
- Claims
- Restitution from offender
- Transitional compensation program
- Payment to abused spouses
- Continued Payment of Pay and Allowances
- Compensation from state where crime occurred

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## DoD Compensation Programs

### Transitional Compensation [10 U.S.C. 1059]

- **Requirements:**
  - » Member abuses spouse or child
  - » Member is separated for the misconduct or forfeits all pay and allowances
- **Benefits:**
  - » Monthly income for 36 months (based on DIC)
  - » Commissary and exchange privileges
  - » Medical care for injuries may be approved

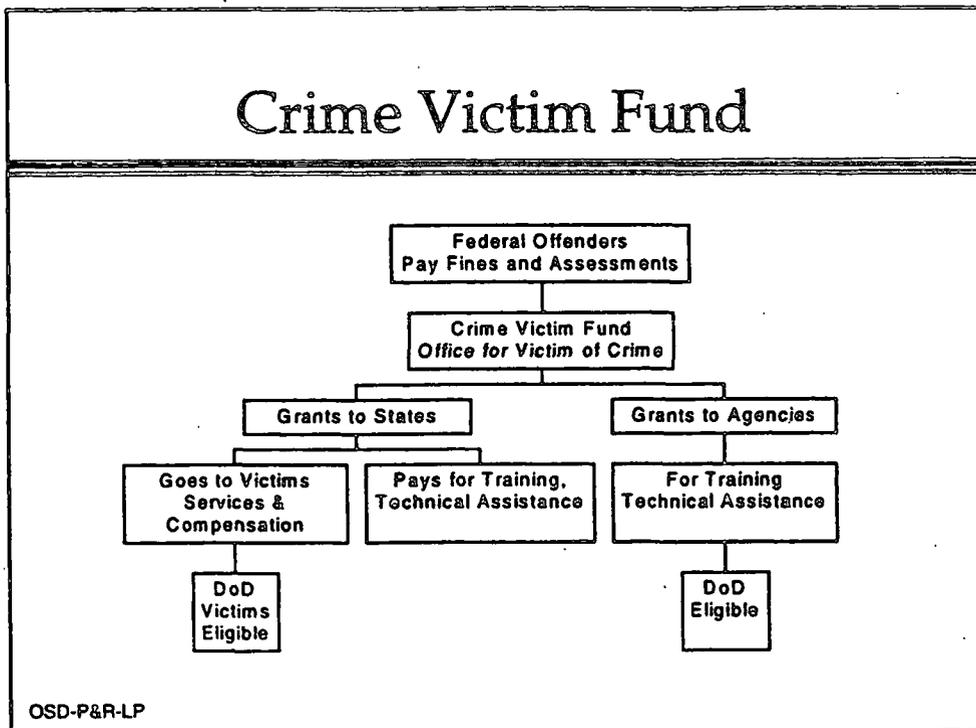
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## DoD Compensation Programs

### Retired Pay Protection [10 U.S.C. 1408h]

- **Requirements:**
  - » Member eligible for retired pay
  - » Court order for payments exists
  - » Member separated for dependent abuse
- **Benefits:**
  - » Spouse/former spouse eligible for payments
  - » Based on member's retired pay
  - » Medical, commissary, and PX

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## State Crime Victim Programs Available Services and Payments

<ul style="list-style-type: none"> <li>● <b>Compensation*</b> <ul style="list-style-type: none"> <li>» Medical bills</li> <li>» Counseling</li> <li>» Funeral costs</li> <li>» Lost wages</li> <li>» Crime cleanup</li> <li>» Child care</li> <li>» Cost to attend case               <ul style="list-style-type: none"> <li>◦ <i>Funded partially with payments from CVF</i></li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● <b>Services*</b> <ul style="list-style-type: none"> <li>» Crisis intervention</li> <li>» Counseling</li> <li>» Transportation</li> <li>» Housing</li> <li>» Advocacy               <ul style="list-style-type: none"> <li>◦ <i>Funding available through grants from CVF</i></li> </ul> </li> </ul> </li> </ul>
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## State Victim Witness Programs Compensation for Victims

- States, D.C., & V.I. Have Programs to Provide Compensation and Services
- Mandatory Compensation to Victims of:
  - » Violent crime
  - » Domestic abuse and drunk driving
  - » Terrorism
- Available from State Where Crime Occurs
- Includes Military Personnel in State

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## Victim and Witness Assistance DoD Points of Contact

Name and Organization	Phone	Fax	E-mail
● Office of the Secretary of Defense			
LTC Bernard Ingold; OUSD(P&R)PI-Legal Policy;	(703) 697-3387;	(703)693-6703;	<a href="mailto:IngoldB@pr.osd.mil">IngoldB@pr.osd.mil</a>
● Army			
● Air Force			
LtCol Keith Roberts; AFLSA/JAJ;	(202) 767-1539;	(202) 404-8755;	<a href="mailto:keith.roberts@af.pentagon.mil">keith.roberts@af.pentagon.mil</a>
● Navy			
LT Mark Myers; Office of Legal Counsel PERS 06L1;	(901) 874-2601;	(901) 874-2601	
● Marine Corps			
● Coast Guard			
CDR Henry Lopez; USCG G-WPW-2;	(202) 267-1329;	(202) 267-4862;	<a href="mailto:HLopez@comdt.uscg.mil">HLopez@comdt.uscg.mil</a>

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<p>Investigation:</p> <p>With respect for victim's dignity and privacy</p>
<p>Provide information:</p> <p>Written and verbal Brochure and other material</p>

Responsibilities	
Brochure	
Target recipient	<ul style="list-style-type: none"> <li>• Victims of crime</li> <li>• Witnesses</li> </ul>
Responsibility for filling in blanks on back	
Name and phone number of investigator	The investigator should carry at all times and fill in his or her name and office phone
Name and phone number of V/W Responsible Official	This should be the person who has a broad view of local services for victims and who can help direct victim to those services and can be a POC for victim when case agent is unavailable
Name and phone number of trial counsel	Local V/W Responsible Official should provide info based on local preference to have law center V/W Coordinator's info or that of trial counsel. TC may not be known when info given to victim.
Name and phone number of state crime victim compensation board	Local V/W Responsible Official should provide local POC for state compensation office.

**Restitution**

Def: Something provided by  
criminal to victim to make up  
for loss incurred

Civilian courts:

May be directed by judge

Military courts:

May be a part of a pre-trial  
agreement

May NOT be ordered by judge

Compensation		
Compensation may be available for these losses	Counseling services	
	Medical care	
	Actual earnings loss	
	Funeral and burial expenses	
Victim is <b>NOT ELIGIBLE</b> if...	Victim is a party to the crime	
	Victim does not cooperate with investigation	

Explain the role of the Victim in the process		
Four phases of the judicial process	1. Response	
	2. Investigation	
	3. Prosecution	
	4. Confinement	
Types of information brochures in DOD INSTR 1030.2	• Initial Information	
	• Court Martial Info	
	• Post-Trial Info	

Discuss reasonable ideas for protection from suspect

Non-violent crime	<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
Violent crime	<ol style="list-style-type: none"> <li>1. 18 USC 1512 (intimidation)</li> <li>2. 18 USC 1513 (injury)</li> <li>3. 18 USC 3579 (restitution)</li> <li>4. Safe place</li> </ol>

<b>Separation of Victim and Suspect</b>	
Notes:	

<b>Handling Victims' Property as Evidence</b>	
RULES OF EVIDENCE:	<ol style="list-style-type: none"> <li>1. Take care of it.</li> <li>2. Return it as soon as you can</li> </ol>

<b>Forensic Medical Exam -- Victims of Sexual Assault</b>	
<p>Forensic examination:</p> <p>Conducted at _____ cost to Victim</p> <p>If charged, Victim must be reimbursed by...</p> <p>_____</p>	

Protecting Victim's home address and phone number	
Basic Rule	DON'T REPORT IT
Provide to those with need to know	<ul style="list-style-type: none"> <li>• Trial counsel</li> <li>• Others?</li> </ul>
Exceptions	<ul style="list-style-type: none"> <li>• Home is crime scene</li> <li>• Telephone number is critical to your investigation</li> </ul>

D. Providing Information to Victims	
Like what?	Done
Transfer of case from patrol to investigations/NCIS	
Periodic contact to inform victim of status of case	
Apprehension of a suspect	
Incarceration of suspect in pre-trial confinement	
Release of suspect from pre-trial confinement	
Change of investigator/case agent	
Closing of investigation, if closed as unresolved	
Services available to victim/witnesses On-base services, eg: Family Service Center Transitional Compensation Navy Relief Off-base services, eg: MADD Domestic violence shelters Crisis lines	

**E. In the case of a minor, incompetent, or deceased victim**

Provide your services to one of the following, in this order...

- Spouse
  - Guardian
    - Parent
      - Child
        - Sibling
          - Another family member
            - Person designated by court of law

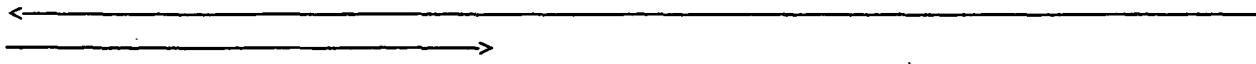


**Defining Witnesses**

...Continuum...

Eyewitness  
to violent  
crime

Clerk who  
provides  
record



**Victim Advocates**

**Role of the Advocate**  
Continuity of care for victim  
Knowledgeable of "the system"  
Serves as "system advocate"  
as well as victim advocate

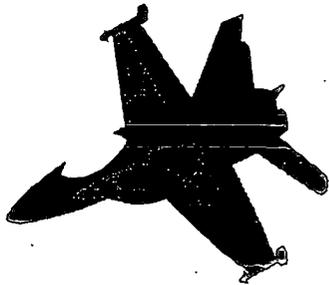
**Value to LE personnel**  
Frees up agent to investigate  
Helps victim understand why  
agent asks certain questions

**Coordination**

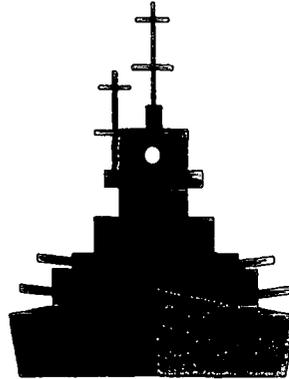
Vital to success  
...with initial responder  
...with medical  
...with social worker  
...with trial counsel  
...with victim advocate  
...with victim  
...with commands

- I. It's the right way to treat people
- II. It's the LAW
- III. LE gets a "take" from it, too

# United States Navy



**SEXUAL ASSAULT VICTIM  
INTERVENTION PROGRAM**



Pcns-681

1 1/2000

# WEAVING YOUR SUPPORT WEB

**A PROGRAM MODEL FOR  
PROVIDING A CONTINUUM OF SERVICES  
AND CARE**

Pcns-681

2 1/2000

## **OBJECTIVES**

- **To provide a model for program planning/coordination/management.**
- **To practice building effective program support and communication.**
- **To identify critical elements of a successful program support network.**

Pers-661

3/1/2000

## **BEGINNINGS**

- **Establish a strong program policy**
- **Identify a specific program goal**
- **Develop a clear program structure and identify critical components**
- **Establish a strong program**

Pers-661

4/1/2000

## NAVY POLICY

As established in OPNAVINST 1752.1A et al..

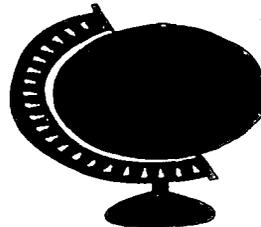
- Zero tolerance for sexual assault
- Sexual assault is a criminal act
- Victims have access to appropriate assistance
- Perpetrators of sexual assault may be prosecuted to the fullest extent of the law
- Commanding Officers of perpetrators shall take appropriate disciplinary and/or administrative action

Pcns-631

8 1/28/00

## SAVI PROGRAM GOAL

A comprehensive, standardized, victim-sensitive system to prevent and respond to sexual assault Navy-wide.



Pcns-631

8 1/28/00

## **SAVI PROGRAM STRUCTURE**

- **Medical Service Corps SAVI Program Manager at HQ**
- **Civilian Assistant Program Manager and Civilian Data Base Manager at HQ**
- **28 full-time Coordinators at 25 FSCs world-wide**
- **33 identified collateral duty Coordinators**
- **A SAVI Coordination Committee at each installation**
- **A SAVI POC for every command in the fleet**

Pers-661

7 1/29/99

## **SAVI PROGRAM STRUCTURE**

- **Role of SAVI Program Coordinator**

- Facilitate program execution and oversight
- Coordinate, plan, develop, implement and direct all administrative aspects of the SAVI Program
- Provide local management of each program component

Pers-661

8 1/29/99

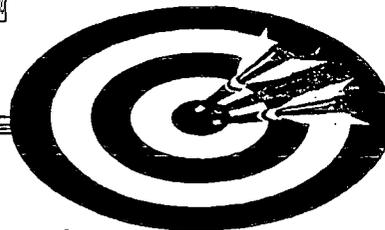
## **SAVI PROGRAM COMPONENTS**

- **Sexual assault awareness and prevention education**
- **Victim advocacy/intervention**
- **Data collection**

Pc2-681

0 1/20/00

## **SEXUAL ASSAULT PREVENTION**



- **Principal focus of program**
- **Aggressive awareness and prevention training**
- **Reinforced through mandatory general military training**
- **Improved physical security and safety procedures**

Pc2-681

10 1/20/00

## **VICTIM ADVOCACY/INTERVENTION**

- **Avoid re-victimization**
- **Highly responsive volunteer victim advocate system to provide emotional support to victims**
- **Utilize community program resources where available**
- **Coordinated team approach**
- **Multi-disciplinary training**
- **FSC counseling support**

Pers-681

11 1/29/99

## **DATA COLLECTION**

- **Rape and Sexual Assault System (RASAS)**
  - **Document each reported sexual assault**
  - **Aggregate data only - Quarterly**
  - **Track trends**
  - **Enhance prevention efforts**
  - **Aid in program planning**
  - **Analyze effectiveness in processing cases**

Pers-681

12 1/29/99

## ISSUES

- Provide a consistent, standardized program
- Funding
- Victim empowerment
- Reporting
- Case management
- Victim advocacy
- Confidentiality

Pcs-631

13 1/20/00

## WEAVING A WEB OF SUPPORT

- Why - establish a support web/group
  - Reduces stress on staff - more hands/heads
  - Provides additional resources for program and clients
  - Provides consistency - don't depend on one person for program success
  - Empowers program - strength in numbers

Pcs-631

14 1/20/00

## WEAVING A WEB OF SUPPORT

- Who

- **First Responders**  
Medical, Law Enforcement , Advocates
- **Key Personnel**  
community leaders, service providers
- **Think “DIVERSE”**
- **Hard workers**
- **Creative thinkers**
- **“Doers”**

Pers-061

15 1/29/99

## WEAVING A WEB OF SUPPORT

- How

- **Define group makeup/Give it a title**
- **Recruit members**
- **Train group - initial and ongoing**
- **Establish guidelines**
- **Meet frequently**
- **Let the group lead and educate each other**
- **Address current issues**
- **Solve problems/Recommend action**
- **Provide resources**

Pers-061

16 1/29/99

## WEAVING A WEB OF SUPPORT

- When

- Establish minimal guidelines

**Quarterly**

**BI-monthly**

- Allow for emergency meetings
- Be consistent
- Group sets convenient time

Pcrs-631

17 1/28/03

## WEAVING A WEB OF SUPPORT

- Where

- Choose a convenient location

**Comfortable**

**Accessible**

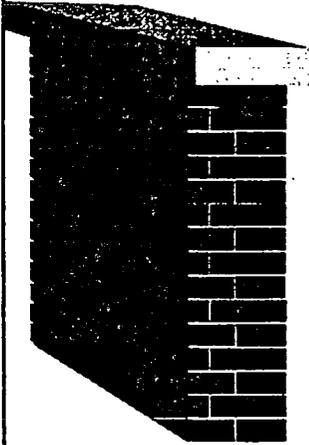
- Be consistent

**A consistent location will facilitate better attendance/less notification**

Pcrs-631

10 1/28/03

# **WEAVING A WEB OF SUPPORT**



## **POTENTIAL BARRIERS**

- **PERSONAL / PROFESSIONAL AGENDAS**
- **DIFFERENT DISCIPLINES / FOCUS**
- **LACK OF COMMITMENT**
- **LACK OF AUTHORITY**
- **NO GROUP CHARTER**

Pers-661

19 1/29/99

# **Establishing a V/WAP in the Military**

**Becky Moody**

**rmoody@legal.robins.af.mil**

**dsn 468-3961 ext 119**

## **We're Gonna' Talk About**

- **Got to Do's**
- **Getting the Money**
- **Good to Do's**

**Got to Do -  
The DD Forms**

- **Train**
- **Track**
- **Trial Record**

**Getting the Money**

- **Transition Compensation & Retired  
Pay for Abused Dependents**
- **Article 58b Waiver**
- **State Compensation**
- **Civil Remedies and Restitution**

## **Transition Compensation**

- **MPF Coordination**
- **Point of Contact**
- **Common Errors**

## **Article 58b Waiver**

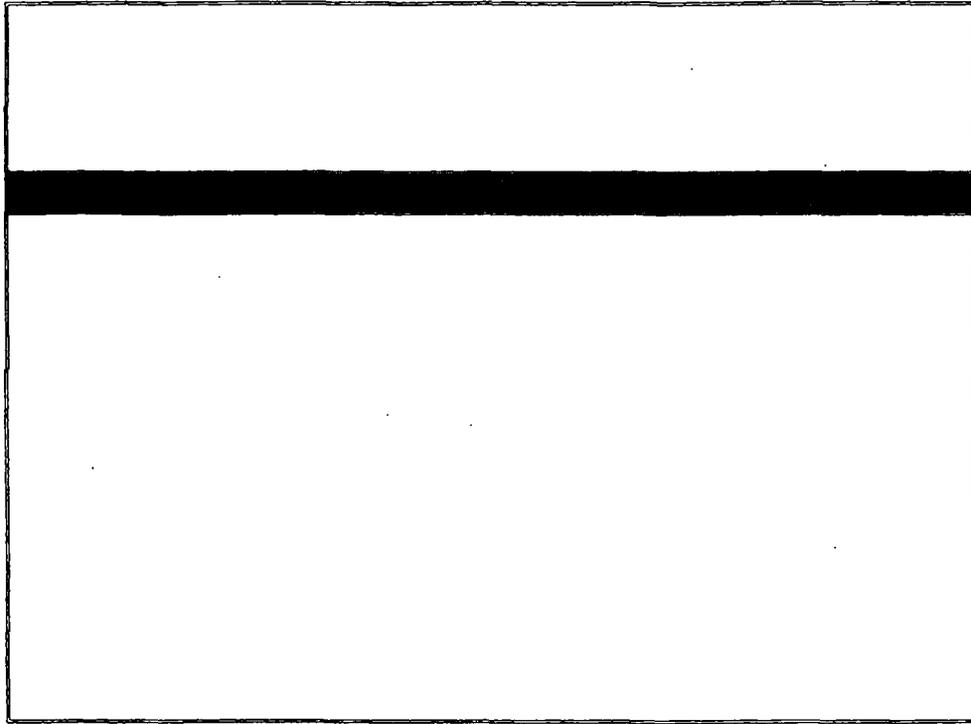
- **Remind Defense**
- **Prepare the Package**
- **Finance Coordination**

## **Other Money**

- **State Compensation Programs**
- **Civil Actions**
- **Restitution**

## **Good To Do's**

- **V/WAP Board**
- **IPT's**
- **Liaison to Off Base Agencies**





**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**WORKSHOP RESOURCE MATERIALS**

***TRACK SIX: IMMIGRATION  
INTERNATIONAL***

**THE FOLLOWING RESOURCE MATERIALS HAVE BEEN  
SUBMITTED BY THE PRESENTERS CONDUCTING  
WORKSHOPS IN THIS PARTICULAR TRACK.**

**ADDITIONAL MATERIALS MAY BE DISTRIBUTED AT THE  
WORKSHOPS THEMSELVES.**





Office for Victims of Crime

19 of 19

# OVC Bulletin

New Directions

Advocating for the Fair

Treatment of Crime Victims

## Message from The Director

*New Directions from the Field: Victims' Rights and Services for the 21st Century* is a comprehensive report and set of recommendations on victims' rights and services from and concerning virtually every community involved with crime victims across the nation. The report represents a significant maturation in the field of victims' rights and services since the President's Task Force on Victims of Crime released its *Final Report* in 1982. *New Directions* chronicles the extraordinary accomplishments of a still young field, but also recommends what we as a society should strive to achieve for victims as we enter the 21st century.

*New Directions* is the culmination of more than 3 years' work by over 1,000 individuals in the victims field including crime victims, representatives from national victim advocacy and service organizations, criminal justice practitioners, allied professionals, and many others. In addition, literally hundreds of reference documents were utilized and listed in the end-notes of each of the 18 chapters. The work of these individuals and the publication and dissemination of this material has been supported by the Office for Victims of Crime (OVC). The report and recommendations represent views from the field, however, and do not necessarily reflect the views of the Department of Justice. Moreover, while the recommendations may not reflect all of the individual contributors' views, the contributors agree that all of the recommendations are worthy of discussion and consideration.

This bulletin is a reprint of chapter 18 from *New Directions* and deals specifically with promising practices and recommendations related to International Perspectives. As we move into the 21st century, *New Directions* should serve as a vitally useful guide for developing policies, programs, and practices on behalf of crime victims well into the next century. As comprehensive as this report is, however, the real challenge begins now. After you read the recommendations, after you have examined the numerous promising practices presented in each section, then I encourage you to move forward to see how you can implement improvements in a manner that meets the needs of crime victims.

Kathryn M. Turman  
Acting Director  
Office for Victims of Crime

## New Directions from the Field: Victims' Rights and Services for the 21st Century

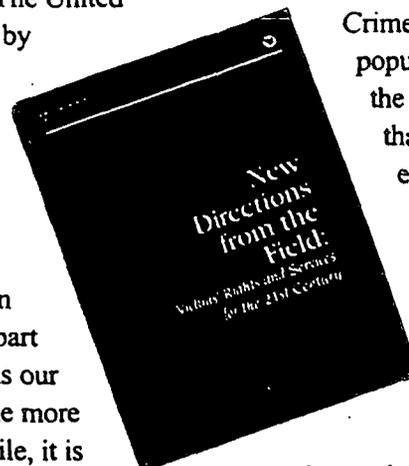
### International Perspectives

*Crime victimization and violence has become an international epidemic. It is imperative that victim assistance become an international antidote and the central feature of a universal strategy of victimization prevention.*

Marlene A. Young, Executive Director,  
National Organization for Victim Assistance

Victimology is increasingly recognized as an international field of research and action, transcending many cultures and legal systems. The United States is visited by millions of foreign nationals each year, and citizens of the United States travel and live in virtually every part of the world. As our societies become more global and mobile, it is no longer possible to confine victim assistance to the borders of a particular country. Crime and victimization have become transnational, and

countries must look beyond their national boundaries to share information, technology, and resources to assist victims.



Crime afflicts urban populations in all parts of the world. The extent of that crime was recently examined through the *International Crime [Victimization] Survey*, which

measured crime in more than 50 different countries. By

bypassing differences in legal codes and definitions of crime that have made comparing crime data among countries difficult, the survey has produced the most comparable cross-national data

## *New Directions from the Field: Victims' Rights and Services for the 21st Century*

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on crime available to date. Conducted in 1989, 1991, and 1996, the survey found that more than a third of all urban dwellers in the world do not feel safe in their own neighborhoods at night and that crime rates are highest in major cities in Africa and Latin America. In every country surveyed, including the United States, no more than 10 percent of victims received assistance from a specialized victim assistance agency.<sup>1</sup>

Countries can learn a great deal from one another about ways to address crime victims' needs. Rights and services for crime victims vary considerably from one country to another. Crime victims in some countries enjoy greater participatory rights in court than do victims in the United States. For example, victims in some countries can review evidence, ask questions during the trial, be represented by an attorney at the country's expense, and even appeal the decision of a prosecutor not to file their case. A few countries provide victims with an ombudsman to help ensure enforcement of their rights. Other countries have established innovative partnerships or stronger laws to help protect victims:

- In Cordoba, Argentina, a victim assistance program has developed a multidisciplinary approach in which every victim referred to the program is met by two people: a mental health worker who helps the victim with the psychological trauma of victimization, and a lawyer who helps the victim through the criminal justice process.
- Throughout Brazil, there are more than 500 police stations staffed

entirely by women to provide services to victims of domestic violence and sexual assault. The stations, which are being replicated in Japan and Costa Rica, were created because they encourage female victims to report crimes.

- In France, a survivor of a terrorist attack in Paris created an association for terrorism victims in 1986 called S.O.S. Attentats. The association helped to establish a compensation fund for victims of terrorism, and provides counseling and forums for these victims to share their trauma. The association also provides legal advocacy, including assistance with filing civil lawsuits.
- In Canada, a law was recently passed to provide standing for crime victims in cases involving the potential release of their records. Legal aid lawyers help to represent victims in these cases.
- For years, Australia and some Scandinavian and European countries have had strong drunk driving laws, allowing blood alcohol levels of only .02 to .05, less than half of that in most states in the United States.
- In many areas in New Zealand, law enforcement responds with social workers to domestic violence calls. The country is currently pilot testing the creation of victim assistance programs in courts in four jurisdictions.
- In South Africa, programs have been developed to educate men about domestic violence.

The 1982 *Final Report* of the President's Task Force on Crime Victims did not specifically address international issues, but a few years after its publication, the United States began to take an active role at international conferences and meetings related to victims of crime. A U.S. delegation to the 1985 United Nations meeting on crime issues worked on drafting the resolution that later became the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.<sup>2</sup> A similar U.S. delegation was active in raising issues of domestic violence at the 1985 U.N. Conference on Women in Nairobi, Africa. Then Assistant Attorney General Lois Haight Herrington, who chaired the 1982 Task Force, was a leading figure in both delegations.

Since the release of the 1982 *Final Report*, there has been increased attention in the United States on the unique needs of American citizens victimized abroad, as well as those of foreign citizens victimized in the United States. There have also been considerable efforts to address victimization issues at an international level. While the complexities of transnational victimization are too numerous to cover comprehensively here, this chapter outlines some of the activities that have been undertaken at the national and international level to address the realm of international victim assistance.

### ***International Collaboration on Victims Issues***

While international interest in the victims movement is still relatively

● the first work in the field of victimology was pioneered in the 1940s by an Israeli researcher, Benjamin Mendelsohn, and a German researcher, Hans von Hentig. Later, the work of English legal reformer Margery Fry resulted in the passage of victim compensation legislation in New Zealand in 1963, soon followed by Great Britain and several states in the United States. The rape crisis movement emerged in the United States and other countries in the early 1970s.

International recognition of victimology as a distinct branch of criminology came with the first International Symposium on Victimology, held in Jerusalem in 1973, where a series of papers on victim compensation, crisis intervention, and the concept of a victim ombudsman were presented. By the end of the 1970s, those ideas were reflected in the establishment of victim service programs such as rape crisis centers, domestic violence shelters, and victim-witness units in a number of countries including the United States, the United Kingdom, and Canada.

### *United Nations Initiatives*

During the past two decades, the United Nations has undertaken a number of initiatives to address the myriad needs of crime victims at the international level. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Declaration) was adopted by consensus in the United Nations General Assembly in 1985, reflecting ● collective will of the international community to address the interests

and concerns of victims of crime.<sup>3</sup> Considered a Magna Carta for crime victims around the world, the Declaration is based on the philosophy that victims should be treated with compassion and respect for their dignity, and that they are entitled to access the mechanisms of justice and to receive prompt redress for the harm they have suffered.

The Declaration purposefully speaks of basic principles of justice for crime victims, which include access to justice and fair treatment, restitution, compensation, and assistance. The last category includes material, medical, psychological, and social assistance through comprehensive use of governmental, voluntary, community-based, and indigenous groups. The Declaration also addresses various principles of justice for victims of abuse of power.

Governments and organizations around the world have responded to the challenge of implementing the Declaration in different ways. Victim justice became a much livelier public issue in Poland, Sweden, India, the Philippines, Brazil, and Germany, to cite six of many possible examples, following its adoption. Victim assistance programs and services have developed around the globe in such diverse nations as Japan, New Zealand, Nigeria, The Netherlands, and Mexico. Other countries, however, have only begun to establish mechanisms to respond to victims' concerns.

The United Nations has undertaken a number of initiatives in recent years to foster implementation of the Declaration worldwide. In 1996, the

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*Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.*

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United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

fifth session of the United Nations Commission on Crime Prevention and Criminal Justice in Vienna, Austria, adopted a resolution calling for the development of an international victim assistance training manual to help countries worldwide develop programs for victims of crime. The Office for Victims of Crime has taken a leadership role in working with scores of experts in victim issues from every region of the world, to develop a *Handbook of Justice for Victims*, and an accompanying *Guide for Policymakers*. Both documents, which contain promising practices and victim assistance approaches from countries around the world, will be submitted for consideration at the seventh Session of the U.N. Crime Commission in 1998.

In 1995, the Fourth United Nations Conference on Women in Beijing, China, was a significant step forward in the international arena for victims of domestic violence. The Conference's final document, the Platform for Action, is a powerful and progressive statement about the empowerment of women and the imperative to eliminate violence against women in all its forms.

### ***Emerging Issues in International Victim Assistance***

A number of international victimization issues have become increasingly apparent to the victim assistance field in recent years, including crimes against international tourists, victim compensation, international terrorism and crisis response, and crimes against children. These issues are discussed below:

#### ***Victimization of Tourists***

International tourist crime is a chronic and growing problem, increasingly causing economic decline, deterring investment, and threatening quality of life in countries all over the world. Tourists who become victims often face unique issues such as isolation and culture shock, lack of familiar social support, travel stress, and language barriers. In addition, most tourists are not familiar with the laws of the country they are visiting, or the criminal justice, social services, health, and mental health systems they must interact with after victimization.

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*It is a violation of human rights when individual women are raped in their communities and when thousands of women are subjected to rape as a tactic or prize of war. It is a violation of human rights when a leading cause of death worldwide among women ages 14 to 44 is the violence they are subjected to in their own homes. If there is one message that echoes forth from this conference, it is that human rights are women's rights . . . and women's rights are human rights.*

---

First Lady Hillary Rodham Clinton,  
United Nations Fourth World Conference on  
Women, Beijing, China, September 5, 1995.

Throughout the world, tourist-dependent economies have implemented a variety of promising, comprehensive programs to deal with the increasing number of tourists who become victims of crime. Many of these programs assist both domestic and international travelers. Programs to assist tourist victims have been implemented in the United States in New York, New York; Orlando, Florida; and throughout Hawaii. They are also available in Dublin, Ireland; Amsterdam, Netherlands; Buenos Aires, Argentina; San Jose, Costa Rica; and throughout New Zealand and Aruba. Specialized services provided by these programs generally include replacement of personal identification, assistance with transportation and lodging, emergency medical assistance, advocacy and support through embassies and consulates, bereavement services, and communication assistance.

### ***Crime Victim Compensation Around the World***

In countries all over the world, victims of crime suffer physical injuries, emotional pain, and financial losses. While many nations provide victim compensation benefits, they often do not apply to foreign travelers. When they do, the small percentage of victim tourists who learn that compensation benefits are available are often discouraged by the legal intricacies of applying for compensation.

To inform travelers from all nations about benefits that exist in the country they are visiting and how to apply for those benefits, the Office for Victims of Crime, in partnership with the U.S. Department of State, developed an *International Victim Compensation Program Directory* in 1996. The State Department sent surveys to U.S. embassies in 174 nations, and questionnaires were then forwarded to the appropriate officials in each country. Of the 91 countries that responded, 30 countries in addition to the United States reported that they have established victim compensation programs. These programs are listed in the directory. Unlike compensation programs in the United States, a number of countries, including Austria, Belgium, and Denmark, do not place maximum award limits on compensation benefits. All but three countries offer benefits to foreign citizens victimized in their country, and seven countries compensate their own citizens who are victimized abroad. Three countries, including the United States, specify that compensation benefits are to be made available to

*I wasn't informed that I should call the Canadian consulate at the time, nor were any contacts made to the Canadian consulate about the crime, even after I requested it.*

A Canadian tourist victimized  
in the United States

victims of terrorism. Three additional countries, Colombia, Italy, and Israel, operate compensation programs solely for victims of terrorism. The Netherlands provides compensation for legal aid expenses as well as aid for extensive services to replace work in the home previously performed by the victim.<sup>4</sup>

## *International Terrorism and Crisis Response*

International crises such as terrorist attacks involve victims and survivors from many different countries, and local caregivers are sometimes unable to intervene usefully due to lack of education, resources, and language and cultural barriers. Moreover, because of complicated international investigations which frequently involve multiple jurisdictions, the rights, needs, and services available to victims of terrorism may be overlooked.

A number of organizations provide invaluable assistance to victims of international terrorism and their families. The National Organization for Victim Assistance (NOVA), for example, worked in the 1980s with family members of U.S. hostages taken in Iran and Lebanon by

convening support group meetings, developing a hostage family newsletter, and helping them contact governmental agencies. In 1990, the organization developed *Coping with the Iraq/Kuwait Crisis: A Handbook* for families and friends of Americans detained in Iraq and Kuwait,<sup>5</sup> and NOVA has coordinated crisis response teams in nearly a dozen countries including Japan, Canada, Bosnia, and Croatia.

NOVA has also been actively involved in training initiatives on international crisis response issues. Prior to the 1996 Summer Olympics in Atlanta, Georgia, the Office for Victims of Crime (OVC) provided funds to NOVA for the training of victim advocates and volunteers on national and international crisis intervention and response, including instruction from experts on how to assist foreign nationals victimized in the United States. After the bombing during the Olympics in Atlanta's Centennial Park, these advocates were instrumental in ensuring that victims received needed services.

Surviving family members whose loved ones were killed abroad by terrorists in various countries have voiced several concerns about the lack of appropriate services for victims and victims' families in the aftermath of the incident.<sup>6</sup> Specifically, they have expressed dissatisfaction with notification procedures after the death of their loved ones, red tape that made finding out information about their cases difficult and more painful, lack of regular updates about the status of their cases from responsible government officials, and the poor coordina-

*The unfortunate lesson that I have learned is that there is no one to answer a cry for help in a foreign country where an American is victimized by crime.*

A victim

tion between governmental agencies involved in these cases.

## *Commercial Sexual Exploitation of Children*

Each year, an estimated 1 million children enter the multi-billion dollar illegal sex market.<sup>7</sup> Children are coerced, kidnapped, sold, deceived, or otherwise trafficked into enforced sexual encounters. The phenomenon of "sex tourism," which mainly involves men traveling to other countries to engage in sex with children, is well documented. The exact nature of exploitation differs from one country to another. In Asia, for example, children are sold, knowingly or unknowingly, into the sex trade by families or friends. In Africa, evidence suggests that the employment of children as domestic help frequently includes sexual exploitation. In Europe, children are trafficked from poorer to more affluent countries where the market for children is fueled by organized pedophile rings and high-tech information services. These rings also exist in Australia, Canada, the United Kingdom, and the United States.

The damage commercial sexual exploitation causes children is unquestioned. Children are robbed of

## *New Directions from the Field: Victims' Rights and Services for the 21st Century*

their natural sexual development and their sense of dignity, identity, and self-esteem as well. Their physical and emotional health are put at tremendous risk, their rights are violated, and their only support may come from those who exploit them. To address these issues, Assistant Attorney General Laurie Robinson led the U.S. delegation to the World Congress Against Commercial Sexual Exploitation of Children in Stockholm, Sweden, in 1996. OVC provided funds to Education Development Center, Inc., to develop a report on strategies to stop the sexual exploitation of children. *Child Sexual Exploitation: Improving Investigations and Protecting Victims—A Blueprint for Action*, which was distributed at the conference. Since the World Congress, an interagency working group comprising representatives from the President's Interagency Council on Women, the Departments of Defense, Education, Justice, Labor, and State, as well as from U.S. Customs and the U.S. Postal Inspection Service, has met periodically to develop a coordinated federal agency strategy for prevention, investigation, and intervention in cases of commercial sexual exploitation of children.

### ***International Parental Child Abduction***

Parental abduction cases often involve international marriages that dissolve, with one parent returning to a native country with children who are too young to give legal consent. It is estimated that each year in the United States more than 350,000 children are abducted by a parent.\* Of

those abductions, reports vary on the numbers of children taken across international borders. One study found that children were known or believed to have been taken to another country in more than one-fifth of all child abductions. Earlier studies with smaller sample groups found that up to 40 percent of abductions may cross international boundaries.<sup>9</sup> Only a small percentage of these cases are ever reported to the State Department, however. The State Department's Office of Children's Issues Statistics reported a total 1,057 international child custody cases in 1994.<sup>10</sup>

The costs of searching for children who have been abducted are staggering. Many parents exhaust their life savings on telephone calls, attorneys, and private investigators. A 1990 study found that in international cases, more than half of the searching parents spent more than \$10,000 and a few spent more than \$50,000 in their efforts to retrieve their children.<sup>11</sup> Accurate statistics on recovery rates are not available, according to the National Center for Missing and Exploited Children, but success or failure often depends on whether the child was taken to one of the 45 countries that have signed the Hague Convention on the Civil Aspects of International Child Abduction. The recovery rate for Hague Convention countries varies by how well the courts of each country implement the treaty. Recovery rates for non-Hague countries are very low.

Since 1985, the Justice and State Departments have worked together

through the National Center for Missing and Exploited Children to track kidnapped children taken across international borders and to help their parents obtain lawful custody under the Hague Convention's treaty on international child abductions. This joint initiative was recently renewed, and OVC will pay travel-related reunification costs for American parents who can prove that substantial economic hardship prevents them from recovering their children from overseas.

### ***Recommendations from the Field for International Victim Assistance***

#### **INTERNATIONAL RECOMMENDATION FROM THE FIELD**

**The United States should continue to play a leadership role in the area of international victim assistance.**

The United States should fully participate in United Nations-affiliated and other international conferences that include victim-related topics, including victim assistance and violence prevention. Participation should include representation by senior government officials, presentations, and submission of action-oriented resolutions on implementation of internationally coordinated victim rights, services, and violence prevention programs. Representation should reflect the diversity of the population of the United States.

## *New Directions from the Field: Victims' Rights and Services for the 21st Century*

### **INTERNATIONAL RECOMMENDATION FROM THE FIELD #2**

**International standards of victim assistance and victim rights should be established, including standards for criminal justice and allied professionals who work with crime victims.**

Adoption of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power served as a significant first step in advancing victims rights around the globe, and an international Training Manual on Victim Assistance will go far to help countries implement the Declaration. More work is needed, however, to ensure that victims around the globe receive consistent and appropriate services. The United Nations should establish standards of victim assistance, and these standards should be adhered to by member states.

### **INTERNATIONAL RECOMMENDATION FROM THE FIELD #3**

**An international network of information, dissemination, training, and technical assistance on victim rights and assistance should be established.**

The development of an international technical assistance and training capacity that involves cataloging, evaluating, and developing victim-related training materials as well as identifying qualified individuals to deliver such assistance should be developed. The International Scientific and Professional Advisory

Council of the United Nations Crime Prevention and Criminal Justice Programme has made detailed recommendations concerning such a clearinghouse function. In addition, a database describing promising victim practices around the world should be established, similar to the database on promising prevention programs developed by the International Center for the Prevention of Crime in Canada.

An international database on promising practices could be built upon or incorporated into UNOJUST, the United Nations Online Crime and Justice Clearinghouse, a technical assistance program designed by the National Institute of Justice in the U.S. Department of Justice and the Office of International Narcotics and Law Enforcement in the Department of State to help the United Nations Program Network Institutes develop a technical capacity for global electronic information exchange on criminal justice issues. Such an exchange should also include victim issues.

### **INTERNATIONAL RECOMMENDATION FROM THE FIELD #4**

**Cross-cultural and multinational research on victimization, violence, and victim assistance should be promoted.**

Because of differences in legal codes and definitions of crime among countries, reliable data that are comparable across nations has been difficult to obtain. The International Crime [Victimization] Survey is one positive step towards comprehensive, multinational data on crime victim-

ization. More research in this area is needed, however, particularly for crimes such as child abuse and domestic violence which are largely unreported to police in most countries. Cross-cultural research should also be undertaken to identify promising victim assistance programs being utilized in different countries.

### **INTERNATIONAL RECOMMENDATION FROM THE FIELD #5**

**International reciprocity in the provision of victim compensation, restitution, and other assistance in cases involving foreign nationals should be promoted.**

As more and more people travel around the world, crimes against foreign citizens, both in the United States and abroad, are likely to increase. In this country, states should examine their compensation and assistance programs to ensure that there is reciprocity in cases involving foreign nationals.

### **INTERNATIONAL RECOMMENDATION FROM THE FIELD #6**

**Standards and procedures should be developed to address criminal cases involving foreign crime victims.**

In cases where a U.S. citizen commits a crime against a foreign national, policies and procedures should be established to allow such victims to participate in the criminal justice system, including providing, when appropriate and necessary, financial assistance for travel and

## *New Directions from the Field: Victims' Rights and Services for the 21st Century*

telephone costs, language interpretation, and other services.

### **INTERNATIONAL RECOMMENDATION FROM THE FIELD #7**

**Communities with large numbers of tourists should establish special programs to assist international tourists who are victims of crime.**

Every major city in the United States should establish programs for international tourist victims that provide, at a minimum, assistance with transportation and lodging, emergency medical assistance, advocacy and support through embassies and consulates, bereavement services, and communication assistance. Some victim advocates have proposed that such programs be funded through the collection of an "exit fee" assessed on international travelers. This fund could also be used to support services to U.S. citizens victimized abroad.

### **INTERNATIONAL RECOMMENDATION FROM THE FIELD #8**

**An international victim care corps under the auspices of the United Nations or an alternative body should be established.**

International terrorism, major airline crashes, and other disasters often involve victims from many different areas of the world. An international victim care corps should be developed to include mobile, multilingual crisis response teams that are trained and able to respond

quickly to community crisis situations in which national responses may prove insufficient. The corps should also include a pool of trained victim advocates to provide assistance, support, and representation to victims of crime or terrorism whose cases are heard by international bodies.

### **INTERNATIONAL RECOMMENDATION FROM THE FIELD #9**

**The federal government should develop a coordinated plan of action to respond to the needs of U.S. citizens who are victimized abroad. The State and Justice Departments should examine whether an ombudsman is needed to ensure effective information and services for these victims.**

American citizens victimized abroad and their families often do not receive comprehensive victim assistance services in the country where the crime occurs or when they return home. This situation is complicated further when the crime involves terrorism or mass violence. International investigations become very complex, frequently involving multiple agencies. Often victims do not know where to turn for information or assistance. The federal government should consider establishing a victim ombudsman at the State or Justice Department to coordinate and streamline responses to Americans who are victimized abroad. Such an ombudsman would have responsibility for contacting victims and providing information and referrals to local services, updating victims on the status of the

investigations, and serving as a point of contact to guide victims through the federal system.

### **INTERNATIONAL RECOMMENDATION FROM THE FIELD #10**

**The federal government should support the creation of a support group for victims of terrorism abroad.**

Many victims of terrorism abroad, as well as surviving family members, have indicated that they feel very isolated following the traumatic event. Many survivors of international terrorism feel that it would aid their healing process to belong to a support group with other survivors. It is difficult, however, for these victims to identify and contact individuals who have experienced similar losses. The Departments of Justice and State should examine how they could help facilitate communication between these victims. In addition, they should establish an advisory task force of victims of terrorism abroad to recommend improvements in victim services.

### **INTERNATIONAL RECOMMENDATION FROM THE FIELD #11**

**The federal government should make every effort to fully implement the Federal Protection for Battered Immigrant Women and Child provision of the Violence Against Women Act, including mandatory training for all INS and asylum officers and others who work with immigrant populations.**

With the passage of the Battered Immigrant Women provision of the Violence Against Women Act, immigrant women who were dependant on their batterer for their legal status, could not escape their abusive situation without risking deportation. The new provision allows immigrant victims the opportunity to apply for legal status independent of their abusive spouse. While some immigrants have already benefited from this new measure, still others who may be eligible are not simply because they and the immigration officials handling their case are unaware the law exists. As such, all immigration and asylum officers should be fully trained concerning the existence of the new law, along with all policies and procedures created to implement the law. The officers should also be trained to identify immigrants who may be eligible and assist them with filing applications to avail themselves of the new provision.

# *New Directions from the Field: Victims' Rights and Services for the 21st Century*

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## Endnotes

- 1 *International Crime (Victimization) Survey*; Criminological Institute, Leyden University, and United Nations Interregional Crime and Justice Research Institute. Preliminary Unpublished Data, 1997.
- 2 *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/Res/40/34, adopted by the General Assembly of the United Nations on November 29, 1985.
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- 4 Office for Victims of Crime, *International Crime Victim Compensation Program Directory*; Washington, DC: U.S. Department of Justice, 1996.
- 5 Young, M. and J. Stein. *Coping with the Iraq/Kuwait Crisis: A Handbook*, Washington, DC: National Organization for Victim Assistance, 1990.
- 6 Meeting of Aileen Adams, Director, Office for Victims of Crime, and surviving family members of victims killed by terrorists abroad, in Washington, DC, April 23, 1996, following signing of Antiterrorism Act.
- 7 World Congress Against Commercial Sexual Exploitation, *Backgrounder: Prostitution of Children*. World Congress Website: <http://www.childhub.ch/webpub/csechome>. 1.
- 8 Finkelhor, D., G. Hotaling, and A. Sedlak, *Missing, Abducted, Runaway, and Throwaway Children in America: First Report: Numbers and Characteristics, National Incidence Studies, Executive Summary*, Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1990.
- 9 Grief, G. and R. Hegar. *When Parents Kidnap*, New York: Free Press, 1993.
- 10 U.S. Department of State, *Office of Children's Issues Statistics Fact Sheet*, Washington, D.C.: U.S. Department of State, 1994.
- 11 Grief and Hegar. *When Parents Kidnap*.

The report and recommendations represent views from the field, and do not necessarily reflect the views of the Department of Justice.

The Office for Victims of Crime is a component of the Office of Justice Programs, which includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office of Juvenile Justice and Delinquency Prevention.

To obtain a copy of the full report, *New Directions from the Field: Victims' Rights and Services for the 21st Century*, contact the OVC Resource Center at 800-623-6782, or query [askncjrs@ncjrs.org](mailto:askncjrs@ncjrs.org), or send in the order form below.

August 1998  
NCJ# 172828

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**NATIONAL SYMPOSIUM ON VICTIMS  
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**WORKSHOP RESOURCE MATERIALS**

***TRACK SEVEN: BASIC  
VICTIM/WITNESS***

THE FOLLOWING RESOURCE MATERIALS HAVE BEEN  
SUBMITTED BY THE PRESENTERS CONDUCTING  
WORKSHOPS IN THIS PARTICULAR TRACK.

ADDITIONAL MATERIALS MAY BE DISTRIBUTED AT THE  
WORKSHOPS THEMSELVES.



## **CRISIS INTERVENTION - THE ABC MODEL**

### **A. ACHIEVE CONTACT**

- 1. Introduce self and role**
- 2. Ask permission**
- 3. Create a "bond"**
- 4. Must happen before "B"**

### **B. BOIL DOWN THE PROBLEM**

- 1. Ask about physical injuries if appropriate**
- 2. Use skills i.e. reflect, paraphrase, active listen**
- 3. Focus on now**
- 4. "What are you most concerned about?"**
- 5. Summarize, check it out**
- 6. Most time spent on "B"**

### **C. COPE WITH THE PROBLEM**

- 1. Client has the solutions**
- 2. Reinforce ideas, give strokes, empower**
- 3. How can I be helpful? Give resources if requested**
- 4. "Yes, but" - Go back to "B"**

## COMMUNICATION SKILLS

### THREE MOST HELPFUL CHARACTERISTICS FOR A HELPER TO PORTRAY

#### 1. Warmth

(56% tone, 37% body language, 7% words)

#### 2. Empathy

#### 3. Respect

### SPECIFIC SKILLS

**A. Active listening - you can listen faster than someone talks, if you commit to listen then put all else aside and really listen**

**B. Mirroring - use to relax upset, uptight person**

**C. Questions - person asking questions is in control**

1. open (lots of information)
2. closed (specific information)
3. who, what, when, where but NOT why

**D. Parroting**

1. choose one word
2. purpose - more information

**E. Reflecting**

1. diffuses
2. gets at emotions

**F. Paraphrasing**

1. clarifies
2. forces you to listen
3. lets them know you're listening
4. lets them hear what they said

**G. Silence**

**Crisis Intervention (continued)**

**2. Contributing factors**

- a. constant exposure to arbitrary disaster**
- b. constant exposure to improbable events**
- c. lack of positive alternative exposure**
- d. lack of caring, supportive resources**

**WHAT HELPS PEOPLE IN CRISIS**

- a. water - cool not iced**
- b. exercise**
- c. talking**
- d. tears**
- e. accurate information**
- f. choices (small not big)**
- g. the colors you wear**
- h. group debriefings**
- i. massage/touch**
- j. anchoring**
- k. expand the incident**
- l. acu-touch**

## **Crisis Intervention (continued)**

### **3/7 Avoidance of stimuli**

- a. thoughts, feelings associated**
- b. activities**
- c. amnesia**
- d. decreased interest in significant activities**
- e. estrangement/detachment**
- f. reduced affect**
- g. foreshortened future**

### **2/5 Physical Arousal**

- a. sleep disturbances**
- b. lack of concentration**
- c. startle reaction (hypervigilance)**
- d. irritability**
- e. physiological reactions**

## **LONG TERM CRISIS REACTIONS**

- 1. Not all victims/survivors have**
- 2. Many experience over long time periods**
- 3. Usually trigger events set off (sensorial, CJS, anniversaries, media etc.)**

## **CRISIS WORKER REACTIONS**

### **Countertransference**

#### **\*contributing factors**

- 1. Recent trauma in caregiver's life**
- 2. Similarities - victim and caregiver**
- 3. Physical/emotional fatigue**

**\*\*secondary victimization, vicarious victimization, compassion fatigue**

### **Constructivist Self-Development Theory**

- 1. Cognitive assumptions altered**
  - a. trust vs distrust**
  - b. safe vs fear**
  - c. control vs no control**
  - d. freedom vs restrictions**
  - e. respect vs evil, cruel**
  - f. intimacy vs estrangement**

## **CRISIS INTERVENTION**

**Viki Sharp, Program Coordinator, Pima County Victim Witness  
Tucson, AZ**

**WHAT IS A CRISIS?**

**WHAT DO YOU SEE?**

### **PHYSICAL REACTIONS**

**Shock, numbness, frozen fright, fight or flight, adrenaline, heart rate, hyperventilation, body  
relieves self, slow motion, senses ...**

### **EMOTIONAL REACTIONS (heightened by the physical reactions)**

**Shock, disbelief, denial, fear, terror, confusion, frustration, out of control, guilt, grief, loss of  
trust, faith, identity, future; selfish, unpredictable**

### **SEVERITY OF REACTIONS**

- A. Intensity**
- B. Duration**
- C. Pre-existing psychopathology**
- D. Suddenness**
- E. Acceptability**
- F. Proximity**

### **PTSD (Post Traumatic Stress Disorder)**

- A. Exposure to a traumatic incident (experienced, witnessed, heard of)**
- B. Duration of at least 1 month, onset can be months later**
- C. Indicators - fear of death, pre-existing psychopathology, disassociation**

**1/4 Re-experiencing the incident**

- a. intrusive thoughts**
- b. flashbacks, hallucinations, repetitive play (children)**
- c. distressing dreams**
- d. intense psychological distress**



# Crime Victim Compensation

## *Good News for Victims*



*Financial assistance for crime victims is available from in every state in the country, plus D.C., Puerto Rico, and the Virgin Islands.*

Crime victim compensation programs administered by state governments promote the recovery of more than 100,000 victims every year, paying out close to \$250 million annually.

*Victims of most violent crimes, including assault, rape, child abuse, and domestic violence, as well as family members of murder victims, are eligible.*

If a victim has been physically injured, or suffered severe emotional trauma, as a result of a violent or personal crime, he or she may be eligible for compensation. Property crimes, such as theft and burglary, are generally not compensable by state compensation programs.

*Crime victim compensation programs pay for medical care, mental health counseling, lost wages and support, and funerals.*

These are the major expense categories covered by the programs, but there are a host of miscellaneous expenses that also may be paid for. Each state determines which benefits it covers. Property losses are generally not covered.

*Victim assistants and law enforcement agents—people who work daily with victims—need to tell victims about this vital resource.*

Without this vital help, most victims will never learn about the financial help that is available to them. Police, prosecutors, victim specialists, medical providers, and others who work with victims must tell them about compensation opportunities. The compensation programs themselves operate with small staffs and depend heavily on the help of criminal justice professionals and victim assistants.

*To qualify for compensation, victims must meet certain requirements.*

While every state operates under its own law, the requirements are broadly similar. Victims must:

- report crimes promptly
- cooperate with law enforcement and prosecutors
- file a timely application
- be innocent of criminal wrongdoing, and
- have an expense or loss not reimbursed by some other insurance or public benefit program.

*Each state sets limits on the amount of compensation available.*

Maximums typically range from \$10,000 to \$25,000, though a few states have higher or lower maximums. In addition, there may be limits on some types of benefits, such as mental health counseling or funeral costs.

*Victims apply by submitting applications to the compensation programs.*

Applications should be available from police, prosecutors, and victim specialists. Victims may need help in completing applications. Once submitted, the applications are analyzed and decided by the compensation program. Victims are given an opportunity to appeal decisions.

*U.S. Crime Victim Compensation Programs: Phone and Fax #'s*

*(1/1/99)*

**ALABAMA**

(334) 242-4007  
(334) 353-1401 (fax)

**ALASKA**

1-800-764-3040/(907) 465-3040  
(907) 465-2379 (fax)

**ARIZONA**

(programs in each county)  
(602) 230-0252 [state coordinator]  
(602) 728-0752 (fax)

**ARKANSAS**

(501) 682-1323/(1-800-448-3014 in-state)  
(501) 682-5313 (fax)

**CALIFORNIA**

1-800-777-9229/(916) 323-6251  
(916) 327-2933 (fax)

**COLORADO**

(programs in each district)  
(303) 239-4402 [state coordinator]  
(303) 239-4491 (fax)

**CONNECTICUT**

(860) 529-3089/(1-800-822-8428 in-state)  
(860) 721-0593 (fax)

**DELAWARE**

(302) 995-8383/(1-800-890-0045 in-state)  
(302) 995-8387 (fax)

**DISTRICT OF COLUMBIA**

(202) 879-4216  
(202) 879-4230 (fax)

**FLORIDA**

(850) 414-3300/(1-800-226-6667 victims only)  
(850) 487-1595 (fax)

**GEORGIA**

(404) 559-4949  
(404) 559-4960 (fax)

**HAWAII**

(808) 587-1143  
(808) 587-1146 (fax)

**IDAHO**

1-800-950-2110/(208) 334-6080  
(208) 334-5145 (fax)

**ILLINOIS**

Court of Claims: (217) 782-0111  
(217) 785-1856 (fax)  
A.G.'s Office: (312) 814-2581  
(312) 814-5079 (fax)

**INDIANA**

(317) 232-7103  
(317) 233-3912 (fax)

**IOWA**

1-800-373-5044/(515) 281-5044  
(515) 281-8199 (fax)

**KANSAS**

(785) 296-2359  
(785) 296-0652 (fax)

**KENTUCKY**

(502) 564-2290  
(502) 564-4817 (fax)

**LOUISIANA**

(225) 925-4437  
(225) 925-1998 (fax)

**MAINE**

(207) 624-7882/(1-800-903-7882 in-state)  
(207) 624-7730 (fax)

**MARYLAND**

(410) 764-4214  
(410) 764-3815 (fax)

**MASSACHUSETTS**

(617) 727-2200, ext. 2557  
(617) 367-3906 (fax)

**MICHIGAN**

(517) 373-7373  
(517) 241-2769 (fax)

**MINNESOTA**

1-888-622-8799/(651) 282-6256  
(651) 296-5787 (fax)

**MISSISSIPPI**

(601) 359-6766  
(601) 359-3262 (fax)

**MISSOURI**

(573) 526-6006/(1-800-347-6881 victims only)  
(573) 526-4940 (fax)

**MONTANA**

(406) 444-3653/(1-800-498-6455 in-state)  
(406) 444-4722 (fax)

**NEBRASKA**

(402) 471-2828  
(402) 471-2837 (fax)

**NEVADA**

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(702) 486-2825 (fax)

(775) 688-2900 (Reno)

(775) 688-2912 (Reno fax)

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(603) 271-2110 (fax)

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(973) 648-3937 (fax)

**NEW MEXICO**

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(505) 841-9437 (fax)

**NEW YORK**

(212) 417-5160 (New York City)  
(212) 417-4829 (New York City) (fax)  
(518) 457-8727 (Albany)  
(518) 457-8658 (Albany) (fax)

**NORTH CAROLINA**

(919) 733-7974/(1-800-826-6200 in-state)  
(919) 715-4209 (fax)

**NORTH DAKOTA**

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(701) 328-6651 (fax)

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(614) 644-8553 (fax)

A.G.'s Office: (614) 466-5610

(614) 752-2732 (fax)

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(405) 557-6737 (fax)

**OREGON**

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(503) 378-5738 (fax)

**PENNSYLVANIA**

(717) 783-5153  
(717) 787-4306 (fax)

**RHODE ISLAND**

(401) 222-2287  
(401) 222-4577 (fax)

**SOUTH CAROLINA**

(803) 734-1900/(1-800-220-5370 in-state)  
(803) 734-1708 (fax)

**SOUTH DAKOTA**

(605) 773-6317/(1-800-696-9476 in-state)  
(605) 773-6834 (fax)

**TENNESSEE**

(615) 741-2734  
(615) 532-4979 (fax)

**TEXAS**

1-800-983-9933/(512) 936-1200  
(512) 320-8270 (fax)

**UTAH**

(801) 533-4000  
(801) 533-4127 (fax)

**VERMONT**

(802) 241-1255/(1-800-750-1213 in-state)  
(802) 241-1253 (fax)

**VIRGIN ISLANDS**

(340) 774-1166, ext. 4104  
(340) 774-3466 (fax)

**VIRGINIA**

(804) 378-3434  
(804) 378-4390 (fax)

**WASHINGTON**

1-800-762-3716/(360) 902-5355  
(360) 902-5333 (fax)

**WEST VIRGINIA**

(304) 347-4850/(1-800-642-8650 in-state)  
(304) 347-4915 (fax)

**WISCONSIN**

1-800-446-6564/(608) 266-6470  
(608) 264-6368 (fax)

**WYOMING**

(307) 635-4050  
(307) 638-7208 (fax)

**OFFICE FOR VICTIMS OF CRIME**

U.S. Department of Justice  
(202) 307-5983  
(202) 514-6383 (fax)

**NATIONAL ASSOCIATION  
OF CRIME VICTIM  
COMPENSATION BOARDS**

P.O. Box 16003  
Alexandria, VA 22302  
Phone and fax: (703) 370-2996

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# CRIME VICTIM COMPENSATION

## AN OVERVIEW

*Crime victim compensation programs across the country offer crucial financial assistance to victims of violence. This overview provides information on how the programs operate and what victims can do to seek help.*

Victims of criminal violence may suffer physical injury, emotional and mental trauma, and financial loss. For many victims and their families, the aftermath of crime can be a painful, difficult time, compounded by worry over whether hospitals and doctors can be paid, or whether income lost due to disability will affect the victim's capacity to pay for other essential living expenses. When a family member is killed, relatives must deal not only with their grief, but also with unexpected funeral bills and perhaps the need to find some way to support dependents of the victim.

Crime victim compensation programs exist to provide financial assistance to crime victims. These programs, now operating in all 50 states, the District of Columbia and the Virgin Islands, can pay for medical care, mental health counseling, lost wages and, in cases of homicide, funerals and lost support. While no amount of money can erase the trauma and grief victims suffer, this aid can be crucial in the recovery process, and can help victims preserve some financial stability and continuity.

Nearly every type of violent crime can result in a financial loss for which compensation programs can pay. Victims of rape, assault, robbery, sex abuse, drunk driving, and domestic violence, as well as the families of homicide victims, are examples of those who are eligible to apply for financial help.

With very few exceptions, compensation programs pay only for expenses related to personal injury, and do not cover property that is stolen, lost or damaged. (Eyeglasses, hearing aids, and medical prostheses are exceptions, and some programs cover crime-scene cleanup.) It's important for victims and advocates to check with any specific state to determine exactly what it can cover.

In addition, it's important to remember that compensation programs are "payers of last resort," meaning that they cannot offer benefits for expenses covered by "collateral resources," such as medical and automobile insurance, employee benefits, other public assistance programs, and restitution received. With limited funds, programs must conserve scarce resources as much as possible.

Many programs experienced a remarkable increase in applications in the late 1980s and early 1990s. While many states continue to show some growth, others have seen a leveling off of applications. This trend, coupled in many states with the institution of sound cost controls--like paying less than 100% of the billed amount, while ensuring that victims are

not charged the difference--has meant that more programs have been able to achieve a fiscal stability that was unusual just a few years ago. As a result, numerous programs have expanded benefits and enlarged their definition of eligible victims. For example, all but a handful of states now cover mental health counseling for family members of homicide victims, and many now include more relatives and household members than were previously eligible. Overall maximums on benefits have risen in a number of states, as have caps on specific items, like funerals. And more programs are seeking to find ways to reach and serve greater numbers of domestic violence and sexual assault victims, as well as minorities.

The goal of compensation programs across the country remains the same: providing timely financial help to crime victims in need. The nation's compensation programs will continue to be a crucial factor in helping victims recover from the trauma and economic burden of criminal victimization.



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## *Program Development, Size and Structure*

California established the nation's first compensation program in 1965, and five other states created programs in the next three years. By 1980, 28 states were providing victim compensation, and most of the rest of the states authorized programs during the next decade. In 1997, all 50 states, plus the District of Columbia and the Virgin Islands, are operating compensation programs, paying out nearly \$250 million annually to more than 100,000 victims nationwide.

California is the largest program in the country by far, paying out about a third of the total benefits paid by all programs combined. (California awards between \$75-80 million annually, while the next largest program, Texas, pays out between \$20-30 million each year.) The median annual payout per state is about \$2 million (half the states pay a total less than that, and half pay more), but the range is considerable, with nearly a dozen states paying less than \$500,000 annually and about the same number paying more than \$3 million.

Staff sizes tend to be quite small, with 12 states operating with 3 or less people, and 34 states employing less than 10. Only 7 states operate with more than 20 employees, California again being the largest, with over 250 employees.

The programs function within a variety of state and local government settings. Nearly a third are affiliated with criminal-justice-related executive branch agencies, and another fifth function within offices of attorneys general. Eight are independent agencies; workers' compensation bureaus house four of the programs; and other affiliations include corrections departments, social services agencies, and finance and management departments. Five states operate their programs within courts or claims courts.

Colorado and Arizona are unique in operating compensation programs through local prosecutors' offices. Twenty-two compensation boards in Colorado (one for each district) and 15 boards in Arizona (one in each county) adjudicate claims under state law and coordination.

## *Funding*

Programs obtain their funding from a number of different sources, but the states can be divided into two basic categories: those that receive the bulk of their funding from fees or charges that offenders pay, and those that depend on general-revenue appropriations from legislatures. 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.

The types and level of offender assessments vary markedly from state to state. Many states require that offenders pay a set penalty or fee, such as \$50 per felony and \$25 per misdemeanor, into a crime victim compensation fund. Other states will take a certain percentage of the offender's fine, or place a surcharge upon that fine, and use it for compensation funding.

*Fund Recovery.* Because offenders and others liable for injury to victims should pay for the consequences of crime, and because programs need to make the most of the scarce resources available for compensation, "fund recovery" has become an important concern for many programs. Some are aggressively seeking restitution from offenders by working with prosecutors and judges to ensure restitution orders are sought and issued, and by monitoring payment through appropriate channels.

While for most programs fund recovery is a minor source of total income, a few programs are beginning to recover more than 10% of their awards.

*VOCA.* Federal funds provide about 20-25% of the state compensation programs' total budgets. Under the Victims of Crime Act of 1984 (VOCA), each eligible program can receive a grant equaling 40% of the state dollars awarded to victims. This means that for a typical state, out of every \$140 spent each year, \$100 will be state and \$40 will be federal, resulting in a 72%/28% state-to-federal mix of money. Of course, states also must bear all or nearly all of the administrative costs for operating their programs (only 5% of each state's VOCA grant is available for administrative purposes). While the large majority of funds spent in operating the programs and paying victims comes from state budgets, VOCA grants have enabled many states to expand coverage, and they make a significant difference in ensuring that there is enough money available to cover all eligible victims that may apply. VOCA will provide about \$70 million to state compensation programs in federal fiscal year 1998.

To be eligible for a federal grant, certain conditions must be met. Programs must cover medical expenses, mental health counseling, and lost wages for victims, as well as funeral expenses and lost support for families of homicide victims. They must consider drunk driving and domestic violence as compensable crimes, and 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 must agree to consider for eligibility all U.S. citizens who are victims of crimes within their states, regardless of the residency of the victim. Each state also must offer benefits to its own residents who are victimized in states not eligible for VOCA funding, but since all states currently have eligible compensation programs, they are required to cover their residents for out-of-state crimes only in Puerto Rico, which does not have a program but is considered a state under VOCA. (Nevada recently added coverage of nonresidents, conditional on the availability of federal funds.) Programs also must cover their own residents who are victims of terrorism in foreign countries; Congress recently extended the deadline for compliance with this requirement to October 1999. Finally, programs must cover crimes falling under federal jurisdiction within the states, such as crimes occurring on Indian reservations, National Park lands, or military bases.

The VOCA grant program is administered by the Office for Victims of Crime in the U.S. Justice Department.

### *The Application Process*

Application procedures vary from state to state, but in a typical state, a victim will be referred to a compensation program by police, prosecutors, victim-witness programs or service providers, or through a poster or written material developed by the compensation program itself. Applications are usually available through law enforcement or victim assistance and service programs, or through direct contact with the compensation program. The process begins when an application is signed and submitted by the victim.

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.

Typically, states request and analyze police reports to confirm that a crime took place and to determine whether the victim was involved in any illegal or contributory activity when victimized. Information from service providers like hospitals, doctors, counselors, and funeral homes, as well as employers if work loss is claimed, forms the basis for benefit determinations.

Decision-making authority varies from state to state, with about a third of the states using part-time boards or commissions to determine eligibility and awards, and the rest authorizing full-time administrative staff (usually program directors) to make determinations. In three court-based programs, judges or court officials decide claims.

The victim should file an application for compensation in the state where the crime takes place, regardless of the victim's residency. A few states will accept claims from their residents for crimes occurring in foreign countries (all states should soon be covering terrorist incidents abroad). Nearly every state will cover foreign residents injured in the states.

### *Eligibility Requirements*

While eligibility requirements vary somewhat from state to state, all programs have the same basic criteria. The victim generally must:

- Report the crime promptly to law enforcement (72 hours is the general standard, but nearly all states have "good cause" exceptions applied liberally to children, incapacitated victims, and in other special circumstances);

- Cooperate with police and prosecutors in the investigation and prosecution of the case (again, some states can make exceptions);

- Submit a timely application to the compensation program (generally one year from the date of the crime, though a few states have shorter or longer time frames, and most can waive these requirements when appropriate) 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.

Apprehension and/or conviction of a perpetrator is not a prerequisite to receiving compensation.

The eligibility of a victim's dependents or other secondary victims generally hinges on the eligibility of the "direct" victim (the one who suffered the injury or death). For example, if a homicide victim was engaged in criminal activity, the family generally would be ineligible for any benefits.

Payment of benefits also depends on whether the victim's losses have not been or will not be paid readily from some other collateral source such as medical insurance or public assistance programs. When restitution from the offender is ordered by a sentencing judge, compensation can still be paid, with the understanding that when the victim recovers any money from the offender, the victim will repay the program for covered losses.

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Each state operates under its own law, rules, policies and procedures, and while all of the programs share broadly similar eligibility requirements, it's important for those accessing any program to check with the individual state to learn exactly how it operates.

### *Compensable Costs*

All compensation programs cover the same major types of expenses, though their specific limits may vary. The primary compensable costs covered by all states are the following:

- Medical expenses;
- Mental health counseling;
- Lost wages for victims unable to work because of crime-related injury;
- Lost support for dependents of homicide victims; and
- Funeral expenses.

Medical fees to hospitals and doctors comprise well over half of the amounts paid. Lost wage and support payments are the next largest expense category for most states, though awards for counseling are growing rapidly (a few programs are now paying from 20% to 40% of their awards for counseling). In addition, a number of other expenses are paid for by some, but not all, programs, including the following:

- Moving or relocation expenses, often limited only to instances where the victim is in imminent physical danger, or if the move is medically necessary (because of severe emotional trauma from sex assault, for example);
- 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 (primarily child care and housekeeping), usually limited to payments to non-family members;
- 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;
- Pain and suffering (only a couple states);
- Attorney fees, usually in limited amounts and sometimes only for appeals;
- 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).

### *Maximums and Limits*

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. In addition, many states have lower limits on specific compensable expenses, like funerals and mental health counseling.

To qualify for payment, mental health counseling must be focused on crime-related trauma rather than on pre-existing conditions or more general problems. Treatment plans are generally required.

### *Collateral Resources*

All compensation programs are "payers of last resort." This means that any other "collateral" sources of payment to the victim, such as restitution from the offender, medical or auto insurance, employee benefit programs, Social Security, and Medicaid, must be accessed first before the programs will consider payment. (Since restitution, if paid at all, is often received over a long period of time, compensation programs usually will pay in advance rather than force the victim to wait to receive restitution.)

In addition, 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 which the program has covered. (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 by the victim from other sources can go to pay for the remaining \$90,000 in losses before the compensation program will expect repayment.)

### *Foreign Countries*

New Zealand and Great Britain established the first compensation programs in the world, immediately preceding California's, and a number of developed countries have programs today. Austria, Belgium, Denmark, France, Germany, Holland, Ireland, Norway, Sweden, and Australia have programs for which U.S. citizens are generally eligible, while Japan's program restricts benefits only to Japanese nationals. Only Canada and the U.S. operate programs among countries in North, Central and South America.



U. S. Department of Justice

*Nova M. Manella*  
*United States Attorney*  
*Central District of California*  
1200 United States Courthouse  
312 North Spring Street  
Los Angeles, California 90012

(213) 894-2401

June 26, 1998

**FIELD**(address)

Dear **FIELD**(SAC or Director's Name):

By this letter, I am seeking your assistance, and the assistance of your agency, to improve the delivery of services to crime victims and witnesses in the Central District of California. As you are aware, President Clinton and Attorney General Reno have made a strong commitment to ensuring that that victims of federal crimes receive information about available resources, reasonable protection from harassment and intimidation, notification of their rights, information on the status of their cases, restitution for their losses, and other services as mandated by federal statutes and policies. Copies of the relevant statutes are enclosed herewith.

#### IMPLEMENTATION OF A FEDERAL VICTIM ASSISTANCE TASK FORCE

In order to comply with these statutes and policies and to ensure that our district provides for victims as soon as possible after a crime has been discovered and throughout the criminal justice process, I have asked Debbie Deem, our Victim/Witness Coordinator to organize a Federal Victim/Witness Assistance Task Force for the Central District of California.

To maximize the effectiveness of the Task Force, I am asking each federal law enforcement agency in the District to designate a representative, preferably someone in a line position such as a Special Agent, to serve as the agency's Victim/Witness Coordinator and to attend meetings of the Task Force. In establishing such Task Forces, other districts have found that such line level staff is a critical element to ensure that agency policies and procedures are carried out. Support staff, who may be doing the actual day to day assisting of victims as a Coordinator, should also attend the Task Force meetings.

It is not expected that this Coordinator position will take up a great deal of additional time. The time commitment is anticipated to require:

- o attendance at approximately 4 meetings a year, in our office,
- o assisting management efforts in implementing victim/witness policy and procedures for your agency,
- o

- availability to conduct training within your agency on federal laws and district policies, available resources for victims, and coordinated efforts regarding victim assistance,
- providing technical assistance to staff within your agency on victim issues and relevant laws, and assisting specific victims upon request,
- assisting the Task Force on identifying criminal justice employees who perform in an outstanding manner on a victim/witness matter, who may deserve recognition during each year's National Crime Victims' Rights Week.

**Please have your agency representative/s contact Ms. Deem, as soon as possible, at 213-894-6786. She would like to schedule the first meeting of the Task Force in July, 1998.**

### **Mandatory Restitution Act of 1996**

I also seek your assistance in implementing new changes to the restitution law and ways to improve the delivery of crime victim services in the Central District of California. On April 24, 1996, the Mandatory Victims Restitution Act of 1996 was enacted as part of the comprehensive Anti-Terrorism and Effective Death Penalty Act of 1996. Among the primary objectives of this statute is obtaining full restitution to all identifiable victims for crimes of violence, fraud and property crimes, and avoiding full scale evidentiary hearings in determining the amount of victim losses.

Toward this end, the new restitution statute requires the government to provide the probation officer with "a listing of the amounts subject to restitution" for each of the identified victims upon the request of the Probation Office, after consultation with the victims. (18 U.S. C. §3664(d)(1)).

To implement the new restitution and right to notice requirements, I need the assistance of your office in preparing information on identified victims and witnesses and their reported losses, by the date of indictment on every case, where possible. Much of this information is already included in many agency investigative reports. In addition, it would be very helpful if agents remind victims and witnesses to report address changes to an agent while a case is under investigation, to ensure that they can receive proper notices and the opportunity to request restitution, even where investigations may last for several years.

In each new case prior to indictment, please have your agents furnish the following information about the identified victims and witnesses:

- the names ( if business or corporate victim, the name of an authorized representative)
- designation of that person or company as a victim or witness
- addresses
- telephone numbers (work and home)
- amount of loss reported at the time of investigation
- other pertinent information such as date of birth if elderly victim in fraud cases, to show possible vulnerable victim status, or in telemarketing cases, which allows enhancement of sentence if elderly, or any special language needs of a victim.

If possible, and in all cases where there are over 15-20 victims, this information should be provided on a computer diskette, compatible with an ASCII format. Our office utilizes Word Perfect 6.1, and has access to Access Database, so even though your agency uses another type of word processing or database software, we should have the capability to convert your data into a format which we can use.

If you do not have access to word processing or database software, the information listed above should be provided as a separate attachment list, to the existing agency investigative report. By separating the Victim Identification and Loss list from the case agent report, our office can work to maintain victim confidentiality and avoid discovery of confidential and sensitive information, as well as ensuring timely notifications to all victims and witnesses of the status of their case, and ensure they have the opportunity to have their losses considered for restitution. This Victim Identification data will become a part of our case file, and will be provided when appropriate, to the Presentence Probation Officer to assist in contacting victims as required, as well as the Clerk of Court, who is required to distribute any court ordered restitution, under the Mandatory Restitution Act.

Please contact Ms. Deem, at 213-894-6786, or myself if you have any questions about these important projects. She is also available to assist in any needed Victim Assistance Training on applicable federal laws and resources available, to any federal agency. I look forward to your participation in ensuring, as President Clinton recently ordered, "that victims should be the center of the criminal justice process."

