

ARSON VICTIMS

suggestions for a system Response



928144
477826



ARSON VICTIMS: SUGGESTIONS FOR A SYSTEM RESPONSE

Prepared by
The Victim Witness Assistance Project
of the
American Bar Association
Section of Criminal Justice
1800 M Street, NW
Washington D.C. 20036
(202) 331-2260

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

American Bar Association

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

Copyright 1983 by the American Bar Association, 1155 E. 60th Street, Chicago, Illinois 60637. Permission to reproduce all or part of this document for commercial purposes must be obtained from the copyright owner, except that the Federal grantor agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use this work for Government purposes.

This publication was supported by Federal Emergency Management Agency Grant EMW-G-0872. Its contents do not necessarily represent the policy of the funding agency. Moreover, the opinions and views expressed herein should not be construed to represent the policy of the American Bar Association or its Criminal Justice Section, the sponsor of the Victim Witness Assistance Project which produced this publication.

ISBN 0-89707-112-3
Library of Congress 83-071922

**AMERICAN BAR ASSOCIATION
SECTION OF CRIMINAL JUSTICE**

William W. Greenhalgh, Chairperson
Richard H. Kuh, Chairperson-Elect
Laurie Robinson, Director
Susan W. Hillenbrand, Coordinator, Victim/Witness Assistance Project

Arson Victim Project

Advisory Board

Consultant

Hon. Ricardo Urbina
Defense Function Committee
Superior Court of D.C.
Washington, D.C.

Arthur M. Gelman
Rockville, Maryland

Arthur C. "Cappy" Eads
Prosecution Function Committee
District Attorney
Belton, Texas

Howard S. Yares
Victims Committee
Director, Legal Services
Philadelphia Bar Association
Philadelphia, Pennsylvania

Victims Committee

Frank Carrington, Chairperson Virginia Beach, Virginia	David A. Kurtz Wenatchee, Washington
Hon. Frank A. Marullo New Orleans, Louisiana	David S. Levine San Francisco, California
Hon. Eric E. Younger Pomona, California	Frank B. Looney Farmingdale, New York
Richard Brzeczek Chicago, Illinois	Michael Madden Chicago, Illinois
Robert E. DeLong, Jr. Huntsville, Texas	E. Michael McCann Milwaukee, Wisconsin
Linda Duggan Hampton, Virginia	George Nicholson Sacramento, California
John J. Easton, Jr. Montpelier, Vermont	Ruth Nordenbrook Brooklyn, New York
Herbert E. Ellingwood Washington, DC	Douglas E. Phillips Washington, D.C.
Linda Fairstein New York, New York	Alfred S. Regnery Washington, D.C.
Paul Garland New York, New York	Terry Russell Washington, D.C.
William Genego Los Angeles, California	Jill Sayenga Washington, D.C.
Hon. Joyce J. George Akron, Ohio	Hon. Phrasel L. Shelton San Mateo, California
Josephine Gittler Iowa City, Iowa	Charles R. Work Washington, D.C.
Abraham S. Goldstein New Haven, Connecticut	Howard S. Yares Philadelphia, Pennsylvania
William M. Hannay Chicago, Illinois	Marlene Young Washington, D.C.
William Heiman Philadelphia, Pennsylvania	Irving B. Zeichner Trenton, New Jersey
Margaret Jordan Leawood, Kansas	Eve Kunen, Law Student Member New York, New York

TABLE OF CONTENTS

	Page
Foreword	vii
Introduction	1
Arson, Victims, and the System	3
The Crime Scene	7
Tending to the Victim's Well-Being	7
Eliciting Victim Cooperation	8
The Investigation	10
Investigative Agency	10
Non-Investigative Agency	11
Victim Assistance Program	11
The Arrest and Pretrial Stages	13
Investigative Agency	13
Prosecutor	13
Victim/Witness Programs	14
The Trial	16
Sentencing	17
Prosecution	17
Probation/Parole	18
Judiciary	18
Policy Review	20
Legislature	20
Executive Branch	20
Judicial Branch	21

FOREWORD

In light of the past decade's improvements in both handling of arson cases and in the treatment of crime victims, the Criminal Justice Section's Victims Committee has taken a close look at the implications of such advances for victims of arson. The findings of that examination are mixed. Improved investigation and prosecution practices, increased victim access to the criminal justice system, and better victim services do not necessarily—and certainly do not automatically—benefit arson victims; however, increased awareness and sensitivity by fire service providers and criminal justice personnel can go a long way toward relating these advances to the benefit of arson victims. At the same time, official efforts to assist arson victims may result in increased victim cooperation in processing arson cases.

Analysis of the unique needs of a specific class of victims, such as arson victims, is not new for the ABA's Criminal Justice Section. In 1975, for example, it spearheaded adoption of an ABA policy calling for revised rules of evidence to protect rape victims from unnecessary and harmful invasions of privacy. In 1978, it obtained ABA approval of several resolutions to improve the situation of victims of domestic violence. Intimidated victims were the subject of a number of Section recommendations adopted by the ABA after two days of hearings in 1980 and printed, together with supporting commentary, in a booklet entitled "Reducing Victim/Witness Intimidation: A Package."

More general victim-related efforts of the Victims Committee of the Criminal Justice Section have resulted in three other publications—"Bar Leadership for Victim Witness Assistance," "Victim/Witness Legislation: Considerations for Policymakers," and "Victims of Crime or Victims of Justice?", a monograph on victims' legal rights. In addition, the Section's Victims Committee has developed a set of "Guidelines for Fair Treatment of Victims and Witnesses in the Criminal Justice System." Approved by the Criminal Justice Section's governing Council in February of 1983, they will come before the ABA's policy-making House of Delegates in August.

Through our own efforts and those of many other individuals and organizations on the national, state and local level, concern for innocent victims of crime has greatly increased in recent years. We hope that this

booklet will help translate this concern into concrete action by fire service providers, police, prosecutors, and judges who are in the position to help some of crime's most tragic victims—the victims of arson.

Frank Carrington
Chairperson, Victims Committee
ABA Criminal Justice Section

April, 1983

INTRODUCTION

Arson has always been a particularly unattractive crime to fire service providers, police and prosecutors. Its work demands are high and unpleasant, and its success rates low.¹ Over the past decade, however, many fire departments and law enforcement agencies have concentrated resources and energies into improving the investigation and prosecution of arson cases. Commendable progress has been made in these two areas. A third major aspect of arson cases has received less attention. This is the improved treatment of those most adversely affected by the crime—the *victims* of arson.

During the past decade, increased sensitivity to the plight of crime victims has resulted in many legislative and programmatic efforts to improve their treatment. For example, improved protections against intimidation, increased use of restitution, utilization of "victim impact" statements in sentencing, an emphasis on victims rights litigation, and increased services to victims are being implemented in