Very truly yours,

Nora M. Manella  
United States Attorney.

cc Enclosure



**Sample Abbreviated Agenda for Initial Meetings of a Federal V/W Assistance Task Force  
(May divide into first two meetings if extra time needed):**

- Welcome and introduce USAO staff, and role of VWC's. (include U.S. Attorney if possible for greeting and/or entire meeting to show importance of program)
- Discussion of purpose of the Task Force.
- Overview of vision of Task Force and their role, use as a tool to assist them and agencies in efforts to comply with law and because its right thing to do.
- Use handout from President and/or Attorney General on need for victim centered criminal justice system, and need for all federal criminal justice agencies to be involved.
- Agency check in /Agency representatives introduce who they are/ types cases, victims and witnesses they have, any special problems or concerns. (At later meetings, this same format is used, which in Northern District was called 'Agency Check In and Introduction of New Members and Guests'.)
- Agency Representative Duties: Briefly highlight ways that members can use information, become technical specialists within own agencies:
  - including giving brief presentations at their staff meetings, sharing materials, working with management for policies and procedures, annual reporting requirements, and ways to get compliance as required element of performance work plan within each agency. (Right now this is only DOJ agencies, but Postal Investigations in Northern District of California recently had this implemented, due to the Postal VWC determining it should be done.
- Duties would potentially include:
  - Establish procedures for agency
  - Provide training for agency personnel
  - Act as the technical expert- assist/advise agency personnel in doing v/w duties
  - Serve as liaison to Victim Service Agencies
  - Provide direct Services to certain Victims/Witnesses
- Brief overview of Statutes (May need to divide this into two meetings-- the first on the statutes, the second on resources).
  - Provide copies of relevant VW statutes, AG Guidelines to help clarify law
  - Point out that includes all agencies involved in federal or military investigation or detection, prosecution and corrections.
- Brief overview of federal, state and community resources: Role of local v/w centers, victim compensation, overview of where fine money from VOCA fund goes- into victim programs importance of ensuring victims of violent crimes aware of compensation.
  - Include handouts about v/w compensation that they can provide to their own agencies in staff meetings.

- Overview of what 's implemented by District USAO. (May also need to be done in second meeting)
  - Notification/helping victims access the system
  - How witness travel handled-- talk to VWC if complaints
  - Victim impact information and how used
  - Court support/crisis intervention/information/referrals
  - Restitution procedures
  - Special victim assistance programs such as Emergency Fund and EWAP
  - Any special programs involving your district
  - Inmate Financial Responsibility Program
  - Bureau of Prison Notification program: Emphasis that Agents also eligible and encouraged to participate
- Participant Views and Feedback
  - Go around the room to hear each agency representative address their needs and concerns- based on information just learned.
- Discuss suggestions for future meetings, set priorities.
  - Discuss role of future meetings in working together on how to best implement the laws and create 'best practices' within the District, as a coordinated effort.
  - Suggest member share information learned from each meeting with their agencies in staff meetings or in emails.

Mention topics for future meetings including

Be sure to solicit ideas from the group as to what their needs are, recognizing that at first everyone in the Task Force must be aware of federal laws and the basic services available. Example: Los Angeles- several agencies have identified identity fraud as a type of case handled.... "pressure on USAO to develop loss guidelines and do these cases."

This is the focus of the first 2-3 meetings, depending on the rate that the group is able to absorb the information.

Offer to share handouts, transparencies used in training with them, for use in training their own agencies, offer to assist in any trainings they give within their agencies.

- Conclusion of meeting
  - Discuss meeting time and frequency-- set up meeting dates for the rest of the year, so all know.
  - Confirm address, phone, E-mail and fax information. (Share V/W member list at next meeting or with minutes of first meeting which are mailed to all members).
- ▷ Additional early considerations
  - Size of room, AV availability
  - Consider days representatives most likely to be able to come- fewest court hearings
  - Consider if group will meet in the summer
  - Consider whether branch offices and agencies can participate (sometimes telephonically)
  - Consider how limited or large you want group

## **Implementing a Federal V/W Assistance Task Force Meeting**

### **Meeting Ideas or Speaker Topics for Task Force Meetings**

**(note that these may be repeated over the course of your task force meetings as needed.)**

These topics can be developed into lesson plans, discussion points, issues for the Task Force, or special speakers to address:

- ▶ **Creating Awards Program to Federal Criminal Justice Workers for Exemplary Service in providing Victim services as part of National Crime Victims Week**
- ▶ **Witness protection, harassment issues and resources (Ochran case, EWAP, HUD, etc)**
- ▶ **Interstate Domestic Violence, Restraining Orders and stalking laws and resources**
- ▶ **Restitution/ what happens once ordered (Invite FLU, Clerk of Court, Probation)**
- ▶ **Provisions, laws, resources, regarding children victims and witnesses and implementing multi disciplinary team efforts**
- ▶ **Mandatory child abuse reporting laws (show video 'The Time to Act')**
- ▶ **Victim Compensation eligibility and process (have local v/w center provider do)**
- ▶ **What do victims need? Overview of effective crisis intervention practices**
- ▶ **Designing VW brochure for use by district agencies covering a variety of issues identified as needed by the Task Force (including bilingual) such as**
  - introduction of rights as a victim/witness**
  - explanation of the court process**
  - crisis intervention assistance**
  - federal domestic violence and stalking**
  - HIV/STD testing rights and sexual assault resources**
  - Restitution Explained**
  - Laws and resources relating to victim witness protection issues**
- ▶ **Potential civil liabilities regarding v/w issues**
- ▶ **Federal laws regarding workplace violence in federal buildings**
- ▶ **Resources and assistance for financial fraud victims, including how district can better handle large scale cases**
- ▶ **Assisting victims of identity fraud: importance of early intervention**
- ▶ **Whistle blowers: victims or witnesses, and what can be done to help**

- ▶ Gathering resources to create a Federal District or Statewide V/W resource directory
- ▶ Catastrophic crime victim assistance under the Antiterrorism Act
- ▶ Critical Incident Debriefing and its Usefulness with Federal Law Enforcement  
(Send out information on Jeffrey Mitchell trainings, and other trainings relevant to law enforcement crisis intervention)
- ▶ Trends and recent bills, laws introduced or passed in state or federal system regarding victim assistance, restitution, witness protection, the constitutional amendment for crime victim rights. (This is a continual process as new federal or state statutes are passed.)
- ▶ Introduce special videos or training aides, such as After the Robbery, Victims of Fraud: Beyond Financial Loss, Ok. Bombing Crime Victims Awards, etc. and discuss how the video can be used by various agencies, as part of staff meetings, regional trainings.
- ▶ Presentation and demonstration of VINES (Victim Information and Notification Everyday which is now being used in several states and counties) which is a tool to do telephone notification to victims (especially useful in domestic violence cases) of when someone is released on bail, or the continuing status of a court case.
- Discussion of Bureau of Prison Programs, such as Inmate Financial Responsibility Program, V/W Notification Program, the Drug and Alcohol Early Release from prison to half way house program and its impact on victims. (Invite community corrections, BOP personnel to do).

**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**WORKSHOP RESOURCE MATERIALS**

***TRACK EIGHT: LAW ENFORCEMENT  
VICTIM/WITNESS  
ISSUES***

**THE FOLLOWING RESOURCE MATERIALS HAVE BEEN  
SUBMITTED BY THE PRESENTERS CONDUCTING  
WORKSHOPS IN THIS PARTICULAR TRACK.**

**ADDITIONAL MATERIALS MAY BE DISTRIBUTED AT THE  
WORKSHOPS THEMSELVES.**



# COGNITIVE INTERVIEWING AND THE VICTIM/WITNESS IN CRISIS

## INTRODUCTION

Most law enforcement training academies teach officers and investigators to rely on the traditional "who, what, where, when, why and how" questions in interviewing. While such training may equip police investigators as report takers, it does not give them the foundation they need to be effective information gatherers. Many criminal events traumatize the victim or terrify the witness so much that critical information is lost in the overwhelming emotional reaction that accompanies the crime. In these types of cases the question and answer approach employed as part of the "standard" method of interviewing may inadvertently suppress important details and critical leads. We need to move away from the principles advocated by the "Jack Webb ... 'Just The Facts Ma'am' School of Interviewing." It is vital that law enforcement trainers begin to neutralize this type of approach by presenting dispatchers, first responders and investigators with a more structured approach, one that assists both the victim/witness and the law enforcement interviewer.

At the Federal Law Enforcement Training Center (FLETC), in Glynco Georgia just such an approach is being taken, one built on the foundation established by the Cognitive Interview Technique as developed and revised by Geiselman and Fisher. What we at FLETC have added to the foundation is: (1) a better understanding of what the victim or witness is experiencing, (2) techniques for identifying and removing emotional barriers--created by the experience--that can stand between the investigator and critical information, (3) additional suggestions for obtaining further information after the first "formal" interview and (4) how to best maintain the behavioral integrity of the information obtained from the victim or witness. With this revised approach emerges a two-pronged interview technique that not only significantly increases the amount of accurate information obtained by the investigator, but assists victims and witnesses to effectively "work through" their experience toward positive recovery.

## THE FOUNDATION

The foundation for an effective approach to the victim/witness interview lies with the "Witness Memory Retrieval Technique", originally developed by R. Edward Geiselman of the University of California at Los Angeles, and Ronald P. Fisher at the Florida International University. Their process represents a collection of memory-jogging techniques designed to provide investigators with an organized series of step-by-step procedures that help victims/witnesses retrieve and elaborate on information stored in the memory. Their cognitive technique as originally developed and subsequently revised is specifically designed for use with cooperative victims and witnesses. It is designed to enhance recall...not detect deception. It is easy to learn and can be incorporated with limited training. It seeks to maximize the quantity and quality of information while minimizing the effects of misleading or inaccurate information.

The Cognitive Interview Technique as initially developed in the early eighties (and since revised) has been shown to produce as much as 45% more accurate information. Over the last decade, Geiselman and Fisher conducted five experiments with the new technique; there was an increase in the amount of correct information, but no increase in the proportion of incorrect data.

Cognitive interviewing techniques are based on the principles of "mnemonics", a technique for improving the memory. This approach guides the person back to the original memory record by use of an established formula. Since we think in pictures, mnemonics experts suggest that as investigators, we should facilitate the witnesses' focus until the picture of the criminal event becomes clear. The techniques used in cognitive interviewing increase the links between stored memory and provide cues that help witnesses recall what they saw or heard.

One of the main goals of the Cognitive Interview is to mentally reinstate the physical and psychological environment of the original event - to reconstruct the event...keyed this time to the feelings of the victim-witness.

Cognitive interviewing is certainly not more difficult to conduct than the more traditional law enforcement interview with its rapid-fire, short answer questions. It is simply different! We need to recognize that we are often so accustomed to asking the "6W's" (who, what, when, where, why and how) that we may be preoccupied with our next question and fail to really listen. Remember, this approach breaks the focus of our interview, recall suffers and valuable information is often lost.

Perhaps the real value of cognitive techniques lies in their ability to create a structured approach to interviewing that helps replace the tendency to ask numerous short-answer questions with a more open-ended, "Tell me" approach. When this approach is used, the "6 W's" will often be answered in the victim's narrative response. Training for interviewers must also emphasize the importance of patiently waiting through pauses and avoiding interruptions.

The process of reconstructing the event may trigger some very intense emotions for some victims and witnesses. It is important that law enforcement understand: (1) what these emotions are, (2) where they come from and (3) how to effectively deal with them so that they don't serve as barriers between the investigator and the information needed from the victim or witness.

## **THE CRISIS**

In both basic and advanced training at FLETC, we are emphasizing a simple and often overlooked concept: Many victims and witnesses will experience the event, the crime, as a crisis. Most of these same victims and witnesses will successfully recover from the experience, and the way they do that is by passing through three stages of crisis

reaction to final "reorganization". In the process they must :

- Develop an understanding of the event
- Re-establish a sense of trust
- Re-establish equilibrium...a sense of control

According to Dr. Morton Bard who researched crime victims' reaction to their victimization, the pattern of behavior that people follow in crisis situations is remarkably similar. The crisis reaction develops in three stages from an initial disorganization of the self, (Impact), through a period of struggle, (Recoil) to the eventual readjustment of the self, (Reorganization).

Dispatchers, uniformed officers, and investigators dealing with victims or witnesses during the first few minutes, hours or even days after the crime has occurred, will frequently observe and need to effectively deal with crisis reactions such as: disorganization and confusion, numbness or shock, disorientation, aimless movement or immobilization, and disbelief. They can expect to encounter crime victims who are angry, afraid or ashamed. They are dealing with persons who may be unusually susceptible to the influence of others.

Those dealing with the victim or witness in the follow-up stages of the investigation may be confronted with two conflicting behaviors:

- 1) The victim may relive the emotional experience vividly (facing his or her emotions), or
- 2) The victim may attempt to deny the feelings by refusing to talk about or deal with the incident.

In the course of a lengthy investigation, the victim may go back and forth between these behaviors, re-experiencing the emotions faced during the "impact" stage at one minute, while trying to mentally deny the crime even occurred, the next.

During this stage, the victim may also be experiencing extreme fear, shame or guilt, intense anger or resentment,

phobic reactions to details of crime ( such as particular places, times of day or kinds of people), difficulty in recalling details, difficulty in making simple decisions and vast mood swings (the "emotional roller coaster"). During this period, to behaviorally resolve their crisis, victims will repeatedly think and talk about the crime.

The duration of the recoil stage varies widely depending on the severity of the crime and the level of the violation of self. It is generally accepted that for the victims of rape or survivors of homicide, the recoil stage lasts a minimum of a year.

By using Psychological First Aid, you assist by identifying and removing the emotional barriers such as anger or fear that can stand between you and the information you need to get from your victim or witness.

### **THE INITIAL RESPONSE - PSYCHOLOGICAL FIRST AID**

According to Dr. Martin Symonds, New York City Police Department Psychiatrist, and Dr. Calvin Fredericks, Medical Psychology Professor at UCLA, the first moments of police contact with a victim-witness are usually the most crucial in terms of emotional responses and accurate memory. An effective initial experience with law enforcement (whether it's with dispatchers or uniform officers) is necessary to provide the proper emotional environment for successfully applying cognitive interviewing techniques.

Organizations including the International Association of Chiefs of Police (IACP) and The National Sheriff's Association have for some time now recommended that law enforcement personnel be trained in a victim/witness communication process called "Psychological First Aid." The importance of this process was also voiced as part of the recommendations for law enforcement made by the Final Report of the President's Task Force on Victims of Crime. While originally designed as a communication technique for use by first responders, Psychological First Aid has proven to be equally valuable to criminal investigators and prosecutors. We have learned from the work of Bard and Symonds that taking a few minutes to focus on the victim or witness can really benefit the investigator in terms of improved cooperation and more accurate and complete information.

Properly applied, Psychological First Aid techniques help ensure that the initial law enforcement response focuses first on meeting the immediate needs or concerns of the victim or witness. Most models for such an approach suggest that we begin by asking a simple question like, "Are you OK?" and that we then really listen to the victim/witness response.

When victims then express their emotions like anger or fear, the challenge is to let them: (1) Get these feelings out in the open (VENT) and, (2) Let them know that these types of feelings are normal and appropriate (VALIDATE).

Often when we don't apply these techniques, the victim or witness may stay mentally focused on their emotions rather than our investigation. It also helps to spend a short period of time helping the victim prepare for what is coming next in terms of the interview and the investigation.

Armed with an improved understanding of the victim's crisis and of techniques for identifying and effectively dealing with emotions that can surface as a result of that crisis, we are now prepared to conduct an effective interview.

## THE INTERVIEW

The Four-Step Process of The Cognitive Interviewing Technique (Geiselman and Fisher 1985) suggests that the criminal investigator guide victims and witnesses to:

### RECONSTRUCT THE SENSORY ENVIRONMENT

Ask them to think about how they were feeling. Have them focus on the event in their minds' eye. Ask them to describe weather, surroundings, objects, people and smells.

### REPORT EVERYTHING

Ask them to focus on the event and tell everything. i.e. "Don't edit anything, even if you feel that it is unimportant." Make this an uninterrupted narrative!

### RECALL EVENT IN A DIFFERENT ORDER

Ask them to tell the story in reverse, beginning with the last thing that occurred and continuing to the first thing that happened.

### CHANGE PERSPECTIVES

Ask them to assume the role of another person present or nearby. What would he or she have been able to see?

Follow the narrative with these five specific questions, asked slowly, when appropriate:

\* Appearance: Who did the person remind you of anyone? Why?

\* Names: Go through the alphabet. Try to recall a name or first letter of the name heard.

\* Numbers: How many did you see? Were they high? Low? Mixed with letters?

\* **Speech:** Who did the voice(s) remind you of? Why?

\* **Reactions:** What was your reaction to what was said?

We suggest that investigators complete their interview by summarizing what was related in the interview.

Keep in mind that when utilizing these techniques investigators should:

- Limit, or preferably, eliminate interruptions
- Limit short-answer questions
- Properly sequence questions. Focus on one area until the mental picture becomes clear and retrieved information complete.
- Slow down the interview process...go at the victim's pace.

## **POST INTERVIEW CONSIDERATIONS**

We teach that the cognitive interview does not end with the formal interview in the office or the field. Recognize that in working through their crisis, victims and witnesses will think a lot about the crime. Many will repeatedly wake up early, mentally replaying the incident. The interview techniques we advocate may enable many victims and witnesses to restructure their early morning cognitive replay of these events. By understanding and formally acknowledging these routine patterns of crisis reaction, law enforcement will help not only the victim/witness but their own investigation.

Finally, in our basic and advanced training, we emphasize the importance of referral to victim assistance programs. For example, if your victim was injured, he or she may be mentally focused on the issue of how to pay the medical bills. By discussing Crimes Compensation, we help to ease that concern, allowing him or her to better concentrate on the investigation.

Also, such referral will help to maintain the behavioral integrity of the information we receive from our victim or witness. If the victim is called upon to testify, he or she testifies stronger with more accurate recall when relating the events of the crime. Strong testimony translates as an improved chance for conviction!

Earlier, we said that most victims will successfully recover from the crisis of their victimization, and that in the process they must:

- Develop an understanding of the event

- Re-establish a sense of trust
- Re-establish equilibrium...a sense of control

By combining cognitive interview techniques, psychological first-aid and victim assistance referral, we can best assist our victim or witness and our own investigation. Cognitive interview techniques assist the victim or witness to "develop a complete understanding of the event." Psychological First-Aid helps "re-establish a sense of trust" between the victim and society, with the law enforcement investigator as its representative. Proper referral for victim assistance helps to "re-establish equilibrium...a sense of control."

## **CONCLUSION**

The Federal Law Enforcement Training Center is committed to remaining in the forefront with training that enables officers and investigators to conduct effective victim/witness interviews. We feel that a two-pronged interview technique designed to provide Psychological First-Aid while facilitating accurate memory recall, best enables us to do just that. We challenge other training facilities to join us and to discover for themselves the effectiveness of such an approach. We look forward to hearing from others who have established similar training.

Determining the most effective and reliable tools available is the hallmark of most successful investigators. As training academies practice, refine and evaluate the techniques discussed here, we will continue to reap the benefits of aiding in and sustaining the emotional recovery of the victim or witness while increasing the amount of accurate information obtained.

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5. The nature of past treatment efforts and the juvenile's response to such efforts; and
6. The availability of programs designed to treat the juvenile's behavioral problems.

A review of the Juvenile Delinquency Act reveals that the provision requiring the court to issue findings related to the six enumerated factors does not specify the manner in which each factor should affect the final balance. For example, a juvenile's advanced maturity and psychological development might indicate that he or she is psychologically like an adult and thus should be transferred; on the other

hand, the same evidence might mitigate against transfer because the defendant's maturity suggests that he or she is capable of one day functioning as a contributing member of society.

Because the juvenile justice system stresses rehabilitation over punishment, attorney arguments (and witness presentations) at the transfer hearing should focus on how each factor affects the defendant's prospects for rehabilitation. If the prosecution can show that there is little (or no) prospect for the defendant to mend his or her ways by age 21, the court should grant transfer of the juvenile to adult status "in the interest of justice." ♦

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## Victim-Witness Response to Church Arsons

*Kathi West*

*Victim/Witness Coordinator*

*Western District of Texas, Austin, Texas*

On December 7, 1996, a middle-aged man who lived near the Hopewell United Methodist Church in Centerville, Texas, and his friends burglarized the small community church for the third and last time. This man had been pawning the stolen church property to support his crack habit. Unfortunately, this time he decided to torch the church to destroy any evidence law enforcement might find to link him to the burglaries. Bureau of Alcohol, Tobacco and Firearms (ATF) Special Agent Jim Rose from the Waco field office, along with Texas Ranger Jim Huggins, worked the case diligently and brought to fruition the Federal arson prosecution.

Assistant United States Attorney Angela Williams, of the National Church Arson Task Force, prosecuted the case. Even though the Western District of Texas was not prosecuting the case, the ATF agent had requested victim-witness (VW) assistance from the United States Attorney's office (USAO) early in the case. Specifically, Agent Rose requested that the USAO's VW Coordinator be permitted to work as a liaison and contact person with the victim congregation for the purpose of answering case status questions, organizing verbal and written victim impact statements, accompanying victims to court, and assisting the congregation with its effort to locate rebuilding resources.

The Hopewell United Methodist Church had a congregation consisting of about 12 regular members who were

extremely devoted to their church. Since the arson, two church members have worked tirelessly to rebuild the church. They have devoted all of their time to working with the insurance company, contractors, and potential funding sources. Immediately after the fire, various people and groups pledged to assist with different phases of the rebuilding, but very few actually followed through. The congregation's faith never faltered in the pursuit of their goal to rebuild their church.

### The Role of a VW Coordinator in Church Arson Cases

Congregations of burned churches have two primary concerns in the aftermath of an arson. First, the congregation's most important concern is to rebuild their house of worship to help reestablish a sense of normalcy in their community. Second, the church members are often concerned that the guilty parties be found and prosecuted. Naturally, church members are traumatized by the fact that someone in their community could harbor so much hatred toward their group that they would want to burn down their house of worship. The VW Coordinator can assist prosecutors in addressing these concerns by keeping the church

contact person updated on the case status, disposition, victim rights, etc.

While there are many other functions of the VW Coordinator in a church arson case, one of the most important is to be a resource to victim congregations who are searching for sources to back the rebuilding of their church. The VW Coordinator may assist the congregation in the compilation of a packet to send to the potential funding sources so they can open a file on the church fire for funding consideration, if and when funds become available. This packet should include newspaper clippings about the fire, documentation showing what the insurance company has paid the church, and bid estimates for rebuilding the church. This estimate does not always include replacing furniture, office and kitchen equipment, organs, pews, hymnals, parking lots, security systems, landscaping, etc. Consider also the following suggestions:

- Encourage the congregation to periodically put an article in the local newspaper (with a photo of the rebuilding progress) thanking those who have contributed time, funds, and in-kind donations. After thanking the contributors, the article should attach a "wish list" of the items and labor still needed to complete the project.
- Encourage the congregation to write letters to other churches in their town asking them to help support the rebuilding effort.

By way of example, the Hopewell United Methodist Church members also wrote letters to other Texas Methodist churches in populated urban cities. Learning of their plight, several churches came through with substantial donations.

One of the best sources for rebuilding funds is the National Council of the Churches of Christ (NCCC)—Burned Church Project, at (212) 870-2251. The NCCC is the oldest and largest national ecumenical and interfaith organization in America. It is comprised of 33 national Protestant and Orthodox bodies. For churches to be considered for funding by the Project, the church must have been destroyed or damaged by fire that was the result of an act of hatred, religious and/or racial. The NCCC staff carefully assess the circumstances of each fire, each congregation's profile and plans, and other resources available for rebuilding, including fire insurance payouts and other donations.

The NCCC has retained Habitat for Humanity International to create the Project's Office in Murfreesboro, Tennessee, and to coordinate volunteers from all over the country to organize work camps to erect buildings. Other in-kind donations to the NCCC-Burned Churches Project have included lumber and wood products needed to rebuild 124 churches, and portable modular units for use as temporary offices or as places of worship while the rebuilding is underway. Other donations include Bibles, hymnals, pews, robes, and office equipment.

The Congress of National Black Churches, at (404) 582-0003, is another resource that can fund security alarms for the newly rebuilt churches. Additional funds may be requested from the Samaritan Project—Save the Churches, at (800) 226-5526.

## Conclusion

The AUSA or DOJ attorney working the case should be sure the USAO VW Coordinator in the district where the fire occurred is made aware of the arson and given the church contact names and phone numbers. It is important that the VW Coordinator get the referral as soon as possible because the congregation is usually quite traumatized and searching for answers, confused by the criminal justice system, and looking for resources to help rebuild as soon as possible. The USAO should advise the ATF offices in their district that the USAO VW Coordinator should be notified as soon as possible whenever a church arson occurs since the ATF is usually the first Federal agency to respond.

If the arson is prosecuted federally, the VW Coordinator can assist the prosecution by acting as a liaison between the church and the criminal justice system, organizing the verbal and/or written Victim Impact Statements, helping collect restitution figures, keeping the church leadership apprised of the case status, enrolling representatives of the church congregations in the Bureau of Prisons Notification Program, and providing the congregation with referrals to the programs and organizations that can assist with their rebuilding efforts. Even though church arson cases are very time consuming and labor intensive, they are very rewarding cases to work on and are well worth the effort. ♦

CHILDREN AND DEATH  
"Developmental Concepts"

<u>Life Period</u>	<u>Predominant Death Concepts</u>
1. Infancy	No concept of death
2. Late infancy, temporary early childhood	Death is reversible; a restriction, departure, or sleep
3. Middle childhood late or preadolescence	Death is irreversible but capricious, external-internal physiological explanations.
4. Preadolescent, adolescent, adult	Death is irreversible, universal, personal, but distant; natural, physiological, and theological explanations

REMEMBER:

- have the parent tell the child
- assure them they are not alone
- be completely honest
- give the child permission to figure out what has happened for themselves
- encourage the child to remember and talk about the person who is gone
- explain the funeral and burial process in honest terms and allow them to be a part of it in whatever way they can
- correct any magical thinking
- encourage them to ask questions
- a-l-w-a-y-s put yourself on their level

## DEATH NOTIFICATION

### I. PRE - DEATH NOTIFICATION

A. Get all the information possible:

1. Who died?
2. How?
3. When? - near exact time ("why, it can't be, he was just here")
4. Who identified the person? (know the make and color of car if auto accident)
5. Where is the deceased now?

B. Survivors commonly want to know lots of information right away, so be prepared to give accurate answers - particularly in sudden death.

### II. ACTUAL NOTIFICATION

- A. Take Victim Witness with you
- B. Be sure you have the right person
- C. Concept: take "it" off the doorstep
- D. Identify self, affiliation
- E. Ask: "May I come in?"
- F. Ask: "May I sit down?" "Would you please sit down?" "Is there anyone else in the house?" You may want to get the whole family together.
- G. Don't stumble or prolong - state the information quickly, confidently and clearly. "I'm sorry, Mrs. Jones, your son, John, was killed in a car accident tonight."
- H. State the information in a very sure manner, looking straight at them with facial and vocal emotion. If you come across as unsure, they will have doubts. Use finite terms to convey message (i.e. fatal, death, killed).
- I. Wait for reaction - this may vary from shock, silence, anger, denial, hysteria and sometimes violence toward the person who has done the notification.
- J. Don't start giving them details until they ask. Answer all questions honestly.
- K. Ask if there is someone they want with them - friends, family, clergy.
- L. Helpful suggestions:
  1. Let them talk, react, express any emotions as long as they don't injure themselves or others.

## Death Notification (continued)

2. Face may be flushed - a wet towel is helpful. Ascertain if they have any medical condition or medication (i.e. heart problems). Sometimes a blanket is necessary due to chills, shock.
3. Don't refer to the deceased as the "body", use their name.
4. Guilt will almost always come up - talk it through.

### What might be helpful

1. Inform survivors of options
2. Allow time for their emotions (no hurrying)
3. Allow expression of feelings
4. Show care, warmth, humanness

### Not helpful

1. If you have few details, limited details, dishonesty
2. Cliches like: you will have others, God's will, be strong for, passed away, better off ...

### General Guidelines

1. Notify in person - not on the phone
2. Obtain as much accurate information as possible
3. Positive identification - both deceased and survivors
4. Be aware of cultural and religious differences
5. Don't protect survivors from the body - give informed choices
6. If death is in home, check area when body is removed
7. Write everything down - shock causes memory to fail
8. Identify the "rock" and give information
9. Leave when support system is in place and questions have been answered
10. Tell survivors you are sorry this happened to them

## Death Notification (continued)

### IV. TYPES OF DEATH

A. Homicide - produces revenge, anger and questions of Who? Why? The intentional taking of a life is one of the gravest forms of violation for the survivors. In some cases, law enforcement may have to question family members. Many times the body is held for evidence and family cannot put their loved one "to rest". If the perpetrator is arrested, the trial process causes a re-living of the nightmare.

B. Suicide - almost always causes extreme guilt and frustration, followed by anger at the perceived "selfish" act. In juveniles, may sometimes result in "copy-cat" attempts or completions. May challenge religious beliefs.

C. SIDS (Sudden infant death syndrome) - Cannot be accurately determined at the time, sometimes is treated as possible abuse or neglect. As with any child, the promise of their future is extinguished.

D. Sudden death - can debilitate even the strongest person as there is no warning to body that death will occur.

E. Natural death - is usually easier for survivors to rationalize. Many times they have started the grieving process even before the death and have had opportunities to deal with "unfinished business" and good-byes.

**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**WORKSHOP RESOURCE MATERIALS**

***TRACK NINE: MASS CRISIS  
RESPONSE***

**THE FOLLOWING RESOURCE MATERIALS HAVE BEEN  
SUBMITTED BY THE PRESENTERS CONDUCTING  
WORKSHOPS IN THIS PARTICULAR TRACK.**

**ADDITIONAL MATERIALS MAY BE DISTRIBUTED AT THE  
WORKSHOPS THEMSELVES.**



**A**  
**Manager's**  
**Handbook**

***Handling***  
***Traumatic***  
***Events***



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## Foreword

Many of us are ill-prepared to handle the traumatic events discussed in this handbook--suicides, assaults, threats, natural disasters, etc. And yet these events can and do occur in our workplaces. They are events for which preparation helps, and this handbook tells us how to prepare.

In addition to using this handbook for preparation purposes, it is an invaluable guide to follow should a traumatic event occur at your workplace. It is a good idea to keep it handy just in case. It will give you practical ideas on what to say to your employees and approaches to take to facilitate recovery .

The handbook was written by Mary Tyler, Ph.D., of OPM's Employee Health Services Policy Center, who is a preeminent expert in the field of workplace violence and trauma. She is well recognized in the United States and Europe for her research on trauma in the workplace, and has provided technical assistance to many organizations.

The information in this manual reflects Dr. Tyler's extensive experience in helping Federal managers cope with traumatic situations. In addition, Chapters 1, 3, and 5 rely on research studies conducted by Dr. Tyler with Colonel Robert K. Gifford, Ph.D., U.S. Army, for the Walter Reed Army Institute of Research. The findings were published in the *Journal of Traumatic Stress, Disaster Management, Military Chaplains' Review, and Sozialwissenschaftliches Institut der Bundeswehr Forum*.

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## *Chapter 1*

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# **When Tragedy Strikes at Work**

**I**magine that you, as a manager, are busy with your many daily responsibilities, when tragedy strikes:

- You hear a commotion down the hall, respond, and discover that an employee has swallowed a lethal dose of drugs in the presence of his coworkers.
- An irate individual storms into your section's work area and shoots an employee while you and other employees look on, shocked and helpless to intervene.
- A dazed-looking employee walks into the work area, bruised and disheveled, collapses at her desk, and reports that she was attacked while conducting a routine business call.

Initially, your responses will probably be almost automatic. You will notify the proper authorities and take whatever steps are necessary to preserve life and safety.

After the paramedics and the investigators leave, the hard questions begin for you as a manager:

- How do you help your employees recover from this event, so their personal well being and professional effectiveness will not suffer long-term effects as a result of trauma?
- How do you get your staff moving again after employees have suffered from injury, bereavement, or emotional trauma?

As you would expect, there are no easy answers, and each situation presents its own set of challenges. However, there are some general guidelines to help you in most situations:

**Stay firmly in charge.** Let all employees know that you are concerned and doing all you can to help them. You represent the organization to your employees, and your caring presence can mean a great deal in helping them feel supported. You don't have to say anything profound; just be there, do your best to manage, and let your employees know you are concerned about them. Be visible to your subordinates, and take time to ask them

how they are doing. Try to keep investigations and other official business from pulling you out of your work area for long periods of time.

**Ask for support from higher management.** Relief from deadlines, and practical help such as a temporary employee to lighten your burden of administrative work can make it easier for you to focus on helping your employees and your organization return to normal functioning.

**Don't "keep a stiff upper lip" or advise anybody else to do so.** Let people know, in whatever way is natural for you, that you are feeling fear, grief, shock, anger, or whatever your natural reaction to the situation may be. This shows your employees you care about them. Since you also can function rationally in spite of your strong feelings, they know that they can do likewise.

**Share information with your employees as soon as you have it available.** Don't be afraid to say, "*I don't know.*" Particularly in the first few hours after a tragedy, information will be scarce and much in demand. If you can be an advocate in obtaining it, you will show your employees you care and help lessen anxiety.

**Ask for support from your Employee Assistance Program (EAP).** The EAP is available to offer professional counseling to those who wish it, and to provide debriefings to groups affected by trauma. Encourage your employees to take advantage of the EAP as a way of preserving health, not as a sign of sickness.

**Encourage employees to talk about their painful experiences.** This is hard to do, but eases healing as people express their painful thoughts and feelings in a safe environment, and come to realize that their reactions are normal and shared by others. You may want to have a mental health professional come in to facilitate a special meeting for this purpose. Or your group may prefer to discuss the situation among themselves. Don't be afraid to participate, and to set a positive example by discussing your own feelings openly. Your example says more than your words.

**Build on the strengths of the group.** Encourage employees to take care of one another through such simple measures as listening to those in distress, offering practical help, visiting the hospitalized, or going with an employee on the first visit to a feared site. The more you have done to build a cohesive work group, and to foster self-confidence in your employees, the better your staff can help one another in a crisis.

**Build on your work group's prior planning.** If you have talked together about how you, as a group, would handle a hypothetical crisis, it will help prepare all employees,

mentally and practically, to deal with a real one. Knowing employees' strengths and experience, having an established plan for communication in emergencies, and being familiar with EAP procedures can help you "hit the ground running" when a crisis actually strikes.

**Be aware of the healing value of work.** Getting back to the daily routine can be a comforting experience, and most people can work productively while still dealing with grief and trauma. However, the process of getting a staff back to work is one which must be approached with great care and sensitivity. In particular, if anyone has died or been seriously injured, the process must be handled in a way that shows appropriate respect for them.

This gives you a general model for management in a traumatic situation. Later chapters will deal more specifically with different types of traumas and the specific managerial challenges they present.

## How to Listen to Someone Who Is Hurting

**W**henever people face bereavement, injury, or other kinds of trauma, they need to talk about it in order to heal. To talk, they need willing listeners. Unfortunately, many of us shrink from listening to people in pain. We may feel like we have enough troubles of our own, or be afraid of making matters worse by saying the wrong thing.

Sometimes we excuse ourselves by assuming that listening to people who are hurting is strictly a matter for professionals such as psychotherapists or members of the clergy. It is true that professional people can help in special ways, and provide the suffering individual with insights that most of us aren't able to offer. However, their assistance, although valuable, is no substitute for the caring interest of supervisors, co-workers, friends, and others from the person's normal daily life.

It is natural to feel reluctant or even afraid of facing another person's painful feelings. But it is important not to let this fear prevent us from doing what we can to help someone who is suffering.

Though each situation is unique, some guidelines can help make the process easier:

- The most important thing to do is simply to be there and listen and show you care.
- Find a private setting where you won't be overheard or interrupted. Arrange things so that there are no large objects, such as a desk, between you and the person.
- Keep your comments brief and simple so that you don't get the person off track.
- Ask questions which show your interest and encourage the person to keep talking, for example:

*"What happened next?"*

*"What was that like?"*

- Give verbal and non-verbal messages of caring and support. Facial expressions and body posture go a long way toward showing your interest. Don't hesitate to interject your own feelings as appropriate, for example:

*"How terrible."*

*"I'm so sorry."*

- Let people know that it's OK to cry. Some people are embarrassed if they cry in front of others. Handing over a box of tissues in a matter-of-fact way can help show that tears are normal and appropriate. It's also OK if you get a bit teary yourself.
- Don't be distressed by differences in the way people respond. One person may react very calmly, while another expresses strong feelings. One person may have an immediate emotional response; another may be "numb" at first and respond emotionally later. Emotions are rarely simple; people who are suffering loss often feel anger along with grief. Unless you see signs of actual danger, simply accept the feelings as that person's natural response at the moment. If a person is usually rational and sensible, those qualities will return once their painful feelings are expressed.
- Don't offer unsolicited advice. People usually will ask for advice later if they need it; initially it just gets in the way of talking things out.
- Don't turn the conversation into a forum for your own experiences. If you have had a similar experience, you may want to mention that briefly when the moment seems right. But do not say, *"I know exactly how you feel,"* because everybody is different.
- It's natural to worry about saying the "wrong thing." The following is a brief but helpful list of three other things **not** to say to someone who is suffering:

**DO NOT SAY:**

**Anything critical of the person.**

*"You shouldn't take it so hard."*

*"You're overreacting."*

**Anything which tries to minimize the person's pain.**

*"It could be a lot worse."*

*"You're young; you'll get over it."*

**Anything which asks the person to disguise or reject his/her feelings.**

*"You have to pull yourself together."*

*"You need to be strong for your children's sake."*

These are helpful guidelines, but the most important thing is to be there and listen in a caring way. People will understand if you say something awkward in a difficult situation.

Once you have finished talking, it may be appropriate to offer simple forms of help. Check about basic things like eating and sleeping. Sharing a meal may help the person find an appetite. Giving a ride to someone too upset to drive may mean a lot. Ask what else you can do to be of assistance.

After you have talked to someone who is hurting, you may feel as if you have absorbed some of that person's pain. Take care of yourself by talking to a friend, taking a walk, or doing whatever helps restore your own spirits. Congratulate yourself on having had the courage to help someone in need when it wasn't easy.

## Chapter 3

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# Recovering From the Death of a Co-worker

**T**he death of a co-worker is a painful experience under any circumstances, and all the more difficult if it is unexpected. Recovery of individuals and of your work group itself depends to a great extent on the effectiveness of the grief leadership provided by you—the group's manager. Effective grief leadership guides members of the work group as they mourn and memorialize the dead, help their families, and return to effective performance of their duties. The following guidelines have proved helpful:

**Provide a private area where co-workers can mourn without public scrutiny.** Initially, close friends and associates will feel shock and intense grief. If the loss is to be resolved, it is essential for all affected employees to spend time talking about the deceased person, sharing memories, and discussing the loss. This "grief work," which is essential for recovery, is intensely painful when done alone, but much less so when it can be shared with friends. Providing a private area where co-workers can talk together and shed tears without public scrutiny will ease this process.

**Share information.** Employees will feel a particularly strong need for information at this time. Managers can show their concern by making a concerned effort to get that information, and share it in a timely manner. *Until you get the information, simply admitting honestly that you don't know is more comforting to employees than not being told anything.*

**Contact employees who are temporarily away from the office.** Ordinarily, people in a small work group are aware of friendship patterns, and will take steps to ensure that those in particular need of comfort are given support. However, problems may occur if co-workers are on leave or travel. The manager and group members may need to reach out to those temporarily away from the office to make sure they don't get left out of the grieving process.

**Serve as a role model.** Managers need to serve as role models for appropriate grieving. If you show that you are actively grieving, but still able to function effectively, other employees will realize that they can also be sad without losing their ability to

perform their duties rationally. You should avoid hiding your own feelings, as this often leads employees to misperceive you as not caring.

**Consider offering a "debriefing."** Often, a cohesive work group can go through the grief process without help. However, if members do not know each other well, or for whatever reason have difficulty talking, a professional person may need to come in and facilitate a "debriefing," or meeting in which grief is discussed.

**Consider holding a memorial service, especially if co-workers cannot attend the funeral.** A memorial service can be very helpful and is often a turning point in restoring a work group to normal productivity. This is not to imply that the deceased is forgotten; rather people find after a point that they can continue to work while grieving. Consider the following points in planning a memorial service:

- The memorial service should honor the deceased and provide an opportunity to say goodbye. Unlike a funeral, a memorial is not a religious service, and should be suitable for employees of all faiths. Friends may speak about the qualities they admired in the deceased, the person's contributions to the work and the morale of the group. Poetry or music reminiscent of the deceased might be shared.
- The most common mistake in planning memorials is to plan them at too high a level. Senior officials may want to take charge, to show that they care, and to assure a polished product. This approach usually "backfires," for example, *"The managers don't care about Sam; they just want to put on a show for the executives."*
- Memorial services are most effective when the closest associates of the deceased are given key roles in planning and carrying them out. Including the "right" people, i.e., the best friends of the deceased, makes the service more comforting for everyone. If the best friends are too upset to speak, they can take non-verbal roles such as handing out programs.

**Reach out to family members.** Reaching out to the family of the deceased can be comforting for both employees and family members. Attending the funeral service, sending cards, visiting the bereaved family and offering various forms of help are all positive healing activities.

**Support informal rituals.** Informal rituals in the office can ease healing. A group of friends might join together to clean out the deceased person's desk, or organize a campaign for contributions to an appropriate charity. Sometimes employees may want to leave a particular work station or piece of equipment unused for a time in memory of the deceased. If possible, this wish should be honored.

**Get back to the work routine in a way that shows respect for the deceased.**

Returning to the work routine can facilitate healing if the work group makes an effort to uphold values held by the deceased and strive toward goals that he/she particularly valued, for example, *"I want to show the customers I care, because Sam was such a caring person."*

**Don't treat a new employee like a "replacement" for the employee who died.**

It is important that new employees not be made to feel like "replacements" for employees who have died. Reorganizing responsibilities and moving furniture can help spare the new employee and others the painful experience of having somebody new at "Sam's desk" doing "Sam's job."

**Remind employees about the services of the Employee Assistance Program.**

Group members should be reminded that normal grieving can produce upsetting responses such as sleeplessness, diminished appetite, and intrusive thoughts of the deceased. Ordinarily, these will subside with time, particularly if the individual receives strong group support. However, some individuals may find these reactions especially troubling or long lasting, and may need to turn to the Employee Assistance Program for professional help in getting over the experience.

## **Supervising an Employee with Suicidal Concerns**

**S**uicide is a significant cause of death among Americans, and government personnel are not exempt from the problem. Though there are differences in suicide rates based on such factors as age, gender, and ethnicity, a person from any background can commit suicide, or go through a period of seriously contemplating it.

People considering suicide often have been "worn down" by many stresses and problems. Actual or expected loss, especially a love relationship, is often a contributing factor. The suicidal person is frequently lonely and without a solid support system. Sometimes this is a long-term characteristic of the person; in other cases a geographic move, death, or a divorce may deprive an individual of personal ties that were formerly supportive.

Listen carefully to what your employees say—people thinking about suicide often give hints about their intentions. Talking about not being present in the future, giving away prized possessions, and making funeral plans are examples of possible hints of suicidal intent. If you hear such talk, question it, kindly but firmly. You won't make the situation worse by clarifying it, and an open conversation with you may be the person's first step toward getting well.

Be alert to changes in behavior. A deterioration in job performance, personal appearance, punctuality, or other habits can be a sign of many problems, including suicidal concerns.

If an employee admits thinking about suicide:

You'll want to get your employee to professional help, and the way you do this is very important. The way you approach the issue can have an impact on the employee's willingness to receive professional help. Your respect and concern for the employee can contribute to the healing process.

- First offer your own personal concern and support. Let the person know you care--the employee is both a unique human being and a valued member of your team.

- Show understanding of the employee's pain and despair, but offer hope that, with appropriate help, solutions can be found for the problems that are leading the person to feel so desperate.
- Ask whether any of the employee's problems are work related, and, if so, take initiative in attacking those problems. For example, the employee may feel improperly trained for key responsibilities, or may be having difficulties with leave or some similar issue without having made you aware of it. If you can act as an advocate in remedying some of these problems, you will help in three ways—removing one source of pain, showing concretely that someone cares, and offering hope that other problems can also be solved.
- Do not question the employee about personal problems, as the individual may wish to keep them out of the workplace, but listen with empathy if the employee chooses to share them.
- Do not offer advice, but acknowledge that the problems are real and painful.
- Protect the employee's privacy with regard to other employees. This will require thought and planning, as questions are sure to arise. When dealing with higher management, you need to think clearly about what they actually need to know, e.g., that the employee is temporarily working a reduced schedule on medical advice—as opposed to what they don't need to know, e.g., intimate personal information that the employee may have confided in you as the immediate supervisor.
- Without hovering over the employee, show your continued support and interest. Make it clear that the individual is an important part of the team, and plays a key role in mission accomplishment.

### **Get Help**

As a general rule, anyone feeling enough pain to be considering suicide should be referred to a mental health professional, at least for evaluation. Make it clear that you want the employee to get the best possible help, and that some types of assistance are outside your own area of competence.

- Usually, the Employee Assistance Program (EAP) is the referral source for mental health assistance. If the employee consents, call the EAP yourself, emphasizing

that the situation is serious and needs timely attention.

- If for some reason the EAP is not immediately available, turn to your community's Crisis Intervention or Suicide Prevention resource. These are normally listed with other emergency numbers in the telephone book, and available on a 24 hour basis.

## Follow Up

Once your employee is involved in a treatment program, try to stay in touch with the program. This does not mean that you should involve yourself with specific personal problems that the employee is discussing with a therapist. What you do need to know, however, is how you can work with the treatment program and not at cross purposes to it.

*Does the employee need to adjust work hours to participate in therapy?*

*Has the employee been prescribed medications whose side effects could affect job performance?*

*Should you challenge the employee as you normally do, or temporarily reassign the person to less demanding duties?*

This kind of communication will occur only if the employee permits it, since mental health professionals will not, for ethical reasons, release information without the employee's consent. If you make it clear to the employee and treatment team what your goals are--to support them, not to delve into the employee's private concerns--you will probably have no difficulty getting cooperation. A meeting involving you, the employee, and the counselor can be particularly helpful in clarifying relevant issues and assuring that your supervisory approach is consistent with the employee's treatment.

## Take Care of Yourself

Working with a suicidal person is highly stressful, and you should take positive steps to preserve your own mental health while you help your employee. You should not hesitate to get support for yourself, either from your own supervisor or from the EAP.

## **Helping an Employee Recover from an Assault**

**B**eing assaulted on the job can lead not only to physical injury, but also to emotional distress. Recovery with return to job effectiveness requires not only the assistance of professional experts such as physicians and psychotherapists, but also the enlightened support of supervisors and co-workers.

The role of the immediate supervisor is especially important, because that person most powerfully represents the organization to the employee. The supervisor needs to convey personal concern for the employee as well as the concern of the organization, and a sense of the employee's unique importance to the work group and its mission. The following guidelines have proved helpful in these situations:

**If the employee is hospitalized, visit, send cards, and convey other expressions of concern.** It is important that the employee not feel abandoned. The nursing staff can advise you of the length and type of interaction most appropriate. If the person is quite ill, a very brief visit and a few words of concern may be enough. As recovery continues, sharing news from the office will help the person continue to feel a part of the organization.

**Encourage co-workers to show support.** At some point the employee will need to tell the story of the assault, probably more than once, and may find it easier to discuss this with co-workers who are familiar with the work setting and may have had similar experiences. Co-workers can help significantly by listening in a caring way, showing support and avoiding any second guessing of the situation. Being assaulted is not only physically painful; it can make the world feel like a cold, frightening place. Simple expressions of kindness from friends and co-workers—a visit, a card game, a funny book, a favorite magazine—can help the person regain a sense of safety.

**Help the employee's family.** If the employee has a family, they may need support as well. If the situation has received media attention, the family may need assistance in screening phone calls and mail. Other kinds of help, such as caring for children while a

spouse visits the hospital, can go a long way in showing that the work group cares for its members.

**Plan the employee's return to work.** The supervisor, employee, employee/labor relations specialist, and health care providers need to work together to plan the employee's return to work. Here are some important points to consider:

- ⊙ There is truth in the old saying about "getting back on the horse that just threw you," and it can be helpful to get back to the crucial place or activity in a timely manner. The sooner the employee can return, the easier it will be to rejoin the group, and the employee will have missed out on less of the current information needed for effective job performance. However, it is important not to expose the employee to too much stress at once. A flexible approach, for example, part-time work, a different assignment at first, or assignment of a co-worker for support, can often help the employee overcome anxiety and recover self-confidence and may allow the employee to return to work sooner than would otherwise be possible.
- The employee's physical needs must be clarified with health care providers, e.g., the supervisor and employee should understand precisely what is meant by phrases such as "light work." If the employee looks different, from wearing a cast or having visible scars, it is helpful to prepare other employees for this in advance. Advance thought needs to be given to any new environmental needs the employee may have, such as wheelchair access or a place to lie down during the day.
- Working out a flexible plan for a recovering employee may take time and energy in the short run, but that effort will be repaid in the long run by retaining an experienced employee as an integral part of the work group.

**Offer counseling.** Counseling services should be offered through the Employee Assistance Program (EAP), and with the attitude that it is perfectly natural to use such professional resources in the aftermath of a traumatic experience. Supervisors and EAP personnel should work together to make the experience as convenient and non-bureaucratic as possible. However, individual preferences and differences should be respected. Some employees find that they can recover from the effects of the experience with the help of their friends, family, and co-workers. Others may not feel the need for counseling until weeks have passed and they realize that they are not recovering as well as they would like.

**Make career counseling and other forms of assistance available if the employee decides to change jobs.** Even with excellent support, employees who have been assaulted sometimes feel, "It just isn't worth it," and decide to transfer to a safer occupation. The employee should be encouraged not to make such an important decision in haste, but career counseling and other forms of assistance should be made available. Supervisors and co-workers who have tried to help the employee may need reassurance that their efforts contributed to the individual's recovery, and that the decision is not a rejection of them.

## **Managing After a Disaster**

**A** disaster such as an earthquake or hurricane creates unusual challenges for management. You and your staff may yourselves be suffering from its effects. Emotional stress, physical injury, bereavement, loss of property, and disruption of normal routines may limit the availability and energy of your work group. At the same time, the group may face new responsibilities - caring for its own members, and facilitating community recovery. Besides meeting customers' special needs for assistance following a disaster, agency personnel are often called on to support other Federal agencies in providing a wide range of community services.

Plan ahead. You and your work group should be familiar with any disaster plans that affect you, and should have your own plans, however informal, for how you might function in a disaster. Involving employees in planning helps give them a sense of empowerment, and can improve the quality of your plan by assuring that everyone's experience and skills are brought into play.

Despite the magnitude of the challenges, Federal Government agencies have a proud history of responding effectively to disasters. The following suggestions are general principles that can help you structure your disaster response (they are no substitute for a comprehensive disaster plan):

Take care of your own people first. You need to locate your staff and assure that they and their families have necessary medical care, housing, food, and other necessities before they can be effective in serving the public.

- Consider setting up a relief center. Particularly if traditional disaster relief agencies are slow to mobilize, you may need to set up a relief center for your own employees, and provide food and other essential items to those in need. If necessary, assign a group of employees, preferably volunteers, to internal disaster relief, and relieve them temporarily of other duties. Their tasks might include staffing the relief center, taking inventory of unmet needs of affected employees, and locating resources to fit the needs.
- ⊖ Consider compiling resource information. Those most affected by the disaster are least likely to have functioning telephones, and may not be able to call around to

locate a new apartment, a child care provider, a rental truck, a place to board the dog, or any of the many goods and services they need to begin normalizing their lives. Compiling information in a booklet or card file can be very helpful, and can result in a document that is helpful to the public as well as employees.

**Modify office rules and procedures that are counterproductive after a disaster.**

Dress codes, rules about children in the office, and restrictions on using telephones for personal business, for example, may need to be temporarily adjusted in the post-disaster period. Agencies have the authority to grant administrative leave to employees who need time off to normalize their home and family situations.

**Work cooperatively with employee unions.** Disaster situations encourage labor-management cooperation, regardless of what the labor relations climate has been in the past. Labor and management share a deep concern for employees' well being and recovery; working together in an informal way can lead to more effective, flexible responses to employee needs.

**Take steps to prevent accidents and illness.** Much of the human suffering associated with a disaster happens after the event itself, and can be prevented through good management. It is particularly important to prevent the overwork and exhaustion that tend to occur as people throw themselves into disaster recovery operations. Post-disaster environments are often less safe and sanitary than normal ones, so that people living and working in them need to exercise special care. Exhaustion can lower resistance to disease, decrease alertness, impair judgment, and make people less careful about health precautions and more vulnerable to accidents. There are several strategies for assuring that people do not exhaust themselves:

- After an initial crisis period, during which overwork may be necessary, develop procedures to assure that employees do not work too many hours without rest.
- Be sure to provide adequate staffing for all new responsibilities created after the disaster, such as internal relief operations.
- Set limits on work hours, if necessary, and train managers to monitor their subordinates and check for signs of exhaustion.

- ⊙ Since leaders are especially prone to overwork, monitor each other and set a positive example for subordinates.
- ⊙ Take care to assure that no employee has an essential task that no one else knows how to do, or that person will surely be overworked.

Communicate clear priorities for work. Since some normal operations may be suspended and new ones undertaken, this must be done carefully and consistently.

Understanding priorities will not only help prevent overwork, but will also empower employees to make decisions about how to use their time most appropriately.

Provide opportunities for employees to talk about their stressful experiences. To recover from severe stress, people need to talk about what they have gone through, and to compare their reactions with those of others. Consider the following suggestions:

- ⊙ Provide a group meeting organized by an Employee Assistance Program (EAP) counselor or other mental health professional.
- Remind employees of procedures for scheduling individual EAP appointments, since some employees may need more personal assistance in resolving problems arising from the disaster.
- ⊙ Offer opportunities for employees to share their experiences informally, for example, by providing a break area with coffee or other refreshments.

#### **Special considerations when employees are detailed out to other agencies**

- It is important that detailed employees remain in contact with their own organization.
- They should, whenever possible, be deployed in small groups, so each employee will have a few familiar people to turn to for support.
- Visits by agency managers can be very helpful in conveying information and boosting morale.

- Informal newsletters can be a valuable source of information.
- Information can reduce the detailed employees' stress from worrying about co-workers, while reassuring them that they are still a valued part of their own organization.

## Managing When the Stress Doesn't Go Away

**P**reviously chapters have focused mainly on traumatic events that overwhelm us with their suddenness. An employee is assaulted, or a tornado rips through an office. We are shocked and shaken by the enormity of the event and its unexpected nature.

Sometimes, though, long term stress can assume traumatic proportions. Carl Dudley and Melvin Schoonover, researchers who interviewed clergy members in South Florida about six months after Hurricane Andrew, report, "They all agreed that surviving the storm was easy compared with surviving afterward." According to one pastor, "Stress-related deaths continue to haunt our congregation long after the storm....some people simply cannot get their lives together in this constant uncertainty."

In recent years, Federal Government employees in several parts of the country have had to cope with rebuilding their homes and lives after a disaster while taking on new roles and responsibilities to help the community's recovery. Disasters are not the only source of long term stress that our employees may face. Threats of violence, whether from individuals outside the agency or from fellow employees, can lead to severe stress situations which go on for weeks, and affect many people. Harassment campaigns directed against employees can be nerve-wracking even when there is no apparent physical danger. The prospect of losing a group member to a slowly debilitating illness can produce a long period of stress for everyone involved. Organizational change can produce severe stress if employees feel uncertain and worried for long periods.

Getting the job done and taking care of employees under conditions of severe, long lasting stress can be one of the most difficult challenges a manager may face. It's not easy to take charge, develop innovative approaches, and be sensitive to the needs of others when you're at least as uncomfortable as your subordinates. There are, however, some management approaches that have proved helpful in these situations:

Take concrete steps to see that everything possible is being done to lessen the sources of stress. If danger is a problem, call the right law enforcement function immediately, and get all the advice and concrete support you can for them. If employees are overwhelmed by competing demands in the aftermath of a large scale emergency, set

clear priorities and make sure they are consistently followed. You probably can't "fix" the entire situation, but you can improve it. Your employees will feel better if they know you are working on their behalf.

**Keep open lines of communication with your employees.** This is always important, but even more so when everyone is under long term stress. In most stressful situations, one source of anxiety is a sense of being out of control. Your employees will feel better if they have up-to-date information and permission to approach you with their questions. Depending on circumstances, you may want to adopt new communications strategies, such as having frequent meetings, publishing an informal newsletter, and keeping an updated notice board in a central place. As you consider your communication strategy, don't forget your employee unions. Like you, union leaders are concerned with getting information to employees, and this may be an excellent opportunity for labor-management cooperation. Consider that—

- Employees will have a greater sense of control if you are careful to listen to them with an open mind before making decisions that affect them. Even if your decision turns out not to be the one they would have wished for, they will feel less powerless if they believe that their ideas and preferences were given serious consideration.
- Communicating with employees may be difficult for you if your own tendency, when under stress, is to withdraw from other people, or to become less flexible than you normally are. Both are common stress reactions, and can interfere with your leadership if you don't monitor yourself.

**Encourage teamwork and cooperation.** Under long term stress, there is no substitute for a supportive, caring work group. Employees will find the situation, whatever it is, less painful if they are surrounded by co-workers who care about them, and will listen if they need to talk, or lend a hand if they need help. A group accustomed to teamwork rather than internal competition will usually be able to cover for members who are temporarily unable to function at 100% effectiveness.

Ideally, your group has always been strong and cohesive. If not, do what you can to help it pull together under stress. Encourage and validate teamwork and cooperation. Avoid any appearance of favoritism and make it clear that there is opportunity for everyone to achieve and receive recognition.

**Set clear work standards.** Doing good work is always essential, but even more so in times of high stress, since success can bolster self esteem and group morale. Keep your standards high, but allow as much flexibility as possible in how the work gets done. If you set clear standards, but give employees some freedom in working out ways to meet them, they will probably be able to develop approaches that fit the contingencies of the stress situation. Check on how much flexibility you have with regard to such conditions as work hours, administrative leave, alternate work sites, etc. It's natural to assume that the way we have always done things is the only way, but you and your employees may have options that you haven't considered.

**Make it clear that this is a difficult period, and it's OK to share feelings of anxiety, fatigue, or frustration.** If you set the example by letting people know you can do a good job even though you are not feeling your best, you can set a positive example. Define the situation in a way that emphasizes the strength of the group while acknowledging the challenges it faces. The tone should not be, "Poor us," but rather, "This is hard, but we're going to hang together and get through it."

**Acknowledge the value of professional counseling, and encourage your employees to get whatever help they need.** Long term stress can wear down the coping resources of the strongest person, and it makes sense to get extra support in order to preserve mental and physical health. One strategy is to bring in an Employee Assistance Program (EAP) counselor to talk to the group about stress management. Besides learning from the presentation, your employees will develop a personal contact which can make it easier to turn to the EAP if they need it.

**Don't underestimate the impact of stress on you as an individual.** Attend to your own stress management program, and use your resources for professional consultation and counseling. You will find it easier to take care of your work group if you also take care of yourself.

## **Chapter 8**

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# **Workplace Violence: Stopping It Before It Starts**

**V**iolence in the workplace is one of the more painful problems of modern life. If you're like most people, you don't even want to think about it. What is at issue here is not danger from the general public, but rather the more painful possibility that our co-workers or people close to them could be a threat to others.

Workplace violence is rare, and it would be a mistake to become overly fearful. But everyone needs to know something about it, and to keep that knowledge at the back of their minds, "just in case." What follows in this chapter is a summary of what you need to know.

This problem needs to be approached at three levels: prevention, early identification of threats, and appropriate response to threats. This is not as complicated as it sounds. What you need to do requires basic management skills plus a willingness to turn to professional resources in a timely manner.

### **Prevention**

When you look at what the experts have to say about preventing violence, their message boils down to what could be called simply "good leadership." The same approaches that create a healthy, productive workplace can also help to prevent crisis situations. There can't be too much attention to leadership basics, like keeping in touch with employees, making sure they have the skills and tools they need, helping them with obstacles, and showing concern and fairness to each one.

Careful observance of personnel practices is a part of good leadership. If you set clear standards, note employee problems promptly, and use the probationary period, performance counseling, discipline, and other management tools conscientiously, your intervention can keep difficult situations from turning into major problems.

The experts also recommend programs to foster effective communication in the workplace and help employees resolve stressful issues at work or at home. Federal Government

agencies are fortunate in having a number of fine resources for work groups and individuals. If you aren't up to date on what your training office, organizational development specialist, employee assistance program (EAP), and career counselor can offer, take a little time to inform yourself.

With so many changes going on now, there's a tendency to think, "We don't have time for that." But if you bring in an expert facilitator to resolve tensions in the work group, or encourage an employee to seek counseling for personal stress, you will probably find that the investment pays off in productivity.

### **Early Identification of Threats**

No matter how good a job is done, it may not be possible to prevent all potentially violent situations. An employee can be driven to the point of violence by factors outside the organization's control. Or an employee's family members, romantic partners, or other associates may bring their own violent impulses into the employee's workplace. So managers also need to be prepared for a second level of involvement: early recognition of possible threats.

Managers don't need to be experts on violent behavior. What is needed is a common-sense recognition that, "Something seems wrong here," plus a willingness to seek advice from those who are knowledgeable about different parts of the problem.

Your employees need to know that intimidation is totally unacceptable in the workplace, and that they should tell you if they feel threatened for any reason. And you must give them reason to believe that you will respond in a mature, constructive way if they do share their concerns.

#### **What are the warning signs to look out for?**

**First, anybody who says or hints that they might harm someone. Like suicidal individuals, people contemplating violence often tell others, directly or indirectly, about their plans.**

**Second, anybody who expresses fear of somebody else. An employee may report being stalked by an ex-spouse. Employees may be afraid of someone who talks repeatedly about weapons in a way that seems strange to them.**

**You, as the supervisor, may find yourself shrinking from the task of counseling an employee because you feel afraid of the person.**

All of these should make the alarm bells go off in your mind. At this stage it's appropriate to listen to "gut level" reactions. You're not making any decisions yet; you're just identifying a situation that needs to be explored.

### **Appropriate Responses to Threats**

If you discover that someone does seem to have threatened violence or to have a genuine fear of it, you need to move on to the third level of involvement, an appropriate response. The key to an effective response is to get all the help you need. This is not the time to be self-reliant. You need the objectivity of an outside point of view, and the expertise of professionals from several fields.

One crucial point is sometimes overlooked. If at any time there seems to be immediate danger, drop whatever else you are doing, notify the authorities, and take whatever steps are necessary to protect safety. Usually, however, these situations develop more slowly, and there is time to respond before emergency measures are needed.

An appropriate response is one that protects the safety of all concerned, while respecting everyone's legitimate rights. This can be a delicate balance, and situations are so varied that it is difficult to draw up a set of procedures that will work for all of them.

What does work is a strategy rather than a procedure. Call in the experts, get them working as a team, and their combined expertise will help you come up with a solution. This strategy has worked in a variety of situations. They weren't all handled the same way, but they were handled in ways that made sense.

As you assemble your team, you will probably turn first to your own management chain, the law enforcement function responsible for security in your office, your personnel department, and an EAP professional. Other specialists, such as union officials, can be important contributors, depending on the specific situation.

Once you get your team together, you will have three major tasks: evaluate the problem more extensively, develop and execute a plan for responding to it, and address security concerns at every step of the way.

Sometimes, objective evaluation may show that there really isn't a serious problem. If this is the case, it's important that nobody be criticized for "over-reacting." If evaluation shows that a response is necessary, your planning will probably have short-term and long-term components. In the short term, you will be concerned with guarding against a possible immediate threat while a long-term solution can be developed. The long-term solution should address the root causes of the problem and prevent a recurrence of the threatening situation.

Communication should be given special attention. It is essential that all team members share a common understanding of the plan and of one another's roles in it. Stress can interfere with listening and memory, so it is important to express yourself clearly and check to make sure you have been understood.

Support for those affected, whether as potential victims or as problem solvers, is an important concern. Fear is a real source of stress, and responsibility for the safety of others is a heavy burden. You can help by establishing an atmosphere of acceptance and open communication. Your EAP can help by offering seminars, debriefings, or other group activities, and by welcoming individual employees to take advantage of its services.

## Chapter 9

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# When Domestic Violence Comes to Work

**T**he previous chapter focused on violence among co-workers. There's also another kind of violence that demands our concern—violence in an employee's personal life that follows the employee into the workplace. Sometimes it literally turns up on the doorstep of the building, with an irate spouse shouting threats, or a stalker lurking around the parking lot. Sometimes it's more insidious, infecting the workplace with stress without anybody's quite being able to pinpoint what's wrong.

This chapter covers scenarios that a manager might encounter. A spouse, lover, or other personal associate might threaten, harass, or assault an employee in the workplace. An employee might confide in a supervisor about being victimized. A manager may suspect that an employee or co-worker is being victimized, but the person hasn't spoken out about it.

**A note on gender:** This chapter refers to the abused person as "she" because that's the pattern in the majority of abuse situations. But remember that men can be abused, and if they are, also need the support of their managers and friends.

Regardless of whether you observe the assaultive behavior or are told about it, the first thing to do is to define the situation correctly.

### **If somebody is threatening, harassing, or injuring the employee—**

If somebody is threatening, harassing, or injuring another person, it is a criminal act. Forget all the polite rules about ignoring lovers' quarrels, because this is another kind of situation altogether.

Never underestimate the possible dangerousness of someone who batters, stalks, or otherwise mistreats another person, whatever their relationship may be. The danger may extend beyond the one targeted employee to others in the workplace. Obviously, all situations aren't equally dangerous, but there's enough risk that you shouldn't try to evaluate dangerousness unless you're well trained in threat assessment.

**If there appears to be an immediate threat, notify the law enforcement resource that can most readily provide security in the situation. For example, this might be a local police officer, an Inspector, a Special Agent, or a Federal Protective Service Officer. Everyone in the office should know who this is and how to find them. If it's really an emergency, any officer will provide assistance.**

If it's not an immediate threat, you need to think about the appropriate place to turn for law enforcement support. Federal Officers can't investigate a situation that is outside their jurisdiction.

Jurisdiction is a complicated issue, but it's important to try and understand it. Otherwise, misunderstandings between law enforcement and other professionals can make things far more painful for everybody. Employees are sometimes disappointed if someone they know and trust, like the security officer in the next office, can't investigate their case. If you can help the employee understand why it isn't possible for the officer to do this, you may prevent unnecessary pain from feeling like, "They don't care."

With regard to understanding jurisdiction issues, these pointers may help you start out in the right direction:

- If the threats, abuse, stalking, or other harassment are happening at or around the employee's home, the law enforcement agency responsible for the employee's place of residence has jurisdiction. (If you are unable to find the appropriate law enforcement authority, your own security staff can be a resource for helping you get in touch with them.)
- If threats or violence occur within the Federal workplace, or in direct connection with employee's duties, there may be a role for Federal law enforcement officers. But even if Federal Officers assist you with security in the workplace, local police will still have jurisdiction over the non-workplace aspects.
- Even if the situation doesn't seem to be an emergency, you shouldn't delay reporting it to law enforcement officials and getting at least their initial take on the situation. Assessing threats is part of their profession, and they may see signs of danger that aren't obvious to an untrained person.
- If there seems to be danger in the workplace, the law enforcement agency responsible for your office's security can help you in assessing the threat and

adjusting security measures. Maybe you should change the locks, or the security guard should be advised to be on the lookout for a particular individual. Maybe the threatened person should be assigned to a different office.

In addition to law enforcement, your employee is likely to need a number of other professional services, ranging from psychological counseling to legal advice to a safe shelter to live in for a while. Many communities now have comprehensive victim assistance programs with a wide array of coordinated services. The employee may appreciate it if you make the initial phone call to locate the resources. If you don't know where to call, ask your Employee Assistance Program for guidance.

As a conscientious manager, you know to leave the counseling to professional counselors. But you need to remember that there's a lot you can do to help the employee without abandoning your own role. The normal things good managers do to make the workplace productive and harmonious for everyone can be especially meaningful to those employees whose personal lives are in turmoil. Having a chance to be productive and feel part of a team can do wonders for the battered self esteem and sense of isolation that often go along with being a victim.

### **If you suspect, but do not know for certain, that an employee is being victimized—**

You may find yourself with a more complicated scenario. What if the situation isn't clear? The employee seems tense and upset. Maybe her work is suffering, or other employees are beginning to find her tension getting in the way of teamwork. Maybe the employee hasn't talked about abuse, but behaves in ways that lead you to worry about it. She might come in on Monday mornings with fresh bruises, or seem frightened whenever her husband/boyfriend phones her at work. Co-workers may be coming to you with concerns that she is being victimized, but nobody wants to bring up the subject with the employee.

As a manager struggling to do the right thing, you may be asking yourself, "Should I get involved at all? Is this a personal problem or a workplace problem? What will happen if I don't do anything?"

This is a complex situation, and the way you handle it will depend on your own judgment and your working relationship with your employees. Here are some suggestions that might be helpful:

- ⊙ Don't assume it couldn't happen to your employee. Even when an employee's behavior causes concern, it's common to think something like, "It must be my imagination because Susan is a mature professional person who wouldn't be involved with anything like that." The fact is that anyone can become a victim. But those who don't fit the stereotype—older women, highly educated women, or men from any walk of life—may find it especially hard to let anyone know what is going on.
- ⊙ Don't ignore the situation. Work may be the only resource an employee has left, particularly if the abuser has succeeded in cutting off other sources of support. The earlier you learn about the situation, the quicker you can bring in professional resources. Then you will have a better chance of aiding the individual employee and preventing an incident of violence that could devastate the entire workplace.
- ⊙ Put aside your thoughts about what may be happening at home, and focus on the employee's behavior at work. It's always appropriate for a supervisor to show concern for an employee who seems seriously distressed, and to support the employee in getting professional help. As you probably know, you shouldn't try to diagnose the employee's problem, and should make it clear that the employee can choose whether or not to confide in you.

*"Susan, I have to tell you that I'm concerned about you. You're doing the same good work you always have, but you seem tense all the time, and this is the second time this week I've seen you crying at your desk. You don't need to tell me what's going on in your life, but if there's anything our EAP could help with, I wish you would go talk with them. We can adjust the schedule to fit your meeting times, and nobody else in the office needs to know where you are. And if I can be of help with anything, I hope you'll let me know."*

- ⊙ If the employee's performance or conduct is deteriorating, then document the deficiency and discuss the matter with your personnel office. Whether or not formal action is appropriate at this time, it is essential to counsel the employee about the deficiency and refer the employee to the EAP. It may seem cruel to confront a person who is obviously suffering, but sometimes this is the only way to help. Reminding the employee how essential she is to the organization may actually help boost her self esteem.

### **If you suspect a co-worker is being victimized--**

If the person is your friend or co-worker rather than your subordinate employee, you have more latitude about how to approach the situation. If you decide to confront the problem, you may want to ask whether the person "*feels safe at home*," rather than asking directly about "*abuse*." This wording, based on first-hand experience, can make it easier for the person to open up about the problem.

If your friend denies that there is a problem, or gets angry at you for suggesting that there is one, don't give up or take it as a personal rejection. Your friend may be so beaten down emotionally that she isn't ready to face the reality of what's going on in her life. She may be telling herself that she deserves what she's getting, or that her husband will change if she only does things better. She may be terrified that any action, even admitting the problem, may lead to greater danger for herself or her children. Even if she seems to reject your concern, you can still be a friend, let her know you are there for her, and remind her that you believe she deserves to be safe and happy.

It can always be helpful to get confidential professional advice before you try to intervene. You might want to talk with an EAP counselor, or contact a community organization specializing in domestic violence.

## **A Final Note: Tips For Coping With Extreme Stress**

- ⊙ Concentrate on caring for yourself.
- ⊙ Talk about it with other people in the same situation. Compare reactions, reassure yourself that you are not alone in the way you are feeling.
- ⊙ Talk about it with friends and relatives who care about you. It's normal to need to tell your story over and over.
- Keep your schedule as routine as possible, and don't overdo it.
- Allow time for hobbies, relaxing activities, being with friends, even if you don't quite feel like it.
- Participate in whatever physical fitness activities you normally enjoy.
- Utilize whatever spiritual resources are part of your normal lifestyle.
- Beware of any temptation to turn to alcohol, tobacco, caffeine, and sweet foods. They may make you feel better momentarily, but can cause more problems in the long run. Concentrate instead on a healthy diet.
- If you can, postpone major life decisions until you have had a chance to get yourself back onto a more even keel.
- Don't hesitate to accept help from friends, co-workers, and others. If you can, offer help to others affected by the event.
- Sometimes good self-care and talking with friends are not enough. You may want to seek professional counseling through your Employee Assistance Program. This does not mean you are "sick," but rather that a counselor may be able to help you get your recovery process on track.

# Emergency Phone Numbers

**Police:** \_\_\_\_\_

**Fire/Rescue:** \_\_\_\_\_

**Security Guards:** \_\_\_\_\_

**Federal Protective Service:** \_\_\_\_\_

**Health Unit:** \_\_\_\_\_

**Employee Relations:** \_\_\_\_\_

**Employee Assistance Program:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Office for Victims of Crime

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# OVC Bulletin New Directions

Advocating for the Fair  
Treatment of Crime Victims

## Message from The Director

*New Directions from the Field: Victims' Rights and Services for the 21st Century* is a comprehensive report and set of recommendations on victims' rights and services from and concerning virtually every community involved with crime victims across the nation. The report represents a significant maturation in the field of victims' rights and services since the President's Task Force on Victims of Crime released its *Final Report* in 1982. *New Directions* chronicles the extraordinary accomplishments of a still young field, but also recommends what we as a society should strive to achieve for victims as we enter the 21st century.

*New Directions* is the culmination of more than 3 years' work by over 1,000 individuals in the victims field including crime victims, representatives from national victim advocacy and service organizations, criminal justice practitioners, allied professionals, and many others. In addition, literally hundreds of reference documents were utilized and listed in the endnotes of each of the 18 chapters. The work of these individuals and the publication and dissemination of this material has been supported by the Office for Victims of Crime (OVC). The report and recommendations represent views from the field, however, and do not necessarily reflect the views of the Department of Justice. Moreover, while the recommendations may not reflect all of the individual contributors' views, the contributors agree that all of the recommendations are worthy of discussion and consideration.

This bulletin is a reprint of chapter 13 from *New Directions* and deals specifically with promising practices and recommendations related to the News Media Community. As we move into the 21st century, *New Directions* should serve as a vitally useful guide for developing policies, programs, and practices on behalf of crime victims well into the next century. As comprehensive as this report is, however, the real challenge begins now. After you read the recommendations, after you have examined the numerous promising practices presented in each section, then I encourage you to move forward to see how you can implement improvements in a manner that meets the needs of crime victims.

Kathryn M. Turman  
Acting Director  
Office for Victims of Crime

## New Directions from the Field: Victims' Rights and Services for the 21st Century

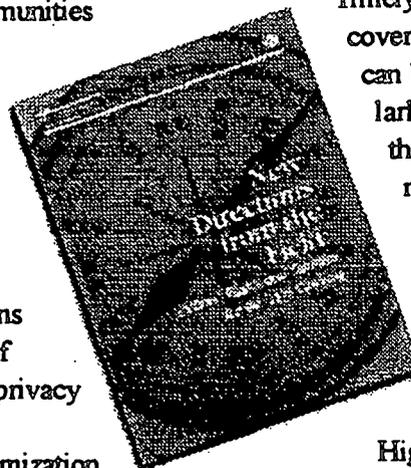
### News Media Community

*Within the last decade, both crime victims and journalists have begun to ask whether crime reporting is victimizing the victims again. The issue is not what newspapers and the electronic media have a right to do legally. It's what we ought to do ethically. The records of crime and its prosecution are public records. The public has a right to know. But where does that right to know end, and where do the privacy rights of private citizens begin?'*

Tommy Thomason, Professor of Journalism, Texas Christian University

The news media play a significant role in public safety by providing important information about the nature and extent of crime occurring in communities and efforts to prevent crime and assist victims. However, this coverage sometimes raises legitimate concerns about the rights of crime victims to privacy in the vulnerable aftermath of victimization, particularly in high profile cases. In some cases, victims perceive aggressive, insensitive

reporting as a direct threat to their ability to grieve with dignity and to their personal safety.



Timely and sensitive coverage of victims' cases can be helpful, particularly when it publicizes the abduction of a missing child or provides information on emergency crisis services following a community-wide disaster.

High-profile coverage of specific cases and emerging crimes has contributed to positive changes in public policy, including

## *New Directions from the Field: Victims' Rights and Services for the 21st Century*

recognition of the need for community notification of released sex offenders and anti-stalking statutes. It has also helped to change public attitudes about the seriousness of violent crimes such as drunk driving and rape. But the media can have a negative impact on individual lives when victims are thrust, often unwillingly, into the limelight solely because of the crimes committed against them. Inaccurate reporting and insensitivity to victims' needs for privacy compound the trauma of crime and often revictimize the victim.

The President's Task Force on Victims of Crime did not issue recommendations specifically pertaining to the news media, although the longstanding ethical dilemma surrounding the public's right to know versus the victim's right to privacy has received substantial attention from media professionals, legal scholars, and crime victims and their advocates. One of the first formal examinations of the legal and ethical considerations of this crucial issue took place in 1986 at a Crime Victims and the News Media symposium in Fort Worth, Texas, sponsored by the Texas Christian University Department of Journalism and the Gannett Foundation. The symposium's participants concluded that ensuring responsible media coverage of crime and victimization is a two-way street. Journalists must become more knowledgeable about crime victims' needs and concerns, and victim service providers must learn more about issues and constraints journalists face when covering crime.<sup>2</sup>

During the past decade, increasing numbers of media professionals have sought sensitivity training from crime

victims and victim advocates to both improve the accuracy of their coverage and minimize the trauma it causes to victims. 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.

In the past decade, several national victim advocacy organizations have developed media codes of ethics. A brochure published in 1987 by the National Victim Center (NVC), *Victims' Rights in the Media*, offers valuable guidelines for the ethical coverage of crime victims by print and broadcast media. In addition, the National Organization for Victim Assistance has developed a working policy for media coverage of victimization in *The Victim Advocate's Guide to the Media* that examines the areas of greatest concern to crime victims and their families.

### *Research Regarding Coverage of Sexual Assault Victims*

Various studies indicate that crime victims, especially sexual assault victims, would be more likely to participate in the criminal justice system if the media were more respectful of their privacy. Data from The National Women's Study presented in *Rape in America: A Report to the Nation* found that 84 percent of rape victims in America do not report the crime to police. The study reported that:

- Half of rape victims (50 percent) 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. 16 percent indicated that they would be "somewhat more likely to report" rapes to the police.

- Almost 9 out of 10 women (86 percent) 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 women (75 percent), rape victims (78 percent), and rape service agencies (91 percent) favored legislation that would prohibit media disclosure of rape victims' names.<sup>3</sup>

Recent surveys of American newspaper editors have shown that, as a general rule, many do not print the names of rape victims. In 1982, a study found that 68 percent of the editors surveyed believed that names of rape victims should not be printed.<sup>4</sup> In 1990, another survey of editors indicated that about 10 percent believed that the rape victims' names should never be printed; 40 percent believed that they should be printed only with the victims' permission; and 44 percent believed that they should be printed only in exceptional cases.<sup>5</sup>

Furthermore, more news media today are examining their policies on covering rape. A 1994 survey of newspaper editors revealed that:

- The topic of rape coverage had been discussed extensively in respondents' newsrooms, with nearly 60 percent of editors noting that their paper had seriously re-examined its policy on rape identification and 55 percent reporting that they had re-examined their policy on rape coverage in general.

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More than 40 percent of editors believed their newspaper was more sensitive toward rape victims than it was 5 years before, and more than 50 percent said they believed newspapers as a whole were more sensitive.

- Almost one-fourth of the editors (23 percent) disagreed with the idea that routine printing of the names of rape victims would remove the stigma of rape.
- Only 24 percent of editors agreed that not printing names of rape victims was a violation of the public's right to know.

The survey also indicated that editors believe that the decision to withhold a name should be the newspaper's and not mandated by legislation prohibiting the press from publishing the name of a sexual assault victim. Almost three-fourths of editors believed that such laws should be repealed because they violate the First Amendment.<sup>6</sup>

### *Guidelines for Journalists Who Cover Crime and Victims' Cases*

The impact of media coverage on crime victims and survivors—positive or negative—depends to a large degree on the sensitivity with which journalists approach their reporting. Written guidelines incorporated into a news organization's policies, much like the guidelines news organizations have adopted in other sensitive areas, can provide journalists basic principles of ethical coverage of victimization. Once in place, they can be used as a

tool for initial and ongoing professional education of media employees.

The guidelines on privacy issues developed by the *St. Louis Post-Dispatch* provide an example of ethical standards for major newspapers. They address such key issues as publishing names and addresses of crime victims and witnesses, interviewing family members of victims of crime, dealing with victims of crime who are juveniles, taking photographs that portray victims or survivors in private moments of deep emotion, and covering funerals, sexual abuse, incest cases, and kidnaping involving sexual abuse.<sup>7</sup>

The following has been excerpted from the *Post-Dispatch* guidelines to provide an example of what news organizations can do to ensure more responsible news reporting on crime and victimization and, in particular, vulnerable victims.

### *VICTIMS OF CRIME:*

#### *General.*

Crime victims often suffer long-term psychological problems that scar their lives. In many cases, victims identified in news stories about the crime involving them are further traumatized. Some feel humiliated by the community knowing what has happened to them. Others fear the criminal who victimized them, or his associates, will somehow use the information from the news story to threaten or harm them. Still others are afraid that the publicity has opened them to harassment from psychotic strangers.

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*When tragedy strikes, journalists are thrust into chaos and forced to make decisions on the fly. These decisions can impact the lives of everyone involved. Both journalists and criminal justice professionals must work as a team to meet the needs of the public while also protecting the rights of the victims. By understanding how the media works, criminal justice professionals can help reporters get the information the public needs to know. By understanding victims' rights, reporters can avoid the common errors of judgment that cause victims needless pain.*

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Robert Davis, National Reporter,  
USA Today

Our policy on crime victims should provide readers with the most relevant information while underlining our concern for the well-being of the victimized.

### *VICTIMS OF CRIME: Names and addresses.*

The general policy will be to publish the names of crime victims as an integral element of news stories.

Names will not be used of victims of sex crimes, pigeon drops and scams or other crimes that tend to humiliate or degrade the victim.

Names will not be used if identification is likely to endanger the life or health of the victim. Any request by police, a victim or representative of the victim to withhold the name from

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a news story for reasons of health or safety should be given great weight.

An exception to the policy of non-identification will be made for victims of degrading crimes who want to be identified or who seek publicity to serve as an example for others.

### **PHOTOGRAPHS.**

Some of the sharpest controversies over invasions of privacy have resulted from sensational spot news photos at scenes of violent crime or other tragedy. . . . A common dilemma is the picture of the grieving relative. Such an image might capture a private moment of deep emotion that dramatizes the event in starkly human terms. But the intrusion of the press at that moment may be resented by many readers, not to mention the subject of the photograph. . .

Care must be taken in publishing pictures of victims of crime and tragedy, and relatives of victims. As a general rule, photographers should identify themselves and seek permission from the subjects to take such pictures, especially on private property.

### **SEX ABUSE: General.**

The general policy of the *Post-Dispatch* is to question the use of names in all stories of a sexual nature. In reporting on sex crimes, our policy should be aimed at alerting the community and protecting the victim. Thus, we reiterate our long-standing policy of not naming rape victims and using only the most general identifying information, while naming and further identifying the accused when a warrant is issued.<sup>8</sup>

### **Legislation to Protect the Identity of Crime Victims**

Feeling that the media's attempts to regulate themselves through victim-sensitive guidelines have not been adequate to protect victims, legislators have enacted laws to force more sensitive coverage. Some of these laws, however, have been held to be unconstitutional. In *State v. Globe Communications Corp.*, the Florida Supreme Court held that a Florida criminal statute that prohibited the media from identifying the names of sexual assault victims violated the First Amendment.<sup>9</sup> In that case, *Globe Communications Corp.* twice published the name and identifying information of a sexual assault victim, violating the Florida statute. The paper had lawfully learned the victim's name through investigation. The Florida Supreme Court relied on the U.S. Supreme Court's decision in *Florida Star v. B.J.F.*, finding that the Florida statute barring any media publication of a rape victim's name was unconstitutional because it was "overbroad"; that is, it punished the media even if, for example, the name of the victim was already known in the community.<sup>10</sup> It also found that the statute was "underinclusive" in that it punished only media publication and not acts by a private person.

Similarly, the U.S. Supreme Court in *Cox Broadcasting Corporation v. Cohn* ruled unconstitutional a Georgia statute that imposed civil liability on media for publishing a rape victim's name.<sup>11</sup> In *Cox*, the news station had obtained the victim's name from public court records—a factor the Supreme Court held to be important,

noting that "the First and Fourteenth Amendments command nothing less than that the States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection."<sup>12</sup>

Following these cases, several states enacted privacy statutes to conform with the First Amendment.<sup>13</sup> The legislation limits access of the public, including the media, to records that might otherwise readily reveal victims' names. For example, Florida's Crime Victims Protection Act, passed in 1995, strengthened the exception to the definition of public records by excluding court information containing the identity of victims of sexual crimes or child abuse.<sup>14</sup> While the new Florida statutes provide that the victim's identity may be released to the defendant and defense attorney, they also establish a specific procedure that, at the victim's request, can be employed to allow a trial court to determine that the victim's identity may not be made public through the court's proceedings or records.

### **Recommendations from the Field for the News Media**

#### **NEWS MEDIA RECOMMENDATION FROM THE FIELD #1**

The news media should adopt codes of ethics or guiding principles that clearly delineate policies sensitive to and respectful of crime victims. These guidelines should include policies that discourage the identification of victims of sexual assault and other vulnerable victims, including children, without the victim's consent.

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*I hurt when I hear about [crime] happening to other people, when I turn on the news or pick up the newspaper. But when it's yours that's on the news or in the newspaper, it's like a dream. And you're wondering when you are going to wake up.*

Wife of a shooting victim

Written guidelines similar to those developed by the *St. Louis Post-Dispatch* can provide basic principles to guide ethical coverage of victimization. A number of news media organizations have established informal policies and practices to protect the privacy of sexual assault victims and children. However, these policies are often not given the authority of written guidelines. Both print and broadcast media should adopt written guidelines and provide training to employees regarding standards for their coverage of crime victims. Written guidelines should serve as a foundation for making difficult decisions about coverage—decisions frequently made hastily under deadline pressures.

## **NEWS MEDIA RECOMMENDATION FROM THE FIELD #2**

**News organizations, victims, and victim-serving providers should sponsor frequent educational forums for journalists on sensitive media coverage of crime and victimization.**

Journalists should be educated about how to cover sensitive stories involv-

ing crime victims, with training and technical assistance from victim service providers as well as crime victims themselves. Professional media organizations should incorporate this training and panel discussions of sensitive coverage of victimization into their state, regional, and national conferences.

## **NEWS MEDIA RECOMMENDATION FROM THE FIELD #3**

**University departments of journalism should incorporate curricula that teach students about sensitivity to victims in the news media's coverage of crime.**

Information and guidelines for dealing with crime victims should be incorporated into curricula for college and university classes in communications and journalism. Courses should cover the trauma of victimization, crime victims' privacy and safety concerns, services available to victims, and developing cooperative relationships with law enforcement and criminal justice officials in the coverage of crime and victimization. Victims themselves should be invited to classes to discuss their experiences with the media. Universities and colleges should use the handbook *Crime Victims and the Media*, published by the National Victims Center in 1989, as a resource for incorporating these topics in their journalism and mass media courses.

## **NEWS MEDIA RECOMMENDATION FROM THE FIELD #4**

**Victim service providers should receive education about media relations and how to be a valuable resource for the press. Training and technical assistance for service providers should be made available from professionals in the journalism community.**

In addition to training, guidelines for providing support and guidance to victims about dealing with the news media in the aftermath of a crime should be made available to victim service professionals, law enforcement, prosecutors, clergy members, and others who might be called upon to provide advocacy and assistance. With funding from the Office for Victims of Crime, both the National Victim Assistance Academy, sponsored by the Victims' Assistance Legal Organization and a consortium of universities, and the National Organization for Victim Assistance have developed curricula that outline tools and strategies to help victim assistance providers work with the media.

## **NEWS MEDIA RECOMMENDATION FROM THE FIELD #5**

**The victim service and mental health professions, in conjunction with media representatives, should develop debriefing protocols to help journalists cope with the trauma and stress of covering crime and victimization.**

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*I'd like to see an article on how to avoid a specific abuser characteristic, or to make your apartment or car safe before assaults, abuse, or rape. So much can be done if people took an interest in saving people from abuse, and death from abuse.*

A domestic violence victim

Reporters, photographers, camerapersons, and editors are confronted with a daily barrage of violence and tragedy, with little guidance on how to cope with the personal trauma of witnessing and reporting these events. Some journalists are themselves victims of crimes similar to those they are assigned to cover.

Representatives of the news media, victim service providers, and the mental health community should work together to produce a protocol to give journalists who cover crime and victimization a means to address the stressful nature of their careers. News organizations should establish a debriefing and counseling program for all journalists who need such assistance.

### **NEWS MEDIA RECOMMENDATION FROM THE FIELD #6**

**State public policy leaders and media representatives should explore the development of legislation that would appropriately limit general public access to confidential information about sensitive victims.**

As the U.S. Supreme Court has made clear, efforts to provide legislative protection of victims' privacy must take into account the important interests of the First Amendment. Several states have developed statutes that secure victims' privacy by eliminating confidential identifying information from public records. Other states may want to review these statutes.

# *New Directions from the Field: Victims' Rights and Services for the 21st Century*

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## Endnotes

- 1 Thomason, Dr. T., "Compassion, Concern Mark Symposium," in *CRIME VICTIMS AND THE NEWS MEDIA*, Fort Worth, TX: Texas Christian University, 1986:2.
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- 3 Kilpatrick, D., C. Edmunds, and A. Seymour, *Rape in America: A Report to the Nation*, Arlington, VA: National Victim Center and the Medical University of South Carolina, National Crime Victims Research and Treatment Center, 1992.
- 4 Okrop, C. E., *Views of Newspaper Gatekeepers on Rape and Rape Coverage*, Manhattan, KS: Kansas City University, 1982:21.
- 5 Winch, S. P., *On Naming Rape Victims: How Editors Stand on the Issue*, Minneapolis, MN: Paper presented at AEJMC National Convention, 1991.
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- 9 648 So.2d 110 (Fla. 1994).
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- 13 E.g., ALA. CODE § 15-23-69(b) (1995); ALASKA STAT. §§ 12.61.100-12.61.150 (1991); MASS. GEN. LAWS. ch. 258B, § 3(h) (1988).
- 14 FLA. STAT. §92.56, 119.07 (1995).

The report and recommendations represent views from the field, and do not necessarily reflect the views of the Department of Justice.

The Office for Victims of Crime is a component of the Office of Justice Programs, which includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office of Juvenile Justice and Delinquency Prevention.

To obtain a copy of the full report, *New Directions from the Field: Victims' Rights and Services for the 21st Century*, contact the OVC Resource Center at 800-627-6872, or query askncjrs@ncjrs.org, or send in the order form below.

August 1998  
NCJ# 172824

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**DAN KURTENBACH, President**  
**Oklahoma Goodwill Industries**  
**410 SW 3rd Street**  
**OKLAHOMA CITY, OK , OK 73109**

**JAN 25 1998**

Dan is the leader of Oklahoma Goodwill Industries. Dan serves on numerous boards and committees, including the following:

- Rotary Club #29
- Knights of Columbus
- Oklahoma City Urban Advisory Committee
- Governor's Committee on Employment of People with Disabilities
- Oklahoma City Mayor's Committee on Disability Concerns
- Resource Coordination Committee
- Citizens League
- Agency Directors Association
- Executive Council of the Goodwill Industries International Conference of Executives
- Professional Secretaries International Executive Advisory Board

Dan and his wife, Theresa, have two sons and one daughter-in-law, Dan II, his wife Tina, and Jerome. They moved to Oklahoma City in September, 1987 when he accepted the position of President of Oklahoma Goodwill Industries. He has helped lead the organization from serving 30 people a day to over 400 and from \$860,000 to over \$12,000,000.

Dan was raised on the family farm near Lindsay, Nebraska. After a two-year tour of duty in the Army, he received his B.S. degree in Business Administration from St. John's University in New York City and a M.B.A. from the University of Nebraska in Kearney, Nebraska. He worked for the State of Nebraska as a Regional Social Services Representative for six years before joining Central Nebraska Goodwill as its Executive Director in 1980. He and his family moved to Lincoln, Nebraska to serve as their Goodwill's Executive Director before moving to Oklahoma City.

Dan was recognized for his service as chair of the Resource Coordination Committee with the 1995 Citizen of the Year award from the Oklahoma Chapter of the National Association of Social Workers. Dan was also an Honorary Role Award winner in the 1996 LifeSavers Corporation "Take a Bigger Role" award. Governor Frank Keating proclaimed July 12, 1996, as Dan Kurtenbach day resulting from his role as chairman of the Resource Coordination Committee. He has also received the Rotary Service Above Self Award in June 1996 and the 1996-97 Executive of the Year with Professional Secretaries International.

Dan II is a social studies teacher and football and track coach at Midwest City High School in Midwest City. Dan and his wife Tina were married on July 12, 1997. Jerome is a Junior at Oklahoma City University. Dan and Theresa enjoy dancing and Dan enjoys golf. Dan and Theresa have been married for 27 years.

His publications include:

- "The First 12 Hours", "Forum", July 1995
- "Tradition and Innovation: Motivating Your Board of Directors", National Goodwill "Forum", October 1991
- "Vocational Services", The Oklahoma City Rotary News 8/13/91
- "Understanding the Americans with Disabilities Act", "Oklahoma City Action"; A publication of the Oklahoma City Chamber of Commerce, 10/4/90
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- "How to write a Successful Business Plan", book review, National Goodwill "Forum", November/December 1988
- "The M.B.A.: A new degree of expertise for Goodwill CEOs", National Goodwill "Forum", November 1987
- "Spotlight", National Goodwill "GIA News", February 1987

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410 SW 3rd Street  
OKLAHOMA CITY, OK , OK 73109**

No newcomer to Goodwill Industries, Dan has been with the organization for 19 years, coming to Oklahoma from Nebraska in 1987. A soft-spoken man with twinkling eyes and a ready smile, Dan is nonetheless a hard-hitting businessman-a CEO with a dynamic vision for his company. That vision has propelled Oklahoma Goodwill Industries from an agency that 11 years ago had an \$860,000 budget and served 30 people a day, to an agency that today has a \$12 million budget and serves more than 400 a day. Some may think of it as the ultimate recycling hub. But Oklahoma Goodwill Industries, Inc. is a center where the disadvantaged and people with disabilities are given a chance to become productive, tax-paying citizens.

Dan was recognized for his community service as chair of the Resource Coordination Committee, an unmet needs committee helping bombing victims and survivors, as the 1995 Citizen of the Year from the Oklahoma Chapter of the National Association of Social Workers. Dan was also an Honorary Role Award winner in the 1996 LifeSavers Corporation "Take a Bigger Role" award. Governor Frank Keating proclaimed July 12, 1996, as Dan Kurtenbach day resulting from his role as chairman of the Resource Coordination Committee. He has also received the Rotary Service Above Self Award in June 1996 and the 1996-97 Executive of the Year with Professional Secretaries International. Dan serves on numerous boards and committees.

Dan was raised on the family farm near Lindsay, Nebraska. After a two-year tour of duty in the Army, he received his B.S. degree in Business Administration from St. John's University in New York City and a M.B.A. from the University of Nebraska in Kearney, Nebraska. Dan and his wife Theresa have been married for 27 years. Their son Dan II is a social studies teacher and football and track coach at Midwest City High School in Midwest City. Dan II married Tina on July 12, 1997. Their son Jerome is a Junior at Oklahoma City University. Dan and Theresa enjoy dancing and Dan enjoys golf.

Workshop on  
**Mass Crisis Response**  
Responding to victims with unique needs:  
Establishing a Resource Coordination Committee  
Washington D.C. February 9, 1999  
3:30 p.m. - 5:00 p.m.

Presented by:

Daniel J. Kurtenbach, President  
Oklahoma Goodwill Industries  
410 SW Third Street  
Oklahoma City, OK 73109

405-236-4451 ext 17  
405-235-7215 FAX  
dan@okgoodwill.org

# **I. How is a Resource Coordination Committee (RCC) started?**

- Building relationships on an ongoing basis
- Organizations to become involved with

# **II. Wednesday 9:02 a.m. April 19, 1995 OKC**

- Annual Mayor's Prayer Breakfast (1400 people)
- Prayer "What can I do that will make a difference?"
- At the office at 8:30 talking to our national CEO
- Life changing moment

# **III. How I got started**

- Went golfing with CEO of Red Cross
- Then came the interview

## **IV. How it worked**

- Agenda
- Cases presented by case manager
- Cases reviewed for needs and decisions
- All commitments written in the minutes
- Case manager shares results with survivor
- Follow through from supporting agency
- Follow-up reported to RCC
- Family concept

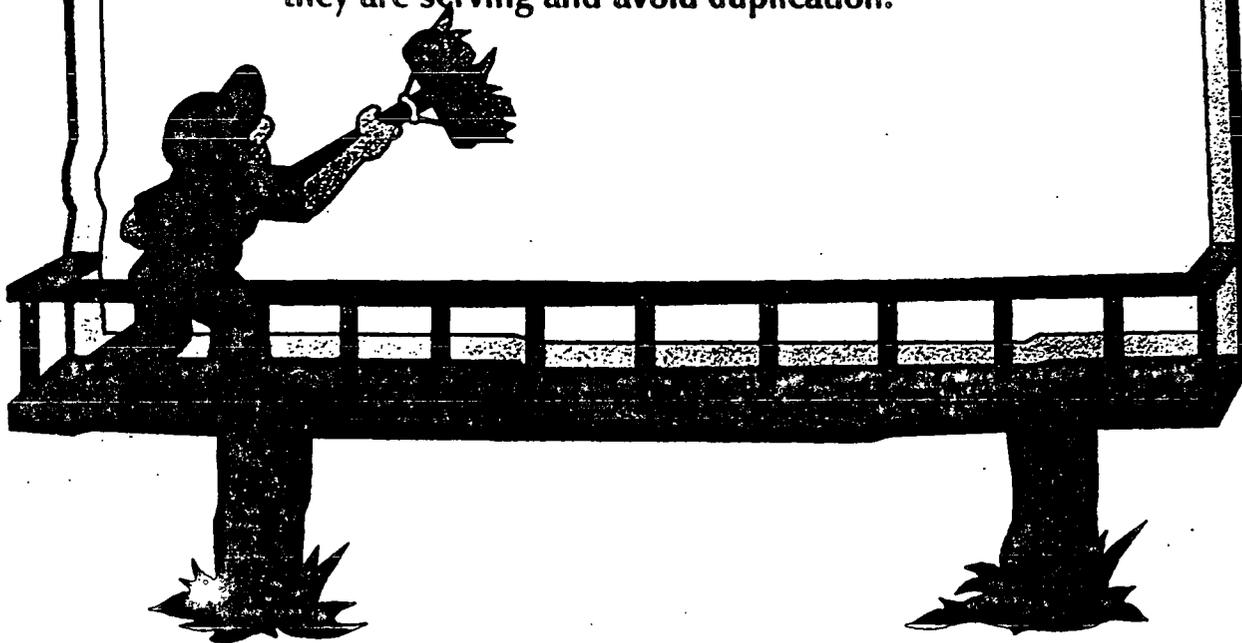
## **V. Capturing the data**

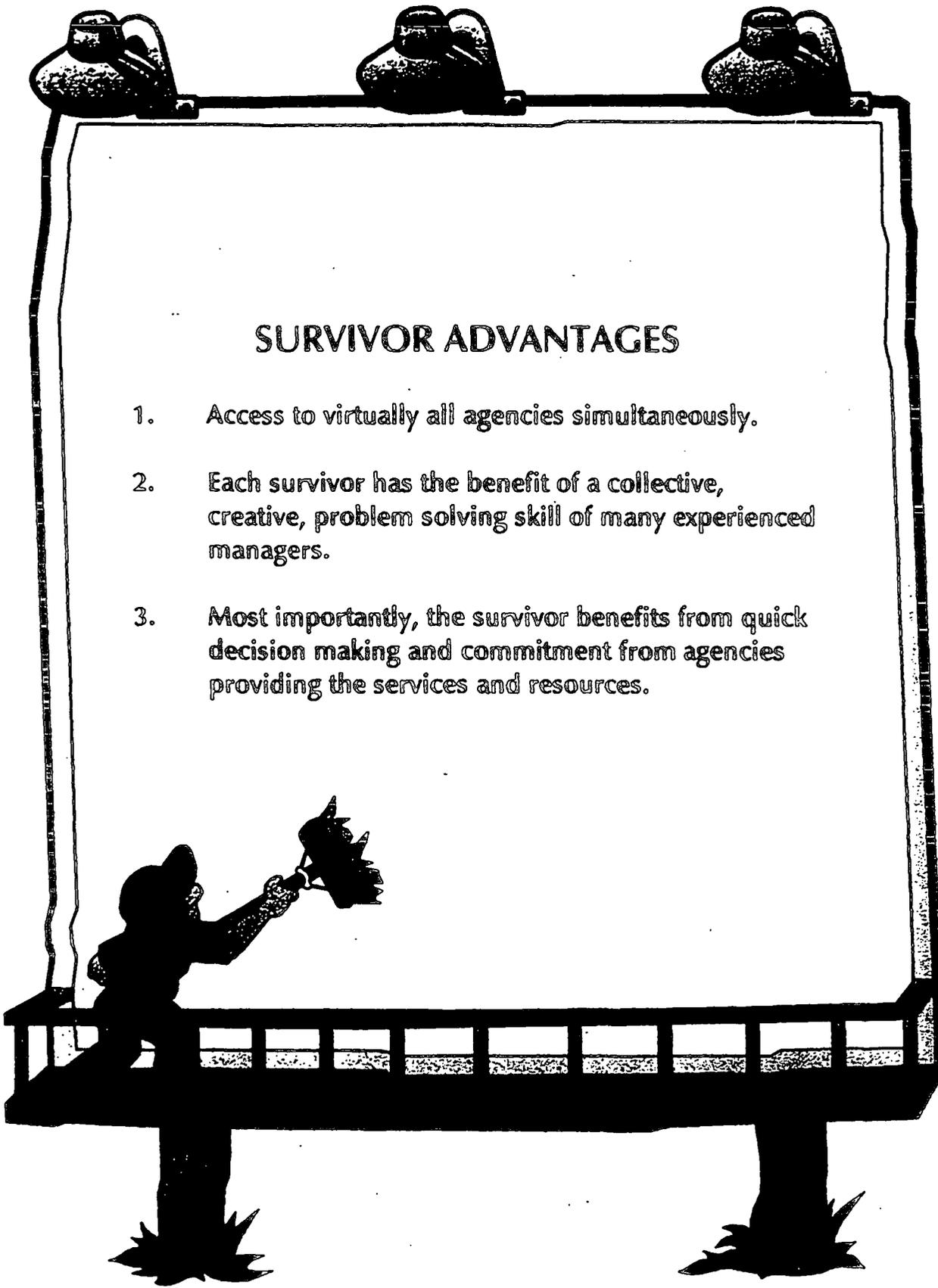
- United Way Database
- Financial Database
- Periodic Reporting to public officials
- Debriefing of RCC members
- School of Social Work report
- What can you do today?



## Agency Advantages

1. It expands each agency's opportunity to offer assistance to survivors they may not have otherwise encountered.
2. The committee approach makes possible the best use of each agency's services and resources matching them with survivors in need.
3. The committee opens access for each agency's clients to the full range of resources available in the community.
4. It provides a system for future interaction beyond the disaster.
5. The committee member exchange will allow agencies to share information about survivors they are serving and avoid duplication.





## SURVIVOR ADVANTAGES

1. Access to virtually all agencies simultaneously.
2. Each survivor has the benefit of a collective, creative, problem solving skill of many experienced managers.
3. Most importantly, the survivor benefits from quick decision making and commitment from agencies providing the services and resources.

## **PRINCIPLES OF GUARDING THE PUBLIC TRUST**

As members of the Oklahoma City Resource Coordination Committee, we assume a public trust and recognize the importance of high ethical standards within the deliberations we conduct. Essential values and ethical behaviors we will exemplify include:

Commitment beyond self  
Obedience of and commitment beyond the law  
Commitment to the public good  
Respect for the value and dignity of all individuals  
Accountability to the public  
Truthfulness  
Fairness  
Responsible application of resources  
Reasonable evaluation of survivor need

In keeping with these values and to assist us in fulfilling our responsibilities to the disaster survivors and community funds we serve, we subscribe to the following principles.

- We will conduct ourselves and operate the Resource Coordination Committee in a manner that upholds the integrity of both and merits the trust and support of the survivors and public.
- We will uphold all applicable laws and regulations, going beyond the letter of the law to protect and/or enhance the Resource Coordination Committee's ability to accomplish its mission.
- We will treat others with respect, doing for and to others what we would have done for and to us in a similar circumstance.
- We will be responsible stewards of all representative agency funds.
- We will take no actions that could benefit an agency personally at the unwarranted expense of the Resource Coordination Committee's efforts as a whole, avoiding even the appearance of a conflict of interest. We will exercise prudence in the expenditure of all funds.
- We will carefully consider the public perception of our actions and the effect that action could have, positively or negatively, on survivors and on member agencies.

June 16, 1995

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Signature

# PRIMARY SURVIVORS

**Families and individuals who have suffered physical, emotional, and spiritual losses including the death or injury of a family member; personal property losses and life-sustaining losses directly associated with the bombing of the Murrah Federal Building. Including but not limited to:**

- A. Immediate survivors who worked in the Federal Building.**
- B. Immediate survivors whose spouse worked in the Federal Building.**
- C. Immediate survivors (minor children) whose parents worked in the Federal Building.**
- D. Immediate survivors of other persons living or employed in the area surrounding the Federal Building.**
- E. Immediate survivors of other persons who were in the building at the time of the explosion.**
- F. Those whose employment has been affected but not their homes or living situations.**
- G. Community residents whose homes have been affected.**
- H. Persons or immediate survivors of those who were injured or who were on the streets or who were assisting in the rescue.**

## **How It Might Work**

### **Case Presentation Process**

1. **Agenda for meeting prepared.**
2. **Cases presented by the agencies.**
3. **Cases reviewed for needs and decisions made by agencies to meet those needs.**
  - **Each agency has the choice to choose which case to assist and to what extent assistance will be given.**
  - **Completion date will be indicated.**
  - **Agencies presenting cases maintain case management responsibility.**
  - **All cases presented must be accompanied by a release of confidentiality, signed by the client(s).**
  - **All commitments of resources, by any participating agency, are voluntary and may be based on the agency's individual criteria for service.**
4. **All commitments made on single cases reduced to Shared Written Plan.**
5. **The presenting agency will immediately share the commitment of other agencies with their client.**
6. **Agency making commitment follows through on delivery of resources.**
  - **Agency confirms delivery of resources to coordinator or the RCC.**
7. **Coordinator reports closed case to committee.**

**Release of Confidential Information and Waiver**

Having applied for assistance from \_\_\_\_\_, I hereby give permission for this information to be shared with other agencies and committees to best serve my needs and those of my family.

For myself and anyone making claims on my behalf, I waive any claims regarding the release of confidential information as authorized here, as well as any claims arising out of the decision to and the manner or method of providing assistance and hold harmless any organization or agency from all such claims.

I further understand that the release of this information does not guarantee that assistance will be provided, but that without the information my case may not be presented for consideration by members of other agencies and committees that may be of help.

The exchange of information regarding my needs or the needs of my family are limited to the following agencies:

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\_\_\_\_\_  
Applicant's signature

\_\_\_\_\_  
Spouse's signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Social Security #, Date

\_\_\_\_\_  
Social Security #, Date

# RESOURCE COORDINATION COMMITTEE AGENDA

Meeting Called By:

Date:

Participants: All Disaster Funding Agencies

Meeting Place:

Starting Time:

Ending Time:

**Purpose of Meeting:** To work with agencies that are assisting families who have been affected by the A.P. Murrah bombing; to develop a plan for their recovery; to identify and help resolve emergency and long term disaster-related needs.

**Desired Outcome:** To expeditiously provide a resource coordination for individuals and families disaster caused needs resulting from the A.P. Murrah bombing.

**Ground Rules:**

- Confine your discussion to the topic
- Appreciate another person's point of view
- Give freely from your experience
- Hold all deliberations in strictest confidence.

**Agenda Items:**

**Person Responsible:**

Welcome

Approval of Minutes of (date)

Follow-up on past identified needs:

Agency Reports (Cases must be received by Wednesday at 11:00 a.m. They must have a case manager and must have all necessary release of information documents.)

Chairman's Report

Other

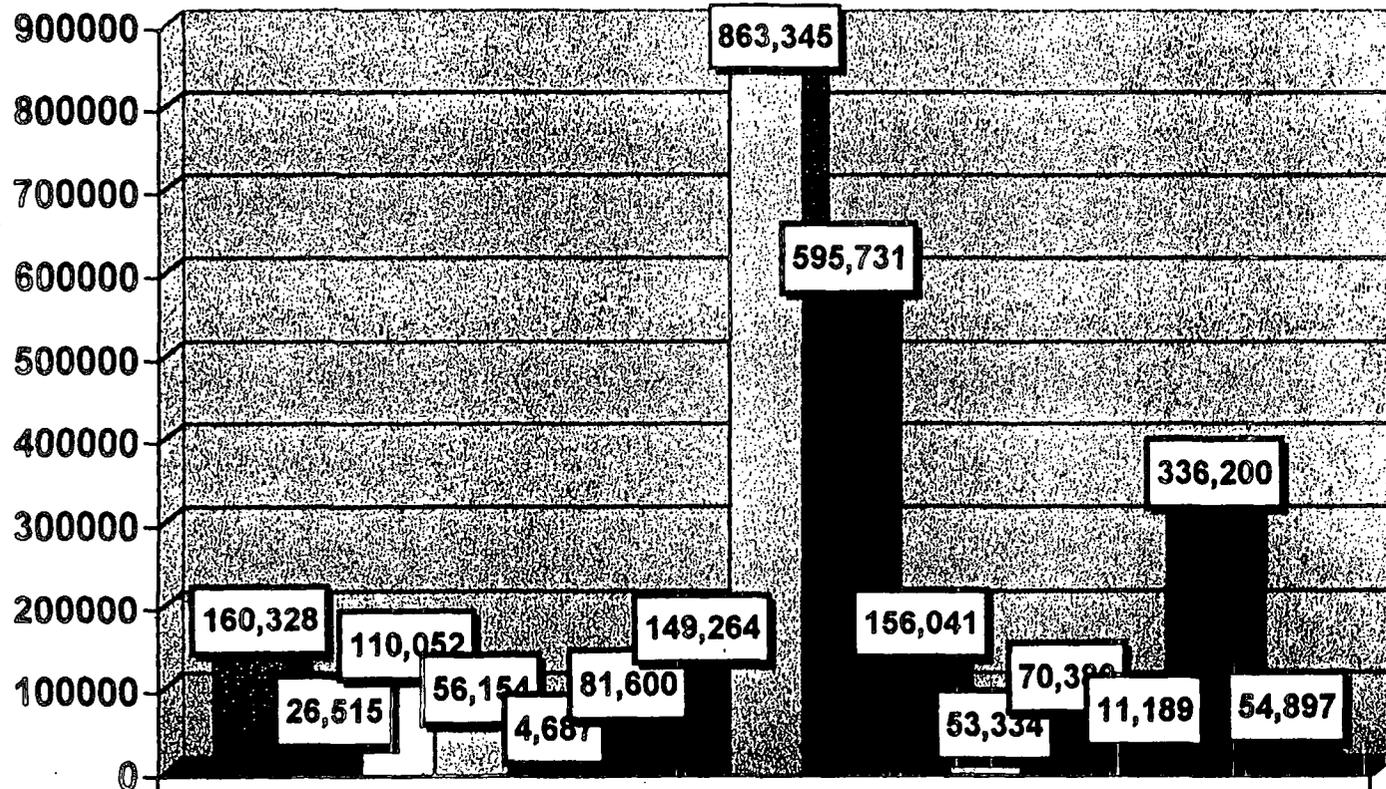




# Resource Coordination Committee Oklahoma City

(Churches 18, Service Clubs 3, Non-Profits 10, Government 11, Private 3)

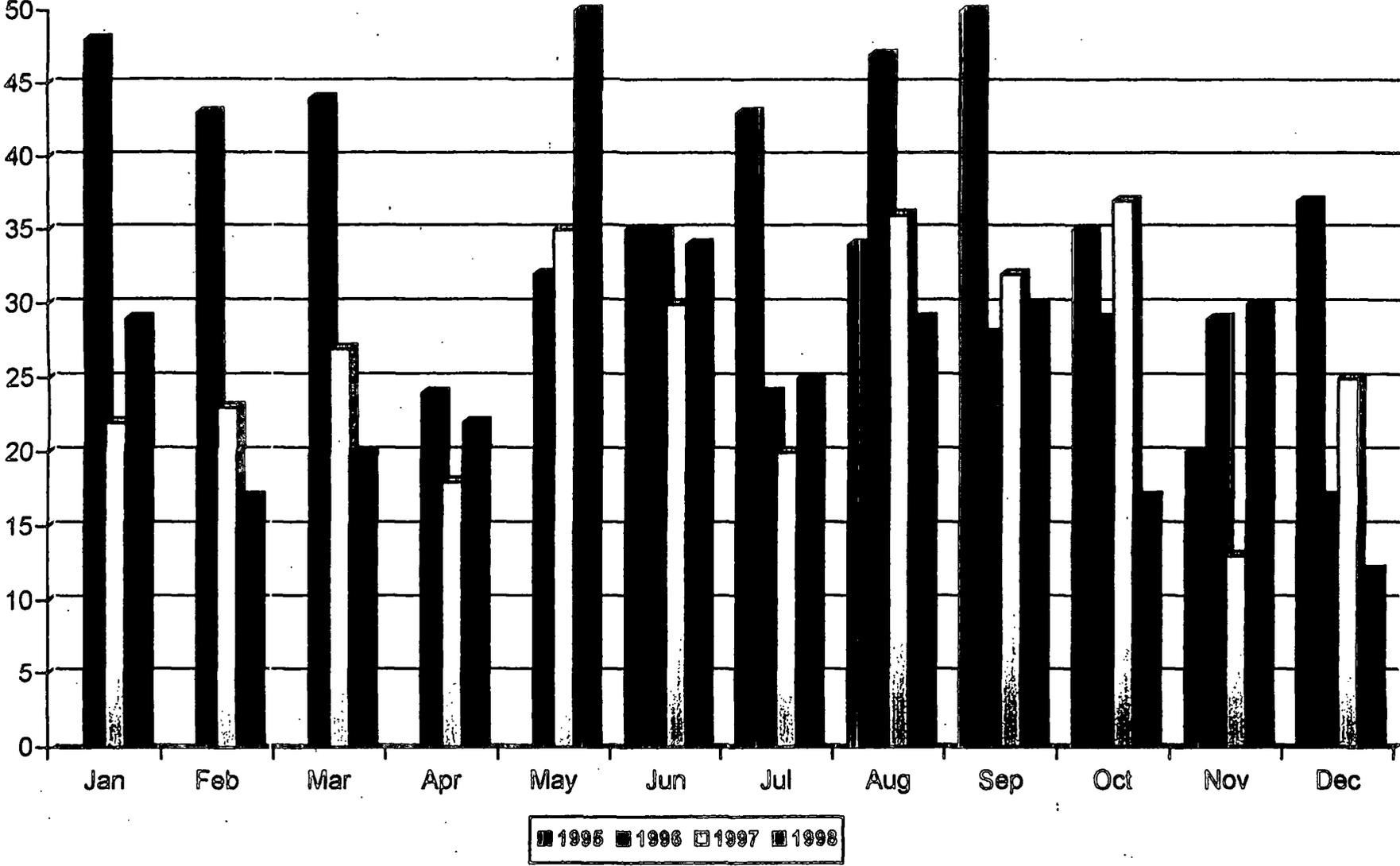
## Dollars Funded



562 People Served  
Grand Total = \$2,729,716



# Number of Cases





# **NATIONAL SYMPOSIUM ON VICTIMS OF FEDERAL CRIME**

## **AGENCY DAY**

**THE FOLLOWING AGENCIES HAVE PROVIDED US WITH THEIR AGENDAS FOR THE SPECIFIC AGENCY MEETINGS, TO BE HELD ON WEDNESDAY, FEBRUARY 10, 1999.**

**THE SPECIFIC TIME AND LOCATION OF WHERE YOUR AGENCY WILL BE MEETING, CAN BE FOUND IN YOUR SYMPOSIUM PROGRAM.**

**PLEASE NOTE: MOST OF THE AGENCY MEETINGS WELCOME PARTICIPANTS WHO DO NOT FALL UNDER ANY ONE AGENCY. HOWEVER, IT IS ADVISABLE TO CHECK BEFOREHAND IF THE MEETING IS IN FACT AN OPEN MEETING.**



**U.S. Postal Inspection Service  
National Symposium on Victims of Federal Crime  
Agency Day Agenda  
February 10, 1999**

<u>TIME</u>	<u>TOPIC</u>	<u>PRESENTER</u>
9:00 am	Workplace Environment Crisis Management Planning Threat Assessment Teams	Suzanne Milton Manager Wkplace Environment Improvement
10:00 am	Assisting Victims of Identify Theft Fraud	Joe Fresco Postal Inspector
11:30 am	U.S. Postal Service Employee Assistance Program (EAP) as a Partner and Resource in Assisting Victims/Witnesses of Postal Crimes	David Bingaman EAP Manager Federal Occupational Health, DHHS and Art Barker EAP Regional Supervisor Vasquez Management Consultants
12:15 pm	Lunch Break	
1:30 pm	USPS EAP Continued	Bingaman and Barker Continued
3:15 pm	Legislation and Liabilities	Gary Hyde Postal Inspector/Associate Counsel
4:00 pm	U.S. Postal Inspection Service Policy & Procedures	Terri Andreoli Postal Inspector/Program Manager



# NATIONAL SYMPOSIUM ON VICTIMS OF FEDERAL CRIME

## DEA-SPECIFIC MEETING TOPICS

- ☐ **Office of Operations Management**
- ☐ **In Service Training**
  - Revised Brochures
  - CSs Witnesses and Victims
  - VWAP in MET and Demand Reduction
  - Restitution Information
  - Child Abuse
  - Firebird and M-204 Systems
- ☐ **Division VWAP Issues and Concerns**
- ☐ **Accountability**
  - Quarterly Reports
  - Inspections
  - Appraisal Records
  - DEA Reporting Form
- ☐ **Liaison Activities**
  - VWAP State/local Task Force Development
  - State Crime Compensation Programs
  - VWAP Coordinators
  - FBI
  - INS
  - DEA
  - EOUSA/USAO
  - OVC
- ☐ **Funding Mechanisms**
  - OVC
  - EWAP
  - VWAP Object Class Code
  - Operating Funds



**Victim-Witness Specialists' In-Service Training**  
**February 10, 1999**  
**Omni Shoreham Hotel**  
**Washington, D.C.**

**Wednesday, February 10, 1999**

9:00 a.m. - 9:15 a.m.	Welcome
9:15 a.m. - 10:00 a.m.	State of the Program
10:00 a.m. - 12:00 noon	Emergency Crime Victim Assistance Fund
12:00 noon - 1:30 p.m.	Lunch
1:30 p.m. - 3:00 p.m.	Legal Instruction
3:15 p.m. - 4:00 p.m.	Victim-Witness Specialist Protocol
4:00 p.m. -	VWAP Grade Structure



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## Department of Defense Agency Day

February 10, 1999

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Plenary Session: Victim Trauma

Time: 0900 - 1030

Panel Presenters: CDR Mike Dineen (Bethesda Naval Hospital); Dr. Harry C. Holloway (Uniformed Services University of Health Science); and LTC Elspeth Cameron Ritchie, (Walter Reed Health Care System)

Brief Description: This panel presentation will address trauma experienced by victims of crime and address the special circumstances of victims of violent sexual offenses and terrorism in the military setting. The workshop will discuss the typical traumatic reactions of crime victims, consider how these symptoms should be evaluated, and recommend techniques for improving the assistance provided to these victims. The workshop will explore improving the response to crimes.

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Breakout Session: Military Service Victim and Assistance Programs.

Time: 1045-1215

Facilitators: Service Victim and Witness Coordinators: Lieutenant Colonel Keith Roberts (Air Force); Major Holly Coffey (Army); Lieutenant Mark Myers (Navy); Captain Andrew Metcalf (Marine Corps); and CDR Ruth Torres (Coast Guard)

Description: The Military Service victim and witness coordinators will lead a discussion of procedures, problems, and initiatives for the attendees from each of the Military Services. Four separate breakout sessions will be held for DoD attendees (Marine Corps and Navy will attend one session). A reporter will record key discussion points and report to the final DoD plenary session.

---

Plenary Session: Working with Child Victims of Crime

Time: 1330 - 1430

Panel Presenters: LTC Nancy Slicner (US Air Force Office of Special Investigation)

Brief Description: This presentation will address the special circumstances of assisting child victims in the military setting. The workshop will discuss the typical traumatic reactions of crime victims experienced by children, discuss methods for interviewing child victims, and recommend techniques for improving the assistance provided to these victims. The workshop will explore improving the response to crimes.

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**Breakout Session: Improving Victim and Assistance by Functional Area (4 separate sessions)**

**Time: 1445-1600**

**Facilitators: Peggy Yoder (Corrections); Tom Boley (Law Enforcement); Chaplain John McCrae (Chaplains); Lieutenant Mark Myer and LTC Keith Roberts (Legal)**

**Breakout Session 2 (1 and 1/4 hour-- Victim and Assistance Procedures and Problems By Functional Area. Separate sessions will be held for law enforcement, legal, corrections, and family/clinical service providers. Facilitators will lead a discussion of procedures, problems, and issues in these areas and identify best practices. A reporter will record discussion and provide report for final DoD plenary session.**

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**Plenary Session Improving Department of Defense Victim and Witness Assistance**

**Time: 1615 - 1700**

**Facilitator: LTC Ingold**

**Reporters from each breakout session will briefly report on the new initiatives, problems, and issues addressed by each breakout session. DoD attendees will discuss solutions to problems identified and recommend improvements to DoD victim and Witness Assistance Programs.**



National Symposium on Victims of Federal Crime

# **MASS CASUALTY INCIDENT**

February 7-12, 1999  
Washington, D.C.



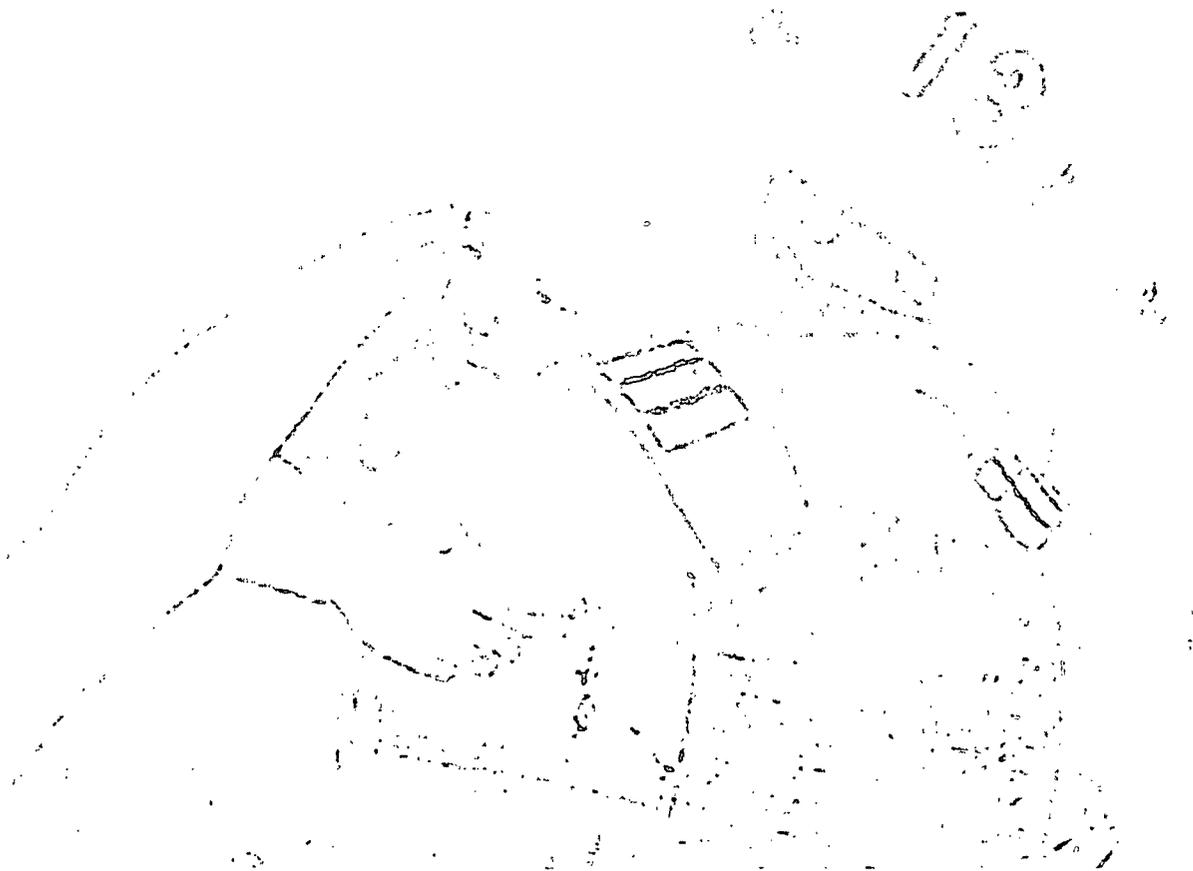
**United States Department of Justice**  
Office of Justice Programs  
*Office of Victims of Crime*

Prepared by  
**RPI**  
Research Planning, Inc.



*"Come when the blessed seals that close the pestilence are broke, and crowded cities wail its stroke! Come in consumption's ghastly form, the earthquake shock, the ocean storm! Come when the heart beats high and warm, with banquet song, and dance, and wine! And thou art terrible! - The tear, the groan the knell, the pall, the bier and all we know in dream or fear of agony are thine."*

Fitz-Greene Halleck



## **AUSTIN, TEXAS - FEBRUARY 9 - 8:35 AM**

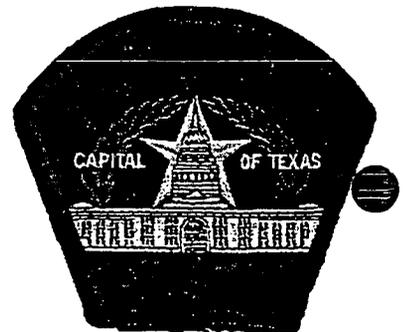


The streets of Austin are alive with activity as workers rush to their offices to start the day. As at countless other buildings in the city, an influx of men and women are arriving at 206 East 9th Street. In this ebb and flow are a number of pedestrians who meander into the building's ground floor deli for their day's first cup of coffee. Among those entering the building is a uniformed flower shop employee delivering a robust miniature palm to the building's lobby. He quietly deposits his special cargo next to a group of similar plants near the elevators and is gone within minutes.

## **FEBRUARY 12 - 3 PM**

An ominous fax arrives for the Director of the City of Austin's Human Resources Department in the building's first floor: "*ENJOY YOUR LAST HOLIDAY! YOU MESSED WITH THE WRONG GUY. YOUR GIFT IS IN THE LOBBY.*" Security personnel are alerted and as a precaution, a sweep is done in the lobby. After cautious examination, a guard finds an odd metal tube subtly protruding from the leaves of one of the lobby's plants. The Austin Police Department (APD) is immediately called and the bomb squad is dispatched.

The APD quickly evacuates the building through secondary entrances. Most building occupants wait tensely outside, but several retreat to local cafes. Many others depart to finish their workday at home. Visitors and onlookers are well back from the lobby entrance. Some workers ask for access to their offices to retrieve their belongings. The police refuse, leaving about 50 individuals wondering how they will get home.



Within an hour the bomb squad has swept the lobby as well as other suspected locations in the building, but no other devices are found. Focusing on the device in the lobby, the bomb squad mobilizes its robot to examine the "metal tube" more closely. Using the robot's delicate controls and miniature camera, technicians evaluate the device. The "metal tube" appears to be fitted with a spray nozzle atop a larger device under the plant's soil level. A team of bomb technicians cautiously enters the lobby to take an x-ray of the device.

## **FEBRUARY 12 - 5 PM**

The x-ray shows that the device appears to present no detonation hazard. However, the tube seems to be part of an improvised spray mechanism connected to a small tank and a timer. This discovery triggers suspicions of a possible weapon of mass destruction (WMD) payload. The team is unable to determine whether the device is active or inert so Hazardous Materials (HazMat) support is requested to evaluate whether any contamination hazard exists.



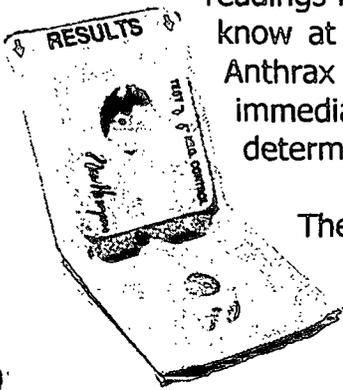
Austin Fire Department (AFD) HazMat teams are on site in short order and don their protective gear. The team enters the building to search for traces of a chemical or biological agent. Samples are taken from the device and the area immediately around it. Portions are run through on-site tests for preliminary analysis while

others are held for evidence and more definitive off-site analysis. Though the device is being treated as credible, a prevailing skepticism is apparent from the response community. Most responders expect this to be yet another of the numerous WMD hoaxes perpetrated within the last six months.

**WEAPONS OF MASS DESTRUCTION (WMD) HOAXES:** During the last six months, the Federal Bureau of Investigation (FBI) has recorded roughly 100 WMD hoaxes. With an estimated response cost of \$500,000 per incident, their impact is not immaterial. The threat of terrorism alone is a Federal crime punishable by up to 10 years in prison. The FBI's WMD Operations Unit issued guidance for the management of anthrax hoaxes in December 1998. The FBI, Centers for Disease Control and Prevention (CDC), and the US Army Medical Research Institute for Infectious Diseases (USAMRIID) are in the process of producing more detailed guidance for the management of a anthrax attacks as well as a variety of other biological threats.

## FEBRUARY 12 - 7 PM

Within 20 minutes, on-site tests (immunochemical assays known as SMART tickets) show positive readings for anthrax. A deep sense of shock is palpable among the responders. They know at once that the danger presented by the incident has climbed exponentially. Anthrax has been released in the lobby of a busy mixed-use building, yet there is no immediate way to tell when the release occurred. Authorities must now attempt to determine who may have been exposed to anthrax, as well as when it occurred.



The incident commander at once directs all responder personnel who entered the building to disrobe and pass through a precautionary decontamination line. Each of these responders -- now a potential victim -- is transported to a hospital for immediate chemoprophylaxis.

**ANTHRAX** is an acute infectious disease caused by the spore-forming bacterium *Bacillus anthracis*. Anthrax most commonly occurs in warm-blooded animals, but can also infect humans.

Anthrax infection can occur in three forms: cutaneous (skin), inhalational (respiratory system), and gastrointestinal (digestive system). The most effective means of weaponizing anthrax is via aerosolization of spores. Aerosol exposure would principally cause inhalational anthrax, an extraordinarily rare form of the naturally occurring disease. Symptoms usually occur within one to six days, with onset and severity of symptoms dependent upon the dose of inhaled organisms.

Initial symptoms are gradual and non-specific. They may resemble a common cold, with possible fever, malaise, and fatigue in association with a non-productive cough and mild chest discomfort. The symptoms may progress to severe breathing problems and shock. Inhalation anthrax usually results in death in 1-2 days after onset of the acute symptoms.

Almost all (95%) cases of inhalation anthrax (where treatment was begun after patients were symptomatic) have been fatal, regardless of treatment. Historically, penicillin has been regarded as the treatment of choice, but ciprofloxacin or doxycycline is recommended.

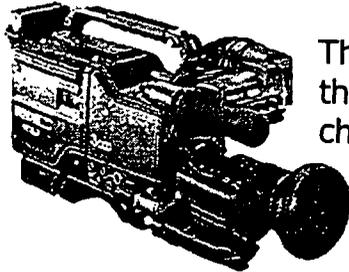
Anthrax is diagnosed by isolating *B. anthracis* from the blood, skin lesions, or respiratory secretions or by measuring specific antibodies in the blood of suspected cases.

A licensed vaccine exists for anthrax, but it affords no immediate protection.

Direct person-to-person spread of anthrax most likely does not occur and the hazard posed by secondary reaerosolization is marginal. Healthcare workers need only practice standard precautions when working with infected patients. Sporocidal agents such as chlorine may disinfect anthrax spores.



APD personnel begin locating and holding any persons who left the now-contaminated building and are still in the vicinity. However, in the time from the beginning of the incident until the discovery of anthrax, late-afternoon has turned to late-evening. The majority of the occupants of the building, as well as those who visited during the day, have returned to their homes or elsewhere throughout the metropolitan area. The building's owner is contacted to begin constructing a list of tenants and others that may have been affected. Security personnel are queried about visitor logs. Businesses in the building are asked to help find those who may have passed through to shop. Records of credit transactions from the building's stores and eateries are sought.



The press anxiously asks police spokespersons what is going on. Having seen the suited entry teams, television crews push for confirmation of a biological, chemical, or nuclear hazard. Building occupants and local merchants voice their frustrations to the media. A barrage of questions and comments fly from victims and the public:

***"Why can't I go up to my office? They didn't tell us we couldn't go back in the building when we left. I've got deadlines! The City's going to hear from my lawyer!"***

***"Why is it taking so long for them to find out what is wrong? Do they know what they're doing?"***

***"What right do you have to shut down my business. I've got bills to pay."***

***"We've heard a biological weapon was used. Is this true?"***

***"What am I supposed to do about my appointments tomorrow? My appointment book is still in the office!"***

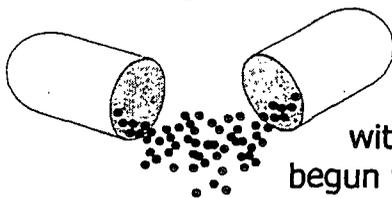
***"I need my medication. It's in my desk!"***

***"Who is going to pay for my employees' time off? Who is going to pay for these business losses?"***



## **FEBRUARY 12 – 9 PM**

Night falls on a city gripped by fear. The Austin/Travis County Emergency Operations Center (EOC) has been activated and representatives are beginning to arrive. Immediately, the EOC coordinates with the Regional Liaison Officer (RLO) for the Governor to declare a State of Emergency.



Public inquiries continue to build and Austin/Travis County Health and Human Services Department (AHD) officials on site attempt to allay fears without causing panic. The Office of Emergency Management (OEM) has begun working with AHD, local hospitals, health centers, clinics, and pharmacies to assess the availability of antibiotics in the community. The EOC requests assistance from the US Public Health Service (PHS). Local FBI representatives, in conjunction with OEM and AHD, are coordinating the tracking of victims. Building records, visitor logs, and personnel rosters are sought. Lists of building contractors are requested. Local hospitals are briefed on anthrax symptomology and treatment; and are asked to report any suspicious cases. Every conceivable information source is utilized to identify possible victims. Police and health officials have begun contacting those potentially exposed.

City Manager Garza and Mayor Watson hold a conference call with Governor Bush, as well as representatives from the FBI, the Department of Defense (DoD), the Federal Emergency Management Agency (FEMA), and the US Department of Health Human Services (DHHS). Scientists from the US Army Medical Research Institute for Infectious Diseases (USAMRIID) present Austin officials with a chilling profile of anthrax.



The Mayor holds a press conference to inform the public and to assuage growing fears. The possibility of an anthrax release is briefed and an attempt is made to explain the real hazards. Potential victims are directed to contact a number established by AHD. Callers are catalogued and asked a series of questions from an improvised WMD victim impact statement. Those that work in the building are given a tracking number then instructed to take showers, seal any clothes they wore while in the 9th Street property in plastic bags, and report to specific treatment centers for preventative care. Other callers who did not come in contact with the contaminated building are interviewed and told to follow similar precautions, but asked to remain at home and watch for flu-like symptoms.

With the confirmation of a biological hazard, the APD bomb squad cannot reenter the building to fully render safe the device. Their personnel do not have the training or equipment to operate in a WMD-contaminated environment. The Army's Technical Escort Unit (TEU) and the FBI's Hazardous Materials Response Unit (HMRU) are requested to neutralize the device and remove any WMD payload.



In the meantime, Austin Environmental Health seals off the building due to contamination and restricts pedestrian and vehicle traffic on the streets on all sides of the structure. 206 E. 9th Street is closed to all personnel until city, state, and Federal technical experts can assess the extent of the contamination and ensure that the building is safe. Though activated, Federal support remains at least 8 hours from being on site. The FBI coordinates with the City to ensure that the crime scene remains uncompromised. Building occupants are directed to begin using alternate facilities.

Worried businesses and employees ask the FBI and the Mayor's Office what they are to do while the building and surrounding area is closed off. Local merchants and most of the building's occupants do not have alternative facilities or telecommuting capability. Wages and livelihoods are in jeopardy. Many victims see legal action as their only recourse.

The Mayor's Office and city agencies are inundated with calls. Families of victims want answers. All four broadcast television networks as well as MSNBC and CNN have broken into regular programming to provide around-the-clock coverage of the unfolding biological terrorism drama. Media crews swarm the hospitals, ADH, and the Mayor's Office. The Mayor's office continues an active public information campaign to explain the incident and services to assist the community. Media reports heightened anxiety among citizens who begin to seek medical attention although they were not in the building and are asymptomatic.



Through the night and into the morning, patients flow into local hospitals with non-specific, flu-like symptoms. Many present with fatigue, fever, and a non-productive cough. Others have more advanced symptoms such as dyspnea, stridor, cyanosis, a

widened mediastinum, and shock. However, the majority of those seeking care are merely fearful that they may have been exposed and are seeking preventative treatment. Care providers attempt to separate true victims from the worried well. Yet, there is no unequivocal way to quickly determine legitimate anthrax casualties. The most effective means of doing so appears to be through interviews to resolve the likelihood of exposure. Hospitals indicate a ratio of at least ten unexposed "victims" to every person who was actually in the building. Psychosomatic victims quickly learn to claim that they were in the 206 E. 9th Street building to ensure the receipt of medication.



Supplies of antibiotics are insufficient to treat all of the patients seeking care. While additional medicine is on the way, it will take time to arrive. In the meantime, pharmaceuticals are being rationed to maximize the treatable group until additional supplies arrive. Several families, upon encountering the rationing, accuse medical personnel of discriminatory practices. Rumors of preferential treatment abound. Health centers request police assistance for additional security.

In consultation with DHHS, the city establishes a comprehensive record-keeping system to track all possible victims and the care they receive. Timetables for intravenous antibiotic administration must be coordinated and maintained. In addition, upon the completion of antibiotic therapy, patients have to be closely observed for regression. The system also needs to be compatible with information management needs of long term tracking of victims.



Nearly one hundred people have died from what has now been diagnosed as anthrax. Another two hundred victims have been admitted to regional hospitals with advanced anthrax symptoms. Refrigerated trucks are requested to provide additional capacity for the disposition of the dead. The medical examiner requests that hospitals review records of the recently deceased to determine whether they may have died from anthrax. Families of victims are interviewed to search for clues. What had appeared to be a bout of the flu amongst the occupants of 206 E. 9th Street seems now to have been a

harbinger of anthrax infection. Attorneys representing families of the deceased and/or affected businesses are beginning to call hospital administrative offices.

The impact of the attack on the medical community is dramatic. Staffs are pulling double shifts, with no end in sight. The volume of patients strains nurses and lab technicians with tedious hours of repetitive tasks (e.g., running IVs and taking throat swabs). Small infection control staffs are taxed beyond their manpower with countless interviews. Doctors attempt to maintain the surety of their diagnoses as hours blend into days. Morale continues to decrease as care providers become consumed with hopelessness with each victim they treat but who dies none the less.

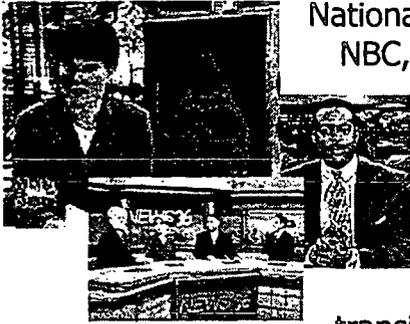
Emergency Medical Services (EMS) personnel also feel the strain of the response. Countless hours pass without respite. Their sorrow builds with the knowledge of the imminent demise of virtually every victim they transport. This feeling is compounded by the frustration they feel with each time-consuming psychosomatic case.

*"I want more antibiotics! Don't you tell me I don't need more!"*

*"When are the Feds finally going to show up? Are they going to try to tell me how to do my job?"*



## **DAY TWO - FEBRUARY 13 - 9 AM**



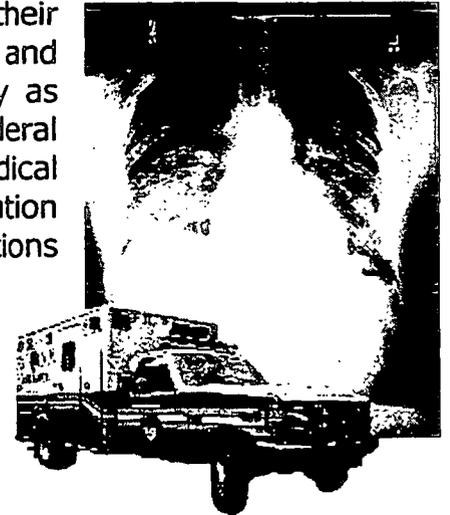
National and international media are consumed by the story. CNN, FOX, ABC, NBC, and CBS lead morning telecasts with coverage of biological terrorism in Texas's Capitol City. Electronic and print headlines are unanimous in declaring the attack on Austin the most horrific act of terrorism in U.S. history.

The Austin Transportation Division reports during an OEM-led conference call that traffic into the city is extremely light and regional transit systems seem to be carrying fewer riders than normal. Commuters and tourist are reluctant to venture into what they now believe to be a deadly source of contagion.

The University of Texas suspends weekend activities as well as classes for the upcoming week.

CDC and USAMRIID laboratories confirm anthrax from specimens taken from infected patients in Austin metropolitan area hospitals. CDC notifies State and local public health agencies across the country to report any possible victims of anthrax that appear in their respective health care facilities. Immediate information on the care and treatment of anthrax-infected victims is also disseminated as widely as possible to health care providers. DHHS and other supporting Federal agencies under Emergency Support Function (ESF) #8 (Health and Medical Services) of the Federal Response Plan (FRP) assist in information dissemination, emergency consultation, and dealing with medical questions from the media.

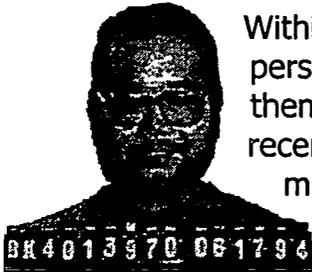
Disaster Medical Assistance Teams (DMATs), Disaster Mortuary Teams (DMORTs), and other Federal assets begin to arrive and provide assistance. The Travis County Medical Examiner is faced with over two hundred bodies in the span of 48 hours. Nearly one hundred calls for the pickup of the deceased continue to be backlogged. The ME and the FBI work closely to track the dead and proceed with the numerous death notifications. Families are asking when the bodies will be released for burial. Several are adamant that the body of their relative is released immediately to allow proper burial in accordance with their faith.



Metropolitan areas across the country are closely monitoring the response effort, and many jurisdictions have implemented stringent security and medical surveillance measures. Elected officials, religious leaders, and private organizations around the globe extend sympathy and support.

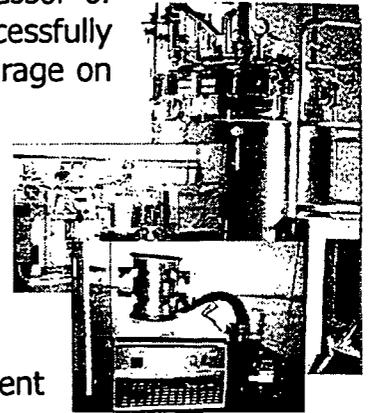
Offers of medical assistance pour in from nations around the world. The attack rivets the world's attention. Security measures in effect in capitals, airports, ports, and at critical infrastructure facilities are unprecedented.

## DAY THREE TO ONE WEEK



Within days the FBI 's investigation has yielded several leads. Interviews with personnel in the city's Human Resources Department and phone records have them to a suspect. By week's end he is arrested. Edmund Takahara had been recently dismissed from his position as an associate professor of microbiology at the University of Texas. After unsuccessfully seeking employment through the city, he turned his rage on the office he felt most responsible.

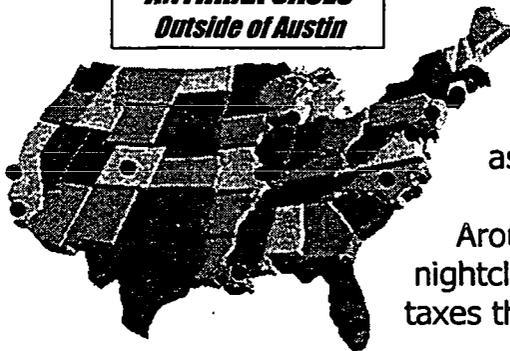
In the converted garage he was living in, authorities find an anaerobic fermenter as well as a centrifuge and drying apparatus. Analysis by the FBI's HMRU determines that Takahara had modified several pieces of secondhand lab equipment to culture and weaponize anthrax.



Though the believed perpetrator is in custody, the impact of the incident continues to unfold. Tens of thousands of patients have sought care throughout the area yet health authorities estimate that perhaps only 500-1000 people were exposed. OEM, AFD, and APD report thousands of backlogged calls from "victims" all through the city.

Announcements are sent throughout the metropolitan area to alert citizens of available psychological counseling through mental health care providers willing to volunteer their time. Training programs are set up for religious leaders to provide specialized counseling; the tragedy haunts many in the responder community. Exhausted hospital staffs are finding it difficult to respond to everyd emergencies.

### ANTHRAX CASES Outside of Austin



Outside the city and around the country the number of suspected cases of anthrax escalates. Some cases are confirmed along with histories indicating that the patient was in Austin during the time of the attack. The majority of reports are ascribed to psychosomatic cases.

Around the nation, courthouses, schools, individuals, and even nightclubs become the victims of copycat hoaxes. Each response further taxes the resources and psyches of responders.

Public observances and memorial services are conducted in Austin and across the nation.

People are continuing to avoid the city, the resulting major drop in commerce and tourism is having real monetary impacts. Numerous conventions and special events are cancelled and moved elsewhere.

Countless hospitals, businesses, and communities are seeking aid for the unreimbursed expenses they accrued due to the attack.

The U.S. Public Health Service (USPHS) and military survey teams have found no anthrax spore contamination elsewhere in Austin. The area immediately around 206 E.



9th Street remains closed. EPA and DoD (ESF #10) conduct air dispersion modeling to try and determine the extent of exposure.

In conjunction with medical personnel and epidemiologists, the FBI is gathering evidence and attempting to pinpoint the time of the attack. Anthrax samples are tested at Fort Detrick to type the agent to determine its possible source. Physical evidence, interviews with victims, and surveillance videos are being collected and catalogued to support the case against the perpetrator. The interviewing causes many to vividly relive the horrors of the trauma.



*"My wife's dead. What will I do now? How am I going to pay these medical bills?"*

*"My mother was visiting and now she went back home to Greece. She's real sick. I think she's got anthrax!"*

*"Who provides my unemployment compensation?"*

*"Can I get a tax refund for my business losses?"*

*"What about my uninsured business loss? Can I get a loan?"*

## **TWO WEEKS**

At an afternoon coordination meeting, Mayor Watson, City Manager Garza, and Governor Bush are briefed by Federal officials on plans for continuing long-term assistance. EPA, DHHS, DoD, FBI, and FEMA, in cooperation with the City of Austin and Texas representatives, meet daily to discuss long-term site remediation. The city, region, and nation continue to experience stray cases of anthrax from delayed incubation. The city is also concerned about the hazard presented by the contaminated building to the surrounding area.



CDC and the Agency for Toxic Substances and Disease Registry (ATSDR) are directed to lead a Federal, State, and local program to provide continued monitoring of survivors who received or are receiving prophylaxis and vaccination. Records must be maintained and histories kept in case of any residual affects.

Though the immediate crisis has subsided, many issues remain. Every citywide illness is still perceived to be anthrax.



*"I work in the City's Office of Personnel. How do I know that someone's not going to come after us again? I'm not coming back to work until you can assure me I'm safe."*

*"Where is that monster that did this being held and when is his court date? I want to be there to make sure he gets what he deserves for killing my brother."*

*"I'm going to get him for killing my sister. He can't hide from me. Mark my words!"*

## ONE MONTH

Ultimately, city leadership and the building's owner determine that the contaminated building must be demolished. Though the residual hazard is assessed to be negligible, it is agreed that public perception demands it be razed. Many of the businesses surrounding 206 E. 9th Street have failed due to diminished traffic.

The psychological impact of the attack has been devastating. Thousands of inquiries come from victims, victims' families, or others seeking follow-up. The sense of crisis lives on.



***"My employer wouldn't give us time off when we couldn't get into the building. I didn't have any leave time and I received a cut in pay for that period. Who is supposed to pay for my time off—the anthrax wasn't my fault!"***



***"My husband was one of the responders who carried the bodies to the morgues. Since then, he can't sleep, he's drinking too much, and we are having problems in our marriage. He won't go to counseling --- what can I do?"***

***"I can't sleep at night because of the nightmares. I keep seeing my coworker in the hospital bed dying from the anthrax exposure. Someone said you offered counseling. Is that for non-family people like me? I just can't concentrate on my work anymore."***

***"This nut was making a biological weapon in my neighborhood! What are you doing to clean it up? My property values are sunk!"***

**NATIONAL SYMPOSIUM ON VICTIMS  
OF FEDERAL CRIME**

**A FOCUS ON DOMESTIC TERRORISM  
AND MASS CASUALTY RESPONSE**

**THURSDAY, FEBRUARY 11, 1997**

PANEL ONE: CRIMINAL JUSTICE PANEL

PANEL TWO: FEDERAL PROTOCOLS AND RESOURCES

PANEL THREE: OBSERVATIONS FROM THE FRONT LINE



## Anthrax Hoaxes Create Costly Wave of Fear

By Rene Sanchez  
Washington Post Staff Writer  
Monday, January 11, 1999: Page A1

LOS ANGELES -- The latest targets were a high school and a popular nightclub. Before that, pranksters here struck courthouses, office buildings and a busy department store, creating chaotic evacuations and mass quarantines, all with the same terrifying, one-word threat: anthrax.

A wave of hoaxes involving the lethal bacteria is spreading across Southern California and turning up in states nationwide. It is a fad so alarming, so costly and so confounding to police and public health officials that some almost sound wistful for the days when they had to contend only with phony bomb scares.

Since late last year, nearly two dozen anthrax threats have been reported just in greater Los Angeles. They have been sent by telephone or by mail, and all have been proved false. But not before thousands of people at the allegedly contaminated sites have been detained for hours, given urgent doses of antibiotics, even ordered to scrub themselves in makeshift showers that authorities set up in parking lots.

None of the incidents appears to be the work of the same group or individual, police say, and so far only one suspect has been apprehended and charged with a hoax. He is a 53-year-old accountant who has been accused of trying to delay his appearance at a bankruptcy hearing by calling a federal courthouse and claiming that anthrax had been released into the air-conditioning system.

Anthrax spores, found naturally in diseased sheep and cattle, can also exist in other media, including water and soil. They can be transmitted by skin contact or spread in biological warfare in tiny, odorless clouds of gas that can be breathed by humans.

Law enforcement officials say headlines about the grave dangers of biological weapons, along with Hollywood's new fascination with bioterrorism in films and television shows, apparently is convincing madmen and pranksters that there is no better way now to frighten the public.

"I think we're dealing with nuts out there who are watching 'The X-Files' too much," said Tim McNally, chief of the FBI's Los Angeles field office. "We have never seen anything like this, and it is causing enormous problems. Any time you have a chemical or biological threat, it has to take the highest priority."

The spate of hoaxes here is running public health and safety agencies ragged. Responding to each threat has required extraordinary time, care and money. By some official estimates, nearly \$500,000 is being spent, and more than 100 health and safety personnel are being dispatched, for almost every incident. Even after a call has been proved fake, many who were affected by it carry lingering fears that their health has been jeopardized.

"This is a terrible psychological crime," said Jonathan Fielding, director of the Los Angeles County Public Health Department. "We're seeing that the public anxiety about this is tremendous."

After someone phoned in an anthrax threat to a nightclub in nearby Pomona just after Christmas, scores of firefighters, hazardous material teams and biological experts swept in and shut the place down while they investigated. All 800 people there at the time were forbidden to leave the club for four hours.

Just two days earlier in Palm Desert, another Los Angeles suburb, an anthrax scare at a department store sent 200 shoppers fleeing into a parking lot. Health workers rushed to the scene, laid down tarps and set up showers, then required shoppers and sales clerks to remove clothing and rinse off with a bleach solution. They, too, were stranded for hours and were even provided with new clothing.

After an anthrax scare at a Los Angeles office building, employees were rushed under guard to a hospital for treatment. And an Anaheim high school was quarantined one day last week after someone — police suspect it was a disgruntled student — called to say that anthrax spores had been put in the ventilation system.

Similar episodes have unfolded across the country recently, at abortion clinics in Kentucky and Tennessee, and at schools and churches in Indiana. In the District two years ago, an anthrax hoax at the B'nai B'rith headquarters closed several downtown blocks and trapped about 100 workers there all day.

"A lot of these are copycat crimes," said Frank Scafidi, an FBI spokesman in Washington. "Bomb scares don't freak people out as much anymore. This is something people know less about, so there is more fear."

Public alarm over bioterrorism is growing for many reasons, officials say, from a poison gas attack by a cult in a Tokyo subway 3½ years ago that left 12 people dead to charges by the United States against Iraq over its possession and past use of chemical weapons. They also cite the recent success of movies such as "Outbreak," in which the deadly spread of bacterial disease is a central element of the plot.

In the West, the largest and most publicized scare over anthrax occurred last February when FBI agents arrested two men near Las Vegas who they suspected were planning to use the bacteria as a terrorist weapon. But the substances the authorities found in vials that the men were carrying turned out to be just an anthrax vaccine for animals. Before that was proved, surplus stores in the Las Vegas area sold out of gas masks.

By now, so many anthrax hoaxes have struck the Los Angeles area that police and health officials are reassessing how they should deal with them. A few days ago, they decided to scale back their initial response until they find any clue that an anthrax threat has credibility.

Some police officials say the criteria for a full-tilt deployment should be much more stringent because getting and using anthrax as a weapon is a fairly sophisticated crime – one that a caller with a teenager's voice is not likely to pull off.

Health officials also say that even if an incident turned out to be real, there would be time – at least a few days – to treat people who were at the site before fatal consequences. Left untreated, someone with the bacteria is likely to die, but health officials say that antibiotics are often effective and that the disease is not extremely contagious among humans.

Still, some officials say the hoaxes put them in a difficult, dangerous bind. Overreacting to a threat drains budgets and manpower and may cause unnecessary panic. But nonchalance even once could prove to be a terribly deadly mistake.

"It's very frustrating," said Darrell Higuchi, deputy chief of the Los Angeles County Fire Department. "We can't keep taxing our resources like this, but we definitely have to treat every threat as the real thing."

In response to the hoaxes, the Centers for Disease Control and Prevention is urging local governments to develop a more consistent blueprint for addressing the threats and is working on one of its own. Some officials say that there has been great confusion among police and health officials at the scenes of some of the incidents.

A Los Angeles city council member also has proposed legislation that would require anyone responsible for making an anthrax threat to pay the cost of responding to it. Law enforcement officials are also hoping that aggressive

prosecution of the accountant they just arrested will deter other pranksters.

The man already has been slapped with the toughest charge available: threatening to transmit a biological agent, a violation of a federal antiterrorism act. If convicted, he could face life in prison.

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# Justice Bulletin

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## FBI Takes Lead in Domestic Preparedness Efforts

U.S. Attorney General Janet Reno recently announced that a new National Domestic Preparedness Office (NDPO) will be housed within the U.S. Department of Justice, Federal Bureau of Investigation (FBI). The FBI has assumed overall responsibility for coordinating the government's efforts to prepare American communities for the possibility of terrorist attacks involving weapons of mass destruction (WMD). WMD include biological, chemical or nuclear weapons or explosives. According to Reno, the FBI will serve as the lead federal coordinator of the domestic preparedness project. Full partnership with state and local gov-

ernments is expected to create a comprehensive approach to terrorist attacks -- from the first responders at the scene to an established chain of command thereafter.

The attorney general stressed that the federal government's role will be to provide proper equipment, plans, and training to first responders to ensure that appropriate actions are taken to save lives in the critical moments after an attack. The FBI will coordinate and establish training standards to meet the needs of first responders. The agency also will focus on identifying the specific

*continued on next page*

*Continued from preceding page*

equipment and technological needs of each community. According to Reno, the preparedness of local first responders is critical for public safety when terrorism by biological and chemical agents strikes an urban or rural community. Until federal assistance and resources arrive, all emergency response depends entirely on local emergency medical teams, firefighters and police.

The NDPO will serve as the focal point for assisting communities in preparing for terrorist incidents and providing a streamlined process for receiving federal assistance. According to the attorney general, the domestic preparedness efforts rely on federal, state and local interagency cooperation to build first responder capacity in the event of an attack. Other strategies include coordination with state and local officials to plan and establish priorities for federally funded equipment, planning and training. Current development efforts include drawing upon the Federal Emergency Management Agency's (FEMA) federal response plan, which is supported by 27 agencies and the American Red Cross. The FEMA responds to natural disasters and other emergencies and has first responder training courses available to all states, territories and municipalities.

According to the attorney general, funding for the NDPO will be provided in part by the U.S. Department of Defense (DOD) under the Nunn-Lugar Act and later funded through the appropriations process.

In addition, the Congress appropriated approximately \$123 million from the counter terrorism fund to support the U.S. Department of Justice, Office of Justice Programs (OJP), Office for State and Local Domestic Preparedness Support (OSLDPS) for fiscal year 1999.

The OSLDPS was created in April 1998 as part of the OJP's efforts to

prepare local public safety personnel to safely respond to and manage WMD terrorist attacks. The OSLDPS administers grants to state and local public safety personnel for special equipment, training, field exercise capabilities and technical assistance for their emergency first response teams. The OSLDPS' role in the federal domestic preparedness effort is to provide support for the nation's emergency first responders, and to facilitate seamless integration of state and federal resources.

Of the \$123 million appropriated to the OSLDPS, approximately \$75.5 million was set aside for a first responder equipment grant program, \$25 million for fire fighter equipment and training programs, \$16 million for first responder training, \$3.5 million for simulated field exercises, \$2 million for technical assistance, and \$1 million for a national needs assessment. The fiscal year 1999 appropriations for the first responder equipment grant program includes \$4 million for the National Domestic Preparedness Consortium to acquire advanced training equipment. The consortium provides advanced operations, technical and incident command training for a variety of public safety disciplines. Training is conducted at the five consortium sites -- the New Mexico Institute of Mining and Technology, Louisiana State University, Texas A & M University, the Nevada Test Site, and the Center for Domestic Preparedness located at Fort McClellan, Ala.

By comparison, in fiscal year 1998, the Congress appropriated \$12 million for grants to state and local governments to acquire personal protective, detection, decontamination and communications equipment in preparation for a WMD attack. Eligibility was limited to the nation's 120 largest counties and cities targeted by the OJP's first responder training program. Recently, 41 jurisdictions received grants for equipment support from the OSLDPS. Localities may use funding to purchase emergency response equipment required by fire, emer-

gency medical services and hazardous materials response units and law enforcement agencies.

Since the inception of the new domestic terrorism office in the FBI, the Justice Department and other federal agencies are continuing to meet to refine the domestic preparedness efforts.

For additional information regarding the NDPO, contact the office directly at (202) 324-8558. Also, for more information on the OSLDPS programs, contact the Office for State and Local Domestic Preparedness Support at (202) 305-9887. Additional sources of information include the Office of Justice Programs, Office of Congressional and Public Affairs at (202) 307-5933 or (202) 307-0703.

### Domestic Terrorism Guidebook

Local government leaders interested in implementing domestic preparedness programs in their communities can contact the National League of Cities (NLC) to obtain a copy of a recently published local officials' guidebook titled, "Domestic Terrorism: Resources for Local Governments," which outlines and clarifies agency roles in the domestic preparedness efforts. The publication's goal is to provide local government officials with a resource manual to prepare their cities to respond to terrorist attacks. In addition, the guidebook includes information and contact numbers for key federal agencies that should be notified in the event an attack occurs.

For more information, contact the NLC's Public Affairs office, tel.: (202) 626-3000. Contact the NLC Publications Department to order a copy of the guidebook, tel.: (888) 571-2939 or (301) 725-4299, or write to NLC Publication Department, P.O. Box 491, Annapolis Junction, MD 20701.





**Domestic**  
*Preparedness*



Helpline: 1-800-368-6498

**RESPONDER AWARENESS**

[www.nbc-prepare.org](http://www.nbc-prepare.org)

**Responder Actions at the Awareness Level**

- Protect yourself
- Move upwind and upgrade
- Call for help
- Isolate the area
- Avoid contamination
- Gather walking victims upwind
- Do not touch the dissemination device
- Watch for secondary devices
- Report critical information to superior
  - Number of casualties
  - Signs and symptoms
  - Weather
- Assist first aid
- Assist emergency decontamination
- Preserve evidence
- Assist in Cold Zone

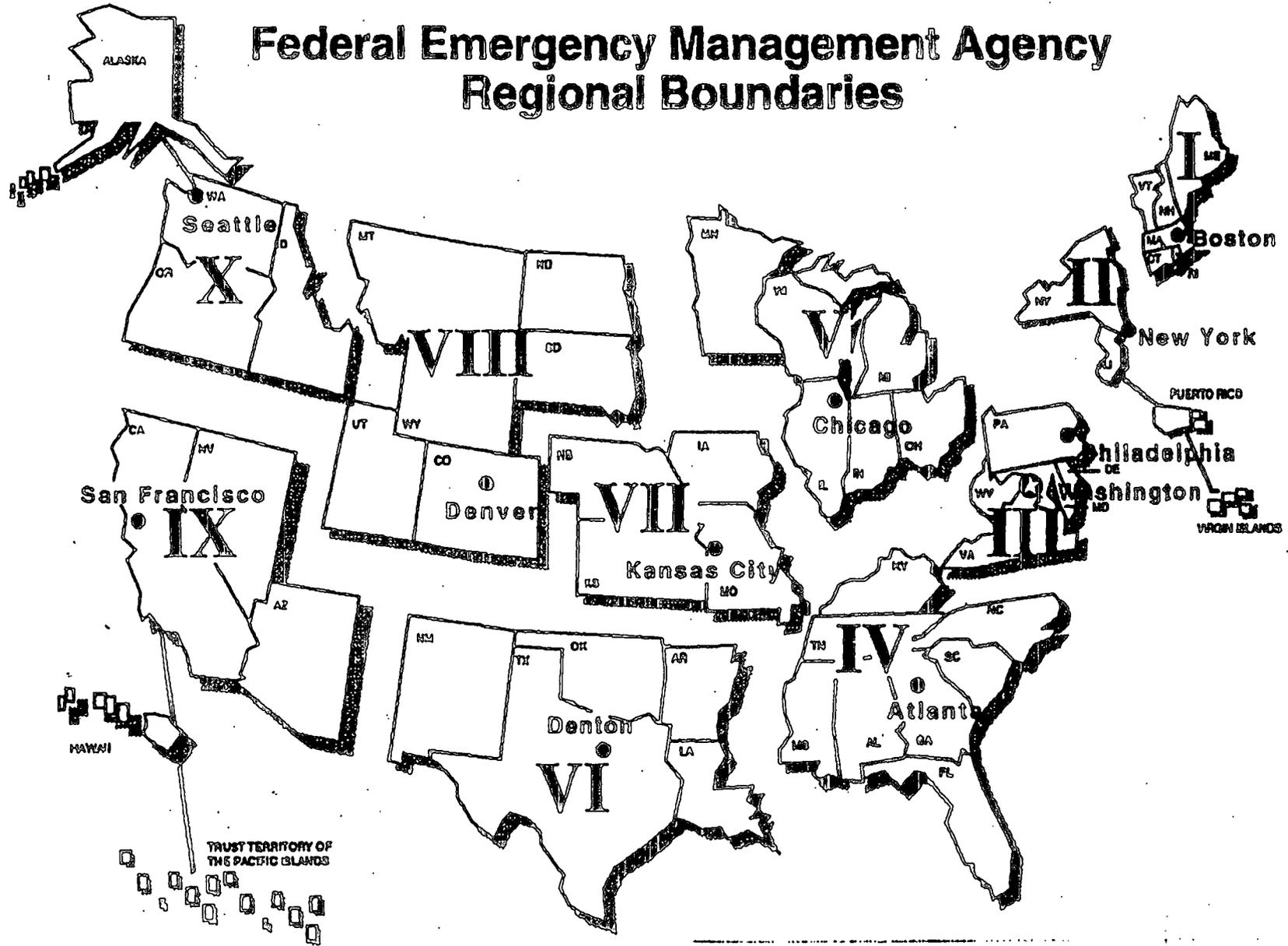
Helpline: 1-800-368-6498 **RESPONDER AWARENESS**

[www.nbc-prepare.org](http://www.nbc-prepare.org)

NBC Attack Indicators		Agent	Odor	Symptoms
Primary	Other			
<ul style="list-style-type: none"> <li>◦ Symptoms of victims</li> <li>◦ Mass casualties</li> <li>◦ Casualty pattern</li> <li>◦ Dissemination device</li> <li>◦ Warning given or credit taken</li> </ul>	<ul style="list-style-type: none"> <li>◦ Dead animals</li> <li>◦ Statements of victims</li> <li>◦ Things out of place               <ul style="list-style-type: none"> <li>- Unexplained liquids</li> <li>- Strange smells</li> </ul> </li> <li>◦ Surge of 9-1-1 calls</li> </ul>	Nerve agent	Fruity	Excessive twitching, runny nose, sweating, drooling, pinpoint pupils, urinating, defecating, vomiting, convulsions
		Mustard agent	Garlic	No immediate symptoms, eye pain, large water-filled blisters
		Lewisite	Geraniums	Immediate pain, eye and lung burning, bee-sting blisters
		Phosgene	New-mown hay	Coughing, choking, pneumonia, delayed for several minutes
		Chlorine	Bleach	Coughing, choking
		Cyanide	Bitter almonds	Bright red lips and skin, headache, gasping, nausea



# Federal Emergency Management Agency Regional Boundaries



A-4



## **Sample Survey**

### **How to Identify Trained Crisis Responders in Your Community**

***Instructions for use: this survey is intended to identify trained crisis responders who are employed by various law enforcement agencies, mental health organizations and victim assistance programs. In order to ensure a greater response, include a stamped return envelope with the survey that you mail to these agencies.***

#### **Survey Questions:**

- 1. Are any members of your staff trained and equipped to respond to major crimes within the community? Outside the community?**
- 2. How many staff members are available to provide these services in case of major criminal disaster?**
- 3. Have any members of your staff ever provided services to victims at a crime scene or immediately following a natural disaster? Please specify.**
- 4. Would members of your staff be interested in assisting crime victims at a federal crime scene?**
- 5. Would members of your staff be interested in training (or additional training) in critical incident stress debriefing?**
- 6. Are you aware of any other crisis response teams, CISM teams or peer debriefers in your community. If so please provide the names and phone numbers (if available) of these groups or individuals.**
- 7. Does your community or agency have an existing crisis response plan or victim assistance protocol for mass disasters? If possible, please attach a copy of the written protocol to the completed survey.**

**If you have any questions or would like more information about this survey, please contact  
XXXXXXXXXXXX at XXXXXXXXXXXX.**



## **A COMPREHENSIVE CRISIS RESPONSE MODEL**

A coordinated, comprehensive crisis response to a mass casualty disaster should include three sets of crisis response teams. A comprehensive victim assistance plan coordinates the crisis response team training, the CRT mobilization following a disaster, and the post-disaster counseling services.

These three sets of teams address different trauma counseling needs after a disaster or mass casualty incident. The three teams include:

1. The Crisis Response Team (CRT) is comprised primarily of mental health professionals from various backgrounds and agencies (social workers, ministers, victim counselors, school counselors, psychologists, trained mental health advocates) trained to provide immediate care (defusings, debriefings, triage, referral) at the scene, emergency shelters, morgues, etc.

2. The Critical Incident Stress Management Team (CISM) provides on-scene and follow-up defusing, debriefing, triage, referral, follow-up for rescue workers and their families. This team is comprised of trained volunteer mental health professionals and peer counselors.

3. The Post-Disaster Community Counselors (PDCC) is comprised of private practice and agency-based mental health professionals committed to providing 3-8 weeks of pro-bono post-disaster counseling services.

Ideally, classroom training for all three groups is supplemented with participation in an annual disaster exercise. CISM mental health professionals should also have periodic "ride-out" requirements with police, fire or EMS to appreciate and stay current with the emergency workers "culture." A private practitioner or agency counselor who doesn't normally see trauma at the point of impact will have a better appreciation and more insight if later called to assist emergency workers in a Critical Incident Stress debriefing. (Compiled by: Kathi West, USAO VWC, WD/TX-Austin)

## **Most Common Complaints from Crisis Responders at Large Mass Casualty Scenes**

1. An absence of national standards for CRT (Crisis Response Team) and CISM (Critical Incident Stress Management) that are flexible (i.e. invite cross-training, teach technique and structure, but emphasize improvisational application) and are recognized throughout the country. National standards would help eliminate confusion of on-scene supervisors and resentment by responders who may be invited by state or federal entities to assist following a disaster.
2. A significant and recurring problem in disaster response has been turf battles within and between CISM and CRT teams regarding training, background and credentials. Trauma counselors and volunteers repeatedly report this phenomenon as the most stressful element of disaster response work and that it interferes with quality of care. Additionally, many of the debriefings were viewed as "technique driven, " the leaders appearing rigid and uncomfortable because they adhered to a literal application of a debriefing model instead of a more natural improvisational approach that utilizes, but is not tied to technique and structure.
3. There are often complaints that some CRT and/or CISM responders come across as overly professional, judgemental, controlling, or detached. Most likely these individuals had good intentions, but unless one does victim or crisis response work regularly, it would be easy to come across as uncomfortable, or overly clinical. Therefore, methods to provide continuing education are important. Additionally, since these teams are rarely mobilized and are in constant flux due to members changing jobs, moving out of the area, or losing interest, it is important to have a mechanism that maintains commitment to membership of the teams. This last point is also true for the Post-Disaster

or elderly loved ones who are dependant on them, the clinically mentally ill, and people in financial or professional crisis. While some victims of hoaxes may appear rather unaffected and will quickly return to their normal functioning, there are oftentimes others whose lives will feel even more "out of control." Some individuals will experience anger, rage, hopelessness, heightened anxiety and paranoia.

To date, only one suspect of an Anthrax hoax has been indicted of "threatening to transmit a biological agent," a violation of the Antiterrorism and Effective Death Penalty Act of 1996. The defendant was an accountant who called in an Anthrax hoax at a federal courthouse in California to delay his bankruptcy hearing! He could face life in prison. Other recent hoaxes include:

- ☒ An Anthrax threat at a Pomona, CA nightclub which caused 800 people to be detained for 8 hours while hoardes of emergency personnel investigated.
- ☒ An Anthrax hoax at the B'nai B'rith headquarters in Wahsington D.C. closed several downtown blocks, rerouting traffic and trapping 100 workers all day.
- ☒ 200 shoppers went running out of a Palm Desert, CA department store where they were quarantined in the parking lot for hours and required to strip down and rinse with a bleach solution.
- ☒ A Los Angeles office building was evacuated and employees waited outside for hours, before being taken under guard to a hospital for treatment.
- ☒ High schools, abortion clinics and churches have had more threats than can be listed here.

Victim Assistance professionals need to determine what victim assistance resources their communities have to assist hundreds or even thousands of victims of this type of a hoax. A

coordinated community response can be planned in advance rather than a disorganized, piecemeal response from several agencies and groups. Or worse yet, taking no action at all...where the victim assistance programs all "assume" someone else must be assisting the victims.

A few ways victim assistance professionals can assist victims of Anthrax hoaxes may be to immediately set up a victim assistance hotline for victims to call with their concerns. Many of these victims agonize alone and really need someone with whom they can discuss their fears. Another suggestion is to use the media in the days following the hoax to address the victim's questions and concerns, and to provide them with available resources. Since few of these cases are actually solved or prosecuted, the victims may never see justice or someone held responsible for the threat and their ordeal. Victims of a "threat to transmit a biological agent" are federal crime victims and whether the case is ever solved, victim assistance professionals must remember to be sure services were provided for this underserved, new classification of crime victim.

**(Compiled By Kathi West, Victim-Witness Coordinator at the U.S. Attorney's Office,  
WD/TX-Austin)**

## ASSISTING VICTIMS OF BIOLOGICAL WEAPON HOAXES

Bomb scares of the 1970's have been replaced by Anthrax scares in the 1990's. All over the country there have been threats made that Anthrax has been released at high schools, courthouses, office buildings, department stores, abortion clinics and churches causing havoc and mass quarantines. These hoaxes are taxing the public health system and safety agencies resources. It is estimated that each hoax is costing approximately \$500,000, and more than 100 health and safety personnel are being dispatched to each incident. Some health and safety departments may modify their criteria for a full scale deployment. But public health officials are in a difficult position. Left untreated, someone exposed to the Anthrax bacteria will die. Yet overreacting to the threats with full scale deployments is draining local budgets and manpower, and causing unnecessary public panic.

Victim assistance professionals should remain cognizant of the "victims" of these hoaxes. Many of these victims have been told they may have been exposed to an extremely deadly biological agent and have been detained for hours, given antibiotics, stripped of their clothing, scrubbed with bleach solutions, and sprayed with fire hoses in makeshift showers usually set up in parking lots. Some of the alleged victims of Anthrax are sent to hospitals for treatment and sent home with instructions to watch for flu-like symptoms. Needless to say, some victims panic and become hysterical. Even after a threat has been proved a hoax, many harbor lingering fears that their health has been jeopardized.

As with all crime victims, there is no standard reaction to this type of victimization. The way each individual victim reacts to a hoax biological threat is dependant upon their personality type, coping skills and their previous exposure to traumatic events. For instance, the victim of a hoax who is already going through a life crisis may be very traumatized and sink into a deeper depression. As in any cross section of the population, there will be victims going through divorces, caretakers for sick

## **Counselors.**

4. Within the fields of psychology and social work, child therapy is specialized because communication with children, especially when they are distressed, can be very difficult. While disaster response teams (CRTs and CISMs) may have to intervene with children, adolescents, and families, there exists no comprehensive model to address their needs in the aftermath of a disaster. Further, training modules need to be refined to provide strategies and techniques for various settings to help children and families.

These are a few of the challenges the victim assistance community must still address. The crisis response in the aftermath of a disaster is still not a well-oiled machine that runs smoothly and consistently. Hopefully, by listing some of the trouble spots that currently exist, we can generate some creative solutions.

## CRISIS RESPONSE PROTOCOL CHART

Agency/Protocol	What They Provide	When They Apply	Who Is Involved
<p>American Red Cross</p> <p>Ltr. of Intent Signed: 4/96 Between: Red Cross, EOUSA, OVC</p>	<ul style="list-style-type: none"> <li>° Ensure notify. to victims of range of services &amp; statutory rights</li> <li>° Coordination between chapter liaisons, Coords. state comp. and assist. Providers</li> <li>° Victim privacy</li> </ul>	<p>"Catastrophic" Federal Crime</p>	<p>EOUSA - If necessary, provide for assistance / a person at Red Cross Center</p> <ul style="list-style-type: none"> <li>- Provide information sheet for distribution by Red Cross regarding victim services &amp; rights</li> </ul> <p>OVC - T &amp; TA to Red Cross and EOUSA regarding victims' rights &amp; services for victims</p> <ul style="list-style-type: none"> <li>- Provide crisis response teams to assist local communities after major criminal disaster</li> <li>- Assist EOUSA in providing materials for local services &amp; victims rights</li> </ul> <p>Red Cross - Send list of Coordinators to each state with agreement, provide space at Centers, distribute info sheets prepared by Coordinators</p>
<p>Federal Emergency Management Agency</p> <p>Letter of Intent Signed: 4/96 Between: FEMA, EOUSA and OVC</p>	<p>Same As Above</p>	<p>Presidential Proclamation of Disaster and "Catastrophic" Federal Crime</p>	<p>Generally Same As Above Plus</p> <p>EOUSA - Has lead for coordination of available services</p> <p>OVC - Coordinates involvement of Emergency Federal Law Enforcement Assistance Program and Peace Officer Benefits Program through Bureau of Justice Assistance</p>
<p>National Transportation Safety Board</p> <p>MOU Signed: 1/97 Between: AG and NTSB</p>	<p>Coordination of Efforts &amp; Specify Roles</p>	<p>Domestic "Aviation Disaster Caused by Criminal Activity (To be determined by chairman of NTSB)</p>	<p>NTSB - Has lead for coordinating family services for victims via:</p> <ol style="list-style-type: none"> <li>1) Designating Nonprofit Org. (American Red Cross)</li> <li>2) Coordinating Roles of all Federal Agencies (HHS, Defense, etc.)</li> <li>3) Coordinating with DOJ/OVC regarding notification of rights and additional services</li> </ol> <p>OVC - Provide trainers and material for NTSB</p> <ul style="list-style-type: none"> <li>- Provide crisis response team</li> <li>FBI - Provide victim identification expert for disaster casualties</li> </ul>
<p>Federal Bureau of Investigation</p> <p>Interagency Agreement</p> <p>Signed: 3/7/97</p> <p>Between: OVC, EOUSA, FBI</p>	<p>Assign personnel, identify and inform victims</p>	<p>Catastrophic events which result from violations of federal law</p>	<p>FBI - Has lead in coordinating efforts to identify and inform victims, respond to their requests. EOUSA - Designate individual to handle media coordination. Coordinates initial briefing to establish extent of crisis, coordinates services.</p> <p>OVC - coordinates services jointly with USA, FBI, provides monies and technical support. informs USAO of services OVC can provide</p>





## REGISTRY FOR VICTIMS OF TERRORISM INVOLVING HAZARDOUS SUBSTANCES



### Authority

- ▶ ATSDR is authorized, in cooperation with the States, to establish and maintain national exposure and disease registries for persons exposed to hazardous substances (explosives, incendiaries, corrosives, toxics, and other substances defined by the ATSDR Administrator as hazardous) [42 U.S.C. §9604(i)].
- ▶ Federal agencies may enter into reimbursable service agreements when such agreements would be more convenient and cost efficient than contracts [31 U.S.C. §1535]. Since ATSDR already has the infrastructure in place to register victims, the U.S. Department of Health and Human Services (HHS) Office of Emergency Preparedness has entered into an Interagency Agreement with ATSDR to register victims of terrorism involving weapons of mass destruction, including biological agents as well as other hazardous substances.
- ▶ ATSDR is authorized to provide technical assistance to other federal departments and agencies on public health issues related to emergency preparedness, short and long-term disaster response and recovery, national security, and emergency processes related to hazardous substances [42 U.S.C. §11005].
- ▶ Presidential Decision Directive 39 directs federal departments and agencies with emergency response missions to increase their efforts to counter terrorism.

### Coordination

- ▶ HHS provides health and medical support in response to disasters under the Federal Response Plan.
- ▶ ATSDR has been tasked developing and maintaining a victim registry under the HHS Health and Medical Services Support Plan for the Federal Response to Acts of Chemical/Biological Terrorism.
- ▶ The victim registry has been included in planning for the HHS Bioterrorism Initiative for Fiscal Year 2000.

### Approach

- ▶ Since 1990, ATSDR has operated the Hazardous Substances Emergency Event Surveillance System (HSEES) through State health departments to obtain and analyze public health information related to accidental and illegal releases of hazardous substances.
- ▶ Currently, thirteen State health departments collect information about victims of emergencies involving hazardous substances from industries; hospitals; and police, fire, and emergency medical services departments; and report that information to ATSDR electronically. ATSDR evaluates the data and prepares an annual report. An Internet reporting system will be available for HSEES later in Fiscal year 1999.
- ▶ ATSDR has concurrently established the National Exposure Registry to identify, locate, track, and evaluate long-term health effects in persons exposed to hazardous substances released into the environment. The National Exposure Registry consists of substance-specific subregistries, and currently tracks and evaluates about 12,700 persons across the nation; an additional 14,000 will be added in Fiscal Year 1999 with the initiation of the radiation subregistry.

- ▶ ATSDR has developed the infrastructure (computer systems, OMB-cleared questionnaires, data management protocols in accordance with the Privacy Act, hiring and training staff) to register, track and evaluate large groups of people.
- ▶ ATSDR has developed a computer system (the Federal Facilities Information Management System) to rapidly access, retrieve, store, format, and evaluate large amounts of environmental monitoring and census data to determine who is, and who is not, a victim of an attack involving hazardous substances. The system estimates doses based on monitoring, modeling, and census data, and compares the estimated doses to doses known to cause adverse health effects.
- ▶ ATSDR is completing a guidance document for the States on registering victims of terrorism involving weapons of mass destruction, in response to a request from the HHS Office of Emergency Preparedness.
- ▶ If a registry would be needed through ATSDR, ATSDR would seek funding from disaster response resources to support contracts to locate, track, and interview participants.

#### Current Objectives

- ▶ Develop partnerships with the U.S. Department of Justice (DOJ), the Department of Defense, the Department of Veterans Affairs, and other federal agencies to provide mutual support on registering victims.
- ▶ Expand HSEES to other States at high risk of terrorist attack.
- ▶ Increase the level of detail collected by HSEES, or obtain detailed information from other sources such as DOJ, to provide a seamless transfer of data from emergency event data collection systems into the victim registry.

#### Contact:

Cdr Joe Hughart, USPHS  
Office of Federal Programs  
Agency for Toxic Substances and Disease Registry  
Mailstop E-28  
1600 Clifton Road  
Atlanta, GA 30333  
telephone: (404) 639-0730  
FAX: (404) 639-0759  
e-mail: [jxh8@cdc.gov](mailto:jxh8@cdc.gov)

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Pub.L. 104-132 provided (the Victims of Crime) paragraph (1) of this section, shall not compensation to any which the Attorney the Director of the United States determination that a able criminal debt gerated by the agen- sion of criminal debt e, readily available dities that adminis- tion programs that ctim compensation cept as authorized

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Treatment Act, Pub.L. 93-247, which relates to grants to States for programs relating to investi- gation and prosecution of child abuse and ne- glect cases and is classified to section 5106c of this title. Translation to section 5106c was

made notwithstanding renumbering of secti 109 as 107 by Pub.L. 104-235, Title § 113(a)(1)(B), Oct. 3, 1996, 110 Stat. 8079, the probable intent of Congress.

§ 10603b. Compensation and assistance to victims of terrorism or mass violence

(a) Victims of acts of terrorism outside the United States

The Director may make supplemental grants as provided in section 10603(a) of this title to States to provide compensation and assistance to the residents of such States who, while outside of the territorial boundaries of the United States, are victims of terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(b) Victims of terrorism within the United States

The Director may make supplemental grants as provided in section 10603(d)(4)(B) of this title to States for eligible crime victim compensation and assistance programs provide emergency relief, including crisis response efforts, assistance, training, a technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney's Office for use in coordination with State victim compensation and assistance efforts providing emergency relief.

(Pub.L. 98-473, Title II, § 1404B, as added Pub.L. 104-132, Title II, § 232(a), Apr. 24, 1996, 110 Stat. 1243.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. Senate Report No. 104-179 and House Conference Report No. 104-518, see 1996 U.S. Code Cong. and Adm. News, p. 924.

References in Text

The Omnibus Diplomatic Security and Antiterrorism Act of 1986, referred to in subsec. (a), is Pub.L. 99-399, Aug. 27, 1986, 100 Stat. 853.

Title VIII of that Act is also known as "Victims of Terrorism Compensation Act". For complete classification of these Acts to the Code see sections 1 and 801, respectively, of Pub.L. 99-399, set out as Short Title of 1986 Acts under section 4801 of Title 22, Foreign Relations and Intercourse, and section 5569 of Title 5, Government Organization and Employees, respectively.

§ 10604. Administrative provisions

[See main volume for text of section]

(As amended Pub.L. 104-294, Title VI, § 604(b)(9), Oct. 11, 1996, 110 Stat. 3507.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. House Report No. 104-788, see 1996 U.S. Code Cong. and Adm. News, p. —

Amendments

1994 Amendments. Subsec. (g). Pub.L. 103-322, § 230207, as amended Pub.L. 104-294, § 604(b)(9), substituted "June 30 every" for "December 31 every".

Effective Dates

1996 Acts. Amendment by section 604 of Pub.L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub.L. 104-294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

Reports on Amounts Received and Distributed from Fines for Violations of Trade Secrets Provisions

Pub.L. 104-294, Title I, § 101(c), Oct. 1996, 110 Stat. 3491, provided that: "Not later than 2 years and 4 years after the date of enactment of this Act [Oct. 11, 1996], the Attorney General shall report to Congress on amounts received and distributed from fines and offenses under this chapter [probably meaning chapter 90, section 1831 et seq., of Title 18, Crimes and Criminal Procedure, as added by section 101(a) of Pub.L. 104-294] deposited in the Crime Victims Fund established by section 1402 of the Victims of Crime Act of 1984 (U.S.C. 10601) [section 10601 of this title]."



# FEDERAL FAMILY ASSISTANCE PLAN FOR AVIATION DISASTERS



PREPARED BY THE NATIONAL TRANSPORTATION  
SAFETY BOARD

April 9, 1997



**SUBJECT: Federal Family Assistance Plan for Aviation Disasters**

**1. REFERENCES.**

- a. Presidential Executive Memorandum, Subject: Assistance to Families Affected by Aviation and Other Transportation Disasters, September 9, 1996
- b. PL 104-264, Title VII, Aviation Disaster Family Assistance Act of 1996, October 9, 1996
- c. Interim Federal Response Plan for a Major Aviation Disaster, November 17, 1996
- d. Memorandum of Understanding between Department of Defense (DRAFT) and National Transportation Safety Board, January 22, 1997
- e. Memorandum of Understanding between Department of Health and Human Services (DRAFT) and National Transportation Safety Board, January 22, 1997
- f. Memorandum of Understanding between Department of Justice and National Transportation Safety Board, January 28, 1997
- g. Memorandum of Understanding between Department of State and National Transportation Safety Board (DRAFT), February 19, 1997
- h. Memorandum of Understanding between Federal Emergency Management Agency and National Transportation Safety Board, February 14, 1997
- i. Statement of Understanding between American Red Cross and National Transportation Safety Board (DRAFT), February 14, 1997
- j. Memorandum of Understanding between Department of Transportation and National Transportation Safety Board, (DRAFT), February 19, 1997



2. **PURPOSE.** This plan assigns responsibilities and describes the airline and federal response to an aviation crash involving a significant number of passenger fatalities and/or injuries. It is the basic document for organizations which have been given responsibilities under this plan to develop supporting plans and establish procedures. It supersedes Reference C, "Interim Federal Response Plan for a Major Aviation Disaster".

3. **IMPLEMENTATION.** This plan will be put into execution, in full or part, by the Director, Family Support Services (FSS), at the direction of the Chairman, NTSB.

- a. The Director, FSS will make a recommendation to the Chairman, NTSB whether to activate the plan or portions thereof.
- b. Federal agencies that have responsibilities under this plan maintain control of their resources while supporting the NTSB in accordance with the above references. (For purposes of this document the terms "federal agencies" and "federal staff" includes the American Red Cross.)
- c. The NTSB, through its communications center, will initiate notification of federal agencies to activate planning and coordinating with the airline an appropriate response based upon the magnitude of the aviation crash. Additional requirements will normally follow as the incident situation becomes better known. Upon direction from Director, FSS, the NTSB communications center will notify some or all of the following operations centers:

- |  |   |
|--|---|
| (1) American Red Cross (ARC)                       | (703) 206-8822                          |
| (2) Department of State (DOS)                      | (202) 647-1512                          |
| (3) Department of Health and Human Services (DHHS) | (301) 443-1167 Ext 0<br>1-800- 872-6367 |
| (4) FBI Operations Center                          | (202) 324-6700                          |
| (5) Federal Emergency Management Agency (FEMA)     | (202) 898-6100                          |
| (6) Department of Defense (DOD)                    | (703) 697-0218                          |
| (7) Department of Justice (DOJ)                    | (202) 514-5000                          |

- d. The role of the NTSB can generally be described as a coordinator to integrate the resources of the Federal Government and other organizations to support the efforts of the local and state government and the airline to meet the needs of aviation disaster victims and their families. The NTSB assists in making available federal resources to local authorities and the airlines. Family counseling, victim identification and forensic services, communicating with foreign governments, and translation services, are just a

few of the areas in which the federal government can help local authorities and the airlines deal with a major aviation disaster. It is recommended that the local government emergency services provide a liaison officer to the joint family support operations center to participate in the local, airline, and federal response. Appendix B shows a sample layout of the joint family support operations center. It is recognized that the joint family support operations center layout is dependent on the facilities and rooms available at the time.

- e. Local authorities will maintain the same jurisdiction they had prior to Reference A and B, such as accident response, recovery, security, cleanup, and medical examiner operations. As in the past the NTSB will still lead the aviation crash investigation. If the aviation crash is determined to have been caused by a criminal act, the FBI will then become the lead investigation agency.
- f. The airline continues to have a fundamental responsibility to the victims and their families affected by an aviation crash. The airline is still primarily responsible for family notification and all aspects of victim and family logistical support. Although their major responsibilities have not changed, "The Aviation Disaster Family Assistance Act of 1996" places the airline in a more collaborative relationship with families, the NTSB, and other supporting organizations.
- g. All personnel involved in providing services to assist the victims and their family members should be trained in crisis response and must demonstrate compassion, sympathy, technical expertise, and professionalism. Information provided by family members and victims through discussions, interviews, counseling, and any other form of exchange of personal information must remain confidential and used only for the intended purpose. Combined with common sense and teamwork, everyone's efforts in the end, will be greatly appreciated by those served.

#### 4. SCOPE.

- a. This plan pertains to any domestic or foreign aviation crash that occurs within the United States, its territories and possessions of the United States, and territorial seas.
- b. This plan is written with three possible crash scales supporting organizations should consider in their development of supporting plans and asset allocation calculations.
  - (1) Crash scale 1. This involves an aviation crash that involves 100 or fewer passengers and crew who are either fatalities or require medical assistance.
  - (2) Crash scale 2. This involves an aviation crash that involves 101 - 200 passengers and crew who are either fatalities or require medical assistance.
  - (3) Crash scale 3. This involves an aviation crash that involves 201 or more passengers and crew who are either fatalities or require medical assistance.

5. ASSUMPTIONS.

- a. The Chairman, NTSB will request federal agencies to support the NTSB in accordance with the above references.
- b. Local and state officials having jurisdiction will allow the federal government to provide assistance.
- c. There will be fatalities and seriously injured passengers and crew for each of the above three scenarios.
- d. Large numbers of families of fatalities will travel to the city closest to the incident and will utilize the accommodations provided by the airline. The remainder of families of fatalities will remain at their local residence.
- e. Many families of seriously injured personnel will travel to the location where the injured are hospitalized and once released from the hospital will return home.

6. GENERAL. The family assistance mission tasks that follow an aviation crash are:

- a. Make initial notification to family members of victims involved in the aviation crash based on manifest documents and other available information.
- b. Monitor search and recovery operations conducted by the local jurisdiction and offer assistance where needed.
- c. Determine the status and location of victims.
- d. Obtain approval of local jurisdiction to provide federal assistance, where appropriate.
- e. Assist the local medical examiner in the identification of fatalities and the notification of their families. ( It is noted that there are differences between a medical examiner and coroner. For purposes of this document the term "medical examiner" is used interchangeably with "coroner".)
- f. Provide psychological and logistical support and services to victims and their family members.
- g. Provide daily briefings to families on the progress of recovery efforts; identification of victims; the investigation; and other areas of concern.
- h. Arrange for a memorial service for victims and their family members.
- i. Provide for the return of personal effects.

- j. **Maintain contact with victims and their families to provide updates on the progress of the investigation and other related matters.**

**7. RESPONSIBILITIES.** There are seven Victim Support Tasks (VSTs). VSTs are tasks that participating organizations may be required to perform based upon the size and circumstances of the actual incident. The seven VSTs are: NTSB Tasks; Airline Tasks; Family Care and Mental Health; Victim Identification, Forensic and Medical Services; Assisting Families of Foreign Victims; Communications; and Assisting Victims of Crime. Due to each aviation crash being unique all of the following responsibilities may or may not be employed. Agencies and organizations should consider this and the various crash level scales when developing their supporting plans.

**a. NTSB: VST 1, "NTSB Tasks".**

- (1) **Coordinate federal assistance and serve as liaison between airline and family members.**
- (2) **Provide NTSB toll free number to family members to obtain information on the recovery and identification effort, accident investigation, and other concerns. This number will normally be provided to families on site during the initial family briefing and repeated in subsequent briefings. The NTSB will coordinate with the airline to have airline family representatives provide the toll free number to the families that do not travel to the site.**
- (3) **Request a copy of the passenger manifest from the airline.**
- (4) **Coordinate with Department of Transportation for marine search and rescue.**
- (5) **Review with the airline family support logistics with special consideration toward security, quality of rooms and facilities, and privacy for family members.**
- (6) **Integrate federal and airline staff to form a joint family support operations center to facilitate close coordination of services and activities.**
- (7) **Coordinate assistance effort with local and state authorities, to include the medical examiner, local law enforcement, emergency management, hospitals, and other emergency support personnel.**
- (8) **Maintain communications with the airline involved to receive frequent updates on the status of notification of victims' families.**
- (9) **Conduct daily coordination meetings with the airline and federal staff to review daily activities, resolve problem areas, and to synchronize future family support operations and activities. Information that is needed to be discussed at the daily coordination meeting is at Appendix C.**

- (10) Provide and coordinate family briefings to those at the site and those who decide not to be at the site.
- (11) Discuss with the medical examiner the subject of DNA testing: under what conditions would it be used; what extent would it be used; whom the medical examiner would use to collect and test samples; and whom would pay for testing of samples.
- (12) Coordinate with investigator in charge for a possible visit to the crash site for family members. Liability release forms from family members should be considered in the planning process.
- (13) Provide information releases to the media pertaining to family support areas of interest. Sample of media releases are at Appendix A.
- (14) Maintain contact with family members to keep them informed about the progress of the investigation as well as to continue to meet their future needs.
  - a) Generally, about 2 to 4 months after the date of the crash, factual reports written by the NTSB investigators are made available in a public docket. Families should be informed approximately 4 weeks prior to the factual report being made public that they may request the NTSB provide a copy of the report to them. The report will be provided to them at no cost.
  - b) Families will also be notified of the public hearing concerning the crash, if the NTSB decides a public hearing is necessary. The hearing is designed to gather additional facts and selected individuals are subpoenaed to testify. Travel and lodging to the hearing is at the family's expense. Families will be provided seating and copies of official exhibits discussed at the hearing.
  - c) Families will be invited to attend at their own expense the public meeting at NTSB's Washington, DC headquarters. The NTSB investigative staff presents to the full five Member Board a draft accident report for member discussion and approval at this public hearing. This report results in the NTSB's probable cause of the crash and recommendations on how to prevent future aviation crashes.
- (15) Consolidate and review after action reports to resolve problem areas and update operating plans and procedures.

**b. Airline: VST 2, "Airline Tasks".**

- (1) In addition to accident notification required by 49 CFR 830.5, notify the NTSB communications center at (202) 314- 6290 immediately upon knowledge of a crash.**
  - a) Provide place of incident, number of passengers and crew, and number of injured and fatalities (if known).**
  - b) Provide origination, connection points and final destination (if known), and whether the flight was domestic or international.**
  - c) Provide name and telephone number of the person who is in overall charge of the incident site.**
  - d) Provide name, telephone number and location of the hotel that has been designated as the joint family support operations center.**
  - e) Provide name and telephone number of the person responsible for the passenger manifest.**
  - f) Provide name and telephone number of the person responsible for family notification.**
- (2) Provide the public a reliable publicized toll free number with sufficient telephone capacity.**
- (3) Provide timely notification to family members of passengers which may consist of a continuous process of updates based upon manifest reconciliation with boarding documents. Personnel should be trained in crisis response and death notification.**
- (4) Provide the NTSB, upon request, the most current reconciled copy of the passenger manifest. Each copy should be numbered or annotated so it can be distinguished from previous copies.**
- (5) Secure facilities at departure, arrival and connecting airports where family members may be initially gathered to protect them from unwelcome media and solicitors, as well as to receive continuous updates on the reconciliation of the passenger manifest and other information on the crash. If at a secured facility, family members will be notified personally and privately by personnel trained in crisis response and death notification that their loved one was on the plane.**

- (6) Provide logistical support to family members that desire to travel to the incident site (or to a hospital location), which includes, but is not limited to, transportation, lodging, meals, security, communications, and incidentals. Factors to consider in selecting a facility are quality of rooms and size of facilities, privacy for family members, and relative location to medical examiner's office, temporary morgue, airport operations, crash site, NTSB investigation HQs, and medical treatment facilities.
- (7) Inform family members (or family friends or clergy who are with the family) at an appropriate time, but as early as possible after being notified, that it is critical that they contact their family dentist to obtain the dental records and dental x-rays of their loved one. Ask the family to have the records and x-rays overnight expressed to the address of the hotel where the joint family support operations center will be located. Packages should be addressed to the Director, Family Support Services, NTSB. If the family is coming to the site the next day, the family may arrange to hand carry these documents. It is important to explain that dental records and x-rays are critical in the victim identification process. If the family is already at the site or arrives without making arrangements with their dentist, Disaster Mortuary (D-MORT) Team personnel will coordinate with the family's dentist to obtain dental records and dental x-rays.
- (8) Make provisions for a joint family support operations center to include space, communication and logistical support for the assisting federal staff. A sample layout and support requirements are provided for planning purposes at Appendix B.
- (9) Make provisions for private areas within the hotel for D-MORT and medical examiner personnel to collect ante mortem questionnaire information from families that are at the site. Also provide quiet space and communications for D-MORT and medical examiner personnel to telephonically collect ante mortem questionnaire information from families that decide to stay away from the site. Additionally, plan to provide ARC with two private rooms for crisis counseling. Support requirements for planning purposes are at Appendix B. These facilities will also be used to inform families when positive identification has been made by the medical examiner. By having the D-MORT/medical examiner team liaison officer located within the joint family support operations center, transportation of victim's remains and other logistical considerations can be better coordinated without having an airline reservation specialist at the morgue location.
- (10) Provide DOS liaison officer necessary information on foreign passengers to facilitate interaction with appropriate foreign government embassies.
- (11) Provide notification of family members prior to releasing passenger names to the public. Family members should be given appropriate time to notify other family members and friends prior to public release of the victim's name.

- (12) Provide the public with continuous updates on the progress of the notification process, such as providing the numbers of victims' families notified as of a certain time and the number remaining to be notified. This process will continue until all victims' families have been notified.
- (13) Provide contact person to meet family members as they arrive and while at the incident site. This person will be responsible for assisting the family while at the site and should continue to be the airline interface with the family after the family returns to their residence.
- (14) Maintain daily contact with family members that do not travel to the incident site by providing a contact person from the airline. This person will be responsible for assisting the family until no longer needed.
- (15) Inquire at the time of notification or soon after, if family members desire ARC crisis assistance or an ARC person just to talk to. If they are undecided or say no, let them know if they change their mind to inform their airline representative. Pass all requests for assistance to the ARC liaison officer who will coordinate for an ARC staff member in the family member's local area to contact the family.
- (16) Establish a joint liaison with ARC at each supporting medical treatment facility to track the status of injured victims and to provide assistance to their families.
- (17) Develop procedures for the handling of personal effects not being held as evidence for purposes of a criminal or accident investigation. Utilizing a third party that has experience in the return of personal effects associated with aviation disasters should be considered. Done properly it is time consuming and resource intensive. Consideration should also be given to protecting airline employees from reexperiencing the crash and possible future psychological and physical health effects. Provisions will be made for unclaimed possessions to be retained for at least 18 months from the date of the crash as required by law.
- (18) Assist family members as they depart the incident site and provide a contact person who will continue to be the airline interface with the family after the family returns to their residence.
- (19) Consult with family members about any airline sponsored monument, including any inscriptions.
- (20) Provide reasonable reimbursement to the ARC for the services it provided to the family, airline, and supporting personnel.
- (21) Coordinate with Department of Justice in arranging meetings with family members to explain their rights under the victim of crime legislation should the crash be declared a crime.

(22) Provide the same support and treatment of families of non revenue passengers (and any other victim of the accident) as for revenue passengers.

(23) Participate in daily coordination meetings to review daily activities, resolve problem areas, and to synchronize future family support operations and activities. Information that is needed to be presented at the daily coordination meeting is at Appendix C. This information is needed to plan logistical requirements, such as food, lodging, and transportation, as well as providing everyone with an overall picture of current and future support operations.

c. American Red Cross (ARC): VST 3, "Family Care and Mental Health".

(1) Provide a liaison officer to the joint family support operations center to coordinate with other members of the operations center staff ARC related issues and family requests for assistance. Additional personnel may be needed for crash scale 2 or 3 scenarios.

(2) Coordinate and manage the numerous organizations and personnel that will offer their counseling and support services to the operation. It is important to monitor and manage this area so that families are not outnumbered and overwhelmed by well-intentioned organizations and individuals.

(3) Employ an accounting system to accurately record cost data for specific cost categories for later reimbursement.

(4) Activate local, state, and national ARC personnel to provide crisis and grief counseling to family members and support personnel. This includes coordinating with the airline to contact and set up an appointment, if appropriate, with family members that do not travel to the site.

(5) Assess the needs and available resources of other agencies and coordinate with them to ensure ongoing emotional support for workers during the operation and provide debriefings before departure.

(6) Establish a joint liaison with the airline at each supporting medical treatment facility to track the status of injured victims and to provide assistance to their families.

(7) Coordinate with the airline to establish areas for families to grieve privately.

(8) Coordinate on site child care services for families that bring young children.

(9) Arrange a suitable non-denominational memorial service days following the crash and a memorial service for any future burial of unidentified remains.

(10) Provide families, at their request, referrals to mental health professionals and support groups that are in the family member's local area.

- d. **Department of Health and Human Services (DHHS): VST 4, "Victim Identification, Forensic and Medical Services".**
- (1) **Provide a liaison officer to the joint family support operations center to coordinate with other members of the operations center staff DHHS related issues and family requests for assistance. Additional personnel may be needed for crash scale 2 or 3 scenarios.**
  - (2) **Provide a D-MORT assessment team to the crash site location within six hours of being notified by NTSB to assess the capabilities of the local medical examiner. After the assessment NTSB and DHHS will make their recommendation to the local medical examiner and seek his/her approval of receiving federal assistance in the identification and mortuary service effort, to include site location of a temporary morgue.**
  - (3) **Provide necessary D-MORT team members to assist the medical examiner in victim identification and mortuary services. Configuration of team and skills required will be determined by details of the crash, medical examiner's request for assistance, and crash scale 1, 2, or 3 factors reviewed by the assessment team.**
  - (4) **Provide, if appropriate, a portable morgue facility and the necessary equipment and supplies to augment the local medical examiner's capabilities.**
  - (5) **Monitor the status of incoming dental records and x-rays to insure that all records have been received. If not, take steps to obtain the records and x-rays. Request assistance from DOS for acquiring necessary records for foreign passengers and crew.**
  - (6) **Develop a standard ante mortem questionnaire and disposition of remains form that can be adapted to meet local medical examiner and state requirements. The disposition of remains form will be used to obtain directions from the lawfully authorized next of kin on what he/she desires the medical examiner to do with remains that may later be identified as those of their family member. Information collected from family members is strictly confidential and will be used only for medical examiner purposes.**
  - (7) **Interview family members who are both on site and off site for ante mortem identification information and disposition of remains information.**
  - (8) **Coordinate with the medical examiner to integrate non D-MORT personnel, who are providing assistance to the medical examiner's office, into the D-MORT team.**
  - (9) **Assist the medical examiner in notifying family members of positive identification, to include explanation of how identification was determined. Notification team may include, if appropriate, ARC crisis counselor and airline family escort.**

- (10) Check remains and associated personal effects being returned with the remains prior to release to local funeral director. Insure that all documentation is correct, chain of custody is established, and returned personal effects are cleaned.
  - (11) Provide NTSB names of victims and their NOK, NOK relationship to victim, and addresses and telephone numbers of NOK. A source for this information is the ante mortem questionnaire.
  - (12) Assist the airlines, if requested, with finding next of kin to be notified by use of established cooperative relationships with local, state, and federal law enforcement agencies.
  - (13) Provide, if requested, professional medical staff and technicians to assist in the care and recovery of injured victims.
  - (14) Assist the ARC, if requested, with additional trained and experienced crisis counselors.
- e. Department of Defense (DOD): DOD supports DHHS in VST 4, "Victim Identification, Forensic and Medical Services". If required:
- (1) Provide the use of a military installation, such as Dover Air Force Base, for mortuary support operations.
  - (2) Provide personnel from the Armed Forces Institute Pathology (AFIP), Office of the Armed Forces Medical Examiner (OAFME), to assist in the identification effort and also conduct appropriate DNA comparison testing on specimens submitted by the medical examiner.
  - (3) Provide assets from the US Navy's Support Salvage (SUPSALV) for the purposes of offshore search, salvage, and recovery of non-military aircraft wreckage, when these services are not locally available. SUPSALV is delegated the responsibility for technical and , when tasked operational control of aircraft search, identification, and/or underwater recovery operations. NTSB and SUPSALV will jointly determine if assets should be deployed and SUPSALV will advise the NTSB on alternate search and recovery methods which may be employed.
  - (4) Provide within 24 hours a trained Graves Registration and Recovery Team to assist in the recovery efforts at the crash site.
  - (5) Provide within 24 hours, requested dental records and x-rays of military fatalities that are active duty, retired, veteran, or reserve.
  - (6) Provide pouches and transfer cases for human remains.
- f. Department of State (DOS): VST 5, "Assisting Families of Foreign Victims". If required:

- (1) Provide a liaison officer to the joint family support operations center to coordinate with other members of the operations center staff DOS related issues, such as obtaining dental records and dental x-rays from foreign families and responding to family requests for assistance. Additional personnel may be needed for crash scale 2 or 3 scenarios involving international flights.
- (2) Provide official notification to foreign governments that have citizens involved in the aviation incident after obtaining necessary information on foreign passengers from the airline.
- (3) Assist the airline in notifying US citizens who may reside or are traveling outside the United States that a member of their family has been involved in an aviation crash.
- (4) Provide translation services to facilitate communications with the victim's family and all interested parties.
- (5) Assist the airline, the federal support staff, and others in maintaining daily contact with foreign families that do not travel to the United States.
- (6) Assist families of foreign victims with entry into the United States and extend or grant visas.
- (7) Facilitate necessary consulate and customs services for the return of remains and personal effects into the country of destination.
- (8) Assist in the effort to provide the medical examiner the necessary information on foreign victims to complete death certificates.

g. Federal Emergency Management Agency (FEMA): VST 6, "Communications". If required:

- (1) Provide a liaison officer to the joint family support operations center to coordinate with other members of the operations center staff and local and state officials emergency management related issues. Additional personnel may be needed for crash scale 2 or 3 scenarios involving a major city emergency response.
- (2) Provide personnel, upon request of the NTSB, to assist in public information dissemination, to include assistance in establishing and staffing external media support centers, such as the crash site, wreckage hanger, family support operations center, airport, and other areas that may attract media interest.
- (3) Provide voice and data communication assets to communicate from the incident site to the NTSB communications center.

h. Department of Justice (DOJ): VST 7, "Assisting Victims of Crime". If required:

- (1) Provide, upon NTSB request, a FBI Disaster Squad with sufficient personnel to obtain fingerprint identification of aviation crash fatalities. This team will work with the medical examiner and the D-MORT personnel at the morgue location.
- (2) The following responsibilities will only be implemented if the airline disaster is officially declared a criminal act:
  - a) Provide a liaison officer to the joint family support operations center to coordinate with other members of the operations center on DOJ related issues.
  - b) Provide information to victims and their family members, on site and off site, as required under the Victims of Crime Act of 1984, as amended, the Victim and Witness Protection Act of 1982, other relevant statutes, and the 1995 *Attorney General Guidelines for Victim and Witness Assistance*.
  - c) Assist the ARC, if requested, with additional trained and experienced crisis counselors through the Office for Victims of Crime's Community Crisis Response Program.
  - d) Provide updates to victims and their family members on the progress of the criminal investigation.

## 8. COORDINATING INSTRUCTIONS.

- a. The point of contact for this plan is the Director, FSS, NTSB. The telephone number is (202) 314-6100. The office fax number is (202) 314-6110.
- b. Upon implementation and until the NTSB FSS staff is situated at the joint family support operations center, calls should be directed to the NTSB communications center at (202) 314-6290 (voice) or (202) 314-6293 (fax). The communications center will pass any information or messages to the appropriate NTSB family support staff member.
- c. DHHS, ARC, and DOS have major and critical responsibilities under this plan. These agencies are to develop formal supporting plans. Coordinating drafts of plans are to be submitted to the Director, FSS NLT June 30, 1997. The remaining federal agencies, DOD, FEMA, DOT and DOJ, are not required to submit formal supporting plans, but should develop procedures to fulfill their responsibilities under this plan. Coordination with the airline industry is encouraged.
- d. It is recommended that supporting agencies provide the same individual or individuals to each aviation crash as their liaison to the joint family support operations center. Fortunately, major aviation incidents do not occur frequently. Unfortunately, when they

do occur, people and organizations in the past have had very little or no experience dealing with the many sensitive issues of an aviation disaster. By developing a core group of experienced staff, operational procedures will continually improve and individual and group experiential bases will increase, all culminating in the better delivery of support services to victims and their families. This does not preclude agencies from designating and training alternate personnel.

- e. It is strongly recommended that federal personnel involved at the incident site wear clothing articles, such as hats, shirts, and/or jackets that identify the agency or group with which they are associated. This will be helpful for families, as well as for all those involved in supporting the operation.
- f. Agencies that are activated and participate in supporting victims and their family members under this plan are requested to submit an after action report to the Director, FSS, within 30 days of completion of their tasks. This information must be captured so appropriate lessons can be derived, corrective actions taken, and plans changed accordingly. A sample format is at Appendix D.
- g. Other than the media releases by the airline on the progress of family notification and release of passenger names described in paragraph 7b, all media inquiries and releases that pertain to the family support operation will be referred to the NTSB family support public affairs officer. The NTSB will advise and assist the local medical examiner on any media affairs in his or her area of responsibility. There are no restrictions on victims or family members meeting with the media, if they so desire.
- h. Due to differences in individual airline and airline underwriter policies, as well as the aviation crash itself, reimbursement of costs associated with participation in an aviation disaster will be made after discussions with the airline and their insurance underwriter.

#### ENCLOSURES

- Appendix A      Drafted Media Releases and Background Papers
- Appendix B      Sample Layout for Joint Family Support Operations Center
- Appendix C      Daily Status Report Information
- Appendix D      Sample After Action Report Format

APPENDIX A

DRAFTED MEDIA RELEASES AND BACKGROUND PAPERS

**Media Topic**

Federal Agencies Supporting the Victims of (Accident)

National Disaster Mortuary Team (D-MORT)

Victim Identification Process

Aviation Disaster Family Assistance Act of 1996 (Background Paper)

Return of Personal Effects (Background Paper)

**FOR IMMEDIATE RELEASE:**

**FEDERAL AGENCIES SUPPORTING THE VICTIMS OF (ACCIDENT)**

**(LOCATION)**—The National Transportation Safety Board (NTSB) has investigated more than 100,000 aviation accidents in its 30 year history. The Aviation Disaster Family Assistance Act of 1996 (PL 104-264, Title VII), was passed by the Congress and signed by President Clinton on October 9, 1996. This Act gave the NTSB the additional responsibility of aiding the families of victims of aircraft accidents occurring in U.S. territory. The new law is complemented by an earlier Presidential Executive Memorandum, dated September 9, 1996, in which President Clinton designated the NTSB as the coordinator of federal services for families of major transportation disasters.

The NTSB, in a cooperative effort with local, state and **(AIRLINE)** officials, is coordinating federal support to assist **(CITY)** in meeting the needs of the victims' families of **(ACCIDENT)**. Federal and other agencies that are involved in the family support area are: **(American Red Cross (ARC); Department of State (DOS); Department of Health and Human Services (DHHS); Federal Emergency Management Agency (FEMA); Department of Justice (DOJ); and Department of Defense.)**

The ARC is providing crisis and grief counseling not only to the families that are here in **(CITY)**, but also for those families who have decided to remain home. The ARC has activated local, state, and national ARC staff to support the families affected by this tragic disaster. ARC personnel are also at key locations, such as the airport, family support operations center, and the morgue, assisting all the support workers who have contributed so much to this operation.

The Department of Health and Human Services (DHHS) is primarily responsible for assisting the **(CITY)** medical examiner in the identification and return of victims to their families. The National Disaster Mortuary (D-MORT) Team is currently assisting the city medical examiner. The team is composed of forensic pathologists, odontologists, anthropologists, finger print experts, and other technical personnel. DHHS is also providing a fully equipped mobile mortuary to expand the medical examiner's capabilities.

**(Since there are foreign passengers involved in this accident, The Department of State (DOS) is assisting the airline in officially notifying the victim's government and helping those affected foreign families travel to the US. They are also providing translation services to facilitate communication with all interested parties.)**

**(The NTSB has also called on the Federal Emergency Management Agency (FEMA) to augment NTSB public information efforts with additional staff. This will enable the NTSB to staff additional media support locations, such as XXXXX)**

**(Now that this tragedy has been officially declared a criminal act by (LAW ENFORCEMENT AGENCY) , the Department of Justice (DOJ) is providing information to family members on the services and assistance provided under the Victims of Crime Act of 1984. Such services and assistance may include compensation for loss of support, loss of wages, medical and mental health counseling expenses, and funeral costs. DOJ is also responsible for keeping the family members up to date on the progress of the criminal investigation.**

**FOR IMMEDIATE RELEASE:**

**NATIONAL DISASTER MORTUARY TEAM (D-MORT)**

**(LOCATION)**—Immediately upon being notified of the **(ACCIDENT)**, the National Transportation Safety Board requested the Office of Emergency Preparedness, United States Public Health Service (USPHS) to send an advance team of experts to assist the local **medical examiner (NAME)** assess the situation to determine, if and how, the federal government can assist in the recovery and identification of fatalities of **(ACCIDENT)**.

After a joint assessment of the situation by **(ME's name)**, NTSB and the USPHS advance team, **(ME's name)** requested federal assistance on **(date)**. Approximately **(time and date)** the first elements of a Disaster Mortuary (D-MORT) Team arrived on site. The team is being led by Tom Shepardson, the National D-MORT Team Commander.

The D-MORT team members are composed of private citizens each with a particular field of expertise. Their licensure and certification is recognized by all states and they are compensated for their duty time by the federal government. They will assist the medical examiner with recovery, identification and body preparation of the deceased victims. The team consists of approximately **(number)** specialists, such as forensic pathologists, medical examiners, odontologists, anthropologists, funeral directors, finger print experts, and other skilled technicians. Many have experience with other aviation disasters, as well as experience involving natural disasters.

The NTSB also requested the delivery of an emergency mobile mortuary. The facility, which is maintained in Arizona, contains a complete morgue with the necessary prepackaged equipment and supplies to support each work station. It **(arrived...time/date)** **(is expected to arrive approximately time/date)**. It **(has been/will be)** located in the vicinity of **(location)** and **(is/will be)** considered a secure site.

This has been a cooperative effort between local, state, and federal officials, as well as **(airline)** with the shared goal of recovering, identifying and returning all victims of this disaster to their loved ones as quickly as possible.

FOR IMMEDIATE RELEASE:

## VICTIM IDENTIFICATION PROCESS

(LOCATION)—(NAME), the local medical examiner is leading the effort to identify the victims of (ACCIDENT). As the medical examiner, (NAME) is legally responsible and retains jurisdiction on victim identification and cause of death determination.

The Aviation Disaster Family Assistance Act of 1996 designates the National Transportation Safety Board (NTSB) to coordinate federal assistance in response to aviation accidents, such as the (ACCIDENT). The NTSB, at the request of (NAME), has provided the medical examiner's office the services of the National Disaster Mortuary (D-MORT) Team. The team consists of approximately (number) specialists, such as forensic pathologists, medical examiners, odontologists, anthropologists, funeral directors, finger print experts, and other skilled technicians. Many have experience with other aviation disasters, as well as experience involving natural disasters. The NTSB also requested the delivery of an emergency mobile mortuary which is maintained in Arizona. It contains a complete morgue with the necessary prepackaged equipment and supplies to expand the operational capacity of the medical examiner's office.

The identification process is very deliberate and time consuming. Consequently, family members and the media are cautioned not to expect immediate identifications to be made. In some cases, unfortunately not all victims may be identified. To minimize this possibility, the NTSB has called on this team of experienced experts.

The identification process utilizes a number of media to make a positive identification. The process may start with documents found on the victim, as well as descriptions of clothing, jewelry, and other characteristics described by family members. Family members have been requested to provide dental records and x-rays that will assist the forensic odontologists with their work. Fingerprint comparisons will also be made by the fingerprint experts of the FBI. Forensic pathologists and anthropologists can also assist by providing information on general age, sex, size, color of hair and eyes, and race of the victim. Based upon past medical information collected from family members, they may be able to determine a victim by a previous broken arm that was reported by the family and the comparison of a x-ray taken by the medical examiner. Collectively, all these procedures' findings must support one another prior to a positive identification being determined by the medical examiner.

Once (NAME) makes a positive identification, the medical examiner's office will personally notify the victim's family. Health care and other support professionals will be available to assist family members through this experience.

## FOR BACKGROUND INFORMATION

### AVIATION DISASTER FAMILY ASSISTANCE ACT OF 1996 (PL 104-264, Title VII)

The National Transportation Safety Board (NTSB) has been investigating the nation's aviation accidents for nearly thirty years and has been to the scene of nearly 100,000 general and commercial airplane accidents. The Aviation Disaster Family Assistance Act of 1996 (PL 104-264, Title VII), was passed by Congress and signed by President Clinton on October 9, 1996. The Aviation Disaster Family Assistance Act of 1996 gave the NTSB the additional responsibility of aiding the families of victims of aircraft accidents. This new law is complemented by an earlier Presidential Executive Memorandum dated September 9, 1996, in which President Clinton designated the NTSB as the coordinator of federal services for families of major transportation disasters in the U.S.. Because of this the NTSB is able to harness the collective resources of the federal government and direct aid to any area in which it is needed.

Before President Clinton's Presidential Memorandum the families of people killed or injured in a commercial aircraft accident had been primarily assisted in the aftermath of the accident by the airline involved. Often local and state agencies, including volunteer organizations also responded, but sometimes in an uncoordinated and divisive effort. While the airline remains a major participant, the NTSB is now able to apply federal resources to augment local and state efforts and coordinate the overall family assistance support system.

The following are highlights of the Aviation Disaster Family Assistance Act of 1996:

1. The Chairman, NTSB designates and publicizes the name and telephone number of a Director, Family Support Services who will be the liaison between family members and the airline.
2. The Chairman, NTSB designates a nonprofit organization (American Red Cross) whose primary responsibility will be to coordinate the emotional care and support to victims and their families.
3. Upon request, the airline will provide a copy of the latest available passenger manifest to the Director, Family Support Services.
4. No person (including a State or political subdivision) will impede the ability of the NTSB (including the Director, Family Support Services) to carry out its responsibilities or the ability of the families of passengers involved in the accident to have contact with one another.
5. Provides a 30 day waiting period in which unsolicited communications by attorneys, representatives of an attorney, insurance company, or airline litigation representative to victims or their families are prohibited.

## FOR BACKGROUND INFORMATION

### RETURN OF PERSONAL EFFECTS

At the time victims of an accident are removed from the incident site, their personal effects are also being recovered. There are two types of personal effects, associated and unassociated.

Associated personal effects are those personal items that can be identified to a specific individual. Examples are items such as rings or earrings that are found on the victim or articles such as a wallet found in a carry on bag with driver's license, credit cards, and other items with a specific person's name.

Unassociated personal effects are those items that can not be identified to a specific person. Examples may be a necklace or earrings found near, but not on, a victim or clothing that has spilled out of a suitcase.

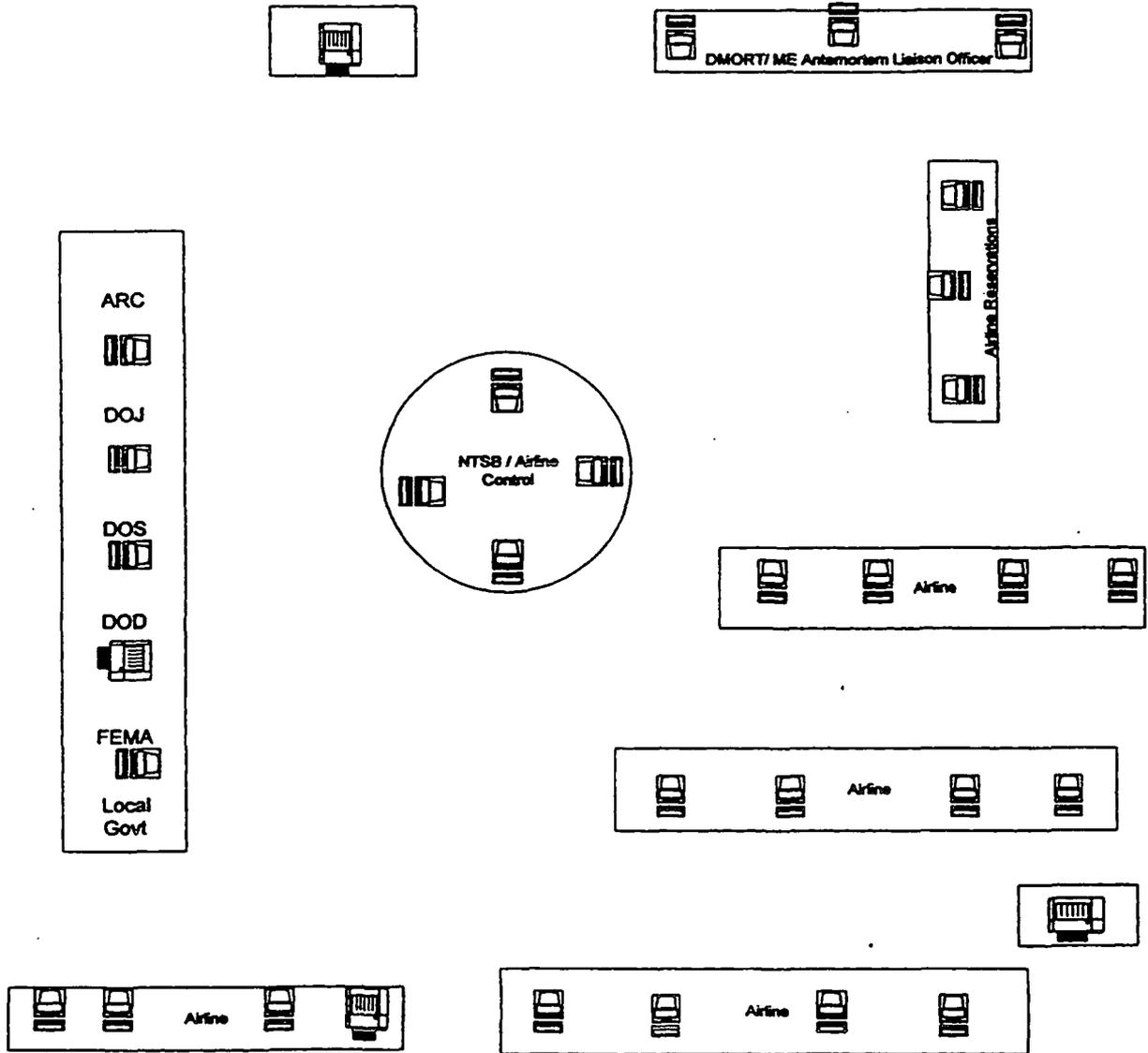
Generally, associated personal effects, such as jewelry items, found on a deceased victim are returned to the family along with the body. Prior to return, the personal effects are cleaned and an inventory list is completed to track receipt and transfer. Sometimes these personal effects are retained by authorities if needed as evidence or as part of the investigation. Once retained items are no longer needed by the authorities, the items are returned to the victim's family.

Associated personal effects are recovered from the cargo hold and aircraft cabin and those items that can not be identified to a specific person are generally processed at a later time. All recovered items are stored in a secure area. The process for associated items is for the airline or their representative to contact the victim or victim's family and ask them how they would like the recovered items returned. The airline or its representative then carries out the desires of the victim or family.

The process for the return of unassociated personal effects is deliberate and time consuming. The primary problem is determining ownership of items that may number in the thousands. In order to do this correctly, all items are first inventoried, numbered, and photographed. Once completed, a photo catalogue is produced and sent out to all victims or their families. Instructions are provided on how to claim an item. Once all victims or families have responded, items that are claimed by only one victim or family are returned according to their instructions. Claims by more than one party must be substantiated and proven by pictures, invoices, or other means. The item in question is returned once ownership is determined.

APPENDIX B

SAMPLE LAYOUT FOR JOINT FAMILY SUPPORT OPERATIONS CENTER



APPENDIX B-1

SUPPORT REQUIREMENTS FOR JOINT FAMILY SUPPORT OPERATIONS CENTER

(For planning purposes only)

	Telephones	FAX	Printers	Computers
<u>Crash Scale 1</u>				
Federal Agencies	6	1	1	2
D-MORT	10	2	1	1
<u>Crash Scale 2</u>				
Federal Agencies	8	1	1	2
D-MORT	15	2	1	2
<u>Crash Scale 3</u>				
Federal Agencies	8	1	1	3
D-MORT	15	2	1	2

## APPENDIX C

### JOINT FAMILY SUPPORT OPERATIONS CENTER DAILY STATUS REPORT INFORMATION

1. Number families notified / number pending notification	AIRLINE
2. Number families on site/ number of families at home	AIRLINE
3. Number of total family members at the hotel	AIRLINE
4. Number of families expected to arrive within next 24 hours	AIRLINE
5. Number of families expected to depart within the next 24 hours	AIRLINE
6. Number of families at home that have been contacted by their airline representative within the last 24 hours	AIRLINE
7. Status of injured personnel and location of family members	AIRLINE
8. Number of families at the site that have requested ARC assistance and have been assisted by ARC personnel within the last 24 hours	ARC
9. Number of families at home that have requested ARC assistance and have been contacted by their ARC representative within the last 24 hours	ARC
10. Number of workers that have received ARC assistance in last 24 hours	ARC
11. Number of injured personnel that have received ARC assistance	ARC
12. Status of dental records and x-rays	ME
13. Status of ante mortem and disposition of remains interviews	ME
14. Status of identification efforts	ME
15. Status of families notified of positive identification	ME
16. Status of release of remains	ME
17. Update on assistance provided to foreign families	DOS
18. Update on assistance provided to victims and families	DOJ
19. Number of federal support personnel, to include D-MORT and ARC personnel on site and their locations.	ALL
15. Remarks on daily activities.	ALL
16. Remarks on next 24 hours activities.	ALL

APPENDIX D

SAMPLE AFTER ACTION REPORT FORMAT

National Transportation Safety Board  
Director, Family Support Services  
490 L'Enfant Plaza East, SW  
Washington, DC 20594-2000

SUBJECT: (AVIATION ACCIDENT) AFTER ACTION REPORT

Describe such items as how the organization was organized; relationships to other organizations; what the organization's mission was; how many of the organization's personnel were involved; what other resources were provided; transportation and equipment requirements; date arrived/departed; daily activities; and any other item the organization feels important to add to this document. This outline is not intended to limit the content of the input.

Attach as separate enclosures specific areas, observed throughout the operation, that were both successful and problem areas. The following format is provided:

Topic:

Discussion:

Recommendations:

Also enclose any programs, associated ceremonial material, or video coverage .



# Briefings



## Thoughts and Reflections After the Bombing of the Alfred P. Murrah Federal Building in Oklahoma City

By Brian W. Flynn, EdD

**T**his article is intended to share some thoughts and reflections after my work in the aftermath of the Murrah Federal Building bombing in Oklahoma City. That event, which remains etched in the hearts and memories of so many, occurred on April 19, 1995.

I am the Chief of the Emergency Services and Disaster Relief Branch in the Federal Center for Mental Health Services. I was in Oklahoma City as part of the Federal Emergency Management Agency's (FEMA) effort to assist in the response to, and recovery from, that bombing. Specifically, my role was to assist FEMA and the State of Oklahoma, Department of Mental Health and Substance Abuse Services in assessing, responding to, and planning for the psychological aftermath of the event. I arrived approximately a week and a half after the bombing and stayed for almost 2 weeks.

My involvement in disaster mental health began approximately 17 years ago, and I have worked full time in that program area for the past 10 years. This event was different from all prior experiences.

What I witnessed and experienced in Oklahoma City deeply moved me. Many people assume that the experience traumatized me and, to some extent, it did. However, in many ways, it was one of the most profoundly positive experiences in my personal and work life: I am so deeply moved by the experience that, even now, tears sometimes accompany my attempts to tell the story.

This article is intended to give others some sense of the events and mood of those days. This is not a

scholarly attempt to analyze the sociological, psychological, and anthropological components of those days. Rather, it is an intensely personal account of several incidents, images, and impressions gathered during my time in the bombing's aftermath. I believe they will influence my future personal and work life as long as I live.

As context, I should note that my work did not directly involve the efforts to recover and remove bodies and body parts. I did not know anyone who was killed or injured in the bombing. Certainly, what I experienced, and what remains with me, would be profoundly different if my personal and professional roles had been different.

Among the most important things I bring back with

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*It is an intensely personal account of several incidents, images, and impressions gathered during my time in the bombing's aftermath. I believe they will influence my future personal and work life as long as I live.*

---

me from Oklahoma City is a renewed respect for the power and value of symbolism and ritual, and a sense that I glimpsed, if only briefly, a way that people can work and live together in a very different relationship to one another. I bring back with me, not primarily a sense of insecurity and vulnerability to violence (although that is a portion of my reaction), but a sense of hope and challenge.

### THE TEMPORARY CULTURE IN THE RECENT AFTERMATH OF THE BOMBING

#### The City

In my many years of disaster work, and in my 25 years as a federal employee, I have never witnessed the outpouring of appreciation and recognition that permeated my experience, and the experience of others, in Oklahoma City. Even the most experienced, and sometimes jaded, FEMA disaster workers were

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moved to the point of disbelief by this phenomenon.

I believe this outpouring is a result of several factors. First, at the risk of overgeneralizing, the people of this region of the country are, by nature and culture, generous and giving. Second, throughout my time in Oklahoma City, I had the sense that nearly everyone needed and wanted to be part of the response and recovery effort. Few had the opportunity to meet this need directly. As a result, people found ways, by very individualized and idiosyncratic means, to tangibly, symbolically, and psychologically participate. This took many forms ranging from making special efforts to personally express appreciation to refusing payment for goods and services.

I was frequently approached and stopped on the street by people with the simple goal of stating their thanks. Many FEMA workers told of people who insisted on paying for their meals in restaurants. One evening while waiting to be seated at a restaurant for dinner, a large and rather gruff-looking young man approached our group and asked if we were "in town to work on the bombing." We hesitated. From past experience this might not have been a friendly overture. When one of the group said yes, the young man said, "I just want you to know how much what you are doing means to us." He proceeded to shake each hand and thank each of us individually.

I stopped at a convenience store for a snack and soda one Sunday. When I stood at the counter to pay, the young woman cashier asked if I was "working downtown," a phrase that had come to mean being part of the bombing response effort. I could not figure out how she knew this since I was not in uniform and dressed casually. Then I realized that my car had a window placard identifying the car as a "Federal Emergency Vehicle." When I said yes, she told me that she would not accept payment for my purchases. I thanked her and told her how much the outpouring of appreciation meant to all of us. She told me that, "Oklahomans are independent people, but when something bad happens to us we pull together and support each other. You all have become part of us, and we all want to do what we can to help. All of you are away from your homes and families to help us. All of us can't be downtown working at the building so we do what we can." At that point, an older woman

who had been stocking shelves approached me. She hugged me and proclaimed, "Besides that, God's gonna bless the pants off all you people!" I was moved by the intent and had difficulty holding back the tears.

These events remind me of how important it is to accept support and appreciation from others. Too often, one's first impulse is to protest the gift of support or gratitude or to unconsciously devalue it by comments about how it is not deserved. In doing so, one fails to benefit from the support and, more important, to deprive the giver of the opportunity to give. It is ironic for one who has selected a profession of giving support and healing to be so frequently blind to the need of others to be satisfied in the same way.

### **The Workplace**

I worked out of the Disaster Field Office (DFO). This is the standard when in the field immediately after a disaster. In this situation, I found the mood and organizational culture in the DFO to be different. There

were few artificial barriers between functions, little regard for individual status, and a genuine sense of collaboration, strong organizational cohesion, and constant and unremit-

ting concern for victims and survivors. This is not to imply that these elements are absent in other situations, but the depth and consistency of these characteristics in this DFO were palpable. In my view, this led to unprecedented programmatic creativity and worker satisfaction in the face of a disaster unlike any in which any of us had worked.

Seldom, at least in government, does one experience working in an environment of such shared purpose, values, and commitment. It is clear that these characteristics in the workplace were major contributors to the creativity and productivity of the entire effort.

### **Lessons**

I knew that this type of milieu in a city or in the workplace could not last indefinitely. Nevertheless, it was a glimpse of what *can be*. For 2 weeks, I had the privilege of living and working in a sense of true community. The boundaries that traditionally separate us in our work and private lives were either removed or made permeable. People cared for each other, and expressed appreciation for one another, without awk-

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***These events remind me of how important it is to accept support and appreciation from others.***

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wardness or self-consciousness. Strangers physically and socially embraced without the usual fears of exploitation, vulnerability, or role conflict.

It feels almost perverse that such positive feelings emerge from such a horrible event as this bombing. I had expected to simply work on another disaster that

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***People cared for each other, and expressed appreciation for one another, without awkwardness or self-consciousness.***

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would undoubtedly provide some unique challenges and opportunities. I never expected to step into a world of such horror that would produce such beauty. I am reminded of the value of remaining open to new experiences. We never know which ones will change our lives.

### **SYMBOLS AND RITUALS**

The Oklahoma City experience has deepened my appreciation for the role of symbolism and ritual in stabilizing our lives and healing our pain. It seems that everything about this incident is symbolic. Even the place in the country where it occurred has symbolic value that, I believe, has contributed to our nation's collective horror. We have come to expect bizarre, unpredictable and troubling things to occur in other areas of the country (such as New York, Los Angeles, and Miami). We do not expect such events in the Midwest. Oklahoma is the heartland, not the head, not the eyes, but the heart, the symbolic location of life and love. The federal building is symbolic of structure, strength, stability, and symbolic value not lost on the perpetrator(s). There were three specific experiences that demonstrate the power of symbolism and ritual: the bear, the doves, the building.

#### **The Bear**

When I received a psychological debriefing on leaving Oklahoma City, I was asked to identify the single most positive event of my experience there. This is the story I told.

I did not enter the highly secure site of the bombing until all of the rescue and body recovery work was complete. A chain link fence was surrounding several city blocks outside which people gathered to stand vigil and leave mementos (flowers, notes, reli-

gious icons, teddy bears). Inside the perimeter, in the medical supply area, I talked with several workers who were in the process of dismantling that operation. When they became aware of my mental health role, one woman to whom I had been speaking said, "Wait here. I want you to see something. I'll be right back." She returned carrying a rather worn and limp brown teddy bear. The bear had on a silly yellow hat on which was written "Hug Specialist." Around its neck was a stethoscope and it wore a hospital wristband stating to whom it should be returned if lost.

This woman explained to me that one of her roles was to have workers inside the perimeter hug the bear. She then took the bear outside the fence where people from the community hugged it. And she repeated the process. The bear thus became the link between those inside who were involved in some of the most difficult work imaginable and those who stood vigil outside, wanting so much to help. It was the *bearer* of their connection, their affection, their hope. Who could have thought of such a simple, but moving, way to connect people necessarily separated by role, steel, and troops yet connected by their common hopes and persistence? Symbols. Rituals. Although I have received much recognition in my 25-year federal career and it means a

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***The bear thus became the link between those inside who were involved in some of the most difficult work imaginable and those who stood vigil outside, wanting so much to help.***

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great deal to me, none means more to me than when she asked me that morning to hug the bear.

#### **The Doves**

I went to the site of the temporary morgue located in a church basement next to the federal building. The people working there had been engaged in some of the most gruesome and traumatic work in the entire effort. After spending a few minutes meeting the staff there, one worker said, "Do you want to see how I handled the stress? Come with me." He led me to the door where they brought the bodies and body parts into the building and he pointed toward the ceiling. Hanging there was a small cage containing three white

doves. He said, "Whenever it got too much for me, I would take a break and walk over here and just look at the doves. They have always represented peace, hope, and love." He told me that just a few minutes watching these doves allowed him to return to work. He went on to tell me that he planned to release two of the birds that afternoon at a memorial ceremony

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***"Whenever it got too much for me,  
I would take a break and walk over  
here and just look at the doves.  
They have always represented  
peace, hope, and love."***

---

involving those who had worked directly on the rescue and recovery operation. Later, he planned to give the remaining dove to one of the families still awaiting the recovery of the body of their family member from the rubble. Symbols. Rituals.

### **The Building**

When I received my exit debriefing, I was asked to relate the *worst* single event of my stay. This is the story I told.

Although I had viewed it several times from a distance, after leaving the temporary morgue, I first stood in front of what remained of the Murrah Federal Building. My first impression was amazement that something capable of fitting in a small truck could do so much damage.

A complex mixture of powerful emotions then overwhelmed me, some of which took me quite by surprise. First, I was struck by my intense identification, as a federal employee, with the victims. I have spent much of my career viewing myself as different from most of my federal colleagues and being a federal employee has been only a minor part of my ego identity. My response shocked me. I saw desks, chairs, and filing cabinets that were just like the ones in my office. Even the building had a similar design as the one in which I work.

A very primitive intense rage enveloped me. I have seen damage before, and in many ways worse than this. But I could not get over the fact that someone had done this. Someone had intentionally created this carnage.

Suspended horizontally from nearly every floor, on the portion of the front slightly less damaged, were

flags (one of the most ancient symbols) of organizations and states that had sent help in the rescue and recovery efforts. Flying above all these was a torn and frayed American flag. This flag was recovered from the tons of concrete, steel, and glass. It had been in the building when the bomb detonated. Symbols.

I stood in front of this carcass of a building and saw the workers continuing to remove the rubble. I realized that I had never felt so aware of being in the presence of such good and such evil simultaneously.

I have thought much about the strength and complexity of my feelings as I stood before the building. Many of those thoughts have been about the nature of grief. It occurs to me that grief is neither a gift nor a curse, although it may, at times, seem like both. Perhaps instead it is the dividend of our investment in, or commitment to, an individual or a group. Without investment there is no loss. Without loss there is no grief. We earn our grief with our investment in others. It is therefore a precious dividend not to be avoided or shunned but embraced.

### **THE FUTURE**

Since my return from Oklahoma City to home and work, I have been trying to both understand what I experienced there and to examine what the experience means in present and future work and personal

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life. How do I actualize what I have learned about the value of a sense of community and common purpose? What do I do with the enhanced appreciation I have for symbols and rituals?

### **At Work**

I have found myself reminded of how easy losing sight of our shared purposes and goals is in our day-to-day work. We seldom remind ourselves that we even have purposes and goals—let alone that we share them with most of our colleagues. As a behaviorist, I needed little reminding about the value and power of

positive reinforcement or little reminding of what a rare commodity that is in most workplaces. I have been trying to remember how much better we work together, and how much better our work is, when we are praised for our efforts rather than criticized. And, I remind myself how energetic and creative people can be when working together toward a common and noble goal. I hope I am becoming a better manager and colleague.

### **At Home**

When one parents adolescents the concept of positive reinforcement is often as elusive as the concept of family harmony. Yet, nowhere is it more important. I was painfully reminded of how much easier it is to find fault than to find our common goals and to reward. I am making a concerted effort to change that.

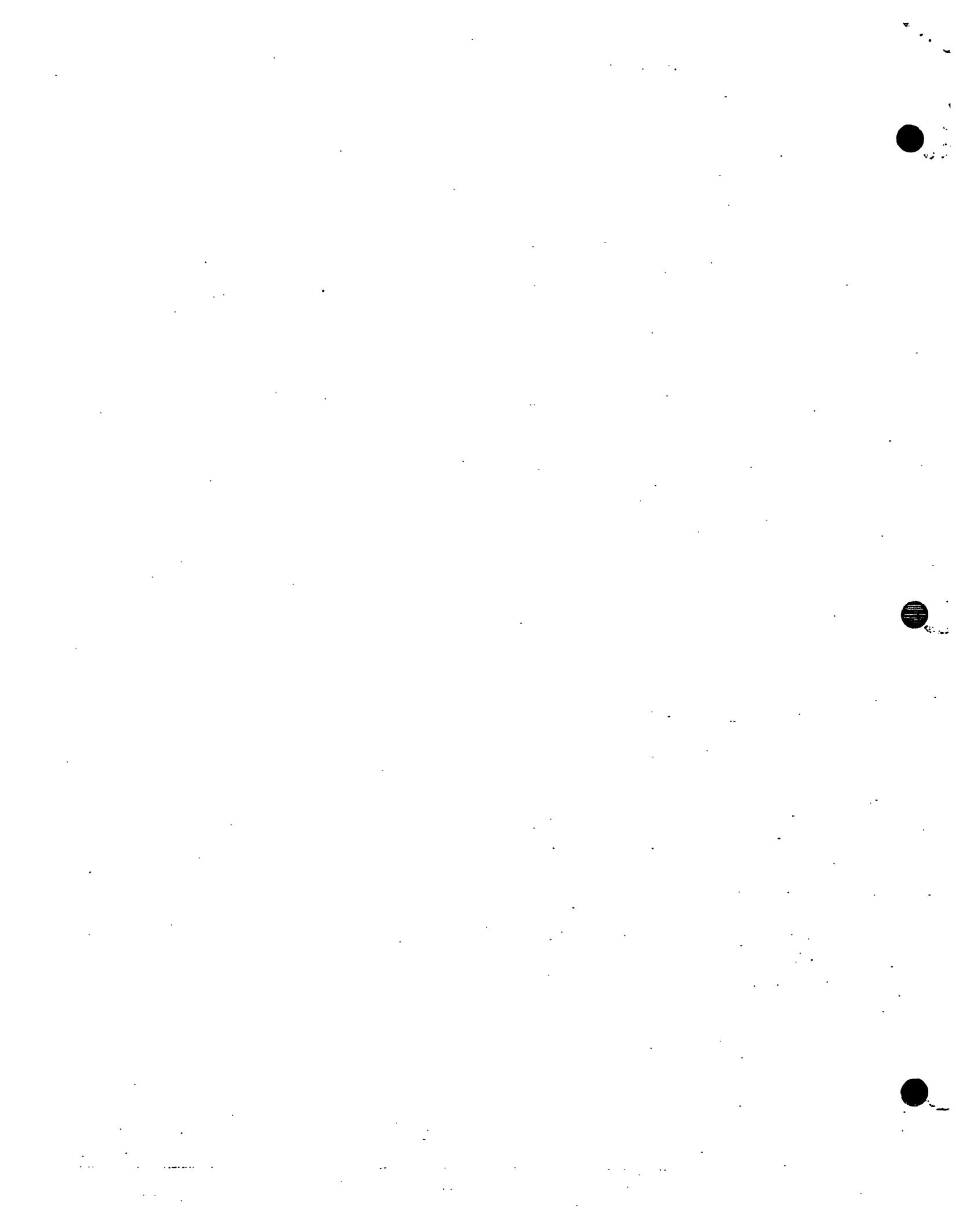
Our culture seems to be dismantling rituals. The family may be the "chop shop" where this is occurring most visibly. The most basic traditional rituals of shared meals and family activities seem to get lost in the fragmentation of our individual and frantic pursuits. I want to protect our family rituals and develop more. The rituals provide a sense of stability and con-

sistency in a world that seems so unpredictable and chaotic.

### **Within Myself**

I find myself in the center of several internal conflicts. At times I want to move ahead and leave the Oklahoma City experience behind. At other times, I realize that not only is there so much work to be done there but so much of my experience still needs examination and contemplation. When it is time to return home after work at a disaster, I am always ready to come home. I did not want to leave Oklahoma City. I think I am grieving not only the loss created by the bombing but the lost sense of the "transient utopian community" (Thomas Forest's phrase for what disaster workers experience).

At times I feel energized by the experience. At times I feel drained. Most times, when I have the experience in best focus and perspective, I am filled with a profound sense of gratitude and privilege. I am ready to move on, feeling both the obligation and hope that comes with the gifts this experience has given me. I vow to always remember, and acknowledge, the terrible price paid, by so many, for these gifts.



## Psychiatrists Respond to TWA Disaster

By Richard Karel

When psychiatrist Neal Cohen, MD, commissioner of the New York City Department of Mental Health, heard there had been a plane crash the evening of July 17, 1996, he froze. Earlier that day his 25-year-old daughter had boarded a flight to Washington, D.C. "I went limp and immediately started to panic," recalled Cohen. But about 10 minutes later he learned the plane was headed for Europe, hence not his daughter's.

Cohen and others from the department's Mental Health Emergency Response team joined officials from surrounding counties, and by early the next morning, were providing and coordinating counseling and support for family members of those who had been on the ill-fated TWA Flight 800. From the start, city and county officials coordinated their response with the American Red Cross and the New York State Office of Mental Health. The team used the Ramada Plaza Hotel at Kennedy International Airport as the crisis center.

Within the first two weeks after the crash, some 150 New York City-based mental health professionals volunteered to assist. At least 20 professionals were scheduled on site each day and 10 each evening, according to Cohen. The majority were brought in by mobile crisis teams from various jurisdictions, but some came on their own.

By the end of the crisis response in early August, 250 mental health care providers had assisted at the center. The Red Cross lauded the response of local community agencies, including the New York City Department of Mental Health, the New York State Office of Mental Health, Suffolk County Mental Health, Nassau County Mental Health and the New York State Psychological Association for their role at the crisis center. According to the Red Cross, the agencies will work with the Greater New York, Nassau and Suffolk units

of the Red Cross to provide long-term follow-up mental health care.

Gerard Jacobs, PhD, the Red Cross Disaster Mental Health Services officer for the crash of Flight 800, wrote Cohen a letter in mid-August lauding the New York City Department of Mental Health and other agencies for the support they provided.

### Comprehensive Role

One of the biggest boons to families was the setting up of an on-site day care and youth center, according to Isaac Monserrate, MSW, who coordinated the efforts of the city's Department of Mental Health. This allowed parents time to themselves to sort out their feelings, he noted.

Because there was a dearth of non-psychiatric physicians, psychiatrists provided general practice medicine in addition to providing counseling and psychiatric medications, Monserrate noted. Psychiatrists dispensed anxiolytic and sleeping medications but also provided antihypertensive, asthma and diabetic medications, recalled Cohen. Family members were camped at the center for weeks as the search for bodies continued, cut off from their regular doctors and pharmacists.

### Confusion and Uncertainty

For several days after the crash, some 200 families arrived from around the world and around the nation to the Ramada site, recalled Cohen. People spent most of their time in a large ballroom, sitting around tables that seated about a dozen each. There soon developed a sense of extended families, as those present shared the bond of uncertainty and loss, said Cohen. All mental health professionals who came to help went through a half-hour crisis orientation program, Cohen said, which included instruction on how to approach families and "how to leave your ego at the door, how not to

worry about doing heavy-duty psychological counseling, to perhaps just provide a glass of water" and be supportive, recalled Cohen.

For all those who went to assist, "there was a tremendous experience ... of sorrow and grief," recalled Cohen. As the families stayed in the ballroom, there was "a feeling of mutual support that developed among the families themselves, facilitated to some extent by the mental health professionals," Cohen said.

Mayor Rudolf Giuliani came to the crash site, as did Governor George Pataki. The mayor knew two individuals on the plane and came to the Ramada almost daily, said Cohen. Family members responded very positively to him, Cohen said.

The recovery of their loved ones' bodies and the determination of the cause of the crash were high-priority concerns of the families, said Cohen. But "at times there was some tension" between the two, as people hungered for closure, he noted.

A visit by President Bill Clinton and Hillary Rodham Clinton helped bring closure for some at the center and generally raised morale, Cohen recalled. The president made "a very brief statement to the families," and he and Mrs. Clinton stayed for about three hours and talked with people in small groups.

Some of the anger about the delay in recovering the victims was diffused by Clinton's display of empathy, according to Cohen. The anger ebbed tangibly. Some families packed up and went home after the visit, while others still awaited word on recovery of the bodies of family members.

Prior to the visit, some of the family members had a surreal feeling that their livers were on hold, said Cohen. Clinton's visit helped them feel that everything possible was being done for them and that they could go home and begin to "get on with it."

*Article reprinted from Psychiatric News, with permission of the American Psychiatric Association.*



COMMON SIGNS AND SYMPTOMS OF A STRESS REACTION  
IN A TRAUMATIZED PERSON

PHYSICAL

Nausea  
Upset stomach  
Tremors (lips, hands)  
Feeling uncoordinated  
Profuse sweating  
Chills  
Diarrhea  
Dizziness  
Chest pain (should be  
checked at hospital)  
Rapid heart beat  
Rapid breathing  
Increase blood pressure  
Headaches  
Muscle aches  
Sleep disturbances, etc.  
Severe fatigue  
Symptoms of shock

THINKING

Slowed thinking  
Difficulty making decisions  
Difficulty in problem solving  
Confusion  
Disorientation (especially to  
place & time)  
Difficulty calculating  
Difficulty concentrating  
Memory problems  
Difficulty naming common  
objects  
Seeing the event over & over  
Distressing dreams  
Poor attention span, etc.  
Illogical thinking  
Catastrophizing  
Loss of objectivity

EMOTIONAL

Anxiety  
Fear  
Guilt  
Grief  
Depression  
Sadness  
Feeling lost  
Feeling abandoned  
Feeling isolated  
Worry about others  
Wanting to hide  
Wanting to limit contact with  
others  
Anger  
Irritability  
Startled  
Shocked, etc.  
Feeling numb  
Inability to control emotions  
Increased excitability

# STRESS MANAGEMENT STRATEGIES

Everly, 1989

## A. Reducing / Avoiding Stressors

1. Reduce stimulant consumption
2. Choose restful avocations and vacations
3. Reduce stressor exposure when possible
4. Social support

## B. Changing Cognitive Interpretations

1. Ellis' A-B-C Model (Irrational Beliefs)
2. Silver-lining technique
3. Flexible expectations
4. Role reversal
5. Trial-and-error learning concept

## C. Relaxation Response Training

1. Diaphragmatic breathing
2. Biofeedback
3. Imagery
4. Meditation

## D. Ventilating Stress Arousal

1. Catharsis
2. Physical exercise
3. Hobbies
4. Social Support

## E. Obtaining Proper Rest

1. Sleep
2. Naps
3. Relaxation response

## RECOVERING FROM EXCESSIVE STRESS

- A. Avoid / reduce further stress
- B. Choose a proper diet
- C. Increased rest
- D. Rebuild with exercise

## INFORMATION FOR FAMILIES ABOUT CRITICAL INCIDENT STRESS

Source: Fort Worth Fire Dept. CISD Team

### WHAT IS A CRITICAL INCIDENT?

Critical incidents commonly result from situations in which there is an imminent threat to life, either for the emergency worker or for the people they are duty-bound to serve. These are incidents of extraordinary magnitude that possibly introduce exceptional physical and emotional turmoil. Typically, such incidents include a disaster caused by fire, airplane crash, building collapse, multiple fatalities, explosion, toxic contamination, death or injury of a co-worker, or death or injury of children. Incidents involving children may produce many profound effects. Incidents where co-workers are injured or killed may be the hardest of all for emergency responders.

### WHAT REACTIONS DOES A CRITICAL INCIDENT PRODUCE?

No two people react to disaster in the same way, but several patterns of behavior have been studied following critical incidents. Given the chaos or horror of a disaster, stress reactions stem from the resulting emotional pain. Emotional pain is as real as physical pain, and feeling this hurt is part of the recovery process.

Keep in mind two things: 1) The problem is a normal reaction to an abnormal circumstance; and 2) stress-related symptoms are transitory—long-term detrimental effects are relatively rare.

Following is a list of some reaction to critical incident stress.

- Anger - both specifically about the incident and about life in general. There could be more than usual irritability at home and at work. However, if domestic violence results, this is not to be tolerated and needs immediate intervention.
- Generally feeling depressed - A sense of loss and grief which is difficult to shake off; a feeling of helplessness; crying for "no reason".
- Guilt - Because they were not able to save more lives in spite of the sophisticated skills, training, and their desire to rescue.
- Sleep disturbances - Insomnia, nightmares, increased sleep time, lethargy, constant fatigue, restlessness, waking early, and sleep that is not giving them a feeling of rest. In fact, sleep disturbance is the one reaction that is most often reported following critical incident.
- Brief flashbacks - A reliving of some aspects of the incident, frequently triggered by smells, sounds, tastes, and emotions. This worries emergency workers; they often wonder about having complete control of their thoughts.
- Mild confusion - Difficulty concentrating and attending to detail, amnesia about parts of the incident, hearing, and speech difficulties.
- Increased "startle response" - Ever-vigilant to incident possibly occurring again, jumpy, senses may be acutely tuned to protect. This could include will-intentioned restrictions being imposed on loved ones to keep them safe.
- Physical changes - Nausea, loss or increase of appetite, muscle tremors, headaches, back and neck aches, indigestion, cold and flu symptoms, increased alcohol or tobacco use.

## Family Information, p. 2

- Denial - Emergency workers may not always be aware of being affected by a critical incident. Some actually report and show no impact at all, this time. You might be more sensitive to a reaction than he/she is. Everyone cling to the concept of invulnerability, the "the next person needs the help". You can see where this belief could be especially strong for rescuers. A variation of denial is to talk all about the other calls while saying that this one was really nothing. Regardless of the circumstance you find, trust you instincts and encourage talk.
- Other manifestations - Lack of coordination, accident proneness, anxiety about returning to work, mood swings, and job dissatisfaction.

You know him/her better than anyone. If you see marked change suddenly appear, it is a clue that a critical incident stress reaction may have occurred. But keep in mind, these symptoms are a normal early response.

. . .

"I can often tell when something unusual has happened. My loved one seems distant, withdrawn, isolated. Is this normal? What can I do?"

Nationally, nearly 60% of emergency personnel report that critical incidents impact their family life through arguments or withdrawal. It is suspected that this impact is probably closer to 100%. The gate between home and work swings both ways, and it just swung to your side.

Specialists in the field of critical incident psychology have closely examined the phenomenon of isolation. A growing sense of isolation is a common emotional sign of a delayed stress reaction. Sometimes these feelings of aloneness develop because of the responder's self-doubt after a tough call.

Emergency workers are great for picking apart every action or decision and brutally putting themselves down for every possible mistake. Unfortunately, the gift of analysis may bring the curse of anger and rage. This irritability results in keeping people at a distance and in limiting the demands placed on the distressed rescue worker.

Isolation may be occurring at more levels than you see.

- There may be feelings of estrangement from colleagues who were not part of the incident, i.e., "they can't understand what it was like."
- Colleagues, not part of the assignment, may feel resentment at not getting into the incident while being left behind with the comparable drudgery of business as usual and an extra work load.
- Another consideration is that your loved one went through something without the family. The feeling may be that since you were not there, maybe you too cannot understand.
- There may be conflict and isolation with family members who are angry at the rescuer's absence during the disaster, especially if overtime or recall is involved. Sleep may now seem more important than family plans. Promises may be broken and routine work may pile up.
- And more subtly, your loved one may shift between a need to ventilate and an unwillingness to talk at all. This vacillation could be completely out of sync with the wishes and readiness of the family.

Jeffrey T. Mitchell, Ph.D., a noted trauma recovery specialist, finds that distressed workers tend to avoid contact with the people who love them most, and who might provide the best support. don't be

## Family Information, p. 3

surprised if they refuse to discuss anything for a while. This is not just happening in your home; it's happening in many homes after the incident. It has nothing to do with anything you did. Don't blame yourself for his/her reaction.

One to solve the isolation dilemma would be to have the emergency worker take a step back for a moment and see what's happening. But remember how powerful denial can be. Realizing that he/she may be experiencing a delayed reaction gets your loved one on a new track, one using trusted friends and open communications. Good friends, family, clergy, and counselors may all be very helpful in restoring the balance of a distressed worker's life by providing support and feedback.

A discussion of family communications would be incomplete without addressing the issue of sex. Occasionally, emergency workers experience a diminished sexual drive, or a decreased ability to perform sexually, as a result of delayed stress reactions. They may also become more resistive to touching, or being touched, during a delayed stress reaction. Conversely, some may desire more affection. Sexuality could be an important love and life affirming statement. If decreased sexual intimacy is related to delayed stress, it is often transitory.

Let us conclude this topic with an observation and reaffirmation of your importance. Strong relationships with family, friends, and co-workers buffer distress and have a positive effect on both physical and mental health. Because of the many stresses and hazards inherent in their work, developing and maintaining good social support networks are very important to emergency workers.

### GENERAL GUIDELINES TO HELP INDIVIDUAL SITUATIONS

- Encourage exercise, especially family exercise. Physical exertion literally burns off the adverse body chemicals produced under stress.
- Rest and recreation are vital as part of any recovery program. Do things that feel good. Structure time to avoid boredom. However, time is also needed to recharge. Wanting some peace and quiet is common, although watch out for long periods of isolation.
- Healthy food selection fuels recovery. Decreased alcohol, caffeine, fat, and sugar consumption is always wise.
- Disappointment often results when expectations about returning home do not match the reception. Try to keep reunion expectations realistic.
- Anticipate that family needs and personal needs may not mesh. One person wants home cooking while the other wants to go out. The desire to talk may not meet a willingness to listen.
- Anticipate a little anger when exposed to problems that seem "minor" or "trivial" compared to what was seen at the disaster. But domestic violence should never be tolerated and needs prompt intervention.
- Family and friends may remind your loved one of disaster victims. This can produce intense emotional reactions that not only surprises you but also surprises the unwitting recipient, and confuses the emergency worker.

## POSSIBLE SOLUTIONS FOR THESE PROBLEM AREAS

Source: Unknown

### For difficulty getting to sleep:

1. Avoid caffeine (coffee, tea, colas, chocolate).
2. Make a list of what's on your mind.
3. Do some gentle stretching exercises before retiring.
4. Finish arguments before you try to go to sleep.
5. Have a glass of milk before bed.
6. Pray.
7. Write in a daily journal for a diary.
8. Avoid catnaps in the evening (or afternoon).
9. Read a book or magazine.
10. Listen to relaxing music.
11. Try a relaxation/deep breathing exercise.

### For waking up in the night:

1. Get up and have a snack and a glass of milk.
2. Keep a notebook to write in by your bed. Unload your feelings into it.
3. Allow yourself to stay up for an hour and enjoy the peace and quiet.
4. Imagine your thought rolling off the top of your head, down your side and away from your body like fountain.
5. Picture yourself sitting under a warm shower or waterfall, letting your cares be washed away for the time being.

### For disturbing dreams:

1. When you wake with a disturbing or thought-provoking dream, write it down.
2. Turn on the light, look around, and maybe get up in order to "shake" the intense feelings of the dream.
3. Picture your own ending to the dream.
4. If you need to "finish" a dream, concentrate on it before you go back to sleep as a way of setting the stage.
5. During the day, think about what your dreams might mean to you.
6. If you dream about loved ones who are no longer living, try to see your dream as a visit with that person.
7. When you are awake, remind yourself that you do have some power and control over what happens in your dreams.
8. With your repetitive dreams, notice the differences each time. Try to picture what you need to finish the dream.

### For waking too early:

1. Get up and enjoy the day until you feel the need for a catnap.
2. Go to bed later so you can sleep later.
3. Put darker curtains over your windows.
4. Use a fan to drown out noise.

## DEVELOPING COPING SKILLS

### SHIFT WORK/CIRCADIAN RHYTHMS

Excerpted from "Wrong Hours, Long Hours and Longevity: The Circadian Viewpoint", lecture presented by Dennis C. Whitehead, MD, FACEP, 1991, Winter Symposium of the American College of Emergency Physicians.

### SUPPORTIVE STRATEGIES

- ⊖ Exercise improves health and reduces stress. Vigorous aerobic exercise after awakening was shown to decrease the time need to shift the circadian sleep/wake cycle from 8 to 1.5 days in one animal study. There is some evidence to suggest humans may similarly benefit.
  
- ⊖ Light exposure (>2,500 lux) for two hours after awakening improves alertness and enhances a sense of sleep refreshment. Research also demonstrates quicker shift in the sleep/wake cycle.
  
- ⊖ Diet should be balanced and in harmony with circadian rhythms. Start the "day" with a high protein meal, switching to complex carbohydrates toward bedtime. Maintaining regular meals during the waking period aids in sleep and in general alertness. Avoid caffeine and alcohol near bedtime. Avoid high calorie/high fat junk food before sleep. Eat meals regularly.
  
- ⊖ Social life is important for the shift worker, helping to relieve stress by maintaining close ties with family and friends. Planning for quality social time is as vital as planning for work.

# STRESS CHECKLIST

Source: Wisconsin Department of Health and Social Services—Project CARE, 1985

This checklist is for you. Look it over and consider which symptoms you experience on a regular basis.

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> General irritability  | <input type="checkbox"/> Increased smoking/drinking  | <input type="checkbox"/> Diarrhea                  |
| <input type="checkbox"/> Emotional instability | <input type="checkbox"/> Muscle tension in back/neck | <input type="checkbox"/> Premenstrual tension      |
| <input type="checkbox"/> Accident proneness    | <input type="checkbox"/> Depression                  | <input type="checkbox"/> Difficulty concentrating  |
| <input type="checkbox"/> Nervous laughter      | <input type="checkbox"/> Fatigue                     | <input type="checkbox"/> Rapid, shallow breathing  |
| <input type="checkbox"/> Poor appetite         | <input type="checkbox"/> Headaches                   | <input type="checkbox"/> Sleep problems/nightmares |
| <input type="checkbox"/> Upset/nervous stomach |  |  |

Most of you will have felt or noticed many of these symptoms at one time or another in your life. Some key questions to ask yourself are:

How much stress is too much stress?  
What is a manageable level of stress?

Can I identify some sources of stress in my life?  
What are some ways I can reduce stress for myself?

## WAYS TO REDUCE STRESS

1. If you are overloaded, find ways to cut back on your activities and commitments. Learn to say "NO".
2. Reduce the noise in your home. Turn the TV or radio down or off. Have noisy children go outside or to another room.
3. Plan ahead whenever possible in order to avoid the last minute rush.
4. Be aware of your daily rhythms. For instance, plan your work or activities during the time of day when you have the most energy.
5. Look at how you spend your time. Is there a balance between the "shoulds" and the "wants"?
6. When possible, try not to tackle too many changes/decisions at once.

## WAYS TO COPE WITH THE UNAVOIDABLE STRESSES

1. Exercise vigorously (within your limitations) on a regular basis.
2. Have a quiet time each day for reading, relaxing breathing, daydreaming, prayer or just sitting.
3. Get plenty of sleep and eat a balanced diet.
4. Cut down on caffeine (colas, coffee, tea, chocolate, etc.)
5. Share your feelings with others or in a diary or journal.
6. Schedule regular times to spend relaxing or doing a favorite hobby.
7. Close your eyes and imagine yourself being in a peaceful place. Enjoy that peaceful place for a while.

## WHAT YOU CAN DO:

List some reasonable goals for yourself for reducing stress:

- 1.
- 2.
- 3.

List some techniques you would use to cope with your stresses:

- 1.
- 2.
- 3.

## GUIDELINES FOR STRESS MANAGEMENT

Stress is the body's physical, mental, and chemical reactions to circumstances that frighten, excite, confuse, endanger, or irritate you. Stress is a very natural antecedent of most kinds of emotional or physical trauma. There are a variety of ways which one copes with stress. No one approach in coping with stress is the best approach. In fact, one needs to develop and depend upon numerous coping strategies. The following list includes several suggestions for anxiety reduction and stress management.

1. Talk with others about the traumatic event. You will feel as though your concerns or difficulties in adjusting are unique and the sharing will give you a common bond with one or more individuals who can be supportive. "Telling your story" is an important part of recovery from the event.
2. Build cooperative rather than competitive relationships. Look for ways that you can constructively help your coworkers or family members. Reaching out to and helping others is a good way to help develop feelings of self-worth.
3. Plan some time to be alone. This solitude will free you up to be responsible, at least for a short time, for nobody but yourself. The stress of others depending upon you will temporarily be decreased. However, if being alone is very uncomfortable for you, it may be a signal that you need to deal directly with the event a little more.
4. Allow yourself breaks from your usual work assignments. A 5-minute walk, a coffee break, or reading a magazine article will give you a refresher from other demands.
5. Take time out for activities other than work. Often physical exercise, sports, or a social event is helpful in letting off pent-up energy or providing a pleasant diversion from something more tense.
6. Recognize that decision will be harder to make. Seek assistance, if needed, or defer decision that can wait.
7. Do not rely heavily upon any one person. His/her stress level may increase to a point of not effectively meeting your needs. Choose people to depend on who will be understanding, patient, and, hopefully, calm.
8. If you haven't already, learn one or more of the "tried and true" relaxation techniques--progressive relaxation, guided imagery, biofeedback, or meditation. Merely listening to relaxing music before bedtime or during break times can be helpful.
9. If you are in a position of authority, attempt to either rotate the authority from time to time or consciously delegate some of your leadership tasks if you begin feeling the pressure of always "being in charge".
10. Anticipate and plan to reward yourself when the stressful situation diminishes. Try to arrange for a day off, take a short trip, plan something out of the ordinary with friends or family, etc.
11. Don't be reluctant to seek professional help. The stress, hopefully, will be a situational one for you; however, it might be useful to have some additional support or guidance.

## WHAT TO EXPECT AS RECOVERY CONTINUES

Source: Counseling and Readjustment Services, "A Center for Stress Recovery"

914 Richland Street, Suite A-102  
Columbia, South Carolina 29201

The following are normal consequences among those who have survived trauma AFTER they have received necessary assistance.

1. Families and friends become cosurvivors. They will develop their own post-trauma feelings.
2. Situations that strongly remind the survivor of the critical incident will induce post-trauma feelings.
3. If the situation goes to court, court dates, etc., will induce post-trauma feelings.
4. Anniversaries of the event (one week, one month, one year, 10 years, etc.) will bring all the memories back and induce post-trauma feelings.
5. Similar events seen on the news read about, or heard about will bring back the memories and induce post-trauma feelings.
6. The survivor's life will be changed forever.
7. Post-trauma feelings will decrease in intensity and frequency with appropriate treatment, but will not completely go away.

## SOME PRACTICAL THOUGHTS

There are many sources of help and support. Too often emergency service personnel will not utilize them or the sources themselves render this difficult. Consider the following:

### SPOUSE/ SIGNIFICANT OTHER

You are not the only one affected by the critical incident. Your spouse/significant other will suffer as well and needs your reassurance. If they were here, they might say to you:

1. Understand how important it is for you to talk with me.
2. Don't try to solve my problems, but let's share things together.
3. Respect me—my feelings, problems, my job; I'll give you the same.
4. Family members aren't "the enemy" to be avoided.
5. Affection brings rewards.
6. Demonstrate your commitment to your family; include us.

### TO THE PEERS

"Misdirected support" hurts and angers. Don't make light of the critical incident or the reaction. Don't come up with pet names, show a lack of caring or ignore. Don't make me hide my emotions or second guess what should have been done.

1. Show concern for the person, not just the event.
2. Listen and don't criticize.
3. Challenge any destructive actions you see me take.
4. Encourage me to continue to talk with people who have been there or can help me.

### DEPARTMENT

Give time off if needed (administrative leave); get them to counseling, if needed; support them in the public and in the media; offer CISM help.



## **PROBLEMS OF SURVIVORS**

1. Isolation, helplessness in a world that is seen as hostile and uncaring, and that frequently blames the victim.
2. Feelings of guilt for not having protected the victim.
3. The memory of a mutilated body at the morgue; how much did my loved one suffer?
4. Getting back the personal belongings of a murder victim.
5. Sensational and/or inaccurate media coverage.
6. Lack of information.
7. Endless grief.
8. Loss of ability to function on the job, at home or in school, etc.
9. The strain on marriages (frequently resulting in divorce), and the strain on family relationships.
10. Effects on health, faith and values.
11. Effects on other family members, children, friends, co-workers, etc.
12. Indifference of the community, including professionals, to the plight of survivors.
13. Society's attitude regarding murder as a form of entertainment.
14. Financial burden of medical and funeral expenses.
15. Medical expenses for stress related illnesses and professional counseling for surviving family members.
16. Financial burden of hiring private investigators, etc.
17. Public sympathy for murderers.
18. The feeling that the murderer, if found, gets all the help; survivors of homicide victims have few rights.
19. Outrage about the leniency of the murderer's sentence.

20. **Disparities in the judicial system (frequently punishments for property crimes are as great or greater than the crime of taking a human life).**
21. **Anger over a plea bargain arrangement/agreement.**
22. **Frustration at not being allowed inside the courtroom at the time of trial.**
23. **Unanswered questions about the crime. What happened!**
24. **Unanswered questions about postponements and continuous delays throughout the trial.**
25. **Bitterness and loss of faith in the American criminal justice system.**
26. **After conviction, the long appeals process begins.**
27. **Constantly reliving your story through the dreaded parole process.**

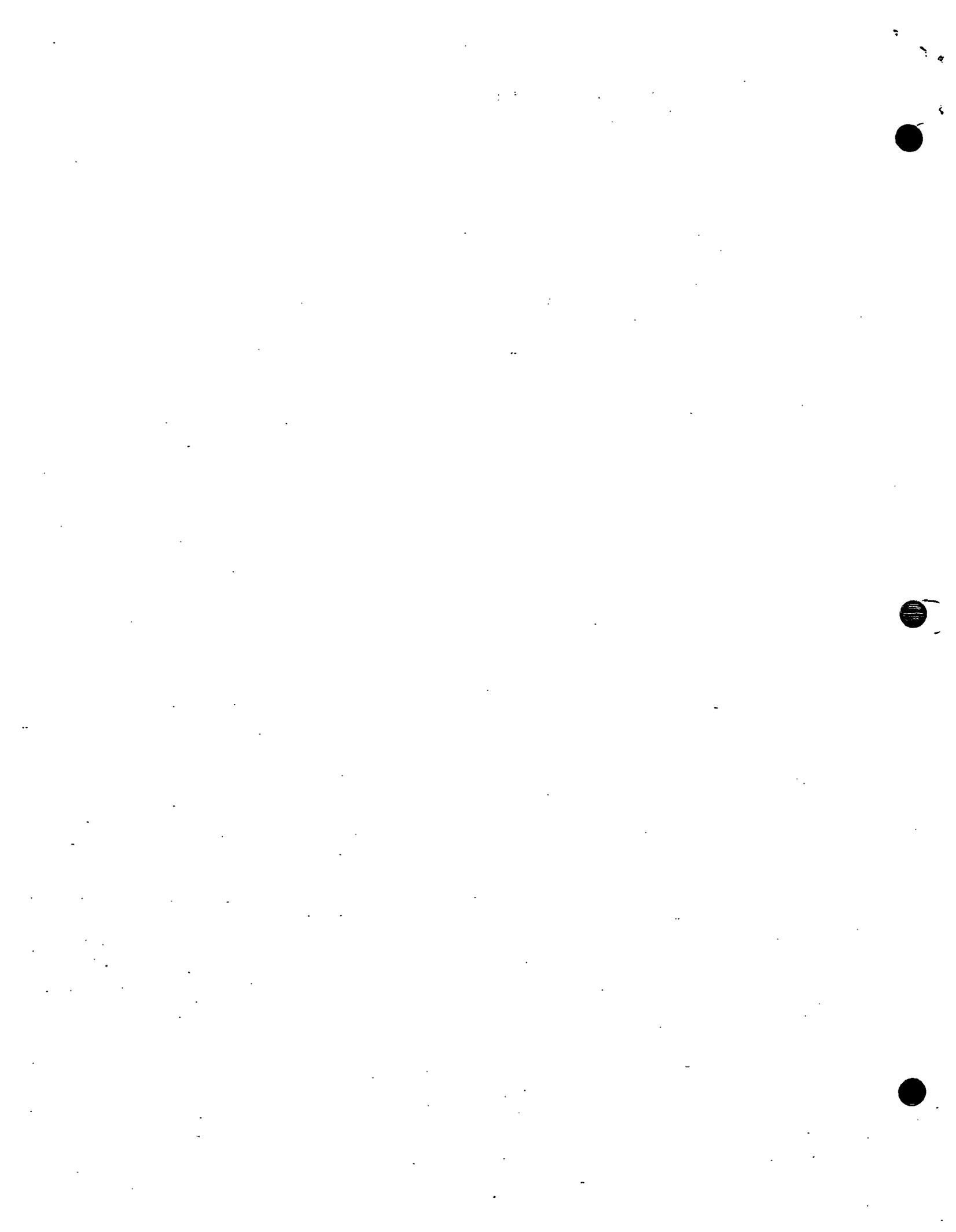
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## **SURVIVORS' NEEDS**

1. A non-judgmental listener to hear the details over and over and over. This helps break through denial as well as helps to start rebuilding trust.
2. Validation of feelings. What we feel is normal. No "shoulds", no timetable.
3. Clear, accurate information. Has a right to know what's going on.
4. Be given simple choices. (restores power). Can I grocery shop for you or would you like to do it? Would you like to go with me?
5. Ordinary acts of kindness and competence (restores trust). Practical help, i.e., cooked meals, babysitting, yard work. Not patronization.
6. Sharing of memories. Use of the loved one's name. **TEARS ARE OK.**
7. Sensitivity at the times of anniversaries and holidays. Anticipation of this and plans to meet survivors' needs. Mother's Day or Father's Day - Am I still a Mom? A Dad? How many children do you have? Stress that the relationship and love are still there even though the person has been physically ripped away.
8. Balance of activity and **TIME ALONE.**
9. Sometimes human presence. Not to chat; just someone to be there.
10. Support, not criticism, e.g., Going to the cemetery too little or too often. Keeping mementos, victim's clothing, etc. Letting go is a long process.
11. The survivor needs patience for self as well as patience from others.
12. Recognition that sometimes the normal tasks are too much, such as driving, because of lack of concentration, lack of energy, or fear.

**SURVIVORS HAVE TO ACKNOWLEDGE THEIR OWN NEEDS AND LET OTHERS KNOW. We're not "always fine". Take responsibility for self.**

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**TXMHMR**  
**Disaster Assistance Program**  
**Office of the Medical Director**  
**Disaster Mental Health Reference Bibliography**

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- Manual for Child Health Workers in Major Disasters.
- The Media in a Disaster.
- Disaster Work and Mental Health: Prevention and Control of Stress Among Workers.
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- Human Problems in Major Disasters: A Training Curriculum for Emergency Medical Personnel.
- Innovations in Mental Health Services to Disaster Victims.

Source: Office of Consumer, Family, and Public Information

Center for Mental Health Services  
Room 12-95  
5600 Fishers, Lane  
Rockville, MD 20857

- Victims and Chronic Trauma (Highlights symptoms of Post-traumatic Stress Disorder).

Source: National Organization for Victim Assistance  
1757 Park Road, N.W.  
Washington, D.C. 20010  
(202)232 - 6682

- Stages of a Disaster.
- Post-Catastrophe Stress Guidelines.
- Taking Care of Yourself Emotionally.
- As Time Goes On ... The Aftermath.

Source: Dr. Pamela Deroian University of Miami The Counseling Center  
21 R Merrick Drive Coral Gables, FL 33124-2070,  
(305)284 -5511

- Helping Children Cope with Disaster: Family Emergency Preparedness. (Describes children's responses to disasters, the development of a family disaster plan, and suggestions for aiding children's coping following a disaster)

Source: Your local Red Cross Chapter or FEMA  
P.O. Box 70274  
Washington, D.C. 20024

- Coping with Children's Reactions to Hurricanes and Other Disasters. (Describes children's responses to disasters, advice to parents, and when parents need to seek professional help for their children.)

Source: Federal Emergency Management Agency (FEMA)  
P.O. Box 70274  
Washington, D.C. 20024

- Dealing with Stress: Normal and Post-Trauma (Describes stages of stress, and coping skills for dealing with stress.)

Source: Charleston-Dorchester Community Mental Health Center  
Division of Children, Adolescents and Families  
4 Carriage Lane, Suite 405  
Charleston, South Carolina 29407  
(803)727 - 2000

**Videotapes:**

- **"Back From Disaster"**: Approximately 1 hour (Talk show with survivors of Hurricane Andrew, Hurricane Hugo, and the Loma Prieta Earthquake discussing the stages of recovery, coping strategies, and the emotional impact of disasters. Includes many interviews of adults and children describing their experiences after the disaster.)  
Source: Dr. Pamela Deroian  
University of Miami  
The Counseling Center  
21 R Merrick Drive  
Coral Gables, FL 33124-2070  
(305) 284 5511
  
- **"Children and Trauma: The Schools Response"**: Approximately 30 minutes (Outlines key concepts of disaster mental health with elementary school children. Designed for use with school and mental health workers. Has excellent examples of teachers working with children in their classrooms on intervention activities.)  
Source: Department of Health and Human Services Substance Abuse and Mental Health Services Administration  
Emergency Services and Disaster Relief Branch  
Room 13-103  
5600 Fishers Lane  
Rockville, MD 20857  
(301) 443 - 4735
  
- **"Disaster Psychology: Victim Response"**: Approximately 30 minutes (Outlines key concepts of disaster mental health.)  
Source: Instructional Technology  
University of Marland Baltimore County  
Baltimore, MD 21228-5398  
(410) 455 - 3686
  
- **"Faces In The Fire: One Year Later"**: Approximately 34 minutes (Presents anniversary reactions of victims/survivors of California fire storm.)  
Source: Department of Health and Human Services Substance Abuse and Mental Health Services Administration  
Emergency Services and Disaster Relief Branch  
Room 13-103  
5600 Fishers Lane  
Rockville, MD 20857  
(301)443 - 4735
  
- **"Hurricane Andrew and Fellowship House"**: Approximately 29 minutes (Presents reactions of Mental Health Consumers following Hurricane Andrew.)  
Source: Department of Health and Human Services Substance Abuse and Mental Health Services Administration  
Emergency Services and Disaster Relief Branch  
Room 13-103  
5600 Fishers Lane  
Rockville, MD 20857  
(301)443 - 4735

- **"Hurricane Blues"**: Approximately 15 minutes (Presents common reactions after a disaster by following the development of a family at different time points post Hurricane Hugo. Describes suggestions for coping for both adults and children.)  
Source: Department of Health and Human Services Substance Abuse and Mental Health Services Administration  
Emergency Services and Disaster Relief Branch  
Room 13-103  
5600 Fishers Lane  
Rockville, MD 20857  
(301)443 - 4735
  
- **"Human Response to Disaster: Training Emergency Service Workers"**: (Videotaped lecture series which addresses disaster-related behaviors, children's responses to disaster, and disaster worker stress.)  
Source: Department of Health and Human Services Substance Abuse and Mental Health Services Administration  
Emergency Services and Disaster Relief Branch  
Room 13-103  
5600 Fishers Lane  
Rockville, MD 20857  
(301) 443 - 4735
  
- **"Relaxing through the Seasons"**  
**"Saving for Stress"**  
**"Stress, a day away from"**: (Videotaped lecture series which addresses stress management and stress coping techniques. Audio tape included.)  
Source: Audio Vision  
3 Morningside Place  
Norwalk, CT 06854  
1-800-367-1604
  
- **"Voices of Wisdom"**: Approximately 31 minutes (Presents reactions of older adults following Southern California earthquake. Describes common coping skills of older adults.)  
Source: Department of Health and Human Services Substance Abuse and Mental Health Services Administration  
Emergency Services and Disaster Relief Branch  
Room 13-103  
5600 Fishers Lane  
Rockville, MD 20857  
(301)443 - 4735
  
- **"Winnie the Pooh, and The Blustery Day"** Walt Disney Mini Classics.: Approximately 24 minutes (Classic children's character in "disaster themed" movie. Presents reactions of the Winnie the Pooh characters to a wind storm, flood and a rescue. Good tool for helping children open up about their own experiences.)  
Source: Buena Vista Home Video, Burbank, California 91521 or most local department and video stores.

**Web Sites:**

American Red Cross

<http://www.redcross.org>

Center for Mental Health Services Knowledge Exchange Network (KEN):

<http://www.mentalhealth.org/emergserv/>

Disaster Mental Health Institute at the University of South Dakota:

<http://www.usd.edu/dmhi>.

Disaster Mental Health Links:

<http://gladstone.uoregan.edu~dvb/pg5.html#DISMAT>

Disaster Mental Health Presented by John D. Weaver:

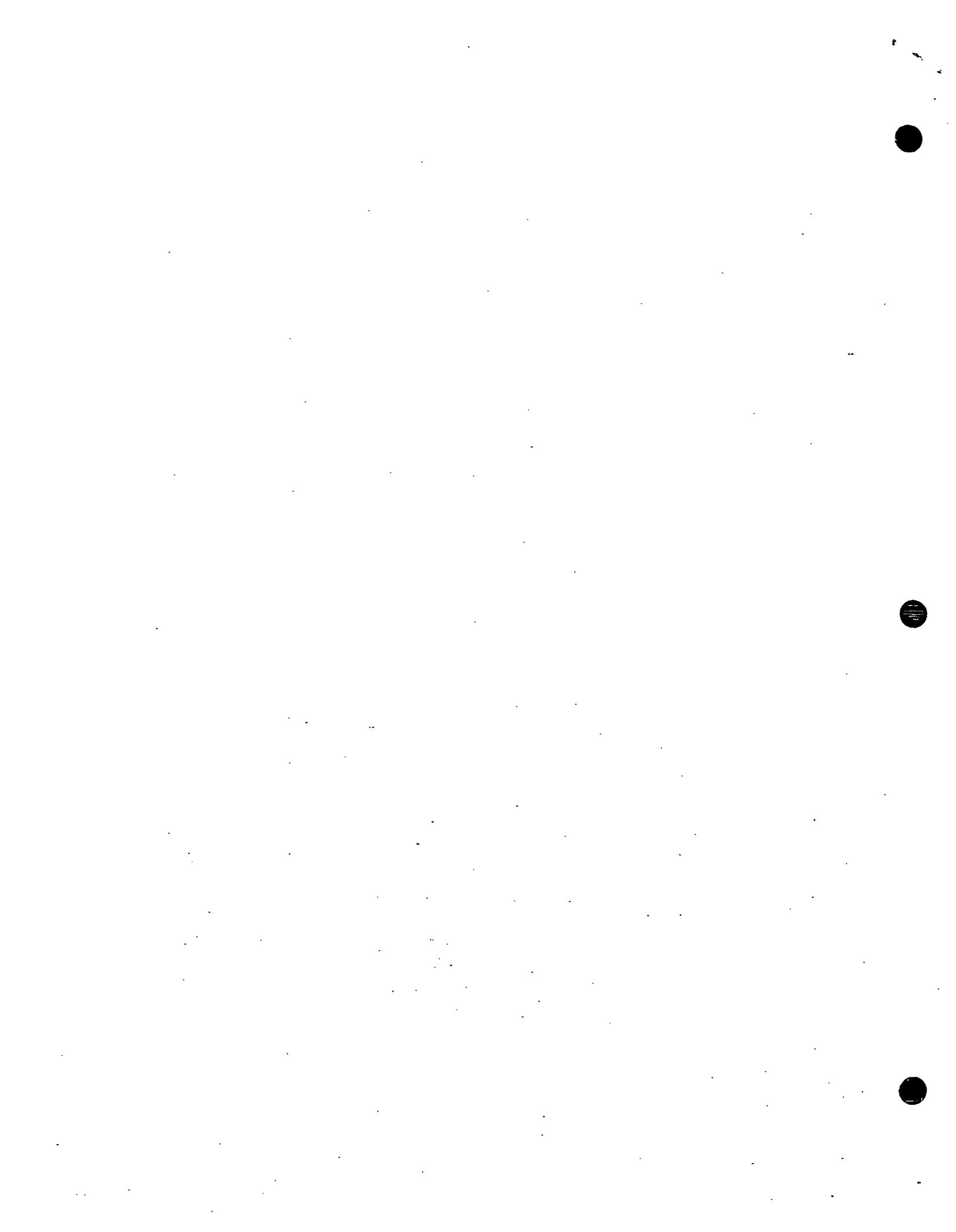
<http://ourworld.compuserve.com/homepages/johndweaver/>

Federal Emergency Management Agency

<http://www.fema.gov/>

University of Illinois at Urbana-Champaign, Disaster Resources:

<http://www.ttp://www.ag.uiuc.edu/~disaster/disasterhtml>

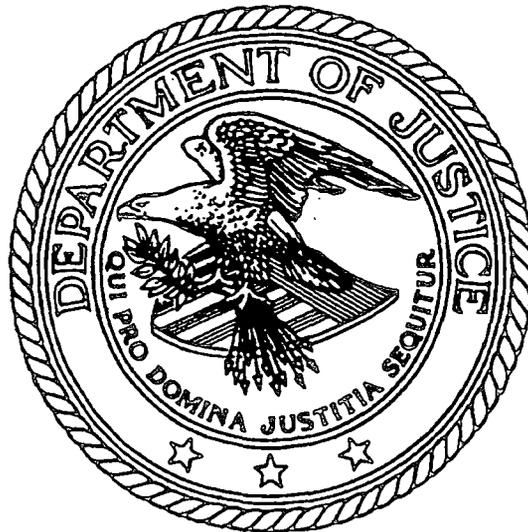


**U.S. Department of Justice**  
*Office of Justice Programs*  
*Office for Victims of Crime*

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# **Handbook for Victims of the East Africa Embassy Bombings**

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**The Office for Victims of Crime  
Office of Justice Programs  
U.S. Department of Justice**



## Introduction

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Dear Friend:

An intense disastrous experience, such as an act of terrorism, will dramatically change the lives of those victimized. Violent and unexpected acts of terrorism may leave the victims with serious physical and emotional wounds. Being involved in the criminal justice system presents additional challenges for injured victims and can prolong healing.

This handbook has been written to assist you with the healing process and to explain what lies ahead if a criminal case is brought. The more you know about the criminal justice system, the more comfortable you may feel as various steps in the process occur in the event of an indictment in the United States. Also, the material in this handbook is designed to help you understand the effects the crime may have on you and your family. This information will not solve all your problems or answer all of your questions, but we hope it will explain how and where to find help. Just as importantly, we hope that you will feel less alone, better understood, and comforted by the knowledge that there are many people who genuinely care about you and your well-being.

We in the U.S. Department of Justice have come to know many families and friends of terrorism victims. They have honored and helped us by sharing with us their memories and their grief. The information in this handbook is based upon their experience. Other victims walked this dark road before you and left markers to help you find your way to healing.

Those of us who have not been where you are cannot understand the depth of your pain, but we will do our best to be sensitive to your needs while working to ensure that the person/s responsible for your injury is prosecuted to the fullest extent of the law.

Janet Reno  
Attorney General



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## COPING AFTER TERRORISM

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Nothing in life prepares you for the horror of an act of terrorism that robs you of your sense of security, and in some instances, a loved one. No one expects such a thing to happen. Violent crime is an abnormal event, and terrorism is even more rare. The normal reactions to this type of traumatic disaster include a wide range of powerful feelings that may feel abnormal to the person having them or seem strange to people who have not gone through it. You may feel like there is something wrong with you and that the terrible pain will never ease up.

Recovering from a traumatic event will take a long time and will not be easy. Everyone responds differently to trauma. No one is reacting in a right or wrong way - just differently. It will help your recovery process if you don't expect too much of yourself and of others.

### Reactions to a Traumatic Disaster

#### *Shock and Numbness*

At first you may be in state of shock. Feeling numb and confused are common. You may feel detached — as if you are watching a movie or having a bad dream that does not end. This numbness protects you from feeling the full impact of what has happened all at once.

#### *Intense Emotion*

As shock begins to wear off, people usually feel intense grief and cry uncontrollably. While some parts of our society frown on emotional behavior, especially in men, this emotional release is an important part of grieving for most people. To try to hold back or "swallow" your painful feelings is unhealthy and can actually make grief last longer. A person who is uncomfortable with these feelings may want to seek help from a counselor, minister, or other victims who understand.

#### *Fear*

You may feel intense fear and startle easily. Leaving your home or being alone may make you extremely anxious. You may be afraid that the terrorist will return and harm you or your loved ones again. Crime shatters normal feelings of security, trust, and the sense of being able to control events. Once you have been harmed by crime, it is natural to be afraid and suspicious of others. These feelings will go away or lessen over time.

#### *Guilt*

Victims who were injured in the traumatic disaster want to understand why the crime happened. Families wonder why they lost a loved one. Some people find it easier to accept what happened if they can blame themselves in some way. It is a normal way of trying to again feel a sense of control over their lives. Victims often feel guilt and regret for things they did and said or what they did not do or say. Often, they feel they should have protected a loved one better or should have done something to prevent their death. Survivors spend a lot of time thinking "If only I had..." This guilt does not make sense because the circumstances leading to terrorism usually cannot be controlled and

are hard to predict. Get rid of imagined guilt. You did the best you could at the time. If you are convinced that you made mistakes or have real guilt, consider professional or spiritual counseling. You will need to find a way to forgive yourself.

Guilt feelings can be made worse by people who point out what they would have done differently in the same situation. People who say such things are usually trying to convince themselves that this tragedy could never happen to them.

### ***Anger and Resentment***

It is right for victims to look for someone to blame for their pain and suffering. If a suspect is arrested, the anger is toward that person. Some people are angry with other family members, friends, doctors, police, prosecutors, God, or even themselves. They may resent well-meaning people who say hurtful things and do not understand what victims are going through. Feelings of anger may be very intense, and the feelings may come and go. These feelings often will return when a suspect is arrested and during trial. If there is no arrest and no trial the feelings of anger, frustration, and resentment may be aimed at the police and prosecutors. Many victims daydream about revenge, which is normal and can be helpful in releasing rage and frustration. The desire for revenge, as well as the anger, should lessen as people begin to heal.

Feelings of anger are a natural part of the healing process. These feelings are not right or wrong, they are simply feelings. It is important to recognize the anger as real but to not use it as an excuse to abuse or hurt others. There are safe and healthy ways to express anger. Many people find that writing down their feelings, exercising, doing hard physical work, beating on a pillow or crying or screaming in privacy helps them to release some of the anger. Ignoring feelings of anger and resentment may cause physical problems such as headaches, stomach upset, and high blood pressure. Anger that goes on a long time may cover up other more painful feelings such as guilt, sadness and depression.

### ***Depression and Loneliness***

Depression and loneliness are often a large part of trauma for victims. It may seem that these feelings will last forever. Trials are sometimes delayed for months and even years in our criminal justice system. The trial and any media coverage means reliving the events around the traumatic disaster. Feelings of depression and loneliness are even stronger when a victim feels that no one understands. This is the reason a support group for victims is so important. They really do understand.

Victims of traumatic disaster may feel it is too painful to keep living and may think of suicide. If these thoughts continue, you must find help. Danger signals to watch for include: (1) thinking about suicide often; (2) being alone too much; (3) not being able to talk to other people about what you are feeling; (4) sudden changes in weight; (5) continued trouble sleeping; and (6) using too much alcohol or drugs (including prescription drugs).

### *Isolation*

You may feel that you are different from everyone else and that others have abandoned you. Terrorism is an abnormal and unthinkable act. People are horrified by it. Injury by terrorism carries with it a stigma for the victim that can leave them feeling abandoned and ashamed. Other people may care but still find it hard or uncomfortable to be around you. You are a reminder that terrorism could happen to anyone. They cannot understand why you feel and act the way you do, because they have not gone through it.

### *Physical Symptoms of Distress*

It is common to have headaches, tiredness, nausea, sleeplessness, loss of sexual feelings, and weight gain or loss during the experience of a traumatic event. Also, some people experience feeling uncoordinated, lower-back aches, chills/sweating, twitching/shaking and grinding teeth.

### *Panic*

Feelings of panic are common and can be hard to cope with. You may feel like you are going crazy. Often, this feeling happens because traumatic disasters like terrorism seem unreal and "crazy." Your feelings of grief may be so strong and overwhelming that they frighten you. It can help a great deal to talk with other victims who have had similar feelings and truly understand what this "crazy" feeling is all about.

### *Inability to Resume Normal Activity*

You may find that you are unable to function the way you did before the act of terrorism and to return to even the simplest activities. It may be hard to think and plan. Life can seem flat and empty. The things that used to be enjoyable now seem meaningless. You may not be able to laugh, and then when you finally do, you feel guilty. Tears come often and without warning. Mood swings, irritability, dreams and flashbacks about the crime are common. These feelings may come several months after the disaster. Your friends and co-workers may not understand the grief that comes with this type of crime and the length of time needed to recover. They may simply think it is time for you to put the disaster behind you and get on with normal life. Trust your own feelings and travel the hard road to recovery at your own pace.

## Post-Traumatic Stress Disorder

The reactions to a traumatic disaster described above are normal responses to an abnormal event and should subside over time. However, some people who have survived a traumatic event, such as an act of terrorism, develop post-traumatic stress disorder (PTSD) which may not appear until weeks or months after the event and will linger much longer.

PTSD is an anxiety disorder which develops after exposure to a terrifying, life-threatening event and significantly interferes with job performance, interpersonal relationships, and the completion of

normal tasks.<sup>1</sup> It often leads to alcohol/substance abuse problems and is associated with increased risk of other anxiety and depressive disorders.<sup>2</sup> PTSD can affect previously healthy, well-adjusted adults, adolescents and children.<sup>3</sup>

Not everyone who experiences symptoms of acute stress following a traumatic disaster will develop PTSD.<sup>4</sup> PTSD will only be diagnosed if the symptoms continue to exist with great intensity over a prolonged period of time.<sup>5</sup> A minimum duration of one month is required.<sup>6</sup>

Symptoms of PTSD<sup>7</sup> are:

- Persistent and intense reexperience of the traumatic event. This may include nightmares, flashbacks, and intrusive thoughts of the event
- Major avoidance of situations or people that could remind someone of the event
- Avoidance of emotions in general, including feelings of emotional closeness to others
- Persistent sleep difficulties
- Exaggerated startle response
- Intense need to be aware of everything, hyper vigilance
- Marked loss of interest in activities which were previously rewarding

If you are experiencing any of these symptoms, contact your doctor or a trained mental health counselor. If you are suffering from PTSD it can be treated with therapy and support groups and/or medications.

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<sup>1</sup> Project Heartland, "A Guide to Recovery: Restoring Health to the Heartland," Pamphlet, Oklahoma Department of Mental health and Substance Abuse Services, 1995.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

## Special Factors of Trauma After Terrorism

There are special factors that can make the effects of trauma worse and can make it last even longer. Murders and serious injuries that are a result of a terrorist act create new aspects of trauma. Terrorism usually involves violent deaths and injuries that were committed by more than one person or that involved multiple victims. These deaths and injuries seem more violent and unbelievable.

The images of the aftermath or terrorist acts are shown over and over again on television and in magazines and newspapers. The idea that a friend or loved one was injured and many others died as a result of the actions of a group or individual making a political "protest" is hard to bear.

If a loved one was killed, you may have to face the fact that he or she also suffered as a result of the act of terrorism. There is some comfort in knowing that the victim was killed instantly and did not suffer. Survivors who know that the murder took time, involved maiming, or humiliation may face years of having to think about what their loved one thought and felt. Seeing the victim severely maimed or in pain before they died is also terribly difficult. When the body of the loved one is violated after death, survivors feel another kind of horror and may be deprived of the traditional, dignified goodbye they would normally observe.

If the terrorist is never caught, it is harder to complete the recovery process. Unanswered questions remain unanswered. The terrorist becomes an almost mystical or super-powerful figure. You may live in fear that it could happen again. You may become afraid of new situations and suspicious of strangers. If you have had to deal with other types of devastating losses, abuses, or changes prior to the crime, you may find it even harder to overcome this blow.

All of the circumstances mentioned above make the loss more painful and recovery more difficult. It is particularly important for victims who face these issues to consider professional counseling and support from other victims.

### Finding Help

Whatever you are facing or feeling at the moment, it is important to remember that each person copes with tragedy in his or her own way. Trust your own feelings — that what you are feeling is what you need to feel and that it is normal. Don't act like things are fine when they are not. Healing begins by talking about what happened with people you trust — people who support you without being judgmental or giving unwanted advice about what you should do or how you should feel.

Most people find it helpful to talk with a professional counselor who has worked with other crime survivors. Sometimes just a few sessions with a trained counselor will help you resolve the anger, guilt, and despair that keep you from recovering. Also, talking with other violent crime victims may help you feel better understood and less alone.

If you feel overwhelmed by your emotions and think you may hurt yourself or others, immediately ask for support and guidance from family, friends, a minister, or a professional counselor. **Wendy Olsen-Clancey** is the Victim Witness Coordinator in the U.S. Attorney's Office in the Southern District of New York, where the case is being prosecuted. She can help you by putting you in touch with support groups or counselors in your area. For help call **Wendy at 212-637-1028 (pager - 1-800-920-8072.)** Also, you can contact the Office for Victims of Crime (OVC) at the U.S. Department of Justice in Washington, D.C. at (202) 307-5983 for a list of the victim assistance programs in your area which are funded by this office. The same information is available through the OVC Home page at [www.ojp.usdoj.gov/ovc/](http://www.ojp.usdoj.gov/ovc/).

## **Recovery and Healing**

Other victims and survivors of traumatic disasters who have been where you are offer some practical suggestions of things you can do that will help you cope and begin to heal:

- Remember to breathe. Sometimes when people are afraid or very upset, they stop breathing. When you are scared or upset, close your eyes and take deep, slow breaths until you feel calmer. Taking a walk or talking to a close friend can also help.
- Whenever possible, put off for awhile any major decisions about moving or changing jobs. You may think a big change will make you feel better, but it will not necessarily ease the pain. Give yourself time to heal and adjust before making decisions about the rest of your life.
- Simplify your life for awhile. Make a list of the things you are responsible for in your life, such as taking care of the kids, buying groceries, teaching Sunday School, or going to work. Then look at your list and see which things are absolutely necessary. Is there anything you can put aside for awhile? Are there things you can let go of completely?
- Take care of your mind and body. Eat healthy food. Exercise regularly, even if it's only a long walk every day. Exercise will help lift depression and help you sleep better, too. Massage can also help release tension and comfort you.
- Avoid using alcohol and drugs. These substances may temporarily block the pain, but they will keep you from healing. You have to experience your feelings and look clearly at your life in order to recover from tragedy.
- Keep the phone number of a good friend nearby to call when you feel overwhelmed or have a panic attack.
- Stay busy with work that occupies your mind, but don't throw yourself into frantic activity.

- ▣ If you are having trouble sleeping, you may want to avoid doing upsetting things right before bed. Do not go to bed before you are tired. Give yourself thirty minutes early in the day as your "worry time." Write down your fears and nightmares. Put on quiet music or relaxation tapes. If you still can't sleep, don't get mad at yourself and worry about not getting sleep. You can still rest by lying quietly and listening to quiet music or by reading a good book. If your sleeping problems continue to last, you may want to see your doctor.
- ▣ Find small ways to help others, as it will help ease your own suffering.
- ▣ You may find it helpful to write about your feelings. Victims sometimes find it helps ease whatever they are feeling when they write down their thoughts.
- ▣ Ask for help from family, friends, or professionals when you need it. Healing grief and loss is similar to healing your body after illness or an accident. Just as there are doctors and nurses who are trained to help heal the body, there are professionals who are trained to help people recover from loss and cope with emotional pain.
- ▣ Think about the things that give you hope. Make a list of them to turn to on bad days.

It is important to remember that emotional pain is not endless. It does have limits. The pain will eventually ease, and the joys of life will return. There will be an ebb and flow to your grief. When it is there, let yourself feel it. When it is gone, let it go. You are not responsible or obligated to keep the pain alive. Smiles, laughter and the ability to feel joy in the good things of life will return in time.

Victims are forever changed by the experience of terrorism. They realize that while things will never be the same, they can face life with new understanding and new meaning. Many things have been lost, but many things remain. Overcoming even the greatest tragedies is possible and can help bring about change and hope for others.

### Coping As A Family

It is important to know that family members each have their own ways of feeling and coping with a traumatic event. Your spouse or child may have different reactions in different ways and at different times from you. What you find comforting may make someone else upset or worried.

It will help if each family member can recognize there are different ways of coping and be able to talk to each other about what they are each feeling. Giving each family member the freedom to deal with trauma in their own way without judging them or taking it personally is hard at times but necessary to survive as a family.

## Helping Children With Trauma

When a traumatic event occurs, adult family members may be so shocked and upset that the needs of children are overlooked. Children may be so overwhelmed or frightened by the intensity of emotion going on around them that they become very confused or quiet. Children who had a family member injured, or watched a lot of television coverage of the event may experience stronger symptoms.

After a traumatic event children may exhibit some of the following symptoms<sup>8</sup>:

- Regression: returning to earlier behaviors that had been outgrown
- Reenacting the disaster while playing
- Nightmares and night terrors
- Clinging to parents, fears of strangers
- Outbursts and tantrums, irritability
- Fragile feelings, hurt easily, quicker than usual to cry
- Nervous behavior, worry
- Withdrawal and isolation
- Suppression of emotion
- Physical complaints: headaches, stomachaches
- Changes in eating or sleeping behavior
- Bed wetting or thumb sucking
- Excessive fear of darkness, separation from a parent, or being alone
- Aggressive behavior and play
- Drop in school performance
- Possible drug use in pre-adolescents (11-14 years)

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<sup>8</sup> Id.

Not every child will have the same reaction to trauma. Some children will not show any of these symptoms. An important factor in a child's successful recovery is the relationship they have with their parents. Often children can recover from these events more quickly when their parents are supportive and return them to their normal routine as soon as possible.<sup>9</sup> If the child's symptoms persist for four to six weeks, or are so great that the symptoms are interfering with normal life, the child should be evaluated by a mental health professional.<sup>10</sup> Also, if a child talks about hurting themselves, or is playing much more aggressively than usual, the child should be evaluated as soon as possible.<sup>11</sup>

As a parent, you can help your child deal with trauma by helping them talk honestly and openly about their feelings. Let your child know his or her feelings are normal. The relationship with a caring adult is the most powerful tool we have to help children heal from traumatic events.<sup>12</sup>

When helping your child deal with feelings after a traumatic event, make sure to do the following<sup>13</sup>:

- Provide reassurance that your child is safe and that you are together and will protect him or her
- Hold, hug, and touch your child often
- Encourage your child to express feelings through talking, drawing or playing
- Explore your child's perceptions of the event
- Correct misinterpretations and answer questions
- Be honest and give accurate information
- Be more tolerant of acting out behavior
- Spend extra time with your child at bedtime
- Help your child identify, label and express feelings

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

## **THE CRIMINAL JUSTICE SYSTEM**

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Following the first shock and trauma of an act of terrorism, victims must deal with several organizations that are working on solving the crime. Most victims have never before dealt with the FBI or other investigative agencies, the U.S. Attorney's Office, and the courts—either in this country or in another country. This can be frustrating if victims do not understand how these organizations work.

### **Federal Bureau of Investigation**

It is the duty of the FBI to collect evidence from the scene and from witnesses and to coordinate investigative steps with the U.S. Attorney's Office and the Department of Justice. There is no way to know how much time the investigation will take or to whom the investigators will need to talk. Their goal is to find and arrest the person or persons responsible for the crime and continue to gather evidence for the case.

#### ***Talking with Investigators***

Although the best source of information about the investigation is the agent assigned to the case, in major investigative matters involving multiple victims, it is impossible for the case agent to deal directly with all interested parties. Additionally, in sensitive matters relating to international terrorism, much information must remain confidential.

If and when an individual is charged with the crime of terrorism, the Victim Witness Coordinator in the U.S. Attorney's office will begin to provide the victim services initially handled by the FBI Victim Specialist. The role of the Victim Witness Coordinator in the U.S. Attorney's Office is explained in greater detail in on the following page.

#### ***Understanding the Role and Attitudes of Investigators***

When victims deal with investigators, it may help to understand the problems that each faces. The victim may see the investigative agent as indifferent and non-caring and may react with anger toward them. The victim may be frustrated and angry already. Investigators need to understand these feelings and should be patient and respectful.

Likewise, victims need to understand that investigators are human beings, and they have feelings also. Each agent may handle multiple cases at one time. In order not to be overwhelmed by their feelings, they develop attitudes that may appear distant and cool. This does not necessarily mean they do not care about their jobs or about the victims. It is an attitude that helps them cope with very difficult and traumatic situations and prevents them from becoming overwhelmed by crisis.

## **The United States Attorney's Office**

Most victims have a strong desire to see that justice is done and that the terrorist is punished. The U.S. Attorney's Office works closely with the Department of Justice and the FBI in the investigative stage of the case. The U.S. Attorney's Office is responsible for bringing the charges against the person or persons believed to have committed the act of terrorism.

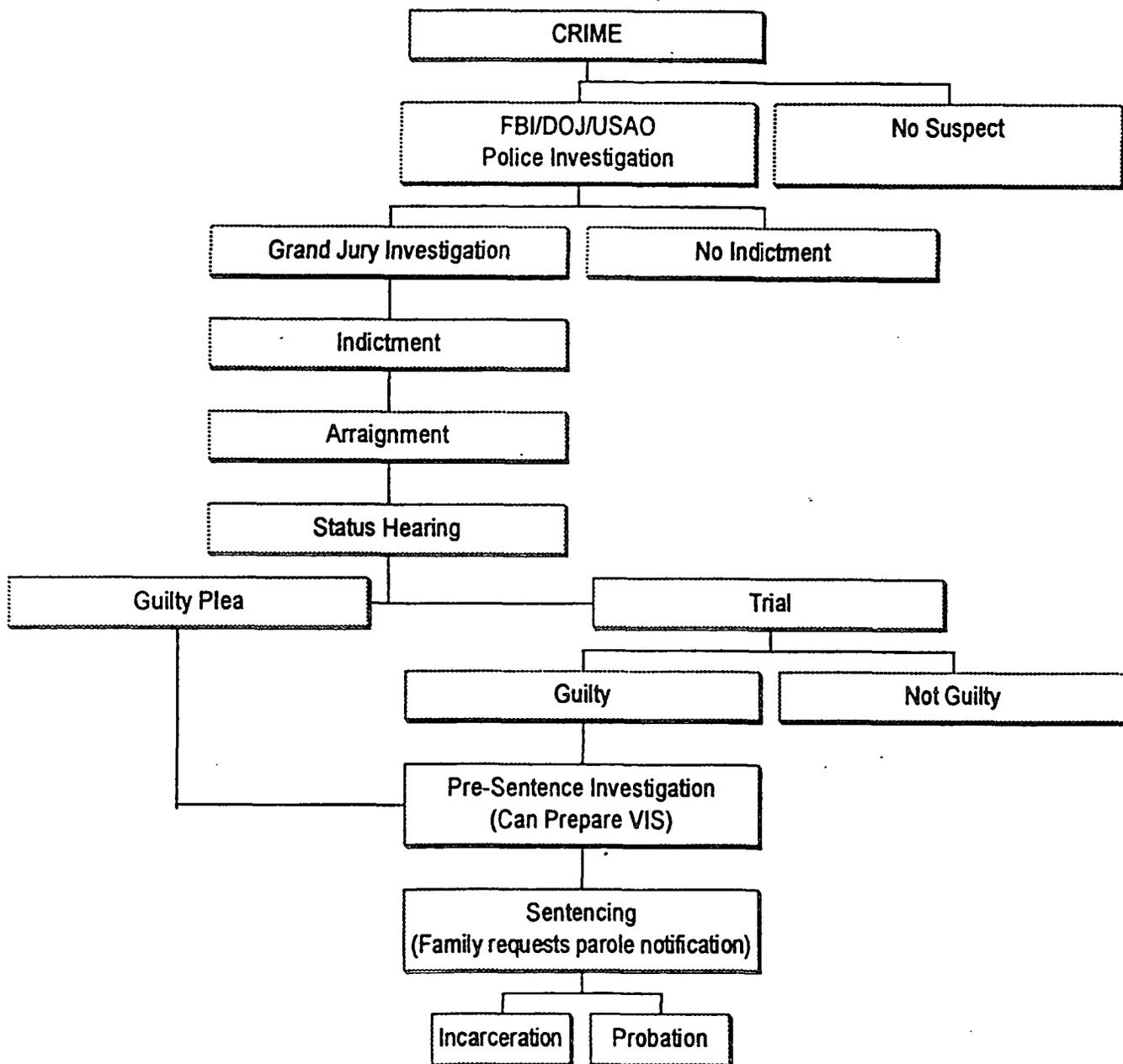
Once an accused person has been charged with the crime, he or she becomes known as the defendant. The Assistant United States Attorney (AUSA) becomes the prosecuting attorney. Court rules and the U.S. Code guide the prosecution of the case. These rules sometimes frustrate victims who may want justice quickly and severe sentences. The laws, however, must be followed.

Many victims find the criminal justice process to be slow, frustrating and sometimes insensitive to their needs. Victims should realize that the prosecuting attorney assigned to their case is working with them, not against them. The prosecutor may be working on several cases at the same time and must give time to each. The process of a terrorism trial is involved and could take a couple of years before all the necessary steps have been completed. Some cases involve more than one defendant or more than one victim. These cases will usually take longer. Further, in international terrorism cases, even if a defendant is charged, it may be impossible for the United States to obtain custody of the person to enable a prosecution to go forward.

When the U.S. Attorney's Office charges a defendant in a terrorism case, the Office also takes over the role (initially given to the FBI) of providing victim related services to those affected by the crime. For cases which reach this stage, the U.S. Attorney's Office has a Victim Witness Coordinator who serves as the point of contact for victims and surviving family members of victims of terrorism. Victim Witness Coordinators are specially trained and experienced in working with people whose lives have been devastated by violent crime. The Victim Witness Coordinator for this case is Wendy Olsen-Clancey, in the U.S. Attorney's Office / Southern District of New York. She can be reached at 212-637-1028 (pager - 1-800-920-8072.)

As the case progresses, you will be notified of key events if you request such notification. You must make sure that the Victim Witness Coordinator has the correct contact information for you. It works best when families designate one person as the liaison with the U.S. Attorney's Office.

# Stages in the Federal Criminal Justice System



## Terrorism-Related Charges/Classifications

Statutes governing the prosecution of acts of terrorism are found in Title 18 U.S.C. Sections 2331-2340 of the Federal Criminal Code. Criminal penalties are found in Section 2332 and include the following:

(A) **Homicide**:—Whoever kills a national of the United States, while such national is outside the United States, shall—

(1) If the killing is murder, be fined under this title, punished by death or imprisonment for any term of years or for life, or both. Murder in the first degree is defined as the unlawful killing of a human being with malice aforethought.

(2) If the killing is a voluntary manslaughter, be fined under this title or imprisoned not more than ten years or both. Voluntary manslaughter is defined as the unlawful killing of a human being without malice and upon a sudden quarrel or heat of passion.

(3) If the killing is an involuntary manslaughter, be fined under this title or imprisoned for not more than three years, or both. Involuntary manslaughter is defined as the unlawful killing of human being without malice and in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

(B) **Attempt or conspiracy with respect to homicide**—  
Whoever outside the United States attempts to kill, or engages in a conspiracy to kill, a national of the United States shall—

(1) In the case of an attempt to commit a killing that is murder, be fined under this title, or imprisoned not more than 20 years or both; and

(2) In the case of a conspiracy by two or more persons to commit a killing that is defined as a murder, if one or more of such persons do any overt act to effect the object of the conspiracy, be fined under this title, or imprisoned for any term of years or life, or both so fined and so imprisoned.

### **Weapons of Mass Destruction (Section 2332a)**

(A) **Offense against a national of the United States or within the United States**.—A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction, including any biological agent, toxin, or vector—

(1) against a national of the U.S. while such national is outside of the U.S.;

(2) against any person within the U.S., and the results of such affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate foreign commerce; or

(3) against any property that is owned, leased or used by the U.S. or by any department or agency of the U.S., whether the property is within or outside of the U.S.,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

**(B) Offense by national of the United States outside of the United States.**—Any national of the U.S. who, without lawful authority, used, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the U.S. shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or imprisoned for any term of years or for life.

**(C) Definitions.**—For purposes of this section—

(1) the term "national of the United States" has the meaning given in Section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

(2) the term "weapon of mass destruction" means —

(a) any destructive device that includes any explosive, incendiary, poison gas; or any type of weapon (other than a shotgun or shotgun shell) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch diameter; and any combination of parts either designed or intended for use in converting any device into any destructive device described above and from which a destructive device may be readily assembled.

(b) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(c) any weapon involving a disease organism; or

(d) any weapon designed to release radiation or radioactivity at a level dangerous to human life.

Prosecution of any offense described in this section by the United States requires the written certification of the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecution, that, in the judgment of the certifying official, the offense was intended to coerce, intimidate, or retaliate against a government or a civilian population.

## Exceptions to Jurisdictional Immunity of a Foreign State

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Generally, a foreign country is immune from the jurisdiction of U.S. courts. In other words, U.S. citizens cannot sue a foreign government. However, there is an exception to this rule which affects cases of terrorism.

Under Title 28 U.S.C. § 1605 of the United States Code, U.S. citizens can sue a foreign government that has been determined to be a state sponsor of terrorism. A victim of terrorism can seek money damages from the country that sponsored the terrorist act or terrorist group that caused the resulting death or injury. Sponsorship may include financial or material aid to terrorists. The entire provision of Title 28 U.S.C. § 1605 should be referred to for additional information.

Victims of terrorism should be aware that there are obstacles to enforcing a judgement against a foreign government. Obtaining a money award from a state sponsor of terrorism may be difficult and, in some instances, futile.

## Glossary Of Legal Terms Used In The Criminal Justice System

**Appeal** - A formal written request made by the defendant and his attorney to a higher Court to change the findings, decisions or actions of the trial court or jury.

**Arraignment** - When the defendant is notified that a Grand Jury has indicted him or her with one or more criminal charges.

**Assistant U.S. Attorney** - A prosecutor who represents the U.S. Government and the citizens of the United States and the District of Columbia.

**Bail/Bond** - A promise the defendant makes to the Court, sometimes backed by a money deposit, that he will come back to Court when told if he is released from jail before the trial.

**Charge** - An accusation that a person broke a law.

**Complaint** - A formal, written accusation to the Court that a certain person violated a law.

**Continuance** - A delay or postponement of a court hearing to another day or time.

**Conviction** - A decision made by a judge or jury that the defendant is guilty beyond a reasonable doubt of breaking the law for which he was tried.

**Crime** - When a criminal law has been violated.

**Defendant** - The person formally accused of violating a law. Also called the **Accused**.

**Defense Attorney** - An attorney who legally represents a defendant.

**Disposition** - The final outcome of a case.

**Evidence** - Testimony and physical objects shown in court by the prosecutor and defense attorney.

**Felony** - A serious crime for which the punishment is more than one year in prison and/or a fine. Felonies include crimes such as murder, rape, burglary, or robbery.

**Guilty** - When the judge or jury finds the evidence presented at the trial shows beyond a reasonable doubt that the defendant is the person who violated a law.

**Guilty Plea** - A statement by the defendant admitting that he committed the crime.

**Indictment** - When the Grand Jury finds there is enough "probable cause" to show that the defendant is the person who committed the crime, they issue an indictment listing the charges against the defendant.

**Grand Jury** - Citizens who listen to evidence to determine whether to issue an indictment or not. Grand Jury proceedings are conducted in secrecy and all communications are confidential.

**Petit Jury** - Citizens who sit throughout a trial to decide the facts of the case to determine if the defendant broke a law.

**Misdemeanor** - A crime that is less serious than a felony and is punishable by one year or less in jail and/or a fine.

**No Bill** - In Federal Court cases when the Grand Jury does not find the prosecutor has shown enough evidence to make the defendant stand trial and the case is dismissed.

**Not Guilty** - When the Petit Jury finds that the evidence presented at trial does not show beyond a reasonable doubt that the defendant is the person who violated the law. It does not mean the defendant is innocent. Another word for Not Guilty is Acquittal.

**Plea Agreement** - An agreement reached between the prosecutor, the defense attorney and the defendant where a defendant agrees to admit he was guilty of committing the crime for which he was charged in exchange for some consideration. (Plea agreements may be more complicated than this.)

**Pre-Sentence Report** - A report prepared for the judge by the probation officer about the defendant and his life to help the judge decide what kind of punishment or sentence the defendant should be given for breaking a law.

**Probation** - A form of punishment that allows the defendant to live in his community under the supervision of the court and a probation Officer after he is found guilty or pleads guilty to breaking the law.

**Probation Officer** - A person who works for the court to make sure defendants do not break any other laws while on probation and that the defendant pays any court ordered restitution and follows any other rules imposed by the court.

**Restitution** - The payment of money by the defendant to victim or to the court for damages caused by his criminal actions.

**Sentence** - The punishment the defendant is given by the judge when the defendant is found to be guilty or pleads guilty to breaking a law.

**Subpoena** - A written order of the court commanding a witness to come to court on a certain date and time. Another word for Subpoena is Summons. Failure to respond may result in the arrest of the person who receives the subpoena.

**Terrorism** - Terrorism is a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any state, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State, and appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by assassination or kidnaping.

**Testify** - When a witness goes to court and answers questions under oath about what he saw, heard, or knows.

**Testimony** - The statements a witness gives under oath.

**True Bill** - In Federal Court cases when the Grand Jury finds the prosecutor has enough evidence to make the defendant stand trial.

**Verdict** - The decision of the jury about whether or not the defendant is guilty or is not guilty.

**Victim Impact Statement** - A written or spoken statement made by a victim and/or his family to the court about the physical, emotional and/or financial impact of a crime.

**Victim Advocate** - A person who helps victims and witnesses before and after they go to Court.

**Victim** - The person who was injured or suffered from the commission of the crime.

**Witness** - A person who saw or knows something about the crime.

**Witness Conference** - A meeting between the victim or witness and the prosecutor to prepare for trial.

## **RESOURCES FOR VICTIMS OF INTERNATIONAL CRIME**

### **U.S. State Department Assistance**

When an act of terrorism strikes a foreign country and Americans are injured or killed, the State Department's Bureau of Consular Affairs (Bureau) and the U.S. embassy in the affected country respond to the crisis. If you are injured as a result of terrorism in a foreign country and need assistance contacting relatives in the U.S., or if you believe a relative is a victim and want information concerning their welfare, contact the embassy in that country or the Bureau of Consular Affairs in the U.S. Department of State in Washington, D.C. at 202/647-1488.

If an American is injured, the embassy will contact the Bureau, which will then notify the victim's family in the U.S. The Bureau can assist having money sent to the victim and, if necessary, forward medical history and relevant records to the embassy. In cases where the injured victim requires transportation back to the U.S., and in some instances a medical escort, the Bureau will help make those arrangements.

Depending upon the country in which the crime occurred, there may be victim assistance agencies or organizations in those countries that may provide limited assistance. For families and victims living in the United States, the best sources for assistance are probably in their own community.

### **Victim Compensation**

All 50 states, the District of Columbia, and the Virgin Islands have established victim compensation programs. These programs reimburse victims for crime-related expenses such as medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. The Anti-Terrorism and Death Penalty Act of 1996 requires that all state crime victims compensation programs consider victims and survivors of crimes of terrorism or mass violence. Most states have taken steps to amend their authorizing legislation to accommodate the new federal requirement.

To find out if you are eligible for compensation, contact the Crime Victim compensation Program in the state where you live. For your convenience, the telephone number of each state compensation program in the country is listed in the back of this handbook. If you have difficulty with eligibility with your state crime victim's compensation program, you can contact the Office for Victims of Crime in the U.S. Department of Justice for assistance at 202/307-5983. They can also help you locate other types of victim assistance programs in your community.

### **Support Services From The U.S. Attorney's Office**

The attorneys and victim-witness coordinators who work with crime victims and witnesses know how difficult it can be for victims of terrorism to be involved in the criminal justice system. They understand that victims need information, services and support. The Victim-Witness Coordinator in the U.S. Attorney's Office is there to provide help to victims and witnesses. The Victim-Witness Coordinator can help you and your family with the following:

- Referrals for medical, mental health counseling, financial or social services;
- Information on security and protection for victims and witnesses;
- Information on the justice process, your role and rights;
- Help with employers and creditors;
- Assistance in arranging meetings with the prosecutor;
- Information about court dates, times, places and outcomes of proceedings;
- Arranging victim/witness travel to and from court;
- Escorting or arranging escort services to court hearings; and
- Help with preparing and submitting victim impact statements to the court.
- Help in recovering property taken for evidence, where possible;
- Information about victim compensation benefits or other financial assistance available to crime victims; and
- For Federal Court cases, help in completing victim notification requests from the Bureau of Prison's Victim Notification Program.

The U.S. Attorney's Office Victim Witness Coordinator, Wendy Olsen-Clancey, can be reached at (212) 637-1028.

In terrorism or other mass casualty cases, the Office for Victims of Crime (OVC) can provide additional support and funding to assist victims. OVC is the funding and policy office within the U.S. Department of Justice that addresses victims needs and issues.

## Community Resources for Victims of Crime

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Once a tragedy has occurred, the next step is often unclear. There are community organizations that exist to respond to the special needs facing the victims of violent crime. The following national organizations can refer you to local mental health counselors, support groups, and other victim assistance programs in your area.

**Office for Victims of Crime/U.S. Department of Justice**  
810 Seventh Street, NW  
Washington, D.C. 20531  
(202) 307-5983

<http://www.ojp.usdoj.gov/ovc/>

A bureau within the Department of Justice that provides funds to support victim assistance and compensation programs around the country and advocates for the fair treatment of crime victims. OVC can help direct crime victims to programs located in their area which receive funding from the Department of Justice. Additionally, the OVC Resource Center can be reached at (800) 627-6872, to receive information and materials on a range of victims' issues.

**National Organization for Victim Assistance**  
1757 Park Road, N.W.  
Washington, D.C. 20010

1-800-879-6682 (information and referrals)

An non-profit organization that provides advocacy for victims' rights and has local chapters. Contact this organization for referrals to mental health counselors and support groups in your area.

**National Victim Center**  
2111 Wilson Boulevard, Suite 300  
Arlington, VA 22201  
(703) 276-2880

A national non-profit organization that monitors Federal and state legislation affecting victims of crime, provides training and technical assistance on victim assistance, and promotes public awareness of victims' rights and issues.

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Exupery, Antoine de Saint (1982). *The Little Prince*, Harcourt, Brace, Jovanovich.

Heegaard, Marge (1991). *When Something Terrible Happens* (small children), Woodland Press.

Paulus, Trina (1991). *Hope for the Flowers*, Paulist Press.

Powell, E. Sandy (1990). *Geranium Morning* (elementary age), Carol-Rhoda Books.

Silverstein, Shel (1964). *The Giving Tree*, Harper & Row.

Traisman, Enid (1992). *Fire in My Heart, Ice in My Veins* (a journal for teenagers), Centering Corporation.

Viorst, Judith (1971). *The Tenth Good Thing About Barney*, Macmillan.

White, E.B. (1952). *Charlotte's Web*, Harper & Row.

Williams, Margaret (1983). *The Velveteen Rabbit*, Holt, Henry & Co.

## **Things to Ask My Victim Advocate or Prosecutor**

(This page has been left blank so you can write down any questions or concerns you may have to talk about with the Victim Advocate or the Prosecutor.)

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## State Compensation and Assistance Programs in the United States and U.S. Territories\*

<b>ALABAMA</b> Victim Assistance 334-242-5891  Victim Compensation 334-242-4007	<b>FLORIDA</b> Victim Assistance 904-922-0728  Victim Compensation 904-488-0848	<b>LOUISIANA</b> Victim Assistance 504-925-1997  Victim Compensation 504-925-1997	<b>NEVADA</b> Victim Assistance 702-688-1628  Victim Compensation 702-687-4065	<b>OREGON</b> Victim Assistance 503-378-5348  Victim Compensation 503-378-5348	<b>VERMONT</b> Victim Assistance 802-828-3378  Victim Compensation 802-828-3374
<b>ALASKA</b> Victim Assistance 907-465-4356  Victim Compensation 907-465-3040	<b>GEORGIA</b> Victim Assistance 404-559-4949  Victim Compensation 404-559-4949	<b>MAINE</b> Victim Assistance 207-289-5060  Victim Compensation 207-626-8800	<b>NEW HAMPSHIRE</b> Victim Assistance 603-271-1297  Victim Compensation 603-271-1284	<b>PALAU</b> Victim Assistance 011-680-488-2813 or 011-680-488-2553  <b>PENNSYLVANIA</b> Victim Assistance 717-787-2040  Victim Compensation 717-787-2040	<b>VIRGINIA</b> Victim Assistance 804-786-4000  Victim Compensation 804-367-8686
<b>AMERICAN SAMOA</b> Victim Assistance 011-684-633-5221	<b>GUAM</b> Victim Assistance 011-671-475-3406	<b>MARYLAND</b> Victim Assistance 410-767-7477  Victim Compensation 410-764-4214	<b>NEW JERSEY</b> Victim Assistance 609-984-7347  Victim Compensation 201-648-2107	<b>PENNSYLVANIA</b> Victim Assistance 717-787-2040  Victim Compensation 717-787-2040	<b>VIRGIN ISLANDS</b> Victim Assistance 809-774-6400  Victim Compensation 809-774-1166
<b>ARIZONA</b> Victim Assistance 602-223-2480  Victim Compensation 602-542-1928	<b>HAWAII</b> Victim Assistance 808-586-1282  Victim Compensation 808-587-1143	<b>MASSACHUSETTS</b> Victim Assistance 617-727-5200  Victim Compensation 617-727-2200 Ext 2251	<b>NEW MEXICO</b> Victim Assistance 505-841-9432  Victim Compensation 505-841-9432	<b>PUERTO RICO</b> Victim Assistance 809-723-4949  <b>RHODE ISLAND</b> Victim Assistance 401-277-2620  Victim Compensation 401-277-2500 Ext 33	<b>WASHINGTON</b> Victim Assistance 360-586-0253  Victim Compensation 360-902-5340
<b>ARKANSAS</b> Victim Assistance 501-682-3671  Victim Compensation 501-682-1323	<b>IDAHO</b> Victim Assistance 208-334-5580  Victim Compensation 208-334-6000	<b>MICHIGAN</b> Victim Assistance 517-373-1826  Victim Compensation 517-373-0979	<b>NEW YORK</b> Victim Assistance 518-457-1779  Victim Compensation 518-457-8063	<b>SOUTH CAROLINA</b> Victim Assistance 803-896-7896  Victim Compensation 803-734-1930	<b>WEST VIRGINIA</b> Victim Assistance 304-558-8814  Victim Compensation 304-347-4850
<b>CALIFORNIA</b> Victim Assistance 4-9140  Victim Compensation 916-323-3432	<b>ILLINOIS</b> Victim Assistance 312-793-8550  Victim Compensation 217-782-7101	<b>MINNESOTA</b> Victim Assistance 612-643-3444  Victim Compensation 612-282-6267	<b>NORTH CAROLINA</b> Victim Assistance 919-571-4736  Victim Compensation 919-733-7974	<b>SOUTH DAKOTA</b> Victim Assistance 605-773-4330  Victim Compensation 605-773-6317	<b>WISCONSIN</b> Victim Assistance 608-267-2251  Victim Compensation 608-266-6470
<b>COLORADO</b> Victim Assistance 303-239-4442  Victim Compensation 303-239-4442	<b>INDIANA</b> Victim Assistance 317-232-2560  Victim Compensation 317-232-2560	<b>MISSISSIPPI</b> Victim Assistance 601-359-7880  Victim Compensation 601-359-6766	<b>NORTH DAKOTA</b> Victim Assistance 701-328-6195  Victim Compensation 701-328-6195	<b>TENNESSEE</b> Victim Assistance 615-313-4700  Victim Compensation 615-741-2734	<b>WYOMING</b> Victim Assistance 307-635-4050  Victim Compensation 307-635-4050
<b>CONNECTICUT</b> Victim Assistance 806-529-3089  Victim Compensation 806-529-3089	<b>IOWA</b> Victim Assistance 515-281-5044  Victim Compensation 515-281-5044	<b>MISSOURI</b> Victim Assistance 573-751-4905  Victim Compensation 573-751-7646	<b>NORTHERN MARIANA ISLANDS</b> Victim Assistance 011-670-664-4550  <b>OHIO</b> Victim Assistance 614-644-5610  Victim Compensation 614-466-8439	<b>TEXAS</b> Victim Assistance 512-463-1919  Victim Compensation 512-936-1200	
<b>DELAWARE</b> Victim Assistance 302-577-3697  Victim Compensation 302-995-8383	<b>KANSAS</b> Victim Assistance 913-296-2215  Victim Compensation 913-296-2359	<b>MONTANA</b> Victim Assistance 406-444-3604  Victim Compensation 406-444-3653	<b>OKLAHOMA</b> Victim Assistance 405-557-6700  Victim Compensation 405-557-6700	<b>UTAH</b> Victim Assistance 801-533-4000  Victim Compensation 801-533-4000	
<b>DISTRICT OF COLUMBIA</b> Victim Assistance 202-842-8467  Victim Compensation 202-842-8467	<b>KENTUCKY</b> Victim Assistance 502-564-7554  Victim Compensation 502-564-7986	<b>NEBRASKA</b> Victim Assistance 402-471-2194  Victim Compensation 402-471-2194			

\* These programs are located within different agencies, depending on the state.

## FEDERAL CRIME VICTIMS BILL OF RIGHTS

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A crime victim has the following rights:

- (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.



Office for Victims of Crime

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# OVC Bulletin **New Directions**

Advocating for the Fair  
Treatment of Crime Victims

## Message from The Director

*New Directions from the Field: Victims' Rights and Services for the 21st Century* is a comprehensive report and set of recommendations on victims' rights and services from and concerning virtually every community involved with crime victims across the nation. The report represents a significant maturation in the field of victims' rights and services since the President's Task Force on Victims of Crime released its *Final Report* in 1982. *New Directions* chronicles the extraordinary accomplishments of a still young field, but also recommends what we as a society should strive to achieve for victims as we enter the 21st century.

*New Directions* is the culmination of more than 3 years' work by over 1,000 individuals in the victims field including crime victims, representatives from national victim advocacy and service organizations, criminal justice practitioners, allied professionals, and many others. In addition, literally hundreds of reference documents were utilized and listed in the end-notes of each of the 18 chapters. The work of these individuals and the publication and dissemination of this material has been supported by the Office for Victims of Crime (OVC). The report and recommendations represent views from the field, however, and do not necessarily reflect the views of the Department of Justice. Moreover, while the recommendations may not reflect all of the individual contributors' views, the contributors agree that all of the recommendations are worthy of discussion and consideration.

This bulletin is a reprint of chapter 1 from *New Directions* and deals specifically with promising practices and recommendations related to Victims' Rights. As we move into the 21st century, *New Directions* should serve as a vitally useful guide for developing policies, programs, and practices on behalf of crime victims well into the next century. As comprehensive as this report is, however, the real challenge begins now. After you read the recommendations, after you have examined the numerous promising practices presented in each section, then I encourage you to move forward to see how you can implement improvements in a manner that meets the needs of crime victims.

Kathryn M. Turman  
Acting Director  
Office for Victims of Crime

## New Directions from the Field: Victims' Rights and Services for the 21st Century

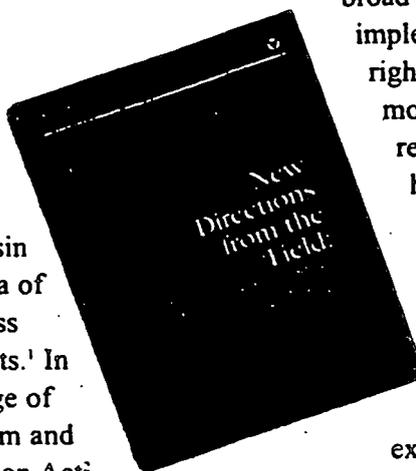
### Victims' Rights

*Let us make sure that we give our victims the right to be heard—not in some dispassionate way in an impact statement, but in a courtroom if they want to be heard, so that people can know what it's like to be a victim. Let us give them an opportunity to participate, to be there, and to hold the criminal justice system at every level accountable.*

U.S. Attorney General Janet Reno  
New York City National Candlelight Vigil,  
April 25, 1993

### Victims' Rights: Two Decades of Dramatic Change

The enactment of the nation's first state bill of rights for crime victims in 1980 in Wisconsin ushered in an era of dramatic progress for victims' rights.<sup>1</sup> In 1982, the passage of the federal Victim and Witness Protection Act<sup>2</sup> and the release of the *Final Report* of the President's Task Force on Victims of Crime



brought national prominence to crime victims' concerns. The *Final Report* established a broad agenda for implementing victims rights and services, and most of its 68 recommendations are highlighted throughout this report. This section reviews many of the state and federal initiatives to expand the rights of crime victims since these seminal events.

# *New Directions from the Field: Victims' Rights and Services for the 21st Century*

## **State Initiatives**

State progress in legislating rights for crime victims within the criminal and juvenile justice systems since the 1982 *Final Report* has been remarkable. When the Task Force began its work, only four states had enacted a set of basic rights for crime victims in the criminal justice system, commonly referred to as victims' bills of rights.<sup>3</sup> Today, every state has laws protecting victims' rights. Moreover, victims' rights have been strengthened in 29 states by constitutional mandate.<sup>4</sup>

The scope of rights extended to crime victims also has expanded significantly.<sup>5</sup> Although states have not established one standard set of rights for victims, most bills of rights contain basic provisions for victims to be treated with dignity and compassion, to be informed of the status of their case, to be notified of hearings and trial dates, to be heard at sentencing and parole through victim impact statements, and to receive restitution from convicted offenders.

Most states afford victims the right to notice of events and proceedings at various stages of the judicial process. Moreover, 35 states give victims the right to attend most criminal justice proceedings and 24 constitutionally protect that right.<sup>6</sup> Every state now allows courts to consider victim impact information at sentencing, and at least 41 states allow victims to make oral statements during sentencing hearings.<sup>7</sup> Virtually every state requires victim impact information as part of the presentence report, and

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*Sadly today, victims' rights largely remain 'paper promises.' For too many victims and families, the criminal justice system remains more criminal than just when it comes to protecting their rights.*

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Roberta Roper, Founder,  
Stephanie Roper Committee,  
Co-chair, National Victims' Constitutional  
Amendment Network

at least half of the states expressly require the court to consider that information in sentencing decisions.<sup>8</sup>

Each year, hundreds of new victims' rights laws and innovative practices are enacted and implemented across the country. Since 1990, after cases of stalking received national attention from the media and victim advocacy groups, all 50 states and the District of Columbia modified their laws to criminalize stalking.<sup>9</sup> Some state legislatures also reacted swiftly to the escalation of juvenile crime to record levels in the early 1990s by extending at least some rights to victims of juvenile offenders. In 1992, for example, only five states provided victims the right to be notified of a disposition hearing involving a juvenile. By 1995, 25 states provided this right.<sup>10</sup>

Despite this record of success, however, victims are still being denied their right to participate in the justice system. Many victims' rights laws are not being implemented, and most states still have not enacted fundamental reforms such as consultation by

prosecutors with victims prior to plea agreements, victim input into important pretrial release decisions such as the granting of bail, protection of victims from intimidation and harm, and comprehensive rights for victims of juvenile offenders.<sup>11</sup>

## **Federal Initiatives**

The 1982 passage of the federal Victim and Witness Protection Act and the release of the *Final Report* of the President's Task Force on Victims of Crime were the catalysts for a decade of advances in victims' rights.<sup>12</sup> The Act became a national model for state victims' rights laws, while the *Final Report's* 68 recommendations spurred legislative reforms and initiatives to improve criminal justice and allied professionals' response to crime victims.

Congress' strong advocacy for crime victims was reflected in the Victim and Witness Protection Act's statement of purpose: "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 to assist victims and witnesses of crime, within the limits of available resources, without infringing on the constitutional rights of the defendant; and to provide model legislation for state and local governments."<sup>13</sup> Congress instructed the Attorney General to develop and implement guidelines for the Victim and Witness Protection Act within 270 days of its enactment. In response, the *Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines)* were issued in 1983, establishing

## *New Directions from the Field: Victims' Rights and Services for the 21st Century*

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and policies and procedures and a code of conduct for federal criminal justice officials who interact with crime victims.<sup>14</sup> The *1G Guidelines* have been updated periodically to incorporate new rights for victims, such as those set forth below.

In 1990, the Crime Control Act established a new framework for victims' rights by creating the first federal bill of rights for victims of crime.<sup>15</sup> This legislation, referred to as the Victims' Rights and Restitution Act of 1990, or the Victims' Rights Act, requires federal law enforcement officers, prosecutors, and corrections officials to use their "best efforts" to ensure that victims receive basic rights and services.<sup>16</sup> These include the right to be treated with fairness and with respect for the victim's dignity and privacy, to be reasonably protected from the accused, to be notified of court proceedings, to be present at all public court proceedings unless the court determines otherwise, to confer with the prosecutor, to restitution, and to information about

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*Even in states with a victims' rights constitutional amendment, the overall protection of victims is varied and uneven. In addition, without federal constitutional protection, victims' rights are always subject to being automatically trumped by defendants' rights.*

---

Robert E. Preston, Co-chair,  
National Victims' Constitutional  
Amendment Network

the offender's conviction, sentencing, imprisonment, and release. The "best efforts" standard, however, made the federal law weaker than many state victims' rights laws, which make the provision of victims' rights and services mandatory.

In 1994, passage of the Violent Crime Control and Law Enforcement Act created new rights for victims of sexual assault, domestic violence, sexual exploitation, child abuse, and telemarketing fraud. The legislation also included significant funding for combating domestic violence and sexual assault, placing 100,000 community police officers on the street, and launching a variety of other crime prevention initiatives.<sup>17</sup>

In 1996, the Megan's Law amendment to the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Act was enacted to help ensure that communities are notified of the release and location of convicted sex offenders.<sup>18</sup> President Clinton also signed the Antiterrorism Act that year to strengthen efforts against terrorists and to make restitution mandatory in violent crime cases.

In 1997, Congress passed the Victims' Rights Clarification Act, asserting that victims should have the right to both attend proceedings and deliver or submit a victim impact statement. This clarification was issued in response to a judicial ruling prior to the first trial regarding the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, that

precluded victims who chose to attend the trial from providing a victim impact statement at sentencing. Also in 1997, Congress adopted the Federal Antistalking Law, which made it a federal offense to cross a state line to stalk another. The act also made stalking within federal jurisdictions a federal offense.<sup>19</sup>

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*When someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in.*

---

President William J. Clinton,  
Rose Garden, June 25, 1996

### *The Proposal for a Federal Victims' Rights Constitutional Amendment*

The 1982 Presidential Task Force urged the passage of federal constitutional protection for victims' rights, advocating that the Sixth Amendment to the U.S. Constitution be amended to create specific rights for crime victims.<sup>20</sup> Subsequently, at a meeting sponsored by the National Organization for Victim Assistance (NOVA) and Mothers Against Drunk Driving (MADD), victim activists and national victims' organizations created the National Victims' Constitutional Amendment Network (NVCAN) to provide leadership and coordination of efforts to amend the federal constitution.<sup>21</sup>

## *New Directions from the Field: Victims' Rights and Services for the 21st Century*

A decision was made by NVCAN to seek amendments to state constitutions before addressing a federal amendment. This strategy was adopted to enhance knowledge about the impact of state constitutional reforms for victims' rights and to establish a strong base of support prior to seeking a federal amendment. NVCAN spent the next decade assisting states in their efforts to pass amendments. One of the NVCAN members, the National Victim Center (NVC), played an important role during this period by serving as the central repository for information regarding constitutional amendment efforts around the country. Efforts to pass state constitutional amendments produced impressive results. In each of the 29 states where victims' rights amendments were put to a vote of the electorate, they won by an overwhelming majority, receiving 80 to 90 percent of the vote in most states.<sup>22</sup>

In 1996, federal lawmakers focused on the significance of federal constitutional rights for crime victims when resolutions to add crime victims' rights to the Constitution were introduced in the Senate by Senators Jon Kyl and Dianne Feinstein and in the House by Representative Henry Hyde. Constitutional protection of victims' rights has proven to be a nonpartisan issue. The proposed federal constitutional amendment received bipartisan support in the U.S. Congress and was supported in both political party platforms and by both Presidential candidates in 1996.

In a Rose Garden ceremony on June 25, 1996, President Clinton endorsed a federal victims' rights constitutional amendment, stating:

*Participation in all forms of government is the essence of democracy. Victims should be guaranteed the right to participate in proceedings related to crimes committed against them. People accused of crimes have explicit constitutional rights. Ordinary citizens have a constitutional right to participate in criminal trials by serving on a jury. The press has a constitutional right to attend trials. All of this is as it should be. It is only the victims of crime who have no constitutional right to participate, and that is not the way it should be.*

### ***Rights for Victims of Juvenile Offenders***

The President's Task Force recognized that many reforms in the juvenile justice system focused "solely on the benefits to be extended to offenders while ignoring the needs of a society burdened by their offenses."<sup>23</sup> The *Final Report* challenged the federal government to evaluate the juvenile justice system from the perspective of the victim who, the report argued, is "no less traumatized because the offender was under age."<sup>24</sup>

For most of this century, the emphasis on rehabilitating youthful offenders and protecting their confidentiality in the juvenile justice system has overshadowed the needs of their victims. The

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*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.*

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Sharon English, Deputy Director,  
Office of Prevention and Victim Services,  
California Youth Authority

1980s brought a decade of reforms to America's juvenile justice system, but few addressed the needs of crime victims. For example, when rights for victims of crime were enacted in state bills of rights in the 1980s, few states extended rights to the juvenile justice system. Of the 45 states that had enacted some form of victims' rights legislation by 1988, only 13 specifically defined their population to include victims of juveniles.<sup>25</sup> However, the dramatic increase in juvenile crime in the late 1980s and early 1990s, particularly the increase in the violent nature of such crimes, prompted demand for greater accountability from the juvenile justice system.<sup>26</sup>

To ensure that victims of juvenile crimes are protected, states are enacting or amending victims' bills of rights to extend basic rights to victims of offenders in the juvenile justice system. While 46 states now allow courts to order restitution from juvenile offenders as part of the disposition of a delinquency proceeding or as part of an informal disposition, only half of the states

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legislated comprehensive notification and participatory rights for victims of serious juvenile offenses.<sup>27</sup> With respect to victim notification, at least 25 states provide the right for victims to be notified of the disposition hearing, 23 states provide the right for victims to be notified of the adjudication hearing, and at least 25 states provide the right for victims to be notified of final adjudication.<sup>28</sup> With respect to victim participation, at least 28 states allow victims of juvenile offenders to submit a victim impact statement at disposition hearings, and 25 states allow victims to attend the disposition hearing.<sup>29</sup> Some of these states, however, only recognize these rights in cases involving offenses that would be considered felonies if committed by adults.<sup>30</sup>

In the important area of plea consultation, by 1995, only 16 states had extended the right to victims of juvenile offenders to receive an explanation of or consultation about plea agreements.<sup>31</sup> While protection from intimidation and harm remains important, laws in only 15 states establish the right of victims to be notified of juvenile offenders' bail and predisposition release.<sup>32</sup> Texas has addressed this problem by passing a statute that gives victims the right to have the court consider their safety when determining if a juvenile should be detained prior to adjudication.<sup>33</sup>

By 1997, eight states had raised victims' rights in the juvenile system to constitutional status. Alaska, Idaho, Missouri, Oregon,

and South Carolina have included victims of juvenile offenders in their victims' rights constitutional amendments, and Arizona, Oklahoma, and Utah have authorized legislative extension of victims' constitutional rights to juvenile proceedings.<sup>34</sup>

At the national level, juvenile crime and victimization received considerable attention in the 1990s. In 1991, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the U.S. Department of Justice released a nationwide evaluation of juvenile justice-based victim service programs, *Helping Victims and Witnesses in the Juvenile Justice System*, which served as an important early roadmap for federal action.<sup>35</sup> OJJDP also sponsored, in cooperation with the American Probation and Parole Association, the development of juvenile restitution programs, policies, and procedures.

In 1994, the Victims Committee of the American Correctional Association issued a report on victims of juvenile offenders, which found that the majority of victims' rights statutes enacted up to that time did not include protections for victims of juvenile offenders and that most state juvenile codes were silent about victims.<sup>36</sup> In 1996, crime victims' rights and services within juvenile justice systems were elevated to national importance with the release of the *National Juvenile Action Plan*, a comprehensive strategy to address juvenile violence, victims of juvenile offenders, and the juvenile justice

system.<sup>37</sup> The document, developed by the Coordinating Council on Juvenile Justice and Delinquency Prevention, chaired by Attorney General Janet Reno, with extensive input from the Office for Victims of Crime, called for the expansion of victims' rights and services within juvenile justice systems.

While much has been accomplished for victims of juvenile offenders through state and federal action to reform the juvenile justice system, much remains to be done. Not only are rights for victims within the juvenile justice system inconsistent nationwide, many are not enforced. According to the National Victim Center, which conducted an in-depth review of victims' rights within the juvenile justice system, "most of the rights for victims of juvenile offenders should more accurately be called suggestions, or recommendations, as they are only advisory in nature."<sup>38</sup> As additional laws are enacted across the nation, enforcement of victims' rights in the juvenile justice system must be made as great a priority as it is in the adult criminal justice system.

### *Recommendations From the Field for Victims' Rights*

A global challenge issued by the field that serves as the foundation for every recommendation in this section is that consistent, fundamental rights for crime victims should be implemented in federal, state, juvenile, and tribal justice systems, as well as in administrative disciplinary proceedings, including military hearings.

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The rights described in this section are among the most significant recommendations in *New Directions*. While victims' rights have been enacted in states and at the federal level, they are by no means consistent nationwide. All too often they are not enforced because they have not been incorporated into the daily functioning of all justice systems and are not practiced by all justice professionals. Moreover, most systems lack enforcement mechanisms, leaving crime victims without adequate legal remedies to enforce their rights when they are violated.

### **VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #1**

**The U.S. Constitution should be amended to guarantee fundamental rights for victims of crime. Constitutionally protected rights should include the right to notice of public court proceedings and to attend them; to make a statement to the court about bail, sentencing, and accepting a plea; to be told about, to attend, and to speak at parole hearings; to notice when the defendant or convict escapes, is released, or dies; to an order of restitution from the convicted offender; to a disposition free from unreasonable delay; to consideration for the safety of the victim in determining any release from custody; to notice of these rights; and to standing to enforce them.**

A federal constitutional amendment for victims' rights is needed for

many different reasons, including: (1) to establish a consistent "floor of rights" for crime victims in every state and at the federal level; (2) to ensure that courts engage in a careful and conscientious balancing of the rights of victims and defendants; (3) to guarantee crime victims the opportunity to participate in proceedings related to crimes against them; and (4) to enhance the participation of victims in the criminal justice process. A victims' rights constitutional amendment is the only legal measure strong enough to rectify the current inconsistencies in victims' rights laws that vary significantly from jurisdiction to jurisdiction on the state and federal levels. Such an amendment would ensure that rights for victims are on the same level as the fundamental rights of accused and convicted offenders. Most supporters believe that it is the only legal measure strong enough to ensure that the rights of victims are fully enforced across the country. They also believe, however, that the efforts to secure passage of a federal constitutional amendment for crime victims' rights should not supplant legislative initiatives at the state and federal level.

Granting victims of crime the ability to participate in the justice system is exactly the type of participatory right the Constitution is designed to protect and has been amended to permanently ensure. Such rights include the right to vote on an equal basis and the right to be heard when the government deprives one of life, liberty, or property.

While the Justice Department has not endorsed specific language for a victims' rights constitutional amendment, the importance of extending constitutional rights to crime victims has been strongly supported by Attorney General Janet Reno. In August 1996, she stated:

*[It] is clear to me that the best way to secure consistent and comprehensive rights for victims is by including those fundamental rights within the U.S. Constitution. . . . What victims want is a voice, not a veto, in our criminal justice system. Today, victims' rights vary significantly from state to state. The federal government, adult and juvenile justice systems, and the military all provide different rights for victims. Victims' rights should not depend upon the state in which they live, whether the crime is federal or state, or whether it occurs on a military base or in Indian country. Fundamental rights for victims should apply in every forum."*

The Attorney General reiterated her support for a victims' rights constitutional amendment in testimony before the Senate Judiciary Committee on April 16, 1997, and before the House Judiciary Committee on June 25, 1997.

While the vast majority of national victims' organizations and a number of other groups including the National Governors Association, the American Correctional Association, and the Victims' Committee of the International Association of Chiefs of Police favor a victims' rights constitutional amendment, some

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victims' organizations and civil liberties groups do not support such an amendment.<sup>40</sup> Many of these organizations believe that such an amendment would undermine the rights of the accused, particularly the right to due process, and that reforms should be achieved through statute rather than constitutional amendment. Organizations that advocate for battered women have expressed concern that victims of domestic violence who are tried as offenders may be disadvantaged by a victims' rights constitutional amendment. In addition, judges have raised concerns over the potential increase in federal court supervision of state court activities, and prosecutors and other justice officials have expressed concerns, including that they do not have the resources to implement victims' rights laws in cases involving large numbers of victims.

Advocates for a victims' rights constitutional amendment respond to these concerns by indicating that they are not proposing that victims' rights be given more weight than the rights of the accused. Rather, they want victims' rights to be given equal weight which would require courts to engage in a careful and conscientious balancing of the rights of both. They note that many judges across the country routinely bar victims of violent crime from attending the trials of the individuals accused of committing those crimes and do not consider whether prohibiting attendance actually would violate the defendant's right to due process. In addition, a victims' rights constitutional

amendment is needed to ensure that courts do not determine that victims' statutory rights are automatically trumped by defendants' federal constitutional rights.

Proponents of a federal amendment also note that while states' victims' rights statutes and constitutional amendments have led to positive reforms, states have failed to implement state statutory and constitutional rights for victims in significant numbers of cases. In the mid-1990s, the National Victim Center, under a grant from the National Institute of Justice, studied implementation of victim rights laws in four states.<sup>41</sup> Two states were selected because they had strong state statutory and constitutional protection of victims' rights, and two were selected because they had weaker protection. The study surveyed more than 1,300 crime victims and was the largest of its kind ever conducted. It found that many victims were still being denied their rights, even in states with strong legal protection.<sup>42</sup> It concluded that state protections alone are insufficient to guarantee the provision of victims' rights.<sup>43</sup>

Key findings of the study included:

- Nearly half of the victims, even in the two states with strong protection, did not receive notice of the sentencing hearing—notice that is essential for victims to exercise their right to make a statement at sentencing.
- While both of the states with strong statutes had laws requiring that victims be notified of plea

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*It is our hope that putting victims' rights in the same document which guarantees the rights of the accused and convicted offenders, that they will not be subject to violation at will, nor subject to changing political winds. It is our hope that victims' rights will be taken just as seriously, and treated with as much respect, as the rights of the accused.*

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David Beatty, Director of Public Policy,  
National Victim Center

negotiations, and neither of the weak protection states had such statutes, victims in both groups of states were equally unlikely to be informed of such negotiations. Laws requiring notification of plea negotiations were not enforced in nearly half of the violent crime cases included in the study.

- Substantial numbers of victims in states with both strong and weak protection were not notified of other important rights and services, including the right to be heard at bond hearings, the right to be informed about protection against harassment and intimidation, and the right to discuss the case with the prosecutor.<sup>44</sup>

National victims' organizations have reported several cases that illustrate how easily victims' statutory rights can be violated in the judicial process. In one case, a woman and her family were injured by a drunk driver. The defendant was charged with a felony. The woman told the prosecutor she

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wanted to provide a victim impact statement in open court, a right secured by the state's victims' bill of rights. The judge denied her request, citing his "busy docket."

Many victim advocacy groups believe that a federal constitutional amendment is needed to increase the involvement of victims in judicial proceedings. Today, many victims do not report crime or participate in the criminal justice system for a variety of reasons, including fear of revictimization by the system and retaliation by the offender. Victims will gain confidence in the system if their rights are recognized and enforced, their concerns for safety are given serious consideration, and they are treated with dignity and respect.

**Crime victims should have the right to notice of public court proceedings, including pretrial release hearings, plea agreements, sentencing, appeals, and appropriate postconviction release proceedings such as probation and parole hearings. Victims should also have the right to notice of any significant change in the status of defendants and to receive timely notice, upon request, of inmates' temporary or permanent release, or inmates' escape or death.**

The right for crime victims to be notified about public court proceedings in a timely fashion is fundamental to their exercise of

other rights such as the right to be present and heard. Without timely notification of proceedings, victims cannot exercise other participatory rights.

The 1982 Task Force on Victims of Crime recommended legislation and policies to ensure that victims are furnished case status information, prompt notice of scheduling changes for court proceedings, and prompt notice of defendants' arrest and bond status. Fifteen years later, many states, but not all, have adopted laws requiring such notice. While the majority of states mandate advance notice to crime victims of criminal proceedings and pretrial release, many have not implemented mechanisms to make such notice a reality. Procedures for notification, if defined at all, vary widely. Some states require immediate notice of a defendant's pretrial release. Others only provide victims with a telephone number to call to find out whether the arrested defendant has been released.

Many states do not require notification to victims of the filing of an appeal, the date of an appellate proceeding, or the results of the appeal. Also, most do not require notification of release from a mental facility or of temporary or conditional releases such as furloughs or work programs.

Some state laws require that notice be made "promptly" or within a specified period of time. Both prosecutors and victims often complain that in many instances the time between the scheduling of a hearing and the date of that hearing

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*When my 16-year-old son was killed by a drunk driver, I wasn't allowed to give a victim impact statement or to tell the judge how the death of my child had affected our family. But the defendant brought a parade of witnesses on his behalf. Our forefathers recognized that as the times changed, so would the Constitution—and indeed it has. A time came for slavery to be abolished—and the Constitution was amended to assure it. A time came for women to vote—and the Constitution was amended to assure it. The time now has come for victims of crime to have a balanced voice with those of their offenders, and the United States Constitution must be amended to ensure it.*

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Katherine Prescott, former National President,  
Mothers Against Drunk Driving

is too short to give victims adequate notice. Victims also complain that prosecutors do not inform them of plea agreements, the method used for disposition in the overwhelming majority of cases in the United States criminal justice system. Many state victims' rights laws do not require this type of notice.

Many states require victims to request notice, and most require victims to maintain a current address and telephone number on file with the notifying agency. In such cases, efforts should be made to establish a system whereby a single request will entitle victims to notice throughout the criminal justice process. Similarly, victims should be required to keep their

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addresses current with one agency would serve as a central source of information for other officials within the criminal justice system. The most effective means of implementing this recommendation is to establish a centralized case tracking system that allows all relevant agencies to both access and update victim notification files, which would then be incorporated on secure, confidential screens. Victims could request notice and maintain contact information with all agencies by notifying only one agency.

Notification of victims when defendants or offenders are released can be a matter of life and death. Around the country, there are a large number of documented cases of women and children being killed by defendants and convicted offenders recently released from jail or prison. In many of these cases, the victims were unable to take precautions to save their lives because they had not been notified of the release. Notice of release is an essential part of a victim's right to reasonable protection, a fundamental right described more fully in Recommendation 6.

Today, some communities use automated voice response technology to notify victims of release information, including systems that phone victims repeatedly until they are reached. Other jurisdictions are implementing victim notification systems that combine several technological solutions.

Georgia's law requires officials to notify a stalking victim by telephone

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*For three years I was a victim of domestic violence, including being kidnapped, and raped. I consider myself a 'fortunate victim' as a conviction put the perpetrator in prison for many years. My concern at this point is his coming release. Upon his release my entire life will change. I hope and pray to remain stable...*

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A survivor of domestic violence

before an offender is released, or, if such notice cannot be made, to call the victim at least twice in no less than 15 minute intervals within 1 hour of the offender's release.<sup>45</sup> The court is also responsible for notifying victims of bail hearings by telephone.

The nation's largest offender release notification system was recently implemented in New York City, where 133,000 inmates are released annually from city jails. Any victim with access to a telephone can register for notification simply by calling a number and providing an inmate's name, date of birth, and date of arrest, or the inmate's state identification number. When the inmate is released or transferred from custody for any reason, the victim receives periodic telephone calls for 4 days or until the victim confirms receipt of the notification by entering a personal code. The police, local prosecutors, victim assistance providers, and local hotline staff have all been trained to explain the system and to encourage

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*Our world is clearly hurtling into the next century at a rapid pace. New technologies are on the street that were unimaginable only a few years ago. Criminal justice practitioners have to be able to tap into these advances to ensure an effective and efficient response to violent crime and to respond to an increasing offender population. Indeed, we must all become part of the technological revolution that is changing our lives, our workplaces, and our world.*

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Laurie Robinson, Assistant Attorney General,  
Office of Justice Programs,  
U.S. Department of Justice

victims and intimidated witnesses to use it. Other systems in operation around the country allow victims and members of the public to determine the status of any incarcerated offender by calling an automated telephone information system.

Technology offers increasingly powerful tools for providing immediate notification to large numbers of crime victims through the Internet, televised press conferences, and community meetings when victim contact information is limited or when usual procedures are impractical. The Illinois Department of Corrections website allows victims to track the status and location of all inmates 24 hours a day, 7 days a week. Similar approaches are being developed in Ohio and Missouri. During the cases concerning the bombing of the

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Alfred P. Murrah Federal Building, prosecutors and victim-witness coordinators held several highly publicized meetings in the community for victims who wanted updated information and an opportunity to interact with prosecutors and other staff members. Representatives of prosecutors and victims organizations should meet to discuss protocols for ensuring appropriate notification in cases involving hundreds of victims, not only in cases of massive criminal violence, but also in white collar crime cases such as telemarketing fraud

### **VICTIMS' RIGHTS RECOMMENDATIONS FROM THE FIELD**

**Federal and state laws should be strengthened to ensure that victims have the right to be present throughout all public court proceedings.**

The right of crime victims to attend proceedings is fundamental and essential to the meaningful exercise of the other participatory rights described in this report. Notice of proceedings means little if the victim must remain outside the court or hearing room while the proceedings take place.

The most common justification for denying a victim's right of attendance in court is the need to keep them sequestered as potential witnesses. There can be no meaningful attendance rights for victims unless they are generally exempt from this rule. Just as

defendants have a right to be present throughout the court proceedings whether or not they testify, so too should victims of crime. Moreover, the presence of victims in the courtroom can be a positive force in furthering the truth-finding process by alerting prosecutors to misrepresentations in the testimony of other witnesses.

The legitimacy of victim attendance has been recognized in a number of states that provide that victims should not be subjected to court exclusion if they are potential witnesses, or in states where laws have been enacted that generally recognize an essentially unqualified right for victims to be present at these proceedings.<sup>46</sup> A number of states provide that crime victims should have the right to attend every proceeding that the defendant has the right to attend<sup>47</sup>, or that victims be sequestered only on the same basis by which defendants are sequestered.<sup>48</sup> Louisiana deals with the sequestration issue by providing that victims must testify first and thereafter may attend the proceedings. Alabama allows victims to sit at the prosecutor's table during trial.<sup>49</sup> Statutes to give victims the right to attend proceedings should be adopted in more states, extended to the juvenile justice system, and strengthened and clarified in states that already purport to provide that right. In many states, the right to attend and be heard often attaches to "all crucial proceedings," with no clear definition of which proceedings are covered by the statute.

*I don't believe half of the American population or even a small portion knows what can happen to you when you are a victim of a crime going through the criminal justice process.*

A victim

**Prosecutors should provide victims an opportunity for meaningful consultation prior to major case decisions such as dismissal, reduction of charges, or acceptance of plea agreements. Judges should not accept plea agreements without first asking prosecutors on the record if they have consulted the victim, and judges should take the views of the victim into account before making a final sentencing decision. Special procedures should be developed for cases involving multiple crime victims, such as acts of mass violence, massive antitrust or telemarketing cases, where consultation may be difficult.**

Many states give victims a right to consult with prosecutors. The most common of these laws require prosecutors to consult with victims prior to accepting plea agreements.<sup>50</sup> Others require prosecutors to consult with victims prior to dismissing charges,<sup>51</sup> declining prosecution,<sup>52</sup> or making other disposition decisions.<sup>53</sup> State laws

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also compel consultation with victims prior to trial.<sup>54</sup>

Some states extend the right to consultation to victims in juvenile cases.<sup>55</sup> In addition, legislators have attempted to address victims' lack of knowledge about the justice system by requiring prosecutors to provide explanations of procedures and dispositional decisions in nontechnical language.<sup>56</sup> Typical are the Nebraska statutes requiring consultation "regarding the content of and reasons for the plea agreement."<sup>57</sup> Louisiana goes further by giving victims the right to retain private counsel to confer with the prosecution regarding disposition.<sup>58</sup>

Enforcing victims' right to consultation, however, is another matter.

Some states specifically require prosecutors to consider the recommendations of victims when making diversion decisions. Other states require prosecutors to confirm their consultation with the victim before a plea agreement may be accepted. In these states, prosecutors must state on the record that the victim was notified and the plea discussed, or explain why consultation was not possible.<sup>59</sup>

Lack of communication about a proposed plea agreement continues to be one of the highest sources of victim dissatisfaction with the criminal justice system.<sup>60</sup> Victims should have the opportunity for meaningful consultation with the prosecutor at the plea agreement stage or prior to the dismissal of charges.

While victims should not have the ability to veto prosecution decisions in a case, they should have a voice.

Victims' rights laws should recognize that cases involving large numbers of victims may call for exceptions to the requirement for victim consultation. This recognition should not, however, excuse prosecutors from their obligation to use any appropriate and reasonable means of consulting with victims: In the Alfred P. Murrah Federal Building bombing case, which involved hundreds of crime victims, prosecutors held widely publicized community meetings to give victims numerous opportunities for consultation. Representatives of prosecutors and victims organizations should meet to develop a protocol for ensuring appropriate consultation in cases involving numerous victims.

Crime victims should have the right to be heard in major court proceedings including pretrial release hearings, bail hearings, at sentencing, and before the disposition of plea agreements, probation, parole, and commutation. Input should be permitted through both allocution and submission of written, videotaped, or audiotaped statements.

In recognition of the special safety risks victims face when offenders are released, some states have also passed laws granting victims the right to attend and participate in pretrial release hearings. Many legislatures have adopted laws allowing judges to consider the risks offenders pose to the

*Crime victims' rights laws strive to give victims' standing in the criminal justice system, which is all about them, but has traditionally been without them.*

State Senator William Van Regenmorter,  
Chairman of the Judiciary Committee,  
Michigan Senate

community in general and to individual victims when ruling on their release.<sup>61</sup> Maryland has taken the concept one step further by passing a law that establishes a rebuttable presumption that those accused of violent crime constitute an inherent danger to other persons or to the community at large.<sup>62</sup> Allowing the victim to be heard on the issue of pretrial release helps to inform the court about the degree of danger posed by a defendant.

Because most criminal cases are resolved through negotiated pleas, the right of victims to be heard by judges before a plea is accepted is essential to meaningful participation in the justice process.

In sentencing proceedings, convicted offenders traditionally have been given the right of allocution, while their victims have not. While all jurisdictions have adopted rights for victim input, not all states permit allocution, an oral statement provided in court by the victim or his or her representative. In addition, the right of victims to provide impact statements has not been extended to all victims, including those in the juvenile justice

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system. These shortfalls in existing laws must be corrected.

States should consider adopting the use of vertical impact statements and include them in criminal and juvenile case files at the outset. When necessary, victims should be allowed to update these statements to record the impact of victimization as time passes. While the right to be heard at sentencing is well-established, statutes allowing victim input at other stages of the justice process are just now gaining prominence. A few states provide that victims may make a written statement at the outset of the case; the statement then remains in the file for the court's consideration throughout the criminal justice proceedings. Victims should also have the right to submit audio- or videotaped statements, or statements via teleconferencing, particularly in parole and other postsentencing hearings, when appearing in criminal or juvenile justice proceedings would create a physical, emotional, or financial hardship for victims or put their safety at risk.

**Victims and witnesses of crime should have the right to reasonable protection, including protection from intimidation. The safety of victims and witnesses should be considered in determining whether offenders should be released from custody prior to completing their full sentence.**

The right to protection from intimidation, harassment, and retaliation by offenders and the accused is becoming a major focus of public and law enforcement attention. Justice officials report an increase in the harassment and intimidation of witnesses, making it increasingly difficult to obtain convictions because crime victims and witnesses are afraid to testify.<sup>63</sup> Legislatures have attempted to address this problem by mandating "no contact" orders as a condition of pretrial or posttrial release. In addition, victims' bills of rights generally require victims to be notified at the outset of the judicial process about legal action they can take to protect themselves from harassment and intimidation.

Harassment or intimidation of a victim or witness by a defendant or convicted offender should result in automatic revocation of pretrial or supervised posttrial release, and should be considered an aggravating factor in sentencing. Such violations should be charged and prosecuted under relevant antiharassment, intimidation, and stalking laws. Any punishment imposed for the separate crime of intimidation should run consecutively after the sanction for the original crime. All protective orders, including those issued as a condition of release, should be maintained in a central, automated database that can be accessed by law enforcement and other justice officials throughout the country. Violations of protective orders should be taken seriously, swiftly sanctioned, and enforced not only within states but across state

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*The vision of America died at 9:02 a.m., April 19, 1995. Everyone feels so personally violated here. We have a single mission. The goal is to go from victim to survivor.*

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Jim Horn, FBI Agent, Retired  
Behavioral Sciences Unit, Quantico, Virginia  
Comments following the  
Alfred P. Murrah Federal Building bombing,  
Oklahoma City, Oklahoma

lines in accordance with current federal law.

Courts must have clear authority to detain defendants whose danger to victims or others cannot be controlled adequately by other means. Retaliation against a victim or witness when an offender is sentenced to probation or released on parole should result in revocation of that release.

States should also increase security in the courthouse to reduce the likelihood of violence when offenders and victims come into contact before, during, and after justice proceedings. Waiting areas for victims should be separate from those for defendants. Victim awareness education should be required for corrections, parole, and probation officials to increase their understanding of the dangers victims face and to help them communicate with victims about their concerns for safety.

These needs have been met in varying degrees by the states. Many states have enacted laws requiring

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orts to establish separate and are waiting areas to protect witnesses and victims waiting to testify from contact with a defendant or his family and friends.<sup>64</sup> Many states have established specific offenses for the harassment of victims and witnesses<sup>65</sup> and made harassment grounds for bail revocation and reincarceration.<sup>66</sup> Some state legislatures have provided that victims need not submit to defense counsel requests for interviews or contact prior to trial.<sup>67</sup> At least 30 states have taken steps to limit or control face-to-face confrontations at parole hearings by holding separate proceedings for offenders and victims, permitting victims to testify outside the presence of the offender, including outside the prison setting, teleconferencing offenders into parole hearings at which only parole officials and the victim are present.<sup>68</sup>

### **VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #7**

**Orders of full restitution for crime victims should be mandatory. Restitution orders should be automatically entered as civil judgments at the end of the offender's supervisory period if not paid. Alternatively, legislation could be enacted giving judges and paroling authorities jurisdiction for enforcing restitution orders until they are fully paid.**

Restitution is one of the most significant factors influencing victim satisfaction with the criminal justice process.<sup>69</sup> While restitution has

always been available via statute or common law, it remains one of the most underutilized means of providing crime victims with a measurable degree of justice. In part, this neglect led the President's 1982 Task Force to call for mandatory restitution in all criminal cases unless the presiding judge can offer compelling reasons why restitution should not be ordered.<sup>70</sup> More than half of the states (29) passed laws in response to this recommendation by the end of 1995.<sup>71</sup> The exceptions permitted in state restitution laws vary considerably from state to state. South Carolina's statute requires that "compelling and substantial" reason be given for not ordering restitution, while courts in West Virginia need only show that restitution would be impracticable.<sup>72</sup> In 1996, Congress made restitution mandatory in federal criminal cases involving violent crimes with the enactment of the Mandatory Victim Restitution Act, Title II of the Antiterrorism and Effective Death Penalty Act.<sup>73</sup>

Historically, only persons who have suffered physical injury or financial loss as a direct result of crime have been eligible to receive restitution for out-of-pocket expenses. But as restitution statutes have evolved, definitions of who qualifies and the losses covered have broadened. Today, in some states, family members, victims' estates, and victim service agencies and private organizations that provide assistance to victims are eligible for restitution.<sup>74</sup> Definitions for compensable losses under state restitution laws

have broadened as well. They now include the costs of psychological treatment, sexual assault exams, HIV testing, and occupational or rehabilitative therapy, as well as lost profits, moving and meal expenses, case-related travel expenses, and burial expenses.

Judges should be encouraged to order full restitution, which can be more effectively enforced through recent legislative innovations. Offenders who willfully fail to pay risk being held in contempt, imprisoned, or having their parole or probation extended or revoked. In some states, authorities are authorized to seize financial assets and property to satisfy restitution orders. Other states allow restitution orders to be enforced as civil judgments at the time of the order or at the end of the offender's supervisory period. During incarceration, prison wages, inheritances, federal and state income tax refunds, and lottery winnings should be automatically attachable. Moreover, probation and parole officials must be provided the motivation and means to administer restitution collection, and both must play an active role in enforcing orders when offenders refuse to pay. (For more information on restitution, see Chapter 15.)

### **VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #8**

**Victims should have the right to disposition of proceedings free from unreasonable delay.**

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One of the greatest hardships victims endure in the criminal justice process is the delay of scheduled proceedings. Just as defendants have the right to a speedy trial, so too should crime victims. Repeated continuances cause serious hardships and trauma for victims as they review and relive their victimization in preparation for trial, only to find the case has been postponed. Delays are sometimes used as a defense tactic. As a case drags on, witnesses move away, die, give up in frustration, or lose clear recollections of the facts. The impact of continuances is particularly difficult for victims whose memories may fade over time or whose health may deteriorate.

The schedule and concerns of victims should be taken into consideration by judges before they grant continuances. A disposition free from unreasonable delay helps to ensure that victims as well as defendants receive speedy trials and that the impact of delay on victims is considered by judges in response to requests for continuances. Several states have already adopted such standards as law. As of 1996, 12 states gave crime victims a constitutional right to a speedy trial or prompt disposition of proceedings. At least 13 others have enacted statutes to give victims such a right or to ensure that their interests are considered in rulings on continuances.<sup>75</sup>

**All crime victims should have the right to a full range of services and support to help them recover physically, psychologically, and in practical ways from the effects of crime, whether or not they report the crime or become involved in related criminal prosecutions or juvenile adjudications.**

In the aftermath of victimization, victims may have many different needs. Victims who report crime need information, assistance and protection when they choose to participate in the criminal and juvenile justice process. Not only should victims have the right to be heard or consulted in decisions that affect them, but they should receive protection if they are witnesses and transportation to and from legal proceedings.

Victims respond differently to their experiences. Some victims may be reluctant or unwilling to report the crimes committed against them and may fear involvement in the justice system. For example, some battered women may be too frightened to report violent incidents to the police. Sexual assault victims fear the loss of privacy in coming forward to report the crime. Other victims distrust law enforcement agencies, and immigrants who become victims sometimes fear deportation.

Regardless of whether they report the crime, many victims need emergency and ongoing services such as health care, shelter, lock

replacement, cash assistance, social and community services and support, mental health counseling, victim compensation, child care services, referrals to support groups, translators, and transportation. Chapters 6 and 14 address these issues in greater detail.

**Crime victims should have fundamental rights that are enforced in all juvenile justice proceedings.**

Traditionally, juvenile justice systems have been cloaked in secrecy. Victims have had limited rights within those systems, which were designed years ago to protect the confidentiality of juvenile offenders. Although some state victims' bills of rights and constitutional amendments include rights for victims of juvenile offenders, most states have extended only selected rights to these victims. Moreover, victims' rights enacted on the federal level do not apply to victims of juvenile offenders. The participation of victims in juvenile justice proceedings is important because it recognizes the impact of the crime on victims and encourages young offenders to consider the personal impact of their offenses. Putting a human face on the results of their destructive behavior helps offenders take responsibility for their actions and deters future crime.

The rights of victims of juvenile offenders should mirror the rights of victims of adult offenders. Victims

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of juvenile offenders should receive information and notification about the status of the case and the offender from the point of arrest through the juvenile corrections system. Victims of juvenile offenders are frustrated by their chronic inability to access vital information about their case due to confidentiality restrictions. Confidentiality protections for juvenile offenders which preclude victims from receiving vital information must be lifted.

Victims of juvenile offenders should have the right to provide input through victim impact statements. While all states now allow victim impact statements at sentencing in the criminal justice system, only 28 states had extended this right to victims of juvenile offenders as of 1995.<sup>76</sup> Without victim impact information, the financial, physical, and emotional injuries of crime cannot be considered when determining adequate restitution or appropriate sentencing.

Victims of juvenile offenders should have the right to restitution, and states should aggressively pursue collection and disbursement of such awards. Restitution is underutilized for victims of juvenile offenders. Restitution has two important benefits. It compensates the victim for losses suffered as a result of the juvenile's behavior, and it holds the juvenile accountable for the damages he or she has caused. Forty-six states have statutory authority to order juvenile offenders to pay restitution.<sup>77</sup> Some states make juveniles and their parents jointly responsible for damages in a

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*Why are there laws if they only protect the criminal?*

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A crime victim

civil action or restitution. The majority of the statutes place limits on the amount of damages or restitution that can be ordered.<sup>78</sup> Nonetheless, this important right is underutilized. A 1991 nationwide study found that only 17 states collect restitution from juvenile offenders, and only 13 state juvenile corrections agencies disperse the restitution to victims.<sup>79</sup>

Finally, victims of juvenile offenders should have the same right to reasonable protection they would have enjoyed had the offender in their case been older. Half of the states give victims of adult offenders the right to be reasonably protected from the offender during the criminal justice process, while this right in most cases is not extended to victims of juvenile offenders. Given the increase in violent crimes by juveniles,<sup>80</sup> the need for protection is plainly present.

**All criminal and juvenile justice agencies, including courts, as well as victim assistance programs, should help ensure that victims receive information about their rights in a form they understand.**

Justice system and allied professionals who come into contact with

victims should provide an explanation of their rights and provide written information describing victims' rights and the services available to them. Furthermore, rights and services should be explained again at a later time if the victim initially is too traumatized to focus on the details of the information being provided. Explanations of rights and services should be reiterated by all justice personnel and victim service providers who interact with the victim.

To provide this critical information, justice and allied professionals need specialized training on the most effective communication techniques to use with victims, including child and elderly victims, victims who do not speak English, victims from diverse cultures, and victims with disabilities, including those who are blind or deaf or who have cognitive or developmental disabilities. Brochures describing victims' rights and services should be developed in the languages used by crime victims in each community, and all brochures and critical victim information written in English should include a sentence offering the literature in other languages as needed. Special provisions should be made for communicating with victims who are blind or visually impaired using audiotapes, special computer disks, Braille, or other communication technologies. Service providers should be trained to use sign language interpreters and TDD technology to communicate with victims who are deaf or hard of hearing.

## **VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD**

**Victims of crime should receive assistance in exercising their participatory rights. Advocates should be available to explain rights to victims, help them to exercise those rights and, when necessary, serve as their representatives in court and other key justice processes when victims are underage or incapacitated or if representation is otherwise appropriate.**

One of the greatest barriers to victims participating in justice proceedings is their not having the means to do so. Many victims cannot afford to pay for parking, child care, or time off from work. Others do not have the resources to cover transportation costs to courts, especially if the trial or hearing is held outside their community. In these cases, every effort should be made to facilitate victim participation by providing special services such as child care, or paying for transportation and lodging expenses. For example, in the Alfred P. Murrah Federal Building bombing cases, government and non-profit agencies and the private sector formed a partnership to provide funding for victim travel expenses after the trial was moved from Oklahoma City to Denver, Colorado in 1997. In addition, the court in Denver set up a closed-circuit television communication in Oklahoma City to allow victims there to view the proceedings in Denver. New uses of technology

should be considered to provide access to trials and other proceedings for victims who are physically unable to attend them. Furthermore, more consideration must be given to the tremendous diversity among victims in the design and delivery of victim services.

## **VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD**

**States should review their victims' rights statutes and constitutional amendments to determine if fundamental rights are extended to all crime victims.**

Victims' rights in many states apply only to a special "class" of crime victims—victims of felonies. Many serious domestic violence and drunk driving cases prosecuted as misdemeanors are thus not covered by victims' rights statutes. States should consider extending victims' rights in all cases, regardless of their classification as felony or misdemeanor or violent or nonviolent.

## **VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD**

**States that have not already done so should adopt truth in sentencing reforms to ensure that victims know how long offenders will actually be incarcerated.**

Under traditional sentencing practices in most jurisdictions, release dates for offenders were set by parole authorities, and the actual periods of incarceration served by

offenders had little relationship to the prison terms specified in criminal sentences. In recent years, many jurisdictions have adopted truth in sentencing reforms to limit or abolish parole and to make the time an offender serves more predictable. In federal cases, for example, parole has been abolished and "good time" credits are limited to 15 percent of sentences, forcing federal offenders to serve at least 85 percent of the sentence imposed in court.<sup>11</sup>

In addition to furthering penal objectives, truth in sentencing reforms serve important interests of victims. Victims as well as the public are entitled to know how long an offender will actually be incarcerated. Victims should not be burdened with the anxiety that offenders will be released prematurely, compelling them to appear repeatedly at postconviction hearings.

## **VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD**

**Federal and state laws should prohibit employers from taking adverse action against victims who must miss work to participate in the criminal or juvenile justice process.**

In his statement endorsing a Victims' Rights Constitutional Amendment on June 25, 1996, President Clinton indicated that "[t]here ought to be . . . in every law, federal and state, a protection for victims who participate in the criminal justice process not to be discriminated against on the job because they have to take

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*It is essential to recognize the impact of crime on a neighborhood and to give residents the information and means to get involved.*

United States Attorney  
Thomas Schneider,  
Eastern District of Wisconsin

time off. That protection today is accorded to jury members; it certainly ought to extend to people who are victims who need to be in the criminal justice process." Without this protection, many workers cannot exercise their fundamental right to participate in justice proceedings. All jurisdictions should adopt the reform proposed by the President, and it should be codified into federal law.

While protections for jurors are limited, victims should have, at minimum, the same levels of protections as jury members. To the extent possible, employers should be required to work with employees and their unions to ensure that victims maintain their employment after absences due to attendance at criminal and juvenile justice proceedings. Victims should continue to receive salaries or wages, reduced by any witness fees received, for a designated period of time. Afterwards, they should be able to use vacation and sick leave. In addition, judges should be encouraged to take employment concerns of victims and their employers into consideration when scheduling proceedings.

**VICTIMS RIGHTS RECOMMENDATION FOR HIV TESTING**

**In cases where there is good cause to believe that bodily fluids were exchanged, victims should have the right to be tested and to have the accused or convicted offender tested at appropriate times for the HIV virus and sexually transmitted diseases. State statutes should require these tests to be conducted by specially trained personnel who can advise victims of the reliability, limitations, and significance of the test, as well as HIV treatment options. In addition, laws should specify the agency that will pay for HIV testing and pre- and posttest counseling, as well as treatment for any victims who test positive.**

According to the National Victim Center, as of the end of the 1995 legislative session, 44 states had adopted laws providing mandatory testing of sexual offenders in cases involving sexual penetration or other exposure to an offender's bodily fluids. Of those, 16 make testing mandatory before conviction, and 33 require testing after. Six states make testing mandatory both before and after conviction. Twenty-six states have a mandatory testing law that applies to juvenile offenders.<sup>62</sup> In 1990, the Federal Government passed legislation making HIV testing of convicted sexual assault offenders mandatory for states to be eligible for certain prison grants.<sup>63</sup> The Violent Crime Control and Law Enforcement Act of 1994 gives Federal victims of sexual assault the

right to obtain an order requiring the defendant to submit to an HIV test, and to obtain the results of that test.<sup>64</sup> It also provides for follow-up testing and counseling.

Typically, pretrial testing of defendants is left to the discretion of the court, which must find that there has been significant exposure and that the health and safety of the victim may be threatened. The court is required to hold a hearing, during which the victim must show that the defendant has been charged with a sexual offense and that the test would provide information necessary to protect the health of the victim and his/her partner(s). Some statutes permit a series of tests at 6-month intervals for up to 2 years to detect viruses that do not show up on initial tests.

When victims have possibly been exposed to HIV, they should be referred to an anonymous testing site that uses the most advanced technologies, guarantees maximum reliability of test results, and provides pre- and posttest counseling regarding transmission of the virus and the testing process. If after receiving pretest counseling the victim wants to determine the offender's HIV status, the offender should be tested as soon as possible, including prior to conviction, with a second test at least 3 months later. Regardless of the decision to test the offender or the test results, victims should be encouraged to be tested to determine their HIV status. Although testing the offender may be important to the victim, it should be emphasized that testing the

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offender does not replace focusing on the victim's medical and emotional needs. Testing the victim in the immediate aftermath of a victimization will only provide information about the victim's HIV status prior to the crime. If a victim was exposed to HIV during the crime, testing 1 month and then 3 months after the event (or at other times recommended by health authorities) will provide a clearer indication of whether the virus was transmitted by the crime. While there is a relatively low risk of transmission, victims who test positive should be given access to free FDA approved medical treatments of their choice.

Counseling is an essential part of responding to the risk of HIV transmission in a crime. Victims may not understand the latency of the disease, and may not fully appreciate the limited reliability of a negative test result. States frequently require counseling in conjunction with testing, but specifications vary widely from jurisdiction to jurisdiction. In some states, counseling must be provided contemporaneously with the test, as in Maine, where counseling must discuss the nature, reliability, and significance of the test, as well as its confidential nature.<sup>85</sup> In contrast, other states such as Michigan simply require that the agency notifying the victim of the results of the test also refer the victim to counseling.<sup>86</sup> Oklahoma specifies that the victim receive counseling before and after the test.<sup>87</sup> Florida requires the testing agency to afford "immediate opportunity for face-to-face counseling" when the

results are revealed to the victim.<sup>88</sup> In some states, the statute fails to provide for counseling.

Most laws require confidentiality of test results, but advocates still report problems with insurance companies that, upon learning of the victim's HIV test or results, raise health insurance premiums or cancel the victim's policy altogether. Minnesota has enacted a law to prohibit such practices.<sup>89</sup> Wisconsin's law provides that the results of a test ordered by the court will not become part of a person's permanent medical record. States should enact legislation to protect victims from such practices.

**State and federal laws should allow, and criminal and juvenile justice agencies should facilitate, community impact statements as a means for members of a neighborhood or community that has been impacted by crime to have input into sentencing.**

In many cases, neighborhoods and communities as well as individuals are victims of crime. This is especially true in drug, gang, and prostitution cases where criminal activity endangers and degrades entire neighborhoods, affecting property values and quality of life issues. A few prosecutors have pioneered the use of community impact statements, which are, in effect, an expanded version of the victim impact statement. For example, as noted in Chapter 3, the

*From tribal police intervention to tribal court proceedings, the victims of violent crime in Indian country must have rights available to them. They must be informed of their rights, encouraged to exercise their rights, and be protected from further harm. This is the basic responsibility of a tribal criminal justice system.*

Joseph Myers, Executive Director,  
National Indian Justice Center

District Attorney for Milwaukee, Wisconsin and the United States Attorney for the Eastern District of Wisconsin notify members of the community when drug arrests are made and encourage them to become involved in the criminal proceedings by submitting impact statements. These offices inform residents in affected neighborhoods of arrests and trial dates and coordinate outreach efforts in concert with probation agencies to help them prepare their statements. To encourage this important type of participation in criminal justice proceedings, both state and federal laws should recognize communities as victims and permit this form of input.

**Victims should have standing to enforce their rights, and sanctions should be applied to criminal and juvenile justice professionals who deny victims their fundamental rights.**

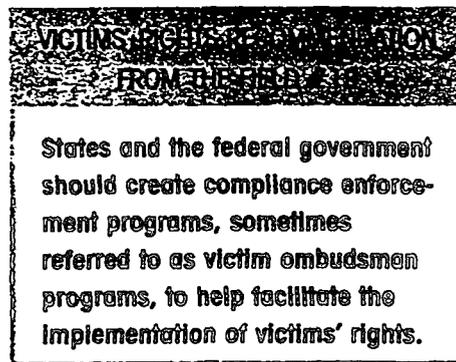
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Although more than 27,000 state and federal laws have been enacted to protect and enforce the interests, rights, and services for crime victims, the *consistent* implementation and enforcement of these laws is an area of great concern. Victims report that criminal and juvenile justice officials at times disregard their statutory and constitutional rights, and that they have no legal recourse when their rights are violated. States should enact provisions that give victims measures to enforce their rights when they are disregarded.

While limited legal remedies such as court-ordered injunctions and writs of mandamus are generally available to force criminal justice personnel to comply with the law, states are beginning to pass laws that provide specific statutory remedies and recourse for crime victims. A Maryland statute enables victims of violent crimes to apply for "leave to appeal" any final order that denies victims certain basic rights.<sup>90</sup> Arizona law grants victims the right to challenge postconviction release decisions resulting from hearings at which they were denied the opportunity to receive notice, attend, or be heard. Arizona law allows victims to sue for money damages any government entity responsible for the "intentional, knowing or grossly negligent violation" of the victims' rights.<sup>91</sup>

It is critical that effective measures be available to remedy violations of victims' rights, including authority for the government to obtain redress through applications for mandamus

and appeal. The need for this reform in federal proceedings is illustrated by the first trial in the bombing of the Alfred P. Murrah Federal Building, in which the trial court ruled that victims would not be allowed to attend the trial if they wished to be heard at the sentencing stage. On review, the Tenth Circuit Court of Appeals held that victims had no standing to assert their right to be present and that the government could not enforce that right by appeal or by seeking a mandatory order.<sup>92</sup>



State victims' rights compliance enforcement programs oversee justice officials' and agencies' compliance with crime victims' statutory and constitutional rights and investigate crime victim complaints relevant to those rights being violated.<sup>93</sup> A few states have created such programs within an existing agency or have established a new, state-level oversight authority. In initiating such a program, officials should consider the importance of meaningful remedies and sanctions for noncompliance with victims' rights laws; and ensure that victims, victim service providers, advocacy groups, and victim-sensitive justice professionals are involved in the program planning process. In addition, justice

agencies should consider increasing crime or court surcharges to support a compliance enforcement functions, and should evaluate overall compliance enforcement system.

Innovative approaches to victims' rights oversight have been implemented in several states:

- The Minnesota Office of the Crime Victims Ombudsman (OCVO) protects the rights of victims by investigating statutory violations of victims' rights laws and mistreatment by criminal justice practitioners. OCVO is authorized to initiate its own investigation of alleged violations, recommend corrective action, and make its findings public to both the legislature and the press.
- The South Carolina Office of the Crime Victims' Ombudsman is empowered to act as a referral entity for victims in need of services, a liaison between victims and the criminal and juvenile justice systems in the course of their interaction, and a resolver of complaints made by victims against elements of those systems and against victim assistance programs. In addressing complaints, the South Carolina Ombudsman program is not limited to inquiries into violations of specific statutory rights, but may review other conduct that is potentially unfair to victims.<sup>94</sup>
- Colorado has recently enacted a state-level coordinating committee that serves an ombudsman function for victims' rights implementation.<sup>95</sup> The Colorado Victims' Compensation and Assistance Coordinating Committee and its Victims' Rights Act (VRA)

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*Fairly early in the history of the victims' movement, victim 'counselors' were taught that they also had to become victim 'advocates' if their clients were to avoid revictimization by the very institutions that were meant to help them. In time, the advocates were taught that 'case advocacy' was insufficient to ensure that the dignity of crime victims was to be respected—their rights to be heard had to be codified in law. Those who taught us these lessons include legal scholars, mental health researchers, and a host of other thoughtful academics. But most of all it was the victims themselves, against whom palpable injustices were being committed daily, who taught us that providing effective victim assistance is impossible in the absence of effective victim rights.*

John H. Stein, Deputy Director,  
National Organization for  
Victim Assistance

subcommittee help victims enforce their rights by overseeing the actions of local government agencies. The subcommittee and full coordinating committee have the power to investigate VRA violations and to recommend action with which an agency must comply to rectify victims' complaints. The two bodies also monitor the implementation of those suggestions and may refer issues of noncompliance to the governor or attorney general.<sup>98</sup>

- Wisconsin has a state-level victims' services office—the

Victim Resource Center (VRC)—which provides information and service referrals to victims and acts as a liaison between victims and criminal justice agencies in resolving complaints concerning unlawful or inappropriate agency action. Though it lacks enforcement authority, the VRC protects victims' rights by investigating complaints and presenting its recommendations for corrective action to state criminal justice officials. The Wisconsin legislature is currently debating a measure that would prescribe remedies for violations of victims' rights laws and provide for the enforcement of Wisconsin's victims' rights constitutional amendment.<sup>97</sup>

### **VICTIMS RIGHTS RECOMMENDATION FROM THE FIELD 20**

**Federal crime victims' rights should apply in military proceedings.**

The extensive range of information, notification, and participatory rights that have been enacted on the federal level should be fully implemented for victims' rights within military justice proceedings. Some victims' rights established at the federal level are not implemented in military courts. Restitution for victims is frequently ordered as part of sentences for federal crimes, but there is no authority to do so under the Uniform Code of Military Justice.<sup>98</sup> Moreover, the military justice system has failed to adopt "truth in sentencing" reforms and continues to parole offenders, a practice that generally has been abolished in

federal criminal cases. The Uniform Code of Military Justice should be amended to make restitution mandatory.

**Indian tribes should review their legislation, policies, and court systems to enhance the fundamental rights of Native American victims.**

There are 621 federally recognized tribes in the United States; each of these tribes is a separate sovereign with legislative and adjudicatory authority. There are 242 separate tribal court systems, trial and appellate, as well as numerous traditional dispute resolution forums unique to each tribal culture.<sup>99</sup> While many major crimes that occur in Indian country are prosecuted in federal or state courts, tribes retain concurrent criminal jurisdiction over Native American defendants.<sup>100</sup> Moreover, tribal courts are often the sole forum for prosecuting crimes and juvenile offenses involving child abuse and domestic violence.

Tribes should analyze and amend their laws and policies, as well as observe and change procedures of their courts, law enforcement offices, and human services agencies in order to protect and enhance the fundamental rights of Native American victims. Tribes should establish joint tribal-state and federal forums to ensure that Native American victims are not lost in the jurisdictional complications of Indian country. They should also

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their leaders, justice personnel, and community members on prevention measures and effective responses to crime in Indian country.

Notwithstanding political pressures and lack of economic resources, a number of tribes have successfully implemented crime victims' rights ordinances, mandatory arrest policies for domestic violence, safe houses, community education projects, and an array of culturally appropriate systems for protecting Native American crime victims.

Some tribes have included the rights of crime victims in their codes. For example, the Uniform Sentencing Policy of the Courts of the Navajo Nation includes the rights for victims to have input into plea agreements, proposed sentences, and retention decisions. The Salt River Pima-Maricopa Indian Community Council passed a Children's Bill of Rights, and the Crow Tribal Council developed rights for domestic violence victims that are set forth in its Domestic Abuse Code.

**Victims of crime should have rights at administrative proceedings, including the right to have a person of their choice accompany them to the proceedings, the right to input regarding the sanction, and the right to notification of the sanction.**

Agencies and institutions that seek to hold their employees or students accountable for their alleged

criminal or negligent behavior often do so through administrative proceedings, including disciplinary hearings on college campuses in sexual assault cases and other crimes that violate college rules. Governmental and private sector organizations also conduct administrative hearings when an employee is accused of misconduct, which sometimes also constitutes a criminal act. These hearings are held to determine whether an employee or student should be dismissed or sanctioned.

Victims often complain about their lack of rights and protections at these hearings. For example, at disciplinary hearings on college campuses and in schools, as well as administrative proceedings when criminal justice personnel are accused of conduct violations, victims are frequently not allowed such fundamental rights as the right to be accompanied by a person of their choice and the right to submit a victim impact statement before the offender is sanctioned. Agencies and institutions should review their disciplinary codes and ensure that fundamental victims' rights are incorporated. In addition, all cases involving criminal conduct should be referred to law enforcement for further investigation.

State laws should be strengthened to ensure that these victims receive appropriate rights. For example, California recently amended its Education Code to provide victims of sexual assault and harassment in public schools with the rights to: be accompanied by a parent or other

support person during testimony in disciplinary hearings; adequate notice prior to being called to testify; testify at a hearing closed to the public; and have evidence of irrelevant sexual history excluded.<sup>101</sup> The law also requires school districts to take further steps to provide a nonthreatening environment for child victims by adopting procedures that have become the standard across the country for children who testify as witnesses in other legal proceedings. Support for the law was initiated by the Santa Monica-UCLA Rape Treatment Center after the rape of a 12-year-old middle school student in a Los Angeles school by a fellow student. She had to face the accused attacker, his parents, and his attorney alone during an expulsion hearing.<sup>102</sup>

The *Student Right to Know Campus Security Act of 1990*,<sup>103</sup> and *The Campus Sexual Assault Victims' Bill of Rights*<sup>104</sup> passed by Congress should be fully implemented. These laws should be amended to ensure that the same rights to be informed, present, and heard in criminal proceedings apply equally to disciplinary proceedings in school settings.

Other victims whose rights are woefully overlooked are victims of mentally ill offenders whose cases are adjudicated through an involuntary mental commitment process. Where applicable, these victims should receive the same rights as other victims, including the right to receive notice of release.

**Criminal and juvenile justice agencies should establish a means of monitoring their own compliance with crime victims' rights laws and require public documentation showing that victims were provided their rights or indicating an appropriate reason why they were not. In addition, independent audits should be conducted of state and federal agency compliance with victims' rights laws.**

Criminal and juvenile justice agencies and institutions should develop and implement policies and procedures to ensure that all crime victims are afforded the opportunity to exercise their rights. Monitoring should be mandatory at all stages of the justice systems. Criminal and juvenile justice agencies should document whether or not crime victims receive notice of and an opportunity to exercise their rights and, if not, why not. Such documentation is a significant step toward holding officials accountable and will enable agencies to monitor their compliance with legal mandates.

Further information is needed about the level of state and federal compliance with victims' rights laws to determine how to improve implementation of these laws. This information should be obtained through independent audits that can evaluate levels of compliance and propose needed reforms to improve the system.

**Introductory and continuing education for all criminal and juvenile justice professionals should address victims' rights, needs, and services, and incorporate involvement from crime victims themselves.**

To increase compliance with victims' rights laws, states must make education on the rights of crime victims a priority during orientation and continuing education training programs for criminal and juvenile justice officials. Implementing victims' rights remains the responsibility of these officials. They must be educated about the importance of their victim-related responsibilities and sensitized to the critical needs of crime victims.

Training programs for law enforcement officers, prosecutors, and judges, as well as probation, parole, and corrections officials, have been developed and implemented on a broad scale through training and technical assistance grant projects funded by the Office for Victims of Crime. Some institutions responsible for educating and training these professionals are beginning to incorporate victim-related sensitivity training into their permanent curricula. In some states, such training is mandated by statute, but in others, the incorporation of victims' issues is voluntary.<sup>105</sup>

Victim input into such educational programs is critical. Victim impact panels provide a vehicle for victims to tell justice professionals firsthand about the physical, financial, and emotional impact of crime. Developed by Mothers Against Drunk Driving as an educational tool in court-ordered probation programs for DUI offenders, and for youth offenders by the California Youth Authority, they are increasingly being incorporated into numerous types of programs.<sup>106</sup> Moreover, victim sensitivity education and state-of-the-art curricula in victim issues must be included in academia in the fields of health care, medicine, psychology, social work, theology, business, law, and education.

**New funding mechanisms must be developed to support the expansion and implementation of victims' rights and services nationwide.**

Since its establishment in 1984, the Crime Victims Fund has provided more than \$2 billion to states to help implement victims' rights and services. Additional financial resources are needed at the federal, state, and local levels, however, to ensure consistent, comprehensive implementation of victim rights' laws and the provision of needed services to every crime victim.

While a federal constitutional amendment would provide the legal framework for securing victims' rights, many justice officials and

Victim advocates believe that the lack of implementation of rights is due in part to inadequate funding. In many places, a lack of funding has had the practical effect of denying victims their basic rights.

One potential new source of revenue on the federal level is funding generated under the False Claims Act, which triples the damages and penalties imposed in civil cases involving fraud against the federal government.<sup>107</sup> In past years, several hundred million dollars have been deposited into the federal Treasury from judgments rendered in these cases. A significant portion of these funds should be used to ensure that state and federal victims' rights laws are funded. In addition, provisions should be made to provide needed counseling to "whistle blowers" in these cases because they often suffer serious personal and professional consequences for reporting these crimes.

Another promising source of funding for crime victims is the Federal Racketeer Influenced and Corrupt Organizations Act, referred to as RICO.<sup>108</sup> RICO makes it a federal crime to engage in activities related to a "pattern of racketeering activity" related to the operation of any "enterprise" engaged in, or affecting, interstate commerce.<sup>109</sup> Penalties for violation of RICO include fines up to \$25,000 and prison terms up to 20 years, in addition to allowing the government to seek forfeiture proceedings against the organizations and the individuals involved in the organiza-

tions. Since the statute also specifically allows victims to bring civil suits in federal civil court for damages up to three times their actual economic damages and attorneys fees, victims (particularly victims of economic crimes such as fraud) should be made aware of their right to bring RICO actions against such offenders. Congress should also consider earmarking RICO fines and forfeitures to benefit crime victims in the same manner as most other federal criminal fines.

States depend on a variety of sources to fund victim assistance programs, and they must communicate more with each other about which strategies have been most successful. Sources of funding include following the VOCA funding formula of criminal fines and penalty assessments; using a portion of license fees such as fees for marriage licenses; incorporating checkoff boxes for donations to victim services on tax forms; inmate fund raisers; dedicating special, one-time legislative appropriations; and incorporating victim services funding into the annual legislative appropriations process.

More than half of the states impose some type of additional penalty assessment or cost as a condition of an offender's sentence to be used to provide funding for general victim services and assistance. Some states attach a nominal \$5 or \$10 court fee in all cases.<sup>110</sup> Other states take into consideration the severity of the offense or the offender's age, and establish enhanced assessments in

relation to such factors.<sup>111</sup> Another group of states bases offender penalties on the other court-imposed fines and penalties, adding on a certain percentage of the fine and/or penalty as a type of surcharge.<sup>112</sup> Still other states use a combination of approaches.<sup>113</sup>

In most states, license fees are used for a specific type of service as opposed to general victim assistance. The most prominent of these are fees attached to marriage licenses which generally are used to fund domestic violence shelters and programs.<sup>114</sup> In other instances, the additional fees for marriage licenses or birth certificates are used for funding of child abuse treatment and prevention.<sup>115</sup> A number of states include income tax designations as an income source for children's trust funds which provide services to abused or neglected children.<sup>116</sup> Michigan estimates the costs of providing crime victims' rights services as well as the estimated revenue available for such services. The legislature is then notified to determine whether an appropriation should be requested.<sup>117</sup>

In Missouri, a special appropriation in 1996 financed the construction of shelters for battered women across the state. Oregon takes a percentage of punitive damages off the top of civil suits to fund victim compensation and assistance programs. States are also exploring creative funding mechanisms such as tapping into lottery money, taxes on tourism, and fees for hunting, gaming, and liquor licenses.

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In a survey of state VOCA administrators conducted for this report, a majority responded that establishing a stable, predictable funding base for victims' services was one of the greatest challenges to implementing comprehensive victims' services. Collections under VOCA have been unusually high in the past two years; however, since collections may fluctuate in future years, states must expand their sources of funding to protect and expand the remarkable advances for crime victims made in the past two decades.

On the local level, communities also must begin to fund victim assistance programs. Voters in Washtenaw County, Michigan were the first in the nation to approve a special one-time millage or tax to build and provide funding for a countywide domestic violence shelter. In some communities such as Maricopa County, Arizona, and San Diego, California, private foundations have been established to provide financial compensation to victims as well as to support local victim service programs.

In other communities victim services funds are designated as an "untouchable" portion of the city's budget. In Jacksonville, Florida, city funds are combined with state and federal funds to support a comprehensive victim services center. Local annual funding for the center is currently about \$900,000. It includes all of the profits from the county prison's canteen. Center staff screen 2,300 police reports monthly for appropriate outreach and work with 1,400 victims each month,

providing a wide range of services. The philosophy of Jacksonville's approach is to establish crime victim services in such a way that victim assistance becomes an essential part of the infrastructure of the community, not an afterthought funded through sporadic or discretionary funding mechanisms.

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## Endnotes

- 1 National Organization for Victim Assistance, *1988 NOVA Legislative Directory*, Washington, D.C.: National Organization for Victim Assistance, 1988:191.
  - 2 *Victim Witness Protection Act of 1982*, Pub. L. No. 97-291, § 4, 96 Stat. 1249 (codified at 18 U.S.C. §§ 1512-1515; Fed. R. Crim. P. 32); President's Task Force on Victims of Crime, *Final Report*, Washington, D.C.: U.S. Government Printing Office, December 1982.
  - 3 Office of Justice Programs, *President's Task Force on Victims of Crime: Four Years Later*, Washington, D.C.: U.S. Government Printing Office, May 1986:4.
  - 4 As of November 1997, victims' rights constitutional amendments have been ratified by voters in the following 29 states: AL, AK, AZ, CA, CO, CT, FL, ID, IL, IN, KS, MD, MI, MO, NE, NV, NJ, NM, NC, OH, OK, OR, RI, SC, TX, UT, VA, WA, and WI.
  - 5 The National Victim Center's Legislative Tracking Database Project has collected, as of May 1996, more than 27,000 federal and state statutes related to the rights and interests of crime victims. The Center utilizes nearly 1,000 victim issue categories and subcategories to catalog the statutes.
  - 6 National Victim Center, *1996 Victims' Rights Sourcebook: A Compilation and Comparison of Victims Rights Laws*, Arlington, VA: National Victim Center, 1997:§ 9 (hereinafter *1996 Victims' Rights Sourcebook*). As of 1995, the following states provide victims a right to attend most criminal justice proceedings: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, LA, MA, MI, MS, MO, NH, NJ, NM, OH, OK, SC, SD, TX, UT, VA, WA, WI. In November 1996, North Carolina, Oregon and Nevada passed constitutional amendments that, for the first time, guaranteed such access to victims. N.C. CONST., art. I, § 37(1)(a); OR. CONST., art. 1, § (1); NEV. CONST., art. 1, § 8(b). In addition, at the same time, Connecticut, Oklahoma, and South Carolina elevated to constitutional level rights of access previously provided by statute. CONN. CONST., art. 17(b); OKLA. CONST., art. II, § 34(A); S.C. CONST., art. I, § 24(A).
  - 7 *Id.* States providing for oral testimony or a statement by the victim at a sentencing hearing are: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, IL, IN, KS, LA, ME, MD, MA, MI, MN, MO, MT, NB, NV, NH, NJ, NY, ND, OH, OK, OR, RI, SC, SD, TN, WV, UT, VT, WA, WI, WY.
  - 8 *Id.* at § 9 (Table 9-B).
  - 9 Violence Against Women Grants Office, *Domestic Violence and Stalking: The Second Annual Report to Congress*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Violence Against Women Grants Office, July 1997 :15
  - 10 Szymanski, L., *Rights of Victims of Juvenile Crimes Statutes Analysis, 1993 Update*, National Center for Juvenile Justice, 1994:1-9. See also National Victim Center, *1996 Victims' Rights Sourcebook*, § 13 (discussions of victims' rights at the juvenile level).
  - 11 See generally, Beatty, D., S. Howley, and D. Kilpatrick, *Statutory and Constitutional Protection of Victims' Rights: Implementation and Impact on Crime Victims, Sub-Report: Crime Victim Responses Regarding Victims' Rights*, Arlington, VA: National Victim Center, 1997.
  - 12 *Victim Witness Protection Act of 1982*, Pub. L. No. 97-291, § 4, 96 Stat. 1249 (codified at 18 U.S.C. §§ 1512-1515; Fed. R. Crim. P. 32); President's Task Force on Victims of Crime, *Final Report*.
  - 13 *Id.* at § 2(b), reprinted at 18 U.S.C. § 1512.
  - 14 U.S. Department of Justice, *Guidelines for Victim and Witness Assistance*, Washington, D.C.: U.S. Department of Justice, Office of the Attorney General, 1983. These Guidelines have been revised several times, and between 1983 and 1995, the title was changed to *Attorney General Guidelines for Victim and Witness Assistance*. The *Guidelines* will be revised and reissued in fiscal year 1998.
- Crime Control Act of 1990*, Pub. L. No. 101-647, Title V, §§ 502-503, 104 Stat. 4820 (codified at 42 U.S.C. §§ 10606-10607 (1990)).

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- 16 42 U.S.C. § 10606(a); U.S. Department of Justice, *Attorney General Guidelines for Victim and Witness Assistance*, Washington, D.C.: U.S. Department of Justice, Office of the Attorney General, 1995:2,5 (hereinafter *1995 A.G. Guidelines*).
- 17 *Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. No. 103-322, Title IV, §§ 40113, 40221, 40503; Title XXV, § 250002(a)(2); Title XXIII, § 230101(b), 108 Stat. 1904-2078 (codified at 42 U.S.C. §10607(c)(7), 14011(b); 18 U.S.C. §§2263-2264, 2248, 2259 and at Fed. R. Crim. P 32 (1994)).
- 18 Megan's Law amendment to the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Act, 42 U.S.C. §14071.
- 19 18 U.S.C. §2261A.
- 20 President's Task Force on Victims of Crime, *Final Report*, 114-115.
- 21 For further information, see "Constitutional Amendments for Crime Victims" by J. H. Stein, available from the National Organization for Victim Assistance in Washington, D.C. NVCAN was created following a meeting sponsored by the National Organization for Victim Assistance (NOVA) and Mothers Against Drunk Driving (MADD) in 1985. Robert Preston, president of the Florida-based Justice for Surviving Victims forcefully advocated that the group support the Task Force recommendation for a victims' rights amendment to the federal constitution. The coalition has grown to include many other victims, advocates, elected officials, and others from local, state, and national groups that represent all types of criminal victimization.
- 22 This information has been compiled by the National Victims' Constitutional Amendment Network, (NVCAN) and the National Victim Center and appears in NVCAN's 1996 *Constitutional Amendment Action Kit*.
- 23 President's Task Force on Victims of Crime, *Final Report*, 51.
- 24 *Id.*
- 25 Bourque, B., and R. Cronin, *Helping Victims and Witnesses in the Juvenile Justice System: A Program Handbook*, American Institutes for Research, Office of Juvenile Justice and Delinquency Prevention, April 1991.
- 26 Since the release of the report in 1982, the number of crimes committed by juveniles skyrocketed between 1985 and 1994, and juvenile crime became much more violent. Between those years, murder arrests of juveniles increased 150 percent, robbery arrests of juveniles increased by 57 percent, and aggravated assault arrests of juveniles increased by 97 percent. Snyder, H. ET AL., *Juvenile Offenders and Victims: 1996 Update on Violence: Statistics Summary*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, February 1996:12 (report prepared by the National Center for Juvenile Justice, National Council of Juvenile and Family Court Judges). Crimes committed by juveniles against juveniles is also a growing concern. In 1992, 1.5 million violent crimes were committed against juveniles aged 12 to 17, a 23 percent increase in just 5 years. Moone, J., *Juvenile Victimization: 1987-1992*, Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, June 1994:1. However, in 1995, violent juvenile crime arrests—contrary to predictions—declined by three percent. In relative terms this decline was small, but the nature of the decline gives hope for the future. The decline in juvenile murders in 1995 was mostly in gun-related murders by African-American males. "What's Behind the Recent Drop in Juvenile Violent Crime?" *Juvenile Justice*, Volume III, Number 2, Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, September 1997.
- 27 National Victim Center, *1996 Victims' Rights Sourcebook*, § 13 (Table 13-A, Victims' Rights at the Juvenile Level). As of 1996, only Arkansas, Nebraska, North Dakota, South Dakota and the District of Columbia do not allow the court to order restitution from juvenile offenders.
- 28 *Id.*

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- 28
- 29
- 30 *Id.*
- 31 *Id.*
- 32 *Id.*
- 33 *Id.*; TEX. JUV. JUS. CODE ANN. § 57.002 (2) (West).
- 34 *National Victim Center Legislative Tracking Database Project*, §13. As of 1995, the constitutions of Alaska, Idaho and Missouri provide rights for victims of juvenile offenders; the constitutions of Arizona and Utah permit the legislature to extend the rights to juvenile proceedings. In addition, in November 1996, the constitutions of Oregon and South Carolina were amended to provide rights to victims at the juvenile level. OR. CONST., art. 1, § 1(1); S.C. CONST., art. 1, § 24(A)(1). Moreover, the constitution of Oklahoma was amended to authorize the legislature to extend the rights to juvenile proceedings. OKLA. CONST., art. 2, § 34(C) (amended 1996).
- 35 Bourque, B. and R. Crosin, *Helping Victims and Witnesses in the Juvenile Justice System: A Program Handbook*, Washington, D.C.: Office of Justice Programs, Office of Juvenile Justice and Delinquency Programs 1991.
- 36 Seymour, A. and S. English, *Report and Recommendations on Victims of Juvenile Crime*, American Correctional Association Victims Committee, 1994:17-18.
- 37 Coordinating Council on Juvenile Justice and Delinquency Prevention, *Combating Violence and Delinquency: The National Juvenile Justice Action Plan - Report*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, March 1996.
- 38 National Victim Center, *1996 Victims' Rights Sourcebook*, §13.
- 39 August 1996, Keynote address, annual conference of the National Organization for Victim Assistance, Tulsa, Oklahoma.
- 40 Among victim groups and criminal justice and other allies endorsing a Victims' Rights Constitutional Amendment as of November, 1997, are: Association of Traumatic Stress Specialists, Concerns of Police Survivors (COPS), Mothers Against Drunk Driving, National Association of Crime Victim Compensation Boards, National Center for Missing and Exploited Children, National Coalition Against Sexual Assault, National Organization for Victim Assistance, National Victim Center, Neighbors Who Care, Parents of Murdered Children, Security on Campus, Victim Assistance Legal Organization, American Correctional Association, the Victims' Committee of the International Association of Chiefs of Police, the National Criminal Justice Association, and the National Governors Association. Victim groups and other national organizations that have expressed opposition to a federal crime victims' rights amendment include: the American Civil Liberties Union, Murder Victims Families for Reconciliation, the NOW Legal Defense and Education Fund, the National Clearinghouse for the Defense of Battered Women, National Network to End Domestic Violence, and the National Legal Aid and Defender Association. The Criminal Law Committee of the Judicial Conference of the United States and the Conference of Chief Justices have expressed concerns.
- 41 Beatty, D., S. Howley, and D. Kilpatrick, *Statutory and Constitutional Protection of Victims' Rights: Implementation and Impact on Crime Victims, Sub-Report: Crime Victim Responses Regarding Victims' Rights*, Arlington, VA: National Victim Center, 1997.
- 42 *Id.*
- 43 *Id.*
- 44 *Id.*

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- 45 GA. CODE ANN. § 16-5-93 (1993).
- 46 ARK. R. EVID. 616 (right to be present); ALA. R. EVID. 615 (exception to witness exclusion rule for victims); OR. R. EVID. 615 (same).
- 47 ARIZ. REV. STAT. ANN. § 13-4420; MO. CONST., Art. 1, § 32.
- 48 ALA. CODE § 15-14-54; ILL. COMP. STAT. ANN. § 725-120/4(5); S.D. CODIFIED LAWS § 23A-24-7.
- 49 ALA. CODE §§ 15-14-51 to -57 (victim has right to be present and to sit at prosecutor's table). Maryland has also attempted to extend the victim's right to attend to include "attendance" by the homicide victim through an "in life" photograph at the trial of the defendant. This extension is under consideration in the Maryland courts. See *Maryland v. Broberg*, No. 95-22, (Ct. App. Md.)
- 50 As of 1995, 29 states required the prosecutor to consult with the victim or obtain the victim's views prior to entering a plea agreement. See National Victim Center, *1996 Victims' Rights Sourcebook*, 135-37.
- 51 By 1995, fourteen states required the prosecutor to consult with the victim prior to dismissing charges. See National Victim Center, *1996 Victims' Rights Sourcebook*, 135-37.
- 52 Four states required victim consultation by the prosecutor regarding decision not to prosecute the case, as of 1995. See National Victim Center, *1996 Victims' Rights Sourcebook*, 135-37.
- 53 Such disposition decisions include pretrial diversion, reduction of charges, and sentence recommendation. See National Victim Center, *1996 Victims' Rights Sourcebook*, 135-37.
- 54 As of 1995, ten states specifically required a prosecutor to consult with a victim prior to trial, but other states gave victims a general right to consult the prosecutor. National Victim Center, *1996 Victims' Rights Sourcebook*, 135-37.
- 55 See e.g., FLA. STAT. ANN. § 960.001(1)(e)(1) (1996); HAW. REV. STAT. § 801D-4(1) (1996); See also National Victim Center, *1996 Victims' Rights Sourcebook*, § 13 (discussing victims' rights at the juvenile level).
- 56 N.D. CENT. CODE § 12.1-34-02 (1996); See also National Victim Center, *1996 Victims' Rights Sourcebook*, § 5 (discussing victims' right to confer with the prosecutor).
- 57 NEB. REV. STAT. § 23-1201, § 29-120 (1996).
- 58 LA. REV. STAT. ANN. § 46:1844 (1996).
- 59 See e.g., ARIZ. REV. STAT. ANN. § 13-4423 (1996); DEL. CODE ANN. tit. 11, § 5106 (1996); IND. CODE ANN. § 35-35-3-2 (1996); See also National Victim Center, *1996 Victims' Rights Sourcebook*, § 5 (discussing victims' right to confer with the prosecutor).
- 60 See North Carolina Victim Assistance Network, *The Status of Victim Services & Rights in North Carolina*, North Carolina: North Carolina Victim Assistance Network, 1994:4.
- 61 See e.g., DEL. CODE ANN. tit. 10, § 940; ILL. COMP. STAT. ANN. § 725-5/110-4; KAN. STAT. ANN. § 22-2802.
- 62 MD. CODE ANN. art. 27, § 616-2(a-1) (1993).
- 63 Duggan, P., "Reward Program Targets Witnesses to D.C. Homicides," *Washington Post*, March 23, 1994.
- 64 E.g., ARIZ. REV. STAT. ANN. § 13-4331 (West 1991); ARK. CODE ANN. § 16-21-106(a)(5) (1983); N.Y. EXEC. § 642(2) (McKinney 1986); See also National Victim Center, *1996 Victims' Rights Sourcebook*, § 4 (discussing victims' right to protection from offender harm).

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- 65 E.g., COLO. REV. STAT. § 18-8-704 (1990); ILL. COMP. STAT. Ch. 720, § 5/32-44a (1993); KY. REV. STAT. ANN. § 524.05 (1986).
- 66 E.g., ARIZ. REV. STAT. ANN. § 18-1-1001 (1991); D.C. CODE ANN. §§ 23-1321, 23-1329 (1981); N.Y. CRIM. PROC. § 530.13 (McKinney 1986).
- 67 E.g., ARIZ. REV. STAT. ANN. § 13-4433 (1991); OR. REV. STAT. § 135.970(2) (1987). Oregon's 1996 constitutional amendment for victims' rights contains a similar provision. OR. CONST., art. I, § 1(d). It is not yet clear how the statutory and constitutional provisions will interact.
- 68 E.g., ILL. COMP. STAT. Ch. 730, § 5/3-3-4(7) (1996); S.C. CODE ANN. § 24-21-710 (Law Co-op. 1995). See also National Victim Center, *1996 Victims' Rights Sourcebook*, §4 (discussing victims' right to protection from offender harm), §9, (as of 1995, a total of 43 states allow victims to be heard at parole hearings). National Victim Center ET AL., *National Victim Services Survey of Adult and Juvenile Corrections and Parole Agencies Final Report*, Arlington, VA: National Victim Center, September 1991:14.
- 69 See Smith, B., ET AL., *Improving Enforcement of Court-Ordered Restitution: Executive Summary*, American Bar Association, Washington, D.C.:1989:15.
- 70 President's Task Force on Victims of Crime, *Final Report*, 18, 34, 72 and 78-80.
- 71 National Victim Center, *1996 Victims' Rights Sourcebook*, § 11.
- 72 S.C. CODE ANN. § 16-3-1530 (1996); W.VA. CODE ANN. § 61-11A-4 (1996).
- 73 The Mandatory Victim Restitution Act, Title II of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 (1996), 18 U.S.C. § 3663A (1996).
- National Victim Center, *1996 Victims' Rights Sourcebook*, § 11 (discussing victims' right to restitution from the offender).
- 75 National Victim Center, *Legislative Database*, Arlington, VA: 1997.
- 76 See National Victim Center, *1996 Victims' Rights Sourcebook*, § 13 (Table 13-A).
- 77 *Id.*
- 78 As examples, see CONN. GEN. STAT. §52-572 (civil liability, limited to \$5,000); NEV. REV. STAT. § 41.470 (civil liability, limited to \$10,000); N.M. STAT. ANN. § 32A-4-26 (civil liability; limited to \$4,000), TEX. FAM. CODE ANN. §54.041 (restitution).
- 79 Seymour, A., *National Victim Services Survey of Adult and Juvenile Corrections and Parole Agencies: Crime Victims and Corrections: Implementing the Agenda for the 1990s*, Arlington, VA: U.S. Department of Justice, Office for Victims of Crime/National Victim Center, 1991.
- 80 Snyder, H. ET AL., *Juvenile Offenders and Victims: 1996 Update on Violence: Statistics Summary*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, February 1996:12 (report prepared by the National Center for Juvenile Justice, National Council of Juvenile and Family Court Judges).
- 81 See 18 U.S.C. §3624.
- 82 See National Victim Center, *1996 Victims' Rights Sourcebook*, § 8:205.
- 83 42 U.S.C. § 3756.
- Violence Against Women Improvements Act, 42 U.S.C. §14011.

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- 85 ME. REV. STAT. ANN. tit. 5 §§ 19203 et. seq.
- 86 MICH. COMP. LAWS §333.5129.
- 87 OKLA. STAT. tit. 63 §§ 1-524-525.
- 88 FLA. STAT. ANN. § 960.003
- 89 MINN. STAT. § 72A-29
- 90 MD. CODE ANN. Art. 27, § 776 (1993).
- 91 ARIZ. REV. STAT. ANN. § 13-4437 (West 1991).
- 92 *United States v. McVeigh*, 106 F3d 325 (1997)
- 93 The concept of a victim ombudsman was first discussed in Dussich, J., "The Victim Ombudsman: A Proposal," in *Victimology: A New Focus*. Volume II, Society's Reactions to Victimization, Eds. I. Drapkin and E. Viano. Lexington, MA: Lexington Books, 1974.
- 94 South Carolina Victim Ombudsman Program, S.C. CODE ANN. § 16-3-1610.
- 95 COLO. REV. STAT. § 24.4.1-117.5(2)(a) (1996) Colorado Coordinating Committee.
- 96 COLO. REV. STAT. § 24-4.1-303(17) (1992).
- 97 Wisconsin Victim Resource Center. WISC. STAT. ANN. § 950.08.
- 98 See 18 U.S.C. §§3663, 366A; 42 U.S.C. §10606(b) (6).
- 99 Notice of Indian Entities Recognized and Eligible to Receive Services from the U.S. Bureau of Indian Affairs, 61 Fed. Reg. 58211 (1996). As of 1996, the Bureau of Indian Affairs (BIA) had officially recognized a total of 621 Indian entities, including tribes and Native Alaskan villages.
- 100 *United States v. Wheeler*, 435 U.S. 313 (1978); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).
- 101 CAL. EDUC. CODE §§48918, 48918.5, as amended by 1996 Cal. Stat. Ch. 915 §4 (A.B. 692).
- 102 Pyle, A., "New Rights for Campus Victims," *Los Angeles Times*, Wednesday, October 2, 1996.
- 103 *The Student Right to Know and Campus Security Act of 1990*, Title II, P.L. 101-542 (1990) and 20 U.S.C. §1092(f)(1-6).
- 104 *Campus Sexual Assault Victims' Bill of Rights*, 20 U.S.C. §1092(f)(7) (1992).
- 105 See e.g., FLA. STAT. ANN. § 943.172 (1996) (training for law enforcement, probation, and other corrections officials); N.J. STAT. ANN. § 52:4B-47 (1996) (training for police, assistant prosecutors, county detectives, and investigators).
- 106 A how-to booklet and video on implementing victim impact panels or manuals for victim impact classes is available from Mothers Against Drunk Driving.
- 107 See False Claims Act, 31 U.S.C. §§ 37-31. A draft bill being developed by Senators Leahy and Kennedy in May of 1997 proposes using a portion of the money collected under the False Claims Act to fund victim services.

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18 U.S.C. §1962.

109 *Id.*

110 For example, see KY. REV. STAT. ANN. § 346.185.

111 For example, see WIS. STAT. ANN. § 973.045.

112 For example, see UTAH CODE ANN. § 63-63a-1.

113 For example, see COLO. REV. STAT. ANN. § 24-4.2-104.

114 For example, see IDAHO CODE § 39-5213.

115 For example, see MISS. CODE ANN. § 93-21-305.

116 For example, see ALA. CODE §§ 26-16-30 and 31.

117 MICH STAT. ANN. § 28.1287(909).

The report and recommendations represent views from the field, and do not necessarily reflect the views of the Department of Justice.

The Office for Victims of Crime is a component of the Office of Justice Programs, which includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office of Juvenile Justice and Delinquency Prevention.

To obtain a copy of the full report, *New Directions from the Field: Victims' Rights and Services for the 21st Century*, contact the OVC Resource Center at 800-623-6782, or query [askncjrs@ncjrs.org](mailto:askncjrs@ncjrs.org), or send in the order form below.

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Redline indicates  
changes from last  
month



# STATE OF THE LAW IN VICTIM RIGHTS

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Washington, D.C.

1995

I am grateful to Paul G. Cassell, Professor of Law at the University of Utah, and to his research assistant for their help in updating the cases cited in this monograph through April, 1995. All references to statutes reflect research completed in 1993. I am grateful, as well, to Sean Kendall, Esq., of Boulder and Denver, Colorado, for his earlier updates of the legal materials in the monograph, and to NOVA Deputy Director John H. Stein for his assistance in editing the manuscript. © 1995, National Organization for Victim Assistance, Washington, DC.

—*Marlene Young*, April, 1995

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# State of the Law in Victim Rights

## Introduction

### I. Scope of Legislative and Case Law Changes

- A. In the early 'Seventies, there were only 16 states with victim compensation. Today, all 50 states have laws providing for some type of victim compensation. In Fiscal Year 1992, over \$120,000,000 in compensation awards were made.
- B. In the early 'Seventies, there were no states with laws allowing victims to have input at sentencing. Today, all 50 states have such laws.
- C. In the early 'Seventies, there were no states providing funding for victim services on a state-wide basis. At last count, there were 40 states with statewide funding schemes. In addition, the federal government enacted the Victims of Crime Act in 1984—amended in 1986, 1988, 1990, 1992, and 1994—so that today it provides for the accumulation of all federal criminal fines each year to be distributed to victim compensation programs, local victim services programs, victims of federal crimes, and training and technical assistance to support such programs and services. In Fiscal Year 1992, that fund gave \$62,734,000 to states to support local victim assistance programs.
- D. In the early 'Seventies, the concept of “victim rights” had not been articulated except in the Philadelphia District Attorney’s office, which commemorated “Victim Rights Week” in 1975. Today, 49 states have what has come to be known as bills of rights for victims, and over 40 governors and the President of the United States annually recognize National Crime Victims Rights Week. (The so-called bills of rights may be enacted either through a series or package of legislation; through the establishment of services mandated to provide such rights; or through one comprehensive piece of legislation.)
- E. In the early 'Seventies, the idea of litigation addressing victim rights or reparations in the civil or criminal courts was virtually unheard of. Today, there is a burgeoning area of civil law surrounding third-party litigation and victim-perpetrator suits, in addition to a growing set of cases addressing the implementation of victim rights.
- F. In the early 'Seventies, courts were at the height of activity in expanding the rights of the accused and the convicted. Today, the pendulum has swung in the opposite direction, and, in a parallel but unconnected way, there has arisen a powerful movement to expand victim rights not just through statutes but also through amendments to state constitutions. Eighteen states have amended their constitutions to give victims more participatory rights in criminal cases. (California passed a constitutional amendment providing victims with a right to restitution, rights at sentencing, rights at parole hearings, rights to safe schools and addressing certain sentencing issues; and Georgia has an amendment that authorizes a victim compensation law.) Many others are studying the concept or actively lobbying either the state legislatures or the state citizenry to pass it.
- G. In August 1992, the prestigious National Conference of Commissioners on Uniform State Laws recommended for enactment in all the states a Uniform Victims of Crime Act. Some of

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its provisions are referred to throughout the following text regarding issues that many states have not addressed.

## **II. Importance of Tracking the Status of Legislation and Case Law**

- A. Victim service practitioners need to be aware of the rapidly changing face of law for several reasons. The first is that despite the many radical changes that are taking place in the justice system, attorneys are learning little about them at law school or in continuing legal education courses. This means that if prosecutors, judges, and other lawyers are going to become aware of changes in any particular state, it may fall upon the shoulders of victim service practitioners to convey that information to them.
- B. A second reason to become involved is to be able to better serve victims of crime. One of the goals of victim assistance is to give victims a sense of their options in the aftermath of crime. If civil litigation or participation in the criminal justice system is an option, the victim service practitioner needs to be aware of it. The practitioner also should know the limitations of the law. It is quite harmful if a victim receives misinformation from a practitioner, acts on it, and finds out that this option won't work in this jurisdiction.
- C. A third reason to address this issue is that the legal changes may place additional responsibilities on the victim service practitioner — and those changes may even change the very nature of victim assistance. For instance, some prosecutors in Florida considered requiring their coordinator of victim witness services to be a lawyer after the passage of a constitutional amendment in that state. In Multnomah County, Oregon, Doug Beloof, the onetime Director of the Victim Witness Assistance Program (a lawyer and former prosecutor) filed cases on behalf of victim rights on a routine basis as a part of his job. With mandated requirements of service in some states, it is not unlikely that a victim service practitioner or a victim assistance program will eventually be sued for failure to provide adequate service.

### **Victim-Related Legislation and Litigation on Victim Rights in the Criminal Justice System**

The outline that follows reviews major concepts of victim rights by reference to a seven-point statement of principles promulgated by NOVA in 1980. It reviews the intent behind the original statement of principle, how that intent and the law have changed since 1980, and what future issues are for legal change.

#### **I. Right to Protection**

##### ***Original Intent***

In 1980, the idea of the right to protection from intimidation and harassment was inspired by hearings held by the American Bar Association in 1979. These hearings addressed issues concerning intimidation of victims and witnesses. The findings of the hearings were that most laws concerning intimidation were extraordinarily weak and unenforceable. Since then new laws have been enacted concerning pre-trial intimidation and post-trial retaliation against victims and witnesses. Such laws usually address the following:

- broadening the definition of witnesses to include non-subpoenaed witnesses and third parties;
- increasing the charge of intimidation from a misdemeanor to a felony where threats or conspiracy are involved;
- treating attempted intimidation as seriously as successful intimidation; and
- increasing the scope of protective orders.

Forty-five states have changed their laws since 1979.

### *Current State of the Law*

#### A. Victim privacy protections

##### 1. Protection for victims from the publication of names or addresses.

- a. 20 states provide for some type of protection for certain types of adult victims. In some cases that protection applies to the victim's name, in some it applies to the victim's address, and in some it applies to both. The state of Oregon's statute allows the judge to protect "biographical" information about the victim. Three states — New Mexico, Idaho, and North Dakota — provide for general address protection in their bills of rights. Iowa's bill of rights includes a provision that makes all victim records confidential. This would seem to apply to both the defense and the media.
- b. Nine states prohibit the publication of names or addresses of sexual assault victims.
- c. Illinois provides protection from the publication of names or addresses of domestic violence victims.
- d. The statutes protecting victims' names or addresses from publication have been increasingly challenged by those who think they may violate the First Amendment.
  - *Florida Star v. B.J.F.*, 491 U.S. 524 (1989): The Supreme Court overturned a \$100,000 award that a rape victim had won against the newspaper, but did not declare the law unconstitutional on its face. Justice Marshall's opinion said, in part, that there were "highly significant interests" to be served by protecting the privacy of rape victims. He said that the Court did not mean to "rule out the possibility that, in a proper case, imposing civil sanctions for publication of the name of a rape victim might be so overwhelmingly necessary to advance these interests" as to uphold a damage award, but he said, "imposing liability for publication under the circumstances of this case is too precipitous a means of advancing these interests."
  - *Plotkin v. Van Nuys Publishing Co.* (reported in *The Los Angeles Times*, October 19, 1988). Jerry Plotkin sued the owners of *The Los Angeles Daily News* for printing a story stating that Plotkin — one of the American citizens who had previously been taken hostage at the U.S. Embassy in Iran — was under investigation for drug trafficking. In the settlement of Mr. Plotkin's suit, the newspaper admitted that he was not a "public figure" and thus effectively exempt from a libel suit.

- *Florida v. Smith*: Patricia Bowman was unable to keep her name out of the media despite the Florida law that prohibits the publication of the name of a rape victim.
  - *Scheetz v. Morning Call, Inc.*, 946 F.2d. 202 (3d Cir. 1991): This interesting Pennsylvania case addressed the question of whether a reporter and his newspaper are protected by the First Amendment when the reporter unlawfully acquires confidential, non-public portions of a police report relating to crime victimization and the newspaper publishes the contents. The Pennsylvania Supreme Court ruled that information divulged by individuals in police reports is not protected by confidentiality or a constitutional right of privacy, and, therefore, the newspaper cannot be held liable for publicizing information obtained from a police report about domestic problems of a police officer and his wife.
- e. A contributing factor to the legal arguments that weigh the rights of individual privacy against the rights of a free press is public opinion. Media coverage of the *Florida v. Smith* case included a publication of a *Newsweek* poll of April 18-19, 1992, concerning the public's view of the publication of names of rape victims. The following is the result:
- Should names of rape victims be reported by the news media like the names of other crime victims? 19% Yes 77% No
  - Do people tend to think negatively of a woman if they know she has been raped? 57% Yes 38% No
  - Does reporting the names of women who have been raped show that society does not attach special shame to being a rape victim, and treats male and female victims of crime equally? Or does it make a special hardship for women? 9% Equal treatment 86% Special hardship
  - Do you think that a woman is more likely or less likely to report being raped if she knows her name will be made public, or doesn't it make much difference? 4% More likely to report 86% Less likely to report 8% Doesn't make much difference
  - Is a rape victim partly to blame if she was provocative with a man or went off with him? Or doesn't this matter if the woman finally says no to sexual relations? 26% Partly to blame 68% Doesn't matter
- (*Newsweek*, April 29, 1991)
- f. 19 states have laws prohibiting the disclosure of the identity of child victims in the media. Three of those states restrict such protections to victims of sexual assault or physical abuse. These laws, too, are subject to challenge. A recent case in Illinois upheld this prohibition and held that it did not violate the First Amendment. *In re a Minor*, 1992.
- g. 44 states have cameras in the courtroom. While most states also have guidelines that restrict the filming of certain victims' faces, these laws are still untested and unchallenged. In *State of Iowa v. Iowa District Court in and for Johnson County* (Number

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20344, 1988), cameras were allowed in the courtroom despite a motion filed by the prosecutor requesting them to be banned because of the trauma the victim had suffered. The victim had been in bed with her husband when burglars entered her home and shot her husband to death before fleeing with stolen goods. The trial court ruled that the victim did not qualify as a "victim" under its guidelines because it had been her husband who had been murdered and burglary was not one of the serious crimes cited in the guidelines.

- h. The recent idea of substituting videotaped transcripts for traditional court reporting opens a threat to victims' privacy. There are several states that are pilot testing this practice. One of them is Oregon, where victim advocates asked the Chief Justice to issue guidelines for videotaping that would shield the victim from the cameras.
2. Protection of names and addresses of the victim from the defendant or his lawyer unless a judge deems the release of such names and addresses to be critical to the development of a defense.
  - a. 3 states have laws that specifically address this issue.
  - b. As many as 19 states have laws that protect the identities of child victims through a variety of methods.

3. The Uniform Victims of Crime Act provisions on protection are as follows:

"If a victim requests confidentiality, neither a law enforcement agency, the prosecutor, nor the corrections department may disclose, except among themselves, the residential address, telephone number, or place of employment, except to the extent that disclosure is of the site of the crime, is required by law or the Rules of Criminal Procedure, is necessary for law enforcement purposes, or is permitted by the court for good cause.

"A court may not compel a victim or a member of the victim's family testifying in a criminal justice proceeding to disclose a residential address or place of employment on the record in open court unless the court finds that disclosure of the information is necessary.

"A law enforcement agency may not disclose to the public information directly or indirectly identifying the victim of a sex crime except to the extent that disclosure is of the site of the crime, is required by law, is necessary for law enforcement purposes, or is permitted by the court for good cause." Section 201

- B. Separate waiting areas for the defendant and his or her family or friends and the victims and their families or friends.
  1. 31 states have laws that direct courts to provide separate waiting areas.
  2. Few jurisdictions follow the law. Most of the time the excuse is that the court lacks space for this luxury and there are no resources to modify the court structure. However, innovative judges or victim advocates have found such space in even the smallest courthouse. In Essex County, Massachusetts, a courthouse complied with a bill of rights in the mid-'Eighties by converting a set of telephone booths into a small waiting room. In

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Multnomah County, Oregon, a judge agreed to the use of his chambers for the separation of witnesses.

C. Special protections for certain victim populations through legislation, litigation, and legal practices.

1. Legislation and litigation

a. Hate Crimes

- 24 states have laws that have enhanced penalties for crimes such as trespassing or vandalism if they are motivated by prejudice or hate directed at ethnic groups.
- 34 states have laws that have enhanced penalties for crimes motivated by prejudice or hate directed at religious groups.
- An increasing number of states have passed intimidation statutes that make it a crime for individuals to cause physical injury to another because of that person's race, color, religion, national origin or sexual orientation; or make it a misdemeanor to physically threaten or harass another person because of statutorily-designated attributes.
- The Federal Civil Rights Acts have been used not only to prosecute those who deprive protected classes of their civil rights but as a basis for suits for civil damages. The law provides for damages against government officers for committing acts that violate citizens' civil rights, and against private citizens who conspire to commit acts which injure persons and which are motivated by a purpose of depriving them of the equal protection of the law. In 1990, a state jury in Oregon awarded punitive damages in the amount of \$10,000,000 to the estate of a black man who had been beaten to death by "skinheads." (*National Law Journal*, November 5, 1990, p. 6) The suit was filed against the actual murderers and against one Thomas Metzger, the president of the White Aryan Resistance organization (WAR). The jury found WAR had intentionally and recklessly incited imminent violence and the result was the death of the victim. (*Berhanu v. Metzger*, Multnomah Co. (OR) Circuit Ct. #A8911-0707, October 22, 1990)
- Litigation on hate crimes, laws that address bias-related crimes, and so-called anti-bias laws has increased. The results of that litigation is ambiguous. In 1992, the U.S. Supreme Court struck down a St. Paul, Minnesota, anti-bias ordinance because it effectively regulated points of view. St. Paul had a free-standing ordinance that criminalized conduct showing bias. It prohibited the display of a symbol that "arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion or gender." *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992)
- Wisconsin enacted a law allowing stiffer prison sentences for crimes already on the books if the defendant "intentionally selects the person . . . or property because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property." That law was struck down by the Wisconsin Supreme Court on the basis that the Constitution does not

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allow punishment of thought. The United States Supreme Court reversed the state court in *Wisconsin v. Mitchell*, 113 S. Ct. 2194 (1993). The Court held that the hate-based crimes statute at issue was a permissible exercise of state power which was aimed at preventing "special harms" and therefore not in violation of the defendant's First Amendment rights of expression.

b. Domestic Violence

- 50 states have the option of issuing protective orders of some type when someone has been threatened or is threatened by the actions of another.
- 40 states allow for a warrantless arrest when law enforcement officers observe signs of violence or are in the presence of the commission of violence.
- 10 states provide for mandatory arrest when there is evidence of domestic violence.
- While laws regarding domestic violence and partner abuse have changed radically over the last thirty years, policies and practices of criminal justice agencies may still prevent effective protection of victims of partner abuse. On October 22, 1992, Lisa Deruyscher was killed, and Anna Fochtman and Rachel Whitney were stabbed and beaten by Eric Taylor, the ex-boyfriend of Ms. Fochtman. Fochtman had sought treatment from an earlier beating and reported to a police officer that Taylor had kidnapped her and that she was afraid that he would kill her. She was told to wait three days before filing charges. The three day waiting period for simple assault charges was departmental policy in Battle Creek, Michigan. *Detroit Free Press*, Monday, November 9, 1992, B-1.

c. Child Victims

- Virtually all states have some types of special legislation that address protecting child victims. The federal government enacted a Bill of Rights for Child Victims in 1990.
- A key legal change over the last twelve years has focused on providing children with protections at deposition or when they testify through the use of videotape, closed-circuit television, or other device to shield a child victim from facing the defendant. The constitutionality of such protections was placed in question by *Coy v. Iowa*, 487 U.S. 1012 (1988), when the Supreme Court held that the Confrontation Clause of the Sixth Amendment by its words provides a criminal defendant the right to "confront" face-to-face the witnesses giving evidence against him at trial, and that therefore the defendant's right of confrontation was violated since a screen was used to enable the complaining witnesses (two child victims of sexual assault) to avoid viewing him. Key to that holding was the fact that the trial judge had made no finding that such a procedure was necessary to avoid traumatizing the witnesses or impede their ability to testify. But in *Maryland v. Craig*, 497 U.S. 836 (1990), the Court held that in a case where the judge had made a such finding, it was permissible to use a method of shielding the child from confrontation, in this instance, a one-way, closed-circuit, televised examination of the witness. The Fourth Circuit, in *Fields v. Murray*, 1995 WL 114602

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(1995), applied *Craig* to limit the right of a defendant proceeding *pro se* from personally questioning several young girls who were allegedly sexually abused by him.

- Other protections for children that have been addressed through legislation have included: extending the statute of limitations for child victims of sexual abuse such that charges may be filed years after the abuse has taken place or when the child becomes an adult; prohibiting the requirement of corroboration of a child's testimony and presuming the child's competence; admitting hearsay to corroborate a child's story; and allowing the child to be accompanied by someone in court.
- All states have child abuse reporting laws that require certain named professionals to report child abuse. Twenty states require anyone with knowledge of child abuse to report it to appropriate authorities.

d. Victims of Sexual Assault

- Rape shield laws
- Protections with regard to exposure to the Human Immunodeficiency Virus (HIV)

At least thirty states either already have laws criminalizing some activity which may result in the exposure of persons to HIV or have legislation pending before their legislatures. The Young Lawyers Division of the American Bar Association recommended the following:

"Be it resolved, that the American Bar Association encourages the enactment of state legislation making it a crime for a person to knowingly expose another person to HIV/AIDS through either (a) consensual sexual activity without disclosing that he or she has HIV/AIDS, (b) nonconsensual sexual activity regardless of whether disclosure that he or she has HIV/AIDS is made, (c) the donation or sale of blood, blood products, semen, tissue, organs, or other body fluids, and (d) the sharing with another person of a hypodermic needle, syringe, or both, for the introduction of drugs or any other substance into, or for the withdrawal of blood or body fluids from the other person's body without first informing that person that the needle, syringe, or both, has been used by someone infected with HIV/AIDS." (October 26, 1992)

Another legal issue involving HIV/AIDS is whether there should be mandatory testing of persons who are arrested for a sexual crime. The Young Lawyers Division of the ABA recommended the following:

"Be it resolved, that the American Bar Association encourages the enactment of state legislation providing that any person who is arrested for a sexual crime involving the exchange of bodily fluids is to be tested for HIV/AIDS and the results of such test(s) to be disclosed to the prosecutor and the alleged victim of the sexual crime." NOVA supports similar legislation with the modification that the results of the test be disclosed to the victim only upon request by the victim.

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A question was raised in the Florida courts concerning whether victims should be made to submit to testing as well. In *State v. Brewster*, the appeals court ruled that a victim could not be compelled to submit to a blood test for HIV. The defendant in the case was charged with lewd and lascivious assault on a child under the age of 16 and engaging in sexual activity with a child of 12 years or older, but less than 18, while in a position of familial or custodial authority. The defendant was ordered to submit to a blood test for HIV. After testing negative, the defendant filed a motion to compel the victim to submit to HIV testing. The motion was based on the argument that the results of a test on the victim might provide exculpatory evidence. The trial judge granted the order but was reversed on appeal.

The Court of Appeals held that in the absence of any statutory or rule authority for compelling victims of sexual offenses to submit to any type of test or examination, and in the absence of evidence to support a compelling need for the intrusion, the victim's right to privacy from governmental intrusion far outweighed the defendant's need for information." *State v. Brewster*, 601 So.2d 1289 (Fla. Dist. Ct. App. 1992)

Similar results were reached in two other Florida cases. In *State v. Kuntsman*, 643 So. 2nd 1172 (Fla. Dist. Ct. App. 1994), the defense sought to force a witness to view a photograph array of possible perpetrators of the crime. The appeals court reversed the trial court order to that effect, finding that the defense had not shown strong or compelling reasons to justify the order. In *Bartlett v. Hamwi*, 626 So. 2nd 1040 (Fla. Dist. Ct. App. 1993), the defense sought discovery of hair samples from prosecution witnesses. While the trial court allowed the discovery, the appellate court reversed. The witnesses were protected from "unreasonable searches and seizures" by the Fourth Amendment to the U.S. Constitution. Accordingly, the defense was required to satisfy a "heavy burden" justifying the intrusion. In this case, no such justification had been established.

#### e. Victims of Stalking

- As of this writing, twenty-eight states have passed some type of legislation that is aimed at deterring stalking — with the other states hastening to follow suit. California passed the first stalking law in 1990. States typically have defined "stalking" as willful, malicious, and repeated following and harassing of another person. Most stalking laws enacted require that a "credible threat" of violence be made against the victim, and many states extend credible threat to include threats against the immediate family of the victim.
- On July 1, 1992, Senator William S. Cohen (R-Maine) introduced a bill, ultimately passed, that directed the National Institute of Justice in the U.S. Justice Department to evaluate anti-stalking legislation and propose anti-stalking legislation in the States; develop model anti-stalking legislation that is constitutional and enforceable; prepare and disseminate to State authorities the findings made as a result of the evaluation; and report to Congress on the findings and the need or

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appropriateness of further action by the Federal Government. That mandate resulted in a report by the National Criminal Justice Association, *Project to Develop a Model Anti-Stalking Code for the States*, published by the National Institute of Justice, Oct., 1993.

f. Protections aimed at Victimization on School Campuses

- On November 8, 1990, President Bush signed into law the Student's Right to Know and Campus Security Act. This Act requires all colleges and universities receiving federal funds to keep and report crime statistics on campus. Pennsylvania, in 1988, had been the first state to require reporting of crime statistics and since that time some fifteen other states followed suit with some kind of crime reporting legislation. This legislation was fostered by the parents of a young woman who had been killed on campus. They believed that their daughter died as a result of what she did not know about crimes on campus, the dangers of doors propped open, and so on.
- In 1991, the Campus Sexual Assault Victims Bill of Rights was passed that attempted to establish some rights for victims on campuses. Many colleges and universities have very loose enforcement policies against student perpetrators of crime and minimal sanctions.

2. Legal Practices

- a. A judge in Colorado escorted a child victim/witness into the courtroom in order to make her feel more secure.
- b. Many jurisdictions are using no-drop practices in cases of domestic violence and sexual assault to overcome the reluctance of terrified victims or witnesses to come forward in a public case.
- c. Videotaped testimony where intimidation has been used by the defendant is increasingly tried. The New Mexico Supreme Court affirmed the use of videotape in a rape conviction when the prosecutor had videotaped a victim's testimony — the victim was homeless and alcoholic and unavailable at trial. *State v. Tofoya*, 729 P.2d. 1371 (1986). Affirmed again after remand from the Supreme Court in light of *Coy v. Iowa*, 108 S. Ct. 2890. *State v. Tofoya*, 765 P.2d. 1183 (1988).
- d. The Supreme Court of Minnesota issued an order *In re Domestic Abuse Advocates* No. C2-87-1089, 1991 Minn. LEXIS 34 (Feb. 5, 1991) that allowed domestic abuse advocates to sit at counsel table: "It is hereby ordered: 1.) In all proceedings before the trial court under Minnesota Statutes 518B, domestic abuse advocates shall be allowed to attend and sit at counsel table, confer with the victim, and, at the judge's discretion, address the court. 2. In criminal trial court proceedings, domestic abuse advocates shall be allowed to accompany the victim, confer with the victim and, at sentencing, at the judge's discretion, be heard by the judge. 3. Court administrators shall allow domestic abuse advocates to assist victims of domestic violence in the preparation of petitions for protection orders. 4. When they assist victims of domes-

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tic violence as specified in this order, domestic abuse advocates are not engaged in the unauthorized practice of law.” Order C2-87-1089

- E. Legal changes in the standards for release on bail and bond are changing. The prevailing trend is to allow law enforcement to retain the accused in custody, a practice known as preventive detention.
1. The Federal Bail Reform Act of 1984 allows courts to deny bail to persons found by clear and convincing evidence to present a danger to the community. It also requires defendants to refrain from criminal activity as a mandatory condition of release.
  2. The Supreme Court in *U.S. v. Salerno* in 1987 upheld the constitutionality of the Bail Reform Act. 481 U.S. 739 (1987)

F. General right to protection

1. *Thurman v. Torrington*: applied the “equal protection of the laws” provisions of Section 1983 of the Civil Rights Act to a member of a newly-recognized class — domestic violence victims — permitting her to recover substantial damages from the police department which had ignored her repeated efforts to gain protection from her abusive husband. 595 F. Supp. 1521 (1984)
2. *DeShaney v. Winnebago County*: Citing the same provision, 42 U.S.C. 1983, plaintiff claimed that the county had deprived Joshua DeShaney of his liberty interest in bodily integrity in violation of his rights under the substantive component of the 14th Amendment’s Due Process Clause. (At least one caseworker in the public agency that left the child with his abusive father feared for the child’s life, a fear that proved prophetic when the boy was beaten into a comatose state.) 489 U.S. 189 (1989). Held: County’s failure to provide DeShaney with adequate protection against his father’s violence did not violate his rights under the substantive component of the Due Process Clause.

The Due Process Clause imposes no duty on the State to provide members of the general public with adequate protective services. The Clause is phrased as a limitation on the State’s power to act, not as a guarantee of certain minimal levels of safety and security. While it forbids the State itself to deprive individuals of life, liberty and property without due process of law, its language cannot fairly be read to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means.

The State’s knowledge of his danger and expressions of willingness to protect him against that danger did not establish a “special relationship” giving rise to an affirmative constitutional duty to protect.

It may well be that by voluntarily undertaking to provide petitioner with protection against a danger it played no part in creating, the State acquired a duty under state tort law to provide him with adequate protection against that danger — but this is not a due process issue.

3. In *City of New Kensington v. Horton*, the Supreme Court vacated in summary action a judgment holding a municipality and police officer liable under 42 USC 1983 on the

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basis of a death that occurred as a result of the officer's failure to protect a person the officer could reasonably foresee was about to fall into harm. 489 U.S. 1062 (1989)

4. *Maurice M. v. Bouknight*: The Supreme Court ruled that the constitutional privilege against giving self-incriminating testimony could cover a court order compelling a mother to produce her previously abused infant child, however, the privilege is outweighed by the child's right to protection from further abuse. 493 U.S. 549 (1990)

### III. The Right to Information and Notification

#### *Original Intent*

To change laws so that victims had a right to receive information about the status of their cases and timely notification.

#### *State of the Law Today*

A. The right to information about case status and notification of selected events in the criminal justice system is statutory law in all states. Some statutes itemize the events where victims have such rights. These events include the following:

1. Court Schedule Changes: 43
2. Pre-Trial Release: 31
3. Bail Release: 27
4. Plea Agreements: 30
5. Sentencing: 34
6. Final Disposition: 34
7. Parole: 31
8. Pardon: 27
9. Work Release: 31
10. Prison Release: 39
11. Escape: 22

B. The constitutional amendments in at least 12 states raise questions about what "crucial or critical stages of criminal proceedings" means. After Florida's constitutional amendment was passed, the question arose about whether victims should be informed about sealing hearings on criminal cases. *St. Petersburg Times*, Tuesday, March 26, 1991.

The enforceability of this right is open to question as well. At least one case has been litigated concerning the recourse a victim may have if he or she does not receive information about the status of his/her case. In Illinois in 1988, it was the law that the prosecutor had a duty to inform a victim of the status of his criminal complaint. In a misdemeanor case, a victim did not hear about what was happening for a period of over two months. He brought a suit against the prosecutor in Chicago seeking to force him to provide the desired information. Although the prosecutor met the duty after the suit was filed, the prosecutor was or-

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dered to pay the filing fees for the suit. The judge reasoned that if the victim was to bear the costs of the litigation, the purposes of the state's victim rights law would be frustrated. *Meyers v. Daley*, 166 Ill. App. 3d 249 (1988), cert. denied, 122 Ill. 2nd 578.

### **III. Right to Counsel**

#### *Original Intent*

The original intent behind the proposition that victims should have a right to counsel was based on the need to offer victims counseling and advocacy services. The goal was to establish state funding for services and encourage local support of such assistance.

#### *Current State of the Law*

##### **A. Funding for Services**

1. State funding for victim services exists in a number of states — 33 for general victim services, 48 for domestic violence programs or shelters, and 24 for sexual assault or rape crisis programs. The source of the funding most often comes from general revenues or fines or penalty assessments. Domestic violence funding in some states is derived by a marriage license tax. Iowa funds child abuse prevention programs through a \$10 birth certificate fee.
2. The Victims of Crime Act enacted originally in 1984 and amended in 1986, 1988, 1992, and 1994 provides federal subsidies to states to support victim compensation and assistance programs. Funds in that program are generated by fines imposed on criminals convicted of federal crimes. Initially, the Victims of Crime fund was limited to \$100 million each year, but in 1992, the cap on the fund was lifted completely so that all fines will be deposited into the victims fund in the future.

##### **B. Confidentiality**

1. If counseling is to be effective, it is essential that victims can talk with counselors confidentially. Privileged communications between victims and recognized professions such as the clergy, psychologists, and psychiatrists is established in most states, but victim advocates and counselors who have other backgrounds are not protected in most cases. Nineteen states have established privileged communications between victims and domestic violence counselors and 20 states have established that privilege between victims and sexual assault counselors. New York has privileged communications between psychologists or social workers and victims. New Jersey has the broadest confidentiality law, providing privileged communication between all victims and their counselors unless the counselors are staff in a prosecutor's office.
2. Many of the confidentiality statutes include a requirement that counselors must have a minimum number of mandated training hours.
3. Even without a statute on confidentiality, the Pennsylvania and New Jersey Supreme Courts created a limited privileged relationship between rape victims and counselors. *In*

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*the Matter of Pittsburgh Action Against Rape*, 428 A.2d 126 (1981); *In the Interest of L.P.*, 593 A. 2nd 593 (N.J. 1991).

4. Because of the limited nature of confidentiality on a state level, the federal Office for Victims of Crime, with Congressional encouragement, issued VOCA victim assistance guidelines that create a limited confidentiality privilege to clients whose counselors are supported by a VOCA subgrant. That "federal" privilege has been recognized as superseding state law on the issue, although both the guidelines and the courts seem insistent that no communication to any therapist or counselor may be kept confidential if it presents a reasonable case that child abuse has been committed. In that situation, a state's mandatory child abuse reporting law takes precedence.
- C. Over the past decade or more, the concept of the right to counsel has evolved to address participatory rights in the criminal justice system. While the constitutional amendments generally call for the right "to be informed of, present, and heard," every state has some kind of participatory rights for victims through explicit state statutes.
1. Twenty four states allow victim input at the plea bargain stage, a right underscored in California in *People v. Stringham*, 206 Cal. App. 3d. 184 (1988). There, a guilty plea to a single count of voluntary manslaughter was found to be properly vacated when the sentencing judge found that the victim's survivor had not been permitted to comment on the plea; later conviction at trial for second-degree murder, kidnapping, and felony false imprisonment was upheld.

As in all consultation rights, the victim's right to be consulted should not be considered decision-making authority. A state prosecutor violated state legislation setting formal standards for plea negotiations when he conditioned his acceptance of a guilty plea on the approval of the proposed agreement by the parents of the murder victim. The court held that the condition constituted an impermissible delegation to the victim's parents of the prosecutor's statutory discretion. *State v. McDonnell*, Or. Sup. Ct. (1990).

2. Victim impact statements at sentencing are allowed in all 50 states. (In Alabama this is accomplished through judicial administrative policies rather than by statute.) Victim statements of opinion are allowed in 25 states. The constitutionality of victims' input at sentencing was questioned in *Booth v. Maryland*, 482 U.S. 497 (1987) and *South Carolina v. Gathers*, 490 U.S. 805 (1989), in which the Supreme Court ruled that such input was unconstitutional in death penalty cases. However, in 1991, the Supreme Court reversed itself in *Payne v. Tennessee*, 112 S.Ct. 28 (1991), and held that testimony by the victim at sentencing was not unconstitutional. Several issues, however, remain unresolved.
  - a. In states that allow the submission of the victim impact statement in conjunction with the Pre-Sentence Investigation Report, and where such reports are confidential, does the victim have a right to know the contents of the report? The Oregon Supreme Court in 1989 ruled that though the survivors' letters to the sentencing judge revealed their knowledge of the confidential PSI, the prosecutor committed no ethical breach since he described its contents rather than show them the report. *In re Collins*, 308

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Or. 66 (1989). In *U.S. v. Schlette*, 842 Fed. 2d 1574 (1988), the victim's estate was allowed to examine the confidential PSI for evidence of possible negligence of the probation department.

b. The constitutionality of a victim's statement of opinion was called into question in 1991 when the Supreme Court let stand a ruling that family members of a murder victim who oppose capital punishment cannot ask jurors to spare the life of the convicted killer. Olan Robison was convicted of the 1981 killing of three people during a robbery. Family members of at least one victim sought to testify that they wanted Robison given a life sentence, rather than death. But the 10th U.S. Circuit Court of Appeals ruled that the *Payne* ruling does not give family members of victims who oppose capital punishment the right to formally ask the jury that the killer's life be spared. While the refusal of the Supreme Court to hear the case sets no precedent, it is interpreted as indicating that this ruling under *Payne* will not be disputed. *Robison v. Maynard*, 943 F. 2d 1216 (10th Cir. 1991; cert. denied, 112 S. Ct. 445).

c. Some legal theorists have argued that while *Payne* held that victim impact statements were not *per se* unconstitutional in death penalty cases, it does not require the submission of such statements or indicate that they will always meet *state* constitutional norms. Indeed, one of the first state Supreme Court decisions after *Payne* found, on state constitutional grounds, that evidence concerning the emotional impact of crimes on the community and psychological and physical impact of crimes on the victims' families and the community was inadmissible victim impact evidence in a Georgia death penalty case. *Sermans v. State*, 417 S.E.2d 144 (Ga. 1992).

d. A number of victim-oriented criminal justice professionals are now suggesting that impact statements describe not only the impact of crime upon individual victims but also, where appropriate, the impact of crime on neighborhoods. Neighborhood impact statements may be particularly important in dealing with drug-related crime, and is sometimes sought and submitted by the "neighborhood prosecutors" employed by the Multnomah County, Oregon, District Attorney, among others.

3. Victims also have a right to provide victim impact statements at parole hearings in 34 states. Allocution is allowed at parole in 30 states. After the passage of a constitutional amendment on victim rights in Michigan, the state Parole Board failed to ask for the input of victims or family members prior to paroling two felons. The Oakland County prosecutor, Richard Thompson, filed suit on behalf of the victims and survivors on the basis of the violation of state statutes and the constitution and reached an agreement that the Board apologize to the victims. (Hearing held in front of Judge Hilda Gagge, July 22, 1992.)

D. The right to counsel can also be interpreted as a victim's right to have standing, to appear as a party and to have representation in a criminal case. Some have argued that the words "to be heard" in constitutional amendments should be interpreted as legal terms of art conveying on victims a limited right to be formally represented in the courtroom, and in fact, attorneys for the victim have occasionally been heard in hearings in Florida, Arizona, and other "amend-

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ment” states. There is some precedent for this kind of victim representation in this nation’s history and in other countries.

1. In dozens of states there is statutory or case law retaining some vestiges of “private prosecution,” which was the only way prosecutions were brought during the Colonial period and for a time thereafter. One scholar notes some 34 states give victims the right to seek private prosecution as an alternative to public prosecution in certain cases. (William MacDonald, “Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim,” 13 Am. Crim. L. Rev. 648 (1976)).
2. The Tennessee Supreme Court ruled that employment of two private attorneys by a murder victim’s family to assist in the criminal prosecution, as authorized by statute (Tenn. Code Ann. Section 8-7-401), did not violate either the Fourteenth Amendment’s Due Process and Equal Protection Clauses or Art. I, Section 8 of the Tennessee Constitution. *Bennett v. Tennessee*, 798 S.W. 2d. 783 (1990)

#### IV. Right to Reparations

##### *Original Intent*

The goal of establishing this right is to ensure that victims are as fully reimbursed as is possible for their losses following victimization. At the time of the initial promulgation of a bill of rights, the focus of this issue was on compensation, since only 16 states had state compensation programs.

##### *Current State of the Law*

- A. Victim compensation programs have been established by statute in all 50 states. However, there remain a number of unresolved issues.
  1. Funding for many of the programs is insufficient. In fact, in 1992, both Maryland and Connecticut suspended their programs due to lack of funds. Nebraska appropriated no more than \$100,000 for its program. While federal funds subsidize the compensation programs under the Victims of Crime Act, such funds are granted to the states based on the amount of state-dollar awards paid out in the prior year. Thus, if state funds are low, the federal reimbursement is also low.
  2. Benefits vary from state to state. Most programs pay for needed, unreimbursed medical treatment and care, mental health counseling, lost wages or disability pay, physical and sometimes occupational rehabilitation, loss of support for survivors of homicide victims and funeral expenses. Four states allow awards for pain and suffering. Eleven states allow for property recovery of a very limited nature.
  3. Many states have a backlog of claims or awards. Some take longer than a year to pay out benefits.
  4. A big deficiency in the compensation system in the U.S. is the lack of reciprocity that the states have with other countries.
- B. Restitution has always been a sentencing option at common law in all states. However, the trend has been to establish it statutorily and that it be mandated in all cases.

1. All states now do have statutory authority for ordering restitution, and 23 make it mandatory unless the judge gives written reasons for not ordering it in any specific case.
  2. Some states make restitution a condition of any release.
  3. There is also a trend toward legislation that makes restitution orders automatically a civil lien against current or future assets of a criminal once probation is terminated.
  4. A recent issue has received considerable attention. Can a court order restitution for offenses or losses that are not connected with the conduct that caused the conviction? In *Hughey v. U.S.*, 495 U.S. 411 (1990), the Supreme Court held that the federal Victim and Witness Protection Act of 1982 authorizes restitution "only for losses caused by the conduct underlying the offense of conviction." The hardship in that reading of the law can be seen in a 150-count fraud indictment wherein 150 victims lost the same amount of money, but 125 were randomly dropped in reaching a negotiated guilty plea. Congress responded to the decision by amending the statute to authorize the restitution broadly when the offense of conviction involved a scheme, conspiracy, or pattern. 18 U.S.C. 3553 (a)(2). It also amended the law to allow a court to order restitution more broadly "to the extent agreed to by the parties in a plea agreement," 18 U.S.C. 3553 (a)(3), thereby resolving a dispute among the circuits on whether existing law authorized this practice; see, for example, *U.S. v. Hammer*, 967 F.2d 339 (9th Cir., 1992) and *U.S. v. Soderling*, 970 F.2d 529 (9th Cir. 1992), which disagreed with the Fifth, Seventh, Eighth and Eleventh Circuits' interpretation of the issue.
- C. "Notoriety for Profit" statutes seek to prohibit criminals from making a profit out of their criminal story by selling it for publication or authoring their own account of it. In 1990, 44 states had passed some type of notoriety for profit statute.
1. The statutes vary from state to state in how they disperse any profits that are made from such sales. In some states, the victim may be the recipient of any resulting profits; in other states the profits go into a fund to benefit victims in general, and in some states, the profits help to fund victim compensation.
  2. The complexities of the statutes have led to some strange results. In *MacDonald v. McGinnis*, convicted murderer Jeffrey MacDonald sued author Joe McGinnis after McGinnis published his account of the crime in the book *Fatal Vision*. The foundation of the suit was breach of contract and fraud. MacDonald alleged that he agreed to do the book because McGinnis contracted to write it to help prove MacDonald's innocence. Instead, the book seemed to underscore his guilt. MacDonald won the suit and was awarded \$325,000 — \$275,000 for the breach of contract and \$50,000 for the fraud.  
  
MacDonald's mother-in-law then sued MacDonald on the basis of California's notoriety-for-profit act and argued that MacDonald should not be given the money because it was a profit from the selling of his story. (*Kassab v. MacDonald* C672086) The court ruled that the \$50,000 was not subject to the act because it didn't relate to the story itself. The \$275,000 was susceptible to the suit; however, the judge ordered that \$92,000 of MacDonald's attorney's fees be deducted from the sum and that the remaining \$173,000 be divided between MacDonald's mother and his in-laws. (See *National Law Journal*, February 6, 1989, p. 8)

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3. Most notoriety for profit acts were ruled unconstitutional by the Supreme Court in 1991 in *Simon and Schuster Inc. v. Members of New York Crime Victims Board*, 112 S.Ct. 501 (1991). State legislatures are seeking to revise legislation so that it meets the tests that appear in *Simon and Schuster*. Such revised legislation would either make available all "fruits of the crime" income for reparations, or significantly strengthen restitution laws, or both.

#### D. Civil Litigation

1. Civil recourse for victims of crime can take several forms. One type of litigation takes place when the victim sues the offender. For years, such litigation was often viewed as untenable due to the myth that most offenders are impoverished and have few assets. However, civil litigation may be a viable option in certain types of crime — acquaintance rape, domestic violence, child abuse, and so forth.

In recent years, companies insuring the house or apartment where a crime has taken place have become potentially liable. In *Allen v. Allen*, GD 89-13380 (Ct. of Common Pleas, Allegheny Co., PA), Eugene Allen began molesting his grandchildren in 1986 and continued the contact for three years. He was caught and convicted of child molestation. The three children sued him and his wife. The Court of Common Pleas jury on September 25, 1992, awarded compensatory damages of \$1.8 million to the oldest child, \$800,000 to the middle child and \$2.5 million to the youngest child. The jury also awarded \$10 million in punitive damages for each child against Mr. Allen and \$230,000 each for his wife. Since Mr. Allen is in jail and has limited resources, ordinarily the judgment would be uncollectable, but their homeowner's insurance policy may pay much of the award—the subject of a second, pending lawsuit between the plaintiffs and the Allens' insurance company.

In another case, *Haste v. Berdella*, CV 89-7118 (Cir. Ct., Jackson Co., MO) (also at *Howell v. Berdella* 1992 Mo. App. LEXIS 1618), the jury awarded the parents of a man who was killed by a serial killer \$2.5 billion for wrongful death and \$2.5 billion for aggravating circumstances. The trial court upheld the award. Again, the case would seem meaningless due to the fact that the killer is in prison and has few assets. However, his homeowners insurance policy has a clause covering negligence. And, while there is a limit of \$100,000 for acts of negligence, the insurance policy also includes a provision holding the insurance company liable for pre-judgment and post-judgment interest which is running at \$600,000 a day. The insurance company has filed a declaratory motion seeking to determine the extent of its coverage (*Economy Fire & Casualty Co. v. Betty Ann Haste*, CV 89-14300). Earlier in 1992, a trial court's ruling that there was no coverage was reversed by the Missouri Court of Appeals, which said there must be a jury trial to determine the extent and amount of insurance liability. (Appealed at 824 S.W. 2d. (1991)). No court date has been set. (*National Law Journal*, Monday, January 25, 1993).

A very controversial theory of accountability and recovery has been successfully argued in recent months. Mothers in two unrelated cases have been held liable for failing to protect their children from sexually abusive spouses. "The monetary awards could

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represent more than a moral victory for the victims, according to their lawyers, who said that neither set of parents has the assets to pay a multi-million-dollar judgment. But both couples have homeowners' insurance policies that, while excluding coverage for intentional wrong-doing, do cover claims for negligence." "Liability for Spouse's Abuse," Mark Hansen, *ABA Journal*, February, 1993, p. 16.

The first case was in a Minnesota trial that was decided in October, 1992. The Scott County District Court jury awarded Denise Richie, the 21-year-old woman who had been molested by her father as a child, more than \$1.4 million in compensatory damages against both her parents and an additional \$1 million in punitive damages against her father.

Two weeks after the Minnesota case, in Texas, Smith County Court Judge Randall Rogers awarded two sisters \$3.4 million in damages against their mother and stepfather for a pattern of sexual abuse that began when the girls were 6 and 8 and continued for about five years. The judge held the mother was 50% responsible for the damages awarded, which included punitive damages of \$2.8 million.

The controversy over these cases centers on whether mothers in such cases are actually in a position to protect their children.

In a related area of the law, in May, 1992, Judge Ken Kawaichi of Superior Court in San Francisco ruled in favor of neighbors who contended that a 36-unit apartment building had become a public nuisance because it was a center for the sale and distribution of drugs. The owner, Albert C. Lew, was ordered to pay the neighbors \$218,325. Each will receive from \$1,000 to \$5,000. *The New York Times*, May 21, 1992, Section A, page 24, Column 4.

2. There is an old doctrine that certain people have a duty to protect from harm their patrons, customers, tenants, and others with such a special relationship, and when that standard of reasonable care is broken, that third party, and not just the wrongdoer, is liable for civil damages to the victim. At least since 1976, when the University of California system was found liable for failure to relay threats made by a student in psychiatric counseling against a young woman whom he later killed, these third-party wrongful death suits have been successfully brought in cases involving criminal conduct. This doctrine has won civil damages from apartment, store, and hotel owners, schools, prison systems, and a host of others in recent years.

New areas of liability are being found in recent years. In January, 1992, a state court jury in Virginia ordered a gun store to pay \$100,000 to the family of a teacher who was shot to death by a student, whose purchase of the gun had been illegal. Dennis A. Henigan, of the Center to Prevent Handgun Violence, said it was the first time a jury had held a store liable for damages in such a purchase. *National Law Journal*, Feb. 10, 1992, page 3.

Another landmark case emerged from the shooting spree in the Chicago suburb of Winnetka on May 20, 1988, when 30-year-old Laurie Wasserman entered a second-grade classroom of Dann Elementary School and shot six pupils, one fatally. She committed suicide later the same day. The parents of the eight-year-old boy she killed brought suit

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against Dann's parents alleging that they knew their daughter was dangerous and that they had control and charge of their daughter's life. *Corwin v. Wasserman*, 88 L 6369 (Cir. Ct. Cook Co., 1988), *Chicago Tribune*, Chicagoland Section, p. 11, September 9, 1988.

3. In a companion area of civil litigation, divorce and child custody law, issues of domestic violence are beginning to be considered as a relevant factor in custody or visitation litigation. *Kenneth B. v. Elmer Jimm S.*, 399 S.E.2d 192 W. VA. (1990); *In re A.D.R.*, 542 N.E. 2d 487 Ill. Ct. App. (1989); *Lewelling v. Lewelling*, 796 S.W. 2d 164, (Tex., 1990) Several states have statutes that expressly state that courts shall consider domestic violence when evaluating the best interests of children (Ill. Ann. Stat. ch. 40, para. 602(1) (6); Tx. Family Code Ann. Section 14.01 (c)(2)). One parent's physical or psychological abuse of the other parent is a relevant factor.
4. In addition to expanding the grounds for *litigation*, so are the grounds for *recovery*. For example, those suing airlines in the aftermath of crashes are now asking that, in addition to other ways the victims suffered, their "pre-impact emotional distress" also be considered as a basis for affixing damages, and these are believed to be calculated into settlements now being reached in such cases. Three verdicts and two settlements were awarded to passengers suffering psychological injuries when a cargo door blew out on a February 24, 1989, United Airlines flight and killed nine people. The three verdicts of \$55,000, \$50,000 and \$40,000 occurred in *Chin v. United Airlines*, CV-89-3387 (C.D. Calif.). The suits were concluded on April 11 and 12th. Attorney Joseph T. Cook stated, "I think it is the first jury verdict for purely emotional distress in an airplane accident scenario." *National Law Journal*, May 1, 1989. On July 24, 1989, a Philadelphia law firm filed two class actions over the July 19, 1989, United Airline Flight 232 crash in Sioux City, Iowa. *Mackin v. United Air Lines, Inc.*, 1990 WL 6891; *Landsberger v. United Air Lines Inc.*, 89-5476 (E.D. Pa.)

In 1990, a California appellate court ruled that two people who witnessed the death of another passenger while aboard the Palm Springs Aerial Tramway could recover damages for emotional distress. "A plaintiff who suffers emotional distress arising from fear for his own safety caused by a defendant's negligence need not establish either physical injury to himself or a close familiar relationship with a third person who was physically injured" to sue for negligence. *Ballinger v. Palm Springs Aerial Tramway*, E006050, May 17, 1990, 220 Cal. App. 3d 581; 269 Cal. Rptr. 583.

Some states have statutes that specifically allow a judge or jury setting damages in wrongful death cases to consider survivors' grief and loss of companionship.

5. There are also interesting international developments revolving around civil claims against foreign governments and criminal activities by foreign governments.
  - a. On February 21, 1991, the 11th U.S. Circuit Court of Appeals reversed a trial court ruling, permitting plaintiffs Scott and Vivian Nelson to press their claims for compensatory and punitive damages against Saudi Arabia, Saudi-owned King Faisal Specialist Hospital, and Royspec, a Saudi purchasing agency based in Maryland. *Nelson v. Saudi Arabia*, 89-5981. Nelson was recruited by the Saudi government to work as a

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monitoring systems engineer at the hospital. He alleges that on March 20, 1984, he discovered certain safety hazards at the hospital and he reported them to an investigative commission of the Saudi government. On September 27, 1984, Mr. Nelson was summoned to the hospital's security office, then moved to a jail cell where he says he was shackled, tortured, and beaten by Saudi government agents. Mr. Nelson says he was imprisoned for 39 days, during which time he was never accused of any crime. He also alleged that his wife, Vivian, was told by a Saudi government official that her husband could be released if she provided sexual favors.

- b. More recently, law professor Katherine McKinnon agreed to take the case of the Bosnian women who have been raped during the Bosnian and Serbian war in an effort to ensure the enforcement of sanctions for rape on an international basis.
6. One growing concern of some victims and advocates is the trend towards "tort reform" which is a method of limiting methods of recovering damages in civil actions. There are three principle methods for instituting changes favored by the insurance industry and certain policyholders.
- a. The first kind of change is instituting laws aimed at abolishing or curtailing the legal doctrine that all defendants — even ones with a small share of the blame — are fully responsible for all the damages that they jointly are found liable for.
  - b. The second change is capping "non-economic" damages that can be recovered for pain and suffering.
  - c. The third change is to establish limits on punitive damages.
  - d. One of several worrisome cases was decided in Minnesota in *Foley v. Honeywell* 488 N.W. 2d. 268 (1992). There the court ruled that a worker who was raped and killed while on the job had suffered "an accident" on the job and hence tort recovery was limited under the state's workman's compensation law.

## V. The Right to Property and Employment

### *Original Intent*

This concept was based on the fact that, for years, property that was recovered for use as evidence was held by law enforcement for months and sometimes years before being returned to its rightful owners. Indeed, in many cases, property was never returned. Additionally, victims or witnesses who testified in a criminal case often were docked wages or, in some cases, fired because of the need to take time off from work or the stigma that accompanied the trial.

### *Current State of the Law*

- A. The right to expeditious property return is designated by statute in 43 states. However, in most cases the right is limited by the caveat that a judge may deem property necessary for trial or appeal. While most property can be photographed for criminal proceedings, many prosecutors feel that the having the property physically present in court is important to their cases.

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Even if property cannot be expeditiously returned, it should be a right of a victim to have his or her property treated with respect and care. In some cases property is auctioned off or sold by law enforcement agencies without any serious attempt at identifying the owner. In other cases, it is simply lost. Denise Maslund was murdered by Ted Bundy after disappearing on July 14, 1974. When her remains were found a year after her disappearance, her mother, Eleanore Rose, planned a funeral. However, investigators told her she could only borrow the body because they needed it for evidence. For 10 years, Ms. Rose begged the police to return the remains of Denise. Finally, she was told that what was left of Denise had been lost. *The New York Times*, Monday, February 13, 1989, A1 and A9.

- B. States have addressed the issue of the right to employment primarily through statutes that provide for the right of a victim to have an advocate intercede with his or her employer to obtain relief. Some jurisdictions have agreements between the prosecutor's office and local employers to allow victims or witnesses to attend trials or to testify when necessary, at no loss in pay. However, only three states have laws that specifically make it a misdemeanor for an employer to refuse to pay wages or to fire an employee who must be present at criminal justice proceedings.

The Uniform Victims of Crime Act has the following provision.

"An employer may not discharge or discipline a victim or a representative of the victim for:

- "1. participation at the prosecutor's request in preparation for a criminal justice proceeding; or
- "2. attendance at a criminal justice proceeding if the attendance is reasonably necessary to protect the interests of the victim." Section 207.

- C. For many victims, the financial hardship caused by crime can cause them to be unable to pay bills or rent. Twelve states have addressed this issue by providing for the right of a victim to have an advocate intercede with creditors. Some states also explicitly include landlords in such statutes. This has particular importance for many victims of domestic violence. Often landlords will refuse to rent to people involved in abusive relationships or to women who are trying to escape abusive relationships.

## VI. The Right to Due Process During Criminal Proceedings

### *Original Intent*

This concept essentially sought to establish parallel procedural rights for victims that exist for defendants. Such rights include such issues as the right to a speedy trial, the right to attend court proceedings, the right to a jury trial and the like. One narrow issue that has been resolved in the last twelve years was the concern that in jury selection the prosecution should have the same number of pre-emptory strikes as the defense. In 1980, a number of states allowed the defense to have as many as three times the number of strikes as the prosecution.

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## *Current State of the Law*

- A. Twenty-three states now accord certain victims a right to a "speedy" disposition of their case. Most such statutes are limited due to the lack of enforcement provisions. If a defendant demands a speedy trial and does not receive it, the case is dismissed. Parallel remedies are not appropriate for the state or the victim. One remedy seriously considered is the idea of requiring the chief judge of a judicial district to bar any civil case from going to trial until the improperly-delayed criminal case is sent to trial. There is authority for that remedy in the state of Oregon where court rules state that no civil case can go forward while a criminal trial is pending.

The Uniform Victims of Crime Act suggests the following provision.

"A prosecutor, if practicable, shall inform a victim of a pending motion that may substantially delay the prosecution. The prosecutor shall inform the court of the victim's position on the motion, if any.

"If a victim objects to a delay, the court shall consider the victim's objection and, if it grants the motion, state in writing or on the record that it has considered the objection."  
Section 202

- B. Twenty two states explicitly allow victims and family members to attend court proceedings. Five of those states provide for such court attendance through the passage of state constitutional amendments and seventeen have separate statutes on the issue.

The first state to pass a court attendance statute was Alabama in 1983. With the exception of states that have passed constitutional amendments, the Alabama statute is arguably still the most expansive. Its court attendance law grants victims the rights to be present in the court hearing their case and to be seated at the prosecutor's table; not to be excluded from that court or counsel table during any pertinent hearing or trial or portion thereof except for reasons that would also justify a defendant's removal; and to be exempt from rules that separate or exclude witnesses from court in criminal trials or hearings. While to some legal scholars the statute seemed a radical departure from general legal practices, in fact, a number of Alabama courts had traditionally operated in this manner. (Alabama is also one of the states that actively use private prosecution when victims request it.)

The Uniform Victims of Crime Act provision is as follows.

"A victim or an individual designated by the victim may be present whenever a defendant has a right to be present during a court proceeding concerning the crime charged other than a grand jury proceeding, unless the court determines that exclusion of the victim or designated individual is necessary to protect the defendant's right to a fair trial (or the confidentiality or fairness of a juvenile proceeding). If the victim is present, the court, at the victim's request, shall permit the presence of an individual to provide support to the victim, unless the court determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

"Unless a victim requests otherwise, the prosecutor shall promptly inform the victim of the date, time, and place of each court proceeding relative to the disposition of the case at which the victim has a right to be present." Section 205

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- C. Some victims and their advocates have argued that the right of defendants to a trial by a jury of their peers does not necessarily mean that they have a right to waive a jury trial. Victims or the state, it is argued, should also have a right to demand a jury trial. While no state has a statute providing for such a right, Illinois did pass a law giving victims the right to jury trial a few years ago. Following its enactment, a case was appealed to the Illinois Supreme Court in which a defendant argued that the right violated his due process rights. The Illinois Supreme Court found the statute unconstitutional but did not rule out the possibility that if the statute was reworded that it might be upheld.
- D. Another due process issue is one that could be described as a victim's right to have relevant evidence presented in criminal proceedings. The focus of this concern is the growing effort to persuade the judiciary that evidence regarding long-term stress effects of criminal victimization is relevant. (Such evidence includes the battered woman's syndrome, rape trauma syndrome, post-traumatic stress disorder, child sexual abuse accommodation syndrome, and others.) There is no consistent rule of law regarding such evidence throughout the U.S. Whether it may be used as corroborating evidence of a crime, evidence in the assessment of the impact of crime, or evidence of the crime itself varies from state to state.
- E. Elimination of or lengthening the time of statutes of limitation in cases of child sexual abuse and incest has increasingly been addressed by state legislatures. Twenty nine states have changed their laws in two ways. They have extended the time period during which criminal or civil charges can be brought. And, some have indicated that the time period does not begin with the alleged crime but with the moment of discovery of the crime by the victim. This revision attempts to deal with the concern that some victims of sexual abuse repress memories of the crime until adulthood.
- F. Another issue under due process rights addresses procedures for discovery. Pre-trial depositions are permitted in civil proceedings in all 50 states. But criminal cases are different.
1. Thirty-eight states allow depositions in criminal trials only if a witness will be unavailable for trial. Six require court orders for depositions. The remaining six — Vermont, Florida, Indiana, Iowa, Missouri and North Dakota — do not require a court order. In the spring of 1991, Vermont sought to change the law and eliminate depositions unless all parties agreed to them or unless the witness would be unavailable to appear at trial. This move ignited a debate about due process rights of defendants to have depositions and the potential trauma to victims of crime when they must endure hours of questioning.
  2. On October 2, 1992, the majority of the Arizona Court of Appeals, Division One, held that a defendant's due process right to present a defense trumps a victim's right under the Arizona Constitution to refuse to comply with discovery requests. Under the Arizona Constitution, the victim had a right to "refuse an interview, deposition, or other discovery request by the defendant. . . ." However, a state's ability to restrict defendants' right to discover exculpatory information is limited by the doctrine of *Brady v. Maryland*, 373 U.S. 83 (1963), the majority decided. The case was remanded for in camera findings on, among other things, whether the records sought were exculpatory and essential to the defendant's assertion of self-defense. The ruling is a recognition that information essen-

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tial to the defense must be made available to the defendant prior to trial to be useful. *State ex rel. Rowley v. Superior Court*, 836 P. 2d 445 (Az. Ct. App. 1992).

## VII. The Right to be Treated With Dignity and Compassion in the Aftermath of Crime

### *Current State of the Law*

A. Some have argued that treating victims with dignity and compassion includes taking into consideration their needs or their losses at sentencing. While the victim impact statement laws have been enacted to help judges or juries to do this, some laws and legal policies also address sentencing issues more directly.

1. The sentencing of a man who had sexually assaulted his 11-year-old stepdaughter in 1986 by Circuit Judge John F. Foley was based on Judge Foley's consideration, among other things, of how the sentence would affect helping the girl to recover. The Wisconsin Court of Appeals upheld the decision. *State v. Jones*, 444 N.W. 2d. (Wisc. App. 1989) The court said a victim's needs may be considered where appropriate. In a concurring opinion, Appellate Judge Ralph Adam Fine went further, saying a victim's needs should be "an appropriate consideration in every case." "A victim's suffering is not only a good measure of the crime's seriousness but, indeed, is a useful gauge with which to determine appropriate punishment. Criminals who intentionally inflict harm are also subject to penalty enhancement that will vary with the psychological needs of their victims."
2. The federal Sentencing Guidelines allow for escalation of sentences when victims of the crime are vulnerable. (Section 5K2.3 of the Guidelines.) There is considerable discussion of what constitutes a "vulnerable victim" for the purposes of these guidelines. The Third Circuit ruled that the repercussions of a fraudulent investment scheme that wiped out the savings of some elderly victims included the sort of "extreme psychological injury" that justifies an upward adjustment in offense level under the Guidelines. *U.S. v. Astorri*, 923 F. 2nd 1052 (3rd Cir., 1991); cert. denied, 112 S. Ct. 444.

The Tenth Circuit Court of Appeals has indicated that without more than mere membership in that class of persons who are elderly, an enhancement is not allowable. (*U.S. v. Lee*, 973 F.2d. 832 (10th Cir. 1992)). However, the same circuit affirmed an enhancement based on a district court's determination that the victim was vulnerable based on her physical characteristics. In that opinion, the Court of Appeals stated that the defendant selected and targeted the particular victim for a sexual assault because of her double mastectomy and her obvious weakened physical condition. *United States v. Pearce*, 967 F.2d 434 (10th Cir. 1992); cert. denied, 113 S. Ct. 341.

3. Some judges are independently devising sentences that include consideration of victims. In a case in Tennessee, Judge Joe B. Brown gave the victim the right to go to the home of the person who burglarized him and take, as restitution, any five pieces of items he wanted. "Being robbed? Judge believes in eye-for eye," Lawrence Buser, *Detroit News*, October 3, 1991.

B. Increasingly, there has been an emphasis on implementing better treatment of victims through more in-depth training. Twenty states mandate training on some victim issues for law enforcement officers. New York and Montana explicitly include mandated training for pros-

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ecutors as well. There are more and more training curricula available for all types of professionals. Many advocates believe that there should be mandatory pre-service training for victim advocates or counselors in addition to regular in-service training programs.

- C. A second aspect of ensuring that victims are treated with dignity and compassion is to successfully and adequately fund comprehensive victim services. While funding was discussed briefly in the section on the right to counsel, it should be reiterated here that without sustained funding, it is unlikely that victims will be treated appropriately.
- D. A final factor in the provision of appropriate services in the criminal justice system is the establishment of unassailable rights for victims. While all states have some form of bills of rights for victims, in most states those rights only apply to victims of adult criminals. Victims of juvenile offenders are often denied similar rights because of the closed nature of the juvenile proceedings and because the law treats juvenile offenders significantly differently than adult offenders. New York has a specific law providing for victim rights in juvenile proceedings. Legislation in Florida giving victims of crime the right to be informed, present and heard in juvenile court when the offender is under 18 years of age and the right to a prompt and timely case disposition became effective October 1, 1992.

Twenty states currently have constitutional amendments, but the goal of many advocates throughout the United States is to not only change every state constitution but to enact a federal constitutional amendment as well. There is also some question about how such constitutional provisions can be enforced. Florida is currently considering legislation that would give victims standing to invoke their constitutional rights. The following provisions are being considered.

“The victim has standing to seek an order or to bring a special action mandating that the victim be afforded any right or to challenge an order denying any right guaranteed to victims under Florida Statutes, s. 16(b), Article 1, Constitution of Florida, any implementing legislation or court rules. In asserting any right, the victim has the right to be represented by personal counsel at the victim’s expense.

“A victim has the right to recover damages from an individual or governmental entity responsible for the intentional or knowing violation of victim rights guaranteed under Florida Statutes, s. 16(b), Article 1, Constitution of Florida, any implementing legislation or court rules. Nothing in this section alters or abrogates any provision for immunity provided for under common law or statute.

“At the request of the victim, the prosecutor may assert any right to which the victim is entitled.”

(Correspondence with Denny Abbott, Victim Services Coordinator, Palm Beach County, Florida, October 21, 1992.)

The quest for “dignity and compassion” also embodies the teaching of Justice Benjamin Cardozo: “Justice, though due the accused, is due the accuser also.” Dignity and compassion are the bedrock rights sought by victims and their advocates in the United States, and every other proposed reform in the name of victim rights should be measured against this ethical test.



## Chapter Six: Crisis Intervention

### I. Introduction

On a wall of Brasenose College at Oxford University hangs a letter from President Abraham Lincoln as a model of "purest English." It is also a model of written response to a grieving mother:

*Dear Mrs. Bixby,*

*I have been shown in the files of the War Department a statement of the Adjutant General of Massachusetts that you are the mother of five sons who have died gloriously on the field of battle. I feel how weak and fruitless must be any word of mine which should attempt to beguile you from the grief of a loss so overwhelming. But I cannot refrain from tendering you the consolation that may be found in the thanks of the republic they died to save. I pray that our Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have had so costly a sacrifice upon the altar of freedom.*

*Yours very sincerely and respectfully,*

*A. Lincoln*

*- Cook, R.J., ed., One Hundred and One Famous Poems, Contemporary Books, Chicago, 1958.*

### II. Purpose and Value of Crisis Intervention

Simple techniques for intervening in crisis can help survivors regain a sense of control over their lives and begin the process of reconstructing a new life. Much of crisis intervention rests on the idea of creative listening.

Catherine de Hueck Doherty spoke of the impact of

Excerpted from Young, *The Community Crisis Response Team Training Manual, Second Edition*, Chapter Six, Crisis Intervention and Death Notification; copyright noted below.

good listening. She said, "With the gift of listening comes the gift of healing, because listening to your brothers or sisters until they have said the last words in their hearts is healing and consoling. Someone has said that it is possible, 'to listen a person's soul into existence.' "

In the aftermath of a catastrophe, victims must deal with the physical and emotional impact of the crisis reaction, but also with the sense of helplessness, powerlessness and a loss of control. A common response in the shock of the moment is to retreat into a childlike state. The victim is vulnerable to any kind of intervention. Intervenors should use a great deal of care to avoid intrusive or harmful behavior or reactions to victim responses.

Death notification is a kind of crisis intervention that is particularly sensitive. No one wants to learn about the sudden death of a loved one. In most cases, the death notification itself is the traumatic event and the caregiver, initially, is perceived as the source of the trauma. The elements of crisis intervention – safety and security, ventilation and validation, and prediction and preparation – are critical in death notification, but other issues also rise to the surface. Among them are the timeliness of the notification, the accuracy of the information, whether the notification was made in person or through telephone or electronic communication, and the ability of the notifier to provide immediate assistance with practical concerns such as the notification of other loved ones, identification of the deceased's body, explanation of autopsy requirements, or funeral or memorial arrangements, if necessary.

### III. Elements of Crisis Intervention

#### A. "Safety and Security"

##### 1. *Safety*

Safety is an issue for victims who survive. Until it is addressed, other issues or concerns will be tangential. Providing for the safety of victim-survivors involves the following services.

- a. Assisting with and showing concern for the victim's or survivor's physical safety and medical needs. Issues to be addressed include:

- Is the victim in need of medical care?
- Is the victim in immediate danger?
- Are the victim's family, friends or neighbors in immediate danger?
- Are the victim's home or belongings in immediate danger?
- Is there a safe place to which victims and their loved ones can be taken while waiting for immediate danger to pass?
- Are there belongings significant to the victim that need to be rescued, if possible?
- b. Taking care of witnesses' and family members' safety and medical needs. The following questions should be asked:
  - Are any people in immediate danger?
  - Do any people need immediate medical care?
  - Is there a safe place where these people can be taken while waiting for further word of loved ones or for further questions from investigators?
- c. Ensuring that victims or survivors have warmth, food, clothing and are able to sleep.
  - Is there a source of power for heating?
  - Are there sufficient blankets for maintaining warmth?
  - Do they have a change of clothing?
  - Is there a quiet place where they can rest and feel secure?
- d. Giving victims and survivors a sense of connection with other people in a secure setting.
  - Are telephones or others forms of communication available so that victims and survivors can get in touch with friends or relatives?
  - Is there someone the caregiver can contact for the survivors so that they feel more secure?
  - Can groups of survivors meet and talk in order to get a sense of the range and the extent of the disaster?

- Is there a respected authority who can talk to survivors?
- What information do survivors want and need to feel more secure?

## 2. *Security*

Survivors who know they are physically safe may still feel insecure. Individuals who have survived the death of a loved one are not often concerned about their own safety. But they do need to be given a sense of *security*.

- a. Help survivors find privacy for the expression of emotions.
  - Most survivors are uncomfortable with intrusive or sensational media scrutiny.
  - Many survivors do not want family, friends or members of their own culture to witness their loss, pain or grief.
  - Some survivors feel more secure if they talk to only one or two caregivers at a time.
- b. Ensure confidentiality of communication.
  - Confidentiality of communication can be assured when survivors talk with professionals who are legally bound by confidentiality laws, at least within the limits of those laws.
  - Confidentiality of communication may be assured when survivors talk with crisis responders who are ethically bound to keep information private.
  - Assurances of confidentiality should be expressly limited if a crisis responder cannot guarantee for legal or policy reasons that what is said will not be repeated.
  - Assurances of confidentiality should be expressly limited if other people are present during the course of communication and the crisis responder cannot guarantee their trustworthiness.
- c. Reassure survivors that their reactions are acceptable and not uncommon.
  - The reason for knowing the range of crisis reactions and their various manifestations is

- so that caregivers can let survivors know that they are not “going crazy” and that such patterns of response are not unusual.
- Telling survivors of common grief reactions, and assuring them of the validity of such reactions, is also important.
  - Immediate family members should be reassured that family members, friends, and others may react differently to the notification of death, but that grief reactions and crisis reactions of many different types are not unusual.
- d. Help survivors begin to take control of the events going on around them.
- Ask survivors where they would like to sit and talk so they can make initial decisions over their environment.
  - Ask them if they would like a glass of water or a beverage while they talk.
  - Offer them a cigarette or refreshments, if available.
  - Ask them what their names are and what they would like to be called while you talk with them.
  - These are all simple questions that have no “correct” answer but help survivors make small decisions in gaining control over certain parts of their lives.
- e. Support survivors in their efforts to achieve a sense of emotional safety.
- Sometimes victims and survivors are not physically safe after a traumatic event. Crisis responders may not feel safe either – an earthquake may be followed by scary aftershocks; a hurricane may be followed by a flood; an assailant may not have been apprehended. Crisis responders may be called upon to help victims or survivors gain a sense of mental safety (thinking of a place or a time when they did feel safe); safety in the belief that others care (perhaps giving

*Participant's Notes*

small gifts of pictures, ornaments, soap or shampoo, stuffed animals); or spiritual safety (participating in prayer or meditation).

3. Hints for Helping

- a. Make sure the victims/survivors feel safe or secure when you are talking to them.
- b. Respond to the need for nurturing — but be wary of becoming a “rescuer” on whom the victims become dependent.
- c. Help survivors contact loved ones whom they trust and would be willing to assist them.
- d. Help survivors solve immediate problems that have been caused by the tragedy.
- e. Help survivors re-establish a sense of control over the small things, then the larger ones, in their lives.

**B. “Ventilation and Validation”**

1. *Ventilation*

Ventilation refers to the process of allowing the victims/survivors to “tell their story.” Survivors often need to tell the story of the disaster over and over again. Each time it is told it may take a different form. Occasionally the differences will be due to memory problems. Sometimes the differences will reflect what is important to survivors at that particular time. Ventilation involves identifying appropriate words to express experiences, reactions, and responses. Sometimes it helps survivors to read or hear synonyms for words they are using, words which may more accurately express what they are feeling. Survivors may express their reactions through art, dance, music, prayer, or other forms of ventilation. Caregivers may encourage “story-telling” by asking appropriate questions and engaging in active listening. When encouraging survivors to talk about their experiences, caregivers should remember that body language, facial expressions, and tone of voice are as important as the words used in conversation.

- a. Compassionate presence
  - Caregivers and survivors should be seated during conversations. Chairs should be arranged at an angle so that the discussions seem less confrontational. Seating is not always available, so when standing, caregivers should allow the victim or survivor to set the standard for a comfortable distance between the conversants.
  - Lean forward in your chair or incline your head to indicate attentiveness.
  - Keep facial expressions generally neutral but reflect concern or sadness when appropriate to the content of the victim's story.
  - In most cases, it is important to maintain eye contact with survivors. However, in some cultures, it may be more appropriate to only occasionally look a speaker in the eye, particularly when conversations are held between people of the opposite sex.
- b. Speaking style
  - Speak distinctly and clearly, with modulated tones.
  - Convey calm and avoid agitated voice levels.
  - Pace your words so that you speak neither too rapidly nor too slowly for the listener.
- c. Effective words
  - Focus what you say on concrete issues.
  - Ask, "How should I address you?"
  - Ask, "Is there someone you would like me to contact so that they can be with you?"
  - Ask questions like: "How do you think that happened?" "What do you think were the reasons for that?" Never ask "why" questions.
  - Begin conversations with: "When did this happen?" "Where were you when this happened?" "Who were you with?" "What do you remember seeing, hearing, smelling, touching, or tasting at the time?" "What did you do?"

Participant's Notes

- Follow up questions, if necessary, with questions such as: "How did you react to that?" "Were you afraid?" "Were you angry?" "What did you do that makes you think you were at fault?"
- d. Effective listening

*Listening is an intellectual and emotional process that integrates physical, emotional and intellectual inputs in a search for meaning and understanding. The focus is on the entirety of each person's being, not just on words.*

— "Effective Listening," NOVA Training Guide, 1987.

Ineffective listening styles occur when listeners are affected by the following behaviors and attitudes.

- *Assumptions* are often made by listeners that they already know what will be heard so they listen carelessly.
- *Boredom* may occur when listeners do not think that what they will hear is important.
- *Concentration* is interrupted by distractions with other things.
- *Disagreement* is perceived with another's thoughts or interpretations of events.
- *Ego-involvement* by listeners so that they focus on their own words and think it is more important to hear themselves talk or teach rather than listen.
- *Failure* by the listener to understand what has been said or to interpret what was meant.
- *Generalizations* made by the listener that the survivors of one crisis are equated with the survivors of another.
- *Hearing only* what the listener wants to hear.

- *Interruptions* by the listener to complete the speaker's sentences or thoughts.
- *Judgments* of the speaker's behaviors or actions.
- *Kindnesses* that can kill when listeners respond to stories with their own emotions.
- *Listening* to words only — not the intent, meaning or physical reactions of the speaker.

Effective listening is a skill developed with training and patience. It is based on the following principles.

- *Ask* questions only to facilitate the flow of story-telling.
- *Believe* the speaker's impressions and reactions are the most important concern.
- *Clarify* what is being said.
- *Discern* unspoken messages from speakers in their body language, voice tone, and facial expressions.
- *Echo* words or phrases that survivors use to indicate that you are paying attention and following their stories.
- *Find* new or alternative words that repeat or enhance the meaning of speakers in order to respond affirmatively to their reactions.
- *Give* information that might help survivors understand the situation more clearly, if it might dispel specific concerns, without arguing with them or answering unasked questions.
- *Help* survivors remember what happened by asking them about the chronology of time during which the event took place and a chronology of what has happened since the event, or asking them to describe the contextual nature of the event, such as colors, sounds, sensations, or impressions.
- *Instill* peace through silence by waiting for survivors to decide when they may want to continue their stories.

- *Journey* with survivors through their narratives. If parts of the story are confusing, ask survivors if they can repeat those parts or remember other things that might help you understand what they are saying.
- *Keep* your personal values, beliefs, biases, and judgments to yourself, and avoid imposing them on others.
- *Listen*, summarize, and remember you are helping survivors develop a narrative for the event and to create words to describe their emotional reactions.

## 2. **Validation**

Crisis intervenors try to help survivors understand that most reactions to horrific events are not abnormal. Validation should be content-specific. A caregiver should refer to the actual tragedy that has taken place.

- a. Validation is based on effective hearing by caregivers.

In order to validate and affirm survivors' reactions, caregivers should not only learn how to listen but also be aware of the skill of hearing what is said. Hearing has four different registers: decoding ordinary meanings; resonating these meanings for another's lives; awakening to the meanings for the survivor who lives and speaks; and communing with that survivor through dialogue. (Egendorf, A., "Hearing People Through Their Pain," *Journal of Traumatic Stress*, January, 1995).

- i. Decoding ordinary meanings involves an effort to understand a survivor's story in terms of our own. It means listening carefully and identifying the story and the survivor's reaction with his or her past experiences and identity. Hearing requires someone willing to listen, and who brings at least some experience to the listening process.

*I was in bed with the flu, totally unable to function. The phone rang and the voice on the other end told me my son had been injured in an automobile accident. I knew I needed to go the hospital but I couldn't drive. I was so angry. I called a taxi and went to help him. He is doing okay, but I can't get over the anger.*

– A mother whose son was in a drunk driving crash, NOVA Case Notes, 1991.

Hearing ordinary meaning in this case may entail listening to the anger and the reason for the anger. The mother was not angry at the son; she was angry at the fact that she could not respond as she would have liked.

- ii. Hearing resonance refers to a musical metaphor that incorporates harmonies, dissonance and counterpoints.

*In resonating with another we hear the immediate sense that extends from what someone says to his or her wider ecology. This sense is given more directly than associations, conceptual schemes or interpretive linkages and develops as we appreciate more deeply what is being said.*

– Egendorf, A., "Hearing People Through Their Pain," *Journal of Traumatic Stress*. New York, NY. Plenum Publishing, Vol. 8 No. 1, 1995.

- iii. Awakening to what has been heard means trying to understand the context of the trauma and what it means now for the person who survived it. It is a recognition of life and hope.

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*Hearing people through their pain therefore means, in this respect, that we draw them out in the midst of what obscures them from themselves, and use talk creatively ourselves to show, rather than tell them, that they, not their hurt, are foremost.*

– Egendorf, A., "Hearing People Through Their Pain," Plenum Publishing, 1995.

- iv. Communicating our abilities to hear and learn from survivors provides them with support in their process of learning to live from their pain. Caregivers can be very effective in this if they hear well since their hearing is dependent upon their ability to live from and through their own pain.

*Then, ever the poet of transformation, Rilke announces the promise "But as soon as we acknowledge its dreadfulness ... with a confidence that this very dreadfulness may be something completely ours, though something that is just now too great, too vast, too incomprehensible for our learning hearts —: as soon as we accept life's most terrifying dreadfulness, at the risk of perishing from it ... then an intuition of blessedness will open up for us and, at this cost, will be ours." ... Giving "joyous consent" to the dreadful is not to be confused with acquiescence to or collusion with evil. Nor will any other one-sided formula dictate the way therapy, which, in the beginning, middle, and end, is a matter of cultivating and balancing timeless virtues: autonomy and affinity, fierce honesty and kindness, courage and compassion, commitment and care, and a good deal more.*

– Egendorf, A., "Hearing People Through Their Pain," Plenum Publishing, 1995.

- b. Words should be used carefully in validation.
- Let survivors find their own words and use their words in response.  
Victim: *"I get so frustrated when I read about this airplane "crash." This was no crash! The airplane exploded because of a terrorist bomb."*  
Intervenor: *"An airplane crash is certainly different from an airplane explosion."*
  - Allow survivors to name their own reactions, but when repeating their descriptions, provide them with synonyms for their responses.  
Victim: *"I am so angry, I could kill him."*  
Intervenor: *"You say that you are angry, perhaps even outraged or furious. It is not uncommon for people who are hurt so badly to think about killing the person who hurt them."*
  - Apologize if you use words that upset survivors or words that they indicate are inaccurate for their situation.  
Intervenor: *"You seem to be very angry about what happened."*  
Survivor: *"I am not angry. I am just very confused and frightened."*  
Intervenor: *"I am sorry I misinterpreted what you said, I was trying to understand what happened. Could you tell me more about your confusion and fright?"*
  - Avoid careless phrases.  
Intervenor: *"I am sorry to hear that this tragedy happened to you."* This sentence may convey the idea that you were sorry to listen to the victim, not that you were sorry that the tragedy took place.  
*"Thank you for sharing that feeling."* "Sharing" involves both persons experiencing the same feeling. Survivors often resent caregivers who assume

that they can share feelings or stories. Some survivors also dislike discussing *feelings* while they may be willing to talk about *reactions* and *responses*.

*"I would have done exactly the same thing as you did."* No one knows what they will do throughout a traumatic event or its aftermath. It may be better to say, "I don't know what I would have done, but what you did doesn't seem unreasonable."

- c. At times, repeating key elements of the survivors' stories back to them may be useful validation. It also confirms what the caregivers thought they heard said.

Survivor: *"I was in bed asleep when I was awakened by a noise. I was disoriented and confused but went back to sleep for a moment because I heard nothing more. The next thing I knew was that a large man was on top of me and I could not breathe. He told me not to scream or he would kill me. I did what he said without thinking. I was just thinking about staying alive. He tied me to the bed post before he left. I was able to free myself fairly quickly but I waited for the sun to come up before I called the police. Then, I didn't know what to say because I couldn't explain why I didn't call sooner."*

Intervenor: *"Let me see if I heard you correctly. You were awakened suddenly. You went back to sleep. And then you awakened again while this man was attacking you. You were so terrorized that he would kill you so you followed his instructions and when you were able to call the police, you did."*

- d. The emphasis in the validation should be on the fact that most types of reactions such as fear, anger, frustration, guilt, shame and grief are not

unusual and that each survivor's situation is unique.

Survivor: *"I have always tried to do what was expected of me and what I expected of myself. No one ever taught me about what to do if someone broke into my house and stole everything. When I got home that night, I could not believe my eyes. Everything was gone. I was so angry. It was so unfair. Why did someone feel they had a right to my stuff? But then I became scared because whoever took my things might come back and kill me. I didn't cry because I was so frustrated and worried. I called my sister and stayed the night with her. It was when I returned home the next day and I realized that not only were most of my things gone but that the burglar had stolen my mother's wedding picture that I cried."*

Intervenor: *"Most people don't expect someone to break into their homes and steal their possessions. It is unfair and you have a right to be angry. And, it is very frightening to think that someone can come into your home, at will, to steal or perhaps to hurt you. You survived, and I cannot imagine how painful it must have been to lose everything, most particularly to lose your mother's picture. Anger, fear, frustration and grief are a part of a pattern of many reactions that victims often have to such a violation of their lives."*

- e. Although most people manage their reactions well, some may become violent or dangerous to themselves or others. Intervenor should be alert to any signs of potentially harmful responses. Of particular concern are statements of intent to harm when linked to a well-thought-out plan of action in which the victim also identifies the means to carry out the plan.

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Victim: *"I have decided that I will have to kill my neighbor. He raped me. I identified him. The police have done nothing. He sees me every day and acts like everything is all right. I know how I will kill him. I have my father's gun. I have ammunition. I think I will invite him over to my house for dinner. If the gun accidentally discharges when I show it to him, it won't be my fault."*

- f. Do not validate the survivors' experiences by telling them of your own experiences. Previous experience with similar tragedies may be mentioned to help build credibility and create a sense of commonality, but everyone's experience is different. Caregivers should stay focused on the survivors and not use intervention to validate their personal reactions.

Survivor: *"I don't know why I'm talking to you. You can't possibly understand what it is like to have a child murdered. It has been hell every day. I think I see Joe coming home from school even though I know that he will never come home from school. I hear him getting ready for bed even though I know that he won't be in the bedroom when I look. I feel like I'm going crazy. I try to continue working and looking after my daughter but it seems impossible now that Joe is gone. Sometimes I put Jane to sleep reading a story and then wake her up with my own tears."*

Intervenor: *"I can't imagine what anguish you face each day. I do know how I felt when my daughter died, but the circumstances of Joe's death seem overwhelming. I don't think you are going crazy, but I would like to hear more about the problems you are facing. Can you tell me about some of your times with your daughter this last week?"*

3. *Hints for Helping*

- a. Open discussions with words such as "I am sorry that this tragedy happened to you."
- b. Ask survivors to describe the event.
- c. Ask them to describe where they were at the time they heard of the event or saw it happen.
- d. Ask survivors to describe their reactions and responses.
- e. Ask survivors to describe reactions and responses in the aftermath of the disaster — the time period between the disaster and the point in time at which you are talking with them.
- f. Let survivors talk for as long as they want, but when there is a pause, validate what was talked about. (If you have a reason to limit the time of the discussion, indicate what those limits are at the beginning of the talk.)
- g. Don't assume anything. Survivors will tell you what happened and how they reacted.

C. "Prediction and Preparation"

1. *Prediction*

Assist survivors in *predicting* the practical issues that will face them in the aftermath of the tragedy. One of the most important concerns of survivors is "what is going to happen next?" Ask them about the problems they think they will have over the next few days or months. If there are some that you can predict, and that they don't realize will occur, give them as much concrete information about such issues as you can.

- a. Practical predictions
  - Some survivors will have to relocate after a catastrophe. The relocation may be temporary or permanent. They may have concerns about what to take in the relocation, how to contact relatives or friends, or what type of transportation will be provided.
  - It is not unusual for financial issues to be of paramount concern. If an employment site has been disrupted, employees may be out

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of a job. Serious physical injury may result in hospital or medical bills that are not reimbursed by insurance.

- If a crime has been the cause of the disaster, victims may become involved in the criminal justice system as witnesses. Many catastrophes also result in civil litigation. In either case, the survivors may be involved in the legal system for years.
  - Any medical prognosis should be made as clear as possible to survivors.
  - Often survivors are not aware that they must identify loved ones who have died or they are not prepared to deal with funeral arrangements or notification of relatives. These issues should be explained as quickly as possible.
  - Survivors should be warned about the possibility that the media will want to do interviews or may broadcast stories about the disaster. Sometimes the treatment of the disaster story by the media can cause a great deal of anger and distress for victims and survivors.
- b. Possible emotional reactions should also be *predicted*.
- It is important to describe the immediate physical and mental responses that characterize the crisis reaction and grief reactions.
  - Long-term stress reactions should be explained.
  - Stress reactions that might occur in family members or friends should be described. It is particularly useful to describe possible reactions of children. It is not uncommon for parents to underestimate the effect of a disaster on children.
  - Certain things can trigger physical and emotional reactions after a disaster. For instance, holidays or birthdays may trigger grief over the loss of a loved one. Sights or

sounds that are similar to those experienced during the disaster may trigger responses of fear or horror that were prevalent at the time of the catastrophe.

- Reassure survivors that long-term stress reactions are not unusual but that not all people will suffer all of them and many may not face them at all.

## 2. *Preparation*

In addition to predicting what might happen in the aftermath of a disaster, it is helpful for caregivers to assist survivors to *prepare* and plan for such events.

- a. Provide survivors with as much information as they want and need concerning financial aid, insurance, and compensation to meet financial concerns. Help them fill out eligibility forms, if needed.
- b. Help survivors with developing plans for future protection of themselves and their families. Assist them in rehearsing the implementation of such plans.
- c. Provide survivors with referrals to additional resources for counseling, advocacy, or assistance.
- d. Provide survivors with information on prevention of possible similar events in the future or the mitigation of the consequences of such events.
- e. Give survivors accurate and truthful information about the length of time you will be able to assist them and what they might do when you are no longer available.
- f. Help survivors decide what things they can do to deal with specific problems and if there are any that they do not have the capacity to deal with, provide them with assistance once they have decided upon a particular plan of action.
- g. Tell victims and survivors what their rights are in the criminal justice system. Let them know how they might enforce these rights. Let them

know what is happening in your state and in the United States concerning victim rights.

h. Do not make promises that you cannot keep.

3. **Hints for helping**

a. Remind survivors to focus on living one day at a time.

b. Help them explore options and use problem-solving techniques with everyday concerns.

c. Encourage survivors to talk and write about the event.

d. Suggest that survivors establish a daily routine that they can easily follow.

e. Help survivors plan time for memories and memorials.

f. For some survivors, finding a "buddy" who can support them during times when they confront practical problems is helpful.

g. Promote healthy eating, sleeping and exercise habits that can increase the ability to cope.

**D. Useful phrases for crisis intervenors**

1. "You are safe now" (if the survivor is safe).

2. "I'm glad you're here with me now."

3. "I'm glad you're talking with me now."

4. "I am sorry this (tragedy) happened to you."

5. "This wasn't your fault" (if the survivor has done nothing to contribute to the tragedy and its consequences).

6. "Your reaction is not an uncommon response to such a disaster."

7. "It's understandable that you feel that way."

8. "It must have been upsetting to see (hear, feel, smell) that."

9. "I can't imagine how terrible this must be for you."

10. "You are not going crazy."

11. "Things may never be the same, but they can get better, and you can get better."

12. "If you can't tell me what happened to you, try to tell me what has been happening to your family."

*Give Sorrow words; the grief that does not speak  
knits up the o'er wrought heart and bids it break —  
— Shakespeare's Macbeth.*



# Chapter Eleven: Group Crisis Intervention Techniques

## I. Introduction

Group crisis intervention builds upon the lessons of individual crisis intervention while opening avenues for building stronger communities and increasing the depth of understanding in human tragedies. While the focus of such group work is often portrayed as simply the overwhelming emotions of trauma and helping survivors gain cognitive control and understanding of what happened, group sessions should always include not only listening to reactions and allowing participants to tell their stories but assisting them in facing their futures. Reestablishing human connections and affirming hope is critical. It is useful for the crisis responder to remember the words of Helen Keller:

*The marvelous richness of human experience would lose something of rewarding joy if there were no limitations to overcome. The hilltop hour would not be half so wonderful if there were no dark valleys to traverse.*

## II. Goals of Group Work

- A. Guiding the release of emotional steam after the pressure-cooker of trauma.
- B. Addressing great numbers of individuals after a community tragedy.
- C. Peer group validations of individual reactions enhance the effectiveness of the validations provided by crisis intervenors.

Excerpted from Young, *The Community Crisis Response Team Training Manual: Second Edition*, Chapter Eleven, Group Crisis Intervention Techniques (32 pages in length); note the copyright information below.

- D. Group work helps establish social support; rebuild a sense of community bonds; and repair the social fabric rent by the disaster.**
- E. Education of community members about trauma and its aftermath.**
- F. Affirmation or reaffirmation of hope in the future.**

### **III. Scope and Nature of Group Crisis**

#### **Intervention Services**

##### **A. Definition**

NOVA has adopted the term "group crisis intervention" rather than using the term "group debriefing" because there is a growing reluctance to refer to "debriefings" in a community crisis response effort for several reasons. First, the term is often confused with what is known in military and law enforcement populations as "logistical debriefings" which are used to obtain from participants details of an operation. Second, for many community members, "debriefing" sometimes carries with it mental health connotations that may inhibit participation. Third, even among crisis responders, there is often debate over what the "debriefing" process implies. And finally, it is often used carelessly to describe social exchanges that have little value in addressing trauma or crisis.

##### **B. NOVA's protocol**

Group crisis intervention is useful both as an immediate response to acute crisis and as a way to continue to integrate the trauma into community life. NOVA's protocol for group crisis intervention relies upon a chronological approach for addressing the crisis event. Group participants are asked to remember what happened at the time of the trauma, what has happened in the aftermath, and what they expect to happen in the future. If the trauma is particularly intense, it may be useful to pace the group session to avoid initial feelings of being overwhelmed again. To avoid premature exploration of trauma material, group facilitators may want to

start group sessions with the question, "What was life like before the event happened?" While facilitating this review, the group leader constantly seeks to ensure the group's sense of safety and security, to provide opportunity for ventilation and validation, and to help participants predict and prepare for problems in the future.

### C. Critical Incident Stress Debriefing (CiSD) protocol

CISD uses a similar process to that used by NOVA but most people using CISD models address trauma by guiding groups through the following phases:

- Introduction,
- The facts of the incident,
- What participants think about the incident,
- How participants reacted to the incident,
- What stress symptoms have been experienced,
- Education about the incident and subsequent stress, and
- A conclusion and preparation for the group to go back to their lives.

## IV. Description of NOVA Protocols

If a catastrophe such as a serial murder or massive bombing takes place, it is likely that many victims and survivors may not have a great deal of time to focus on group work. Intermittent sessions may be better than one lengthy group session. However, in some cases, a horrific crime can occur in a matter of minutes and community members may find time to participate in comprehensive group sessions. If a catastrophe is a no-low-point tragedy or lasts over an extended period of time, there may be a need for repetitive interventions. When there is no opportunity for repetition, the sessions may be focused on somewhat different issues than those used in immediate post-trauma situations. Because of these variables, several types of group crisis intervention protocols have been developed. This chapter will first review the basic NOVA protocol used in the immediate aftermath of sudden, immediate, low-point tragedies and then when and how NOVA employs modifications of this protocol.

**A. Group crisis intervention – basic protocol**

**1. Overview**

Group crisis interventions often take place at or near the site of the community trauma coincident with the first days or week of the trauma event. The technique allows the facilitators to address thoroughly all of the elements of crisis intervention; to educate participants on the common pattern of crisis reactions and what long-term stress reactions are to be expected; and to help participants consider coping responses. The group sessions usually last between 1½ hours and 3 hours. All victim and survivor populations can benefit from participation. NOVA conducts sessions for both homogenous groups, such as school personnel, firefighters, or survivors of those who have died in the tragedy, and heterogeneous groups for any victims, survivors, caregivers, or community members who want to attend. Although groups of 20-25 participants are ideal, group sessions have been conducted with as few as five people and as many as 600 people. In extremely large groups, not all members can participate verbally, but most benefit from listening to those who choose to participate, hearing the commonalities in stories and reactions, and observing the process itself.

**2. Timing of Sessions**

- a. Try to arrange sessions so that they do not conflict with events such as funerals, memorials and the like.
- b. Night sessions are generally better for community-wide group meetings. Day sessions are generally better for school personnel, children, and employees.

3. CRT group sessions are usually no more than two hours in length. The following estimates of how that time might be spent will vary based on group participation but are included as a guide for crisis responders.

- a. 1½ hours of group work.
  - 10 minutes: introductions by facilitator focused on providing guidelines for discussion and establishing parameters of *safety and security* for participants.
  - 35 minutes: questions designed to help review immediate physical sensory perceptions and emotional reactions of shock and disbelief and to give an opportunity for *ventilation and validation* of these reactions.
  - 25 minutes: questions designed to help review reactions reflecting emotional turmoil, including fear, anger, frustration, shame, guilt or grief, and to provide an opportunity for *ventilation and validation*.
  - 10 minutes: questions designed to elicit participant expectations for future coping strategies and to help *predict and prepare* group members for what may happen over the next few weeks, months or year.
  - 10 minutes: summary by facilitator of what has been said in order to review validation and emphasize preparation for the future, and conclude the session.
- b. Post-group session.

Allow 15 to 30 minutes for distributing handouts, answering individual questions, talking to individuals, and saying good-bye to individual participants.





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## A PRIMER ON CRITICAL INCIDENT STRESS MANAGEMENT (CISM)

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As crises and disasters become epidemic, the need for effective crisis response capabilities becomes obvious. Crisis intervention programs are recommended and even mandated in a wide variety of community and occupational settings (Everly and Mitchell, 1997). Critical Incident Stress Management (CISM) represents a powerful, yet cost-effective approach to crisis response (Everly, Flannery, & Mitchell, in press; Flannery, 1998; Everly & Mitchell, 1997) which unfortunately is often misrepresented and misunderstood.

What is CISM? CISM is a comprehensive, integrative, multicomponent crisis intervention system. CISM is considered comprehensive because it consists of multiple crisis intervention components, which functionally span the entire temporal spectrum of a crisis. CISM interventions range from the pre-crisis phase through the acute crisis phase, and into the post-crisis phase. CISM is also considered comprehensive in that it consists of interventions which may be applied to individuals, small functional groups, large groups, families, organizations, and even communities. The 7 core components of CISM are defined below and are summarized in TABLE 1.

1. Pre-crisis preparation. This includes stress management education, stress resistance, and crisis mitigation training for both individuals and organizations.
2. Disaster or large-scale incident, as well as, school and community support programs including demobilizations, informational briefings, "town meetings" and staff advisement
3. Defusing. This is a 3-phase, structured small group discussion provided within hours of a crisis for purposes of assessment, triaging, and acute symptom mitigation.
4. Critical Incident Stress Debriefing (CISD) refers to the "Mitchell model" (Mitchell and Everly, 1996) 7-phase, structured group discussion, usually provided 1 to 10 days post crisis, and designed to mitigate acute symptoms, assess the need for follow-up, and if possible provide a sense of post-crisis psychological closure.



5. One-on-one crisis intervention/counseling or psychological support throughout the full range of the crisis spectrum.
6. Family crisis intervention, as well as, organizational consultation.
7. Follow-up and referral mechanisms for assessment and treatment, if necessary

TABLE 1

**CRITICAL INCIDENT STRESS MANAGEMENT  
(CISM):  
THE SEVEN CORE COMPONENTS**  
(Adapted from: Everly and Mitchell, 1997)

INTERVENTION	TIMING	ACTIVATION	GOALS	FORMAT
1. Pre-crisis preparation	Pre-crisis phase.	Anticipation of crisis.	Set expectations. Improve coping. Stress mgmt.	Group. Organization
2. Demobilization & Staff Consult.(rescuers); Group Info. Briefing for civilians, schools, businesses.	Post-crisis; or Shift disengagement.	Event driven.	To inform, consult. Allow psychological decompression Stress mgmt.	Large group. Organization
3. Defusing	Post-crisis. (within 12 hrs)	Usually symptom driven	Symptom mitigation. Possible closure. Triage.	Small group.
4. Critical Incident Stress Debriefing (CISD)	Post-crisis. (1 to 7 days)	Usually symptom driven. Can be event driven	Facilitate psychological closure. Sx mitigation. Triage.	Small group.
5. Individual crisis intervention (1:1)	Anytime. Anywhere.	Symptom driven.	Symptom mitigation. Return to function, if possible. Referral, if needed	Individual.
6. Family CISM; Org. consultation	Anytime.	Either symptom driven or event driven.	Foster support, communications. Symptom mitigation. closure, if possible. Referral, if needed.	Families; Organizations.
7. Follow-up; Referral.	Anytime.	Usually symptom driven	Assess mental status. Access higher level of care.	Individual. Family.

[From: Everly, G. & Mitchell, S. (1997) Critical Incident Stress Management (CISM). A New Era and Standard of Care in Crisis Intervention. Ellicott City, MD: Chevron Publishing.]



As one would never attempt to play a round of golf with only one golf club, one would not attempt the complex task of intervention within a crisis or disaster with only one crisis intervention technology.

As crisis intervention, generically, and CISM, specifically, represent a subspecialty within behavioral health, one should not attempt application without adequate and specific training. CISM is not psychotherapy, nor a substitute for psychotherapy. CISM is a form of psychological "first aid."

As noted earlier, CISM represents an integrated multicomponent crisis intervention system. This systems approach underscores the importance of using multiple interventions combined in such a manner as to yield maximum impact to achieve the goal of crisis stabilization and symptom mitigation. Although in evidence since 1983 (Mitchell, 1983), this concept is commonly misunderstood as evidenced by a recent article by Snelgrove (1998) who argues that the CISD group intervention should not be a stand alone intervention. This point has, frankly, never been in contention. The CISD intervention has always been conceived of as one component within a larger functional intervention framework. Admittedly, some of the confusion surrounding this point was engendered by virtue of the fact that in the earlier expositions, the term CISD was used to denote the generic and overarching umbrella program/ system, while the term "formal CISD" was used to denote the specific 7-phase group discussion process. The term CISM was later used to replace the generic CISD and serve as the overarching umbrella program/ system, as noted in Table 1 (see Everly and Mitchell, 1997).

The effectiveness of CISM programs has been empirically validated through thoughtful qualitative analyses, as well as through controlled investigations, and even meta-analyses (Everly, Boyle, & Lating, in press; Flannery, 1998; Everly & Mitchell, 1997; Everly & Boyle, 1997; Mitchell & Everly, in press; Everly, Flannery, & Mitchell, in press; Dyregrov, 1997), unfortunately, this is a fact often overlooked (e.g. see Snelgrove, 1998).

Similarly, there is a misconception that evidence exists to suggest that CISD/ CISM has proven harmful to its recipients (e.g. see Snelgrove, 1998); this is a misrepresentation of the extant data. There is no extant evidence to argue that the "Mitchell model" CISD, or the CISM system, has proven harmful! The investigations that are frequently cited to suggest such an adverse effect simply did not use the CISD or CISM system as prescribed, a fact that is too often ignored (e.g. see Snelgrove, 1998).

In sum, no one CISM intervention is designed to stand alone, not even the widely used CISD. Efforts to implement and evaluate CISM must be programmatic, not unidimensional (Mitchell & Everly, in press). While the CISM approach to crisis intervention is continuing to evolve, as should any worthwhile endeavor, current investigations have clearly demonstrated its value as a tool to



reduce human suffering. Future research should focus upon ways in which the CISM process can be made even more effective to those in crisis.

While the roots of CISM can be found in the emergency services professions dating back to the late 1970s, CISM is now becoming a "standard of care" in many schools, communities, and organizations well outside the field of emergency services (Everly & Mitchell, 1997).

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## WAYS FOR YOU TO RESPOND TO THE STRESS REACTION

- WITHIN THE FIRST 24 - 48 HOURS, periods of appropriate physical exercise, alternated with relaxation will alleviate some of the physical reactions.
- Structure your time - keep busy.
- You're normal and having normal reactions - don't label yourself crazy.
- Talk to people - talk is the most healing medicine.
- Beware of numbing the pain with overuse of drugs or alcohol, you don't need to complicate this with a substance abuse problem.
- Reach out - people do care.
- Maintain as normal a schedule as possible.
- Spend time with others.
- Help your co-workers as much as possible by sharing feelings and checking out how they are doing.
- Give yourself permission to feel rotten and share your feelings with others.
- Keep a journal, write your way through those sleepless hours.
- Do things that feel good to you.
- Realize that those around you are under stress.
- Don't make any big life changes.

- Do make as many daily decisions as possible which will give you a feeling of control over your life, i.e., if someone asks you what you want to eat - answer them even if you are not sure.
- Get plenty of rest.
- Reoccurring thoughts, dreams or flashbacks are normal - don't try to fight them - they'll decrease over time and become less painful.
- Eat well-balanced and regular meals (even if you don't feel like it).

## WAYS FOR FAMILY MEMBERS AND FRIENDS TO RESPOND TO YOUR STRESS REACTION

- Listen carefully.
- Spend time with the traumatized person.
- Offer your assistance and listening ear if they have not asked for help.
- Reassure them that they are safe.
- Help them with everyday tasks like cleaning, cooking, caring for the family, minding children.
- Give them some private time.
- Don't take their anger or other feelings personally.
- Don't tell them that they are "lucky it wasn't worse" - traumatized people are not consoled by those statements. Instead, tell them that you are sorry such an event has occurred and you want to understand and assist them.

## CISM Information Pamphlet

*International Critical Incident Stress Foundation, Inc.*  
 10176 Baltimore National Pike  
 Unit 201  
 Ellicott City, Maryland 21042  
 (410) 750-9600  
 (410) 750-9601 fax  
 www.icisf.org  
 24 Hour Hotline (410) 313-2473



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**You have experienced a traumatic event or a critical incident** (any incident that causes emergency service personnel to experience unusually strong emotional reactions which have the potential to interfere with their ability to function either at the scene or later).

Even though the event may be over, you may now be experiencing or may experience later, some strong emotional or physical reactions. It is very common, in fact quite normal, for people to experience emotional aftershocks when they have passed through a horrible event.

Sometimes the emotional aftershocks (or stress reactions) appear immediately after the traumatic event. Sometimes they may appear a few hours or a few days later. And, in some cases, weeks or months may pass before the stress reactions appear.

The signs and symptoms of a stress reaction may last a few days, a few weeks or a few months and occasionally longer depending on the severity of the traumatic event.

With understanding and the support of loved ones the stress reactions usually pass more quickly. Occasionally, the traumatic event is so painful that professional assistance from a counselor may be necessary. This does not imply craziness or weakness. It simply indicates that the particular event was just too powerful for the person to manage by themselves.

## HERE ARE SOME COMMON SIGNS AND SIGNALS OF A STRESS REACTION:

### Physical\*

Chills, thirst, fatigue, nausea, fainting, twitches, vomiting, dizziness, weakness, chest pain, headaches, elevated blood pressure, rapid heart rate, muscle tremors, shock symptoms, grinding of teeth, visual difficulties, profuse sweating, difficulty breathing, etc.

◦ Any of these symptoms may indicate the need for medical evaluation. When in doubt, contact a physician.

### Cognitive

Confusion, nightmares, uncertainty, hypervigilance suspiciousness, intrusive images, blaming someone, poor problem solving, poor abstract thinking, poor attention / decisions, poor concentration / memory, disorientation of time, place or person, difficulty identifying objects or people, heightened or lowered alertness, increased or decreased awareness of surroundings, etc.

### Emotional

Fear, guilt, grief, panic, denial, anxiety, agitation, irritability, depression, intense anger, apprehension, emotional shock, emotional outbursts, feeling overwhelmed, loss of emotional control, inappropriate emotional response, etc.

### Behavioral

Withdrawal, antisocial acts, inability to rest, intensified pacing, erratic movements, change in social activity, change in speech patterns, loss or increase of appetite, hyperalert to environment, increased alcohol consumption, change in usual communications, etc.

### Spiritual

Anger at God, questioning of basic beliefs, withdrawal from place of worship, faith practices and rituals seem empty, loss of meaning and purpose, uncharacteristic religious involvement, sense of isolation from God, anger at clergy, etc.



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## RECOGNIZING CRITICAL INCIDENT STRESS

Critical incidents may produce a wide range of stress symptoms, which may appear immediately at the scene, a few hours later or within days of the incident. Stress symptoms usually occur in four different categories: Cognitive (thinking), Physical (body), Emotional (feelings) and Behavioral (actions). The more symptoms experienced, the more powerful the stress reaction. The longer the symptoms persist, the more potential there is for lasting harm. The following is only a sample of stress symptoms that can show up after a critical incident.

### Cognitive

poor concentration	memory problems
poor attention span	difficulty making decisions
slowed problem solving	difficulties with calculations

### Emotional

guilt	grief
depression	anxiety/fear
loss of emotional control	feeling lost/overwhelmed

### Physical

muscle tremors	chest pain
gastro-intestinal distress	difficulty breathing
headaches	elevated blood pressure

### Behavioral

excessive silence	sleep disturbances
unusual behaviors	changes in eating habits
withdrawal from contact	changes in work habits

## STRESS SURVIVAL SUGGESTIONS

When emergency personnel experience significant stress from a critical incident, the following steps may help to reduce the stress until the incident is over or until a trained CISM team is located.

- Limit exposure to sights, sounds and odors
- Provide an immediate rest break of at least 15 minutes
- Have a friend stay with the distressed person
- Provide fluids, non-alcoholic and non-caffeinated
- Provide foods low in salt, sugar and fat
- Allow the person to talk about the experience
- Do not rush the person to return to work
- Protect the person from bystanders and the media
- Reassure the person that the stress experience is normal; most people recover very well from stress
- Show appreciation for the person's work
- Do nothing to embarrass the person
- Help the person make decisions

## USING THE EMERGENCY HOTLINE

Any emergency services organization or individual may use the 24 Hour Emergency Hotline to call for assistance or information:

- If they need to know the location and contact numbers for a CISM team during an emergency
- If a situation distresses emergency workers and they need some guidance in working through the stress

## STATEMENT OF REFERRALS

ICISF and Howard County, Maryland do not certify or qualify the competency of the individual members of a CISM team. Referrals are made subject to the determination by the requesting emergency service organization or individual as to whether a particular team should be used.

For additional critical incident stress information of a routine nature, please call (410) 750-9600.

The International Critical Incident Stress Debriefing Team Coordination Center has been made possible by the combined effort of two major groups. The International Critical Incident Stress Foundation, Inc. provides training for the communications personnel and ongoing management of the Center in Howard County, Maryland. The Fire and Police Communications Center provides 24 Hour-A-Day operation of the Center.

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## WHAT IS A CRITICAL INCIDENT?

*Tragedies ... Deaths ... Serious Injuries ... Hostage Situations.* People who respond in emergencies encounter highly stressful events almost every day. Sometimes an event is so traumatic or overwhelming that emergency responders may experience significant stress reactions. These events are known as "Critical Incidents."

Emergency personnel who have these normal, although uncontrollable, stress reactions to extraordinary events are often confused by the changes they incur in themselves and others. Fortunately, help is available.

Over 350 specially trained Critical Incident Stress Management (CISM) Teams throughout all fifty states and in 23 other countries are prepared to assist emergency workers or organizations faced with a stressful incident. A 24 HOUR HOTLINE allows the emergency personnel to link up with this network of CISM teams.

## SERVICES PROVIDED BY COORDINATION CENTER

- Assistance in locating local CISM support
- Maintenance of the CISM Team Registry
- Coordination of CISM teams in areas where there are no known CISM resources
- Provision of immediate stress consultation to emergency service organizations
- Consultations to United Nations



## INTERNATIONAL CRITICAL INCIDENT STRESS MANAGEMENT TEAM COORDINATION CENTER

**24 HOUR  
EMERGENCY HOTLINE:  
(410) 313-2473**

Managed by:  
*International Critical Incident  
Stress Foundation, Inc.*

Operated by:  
*Fire and Police Communications Center  
Howard County, Maryland*



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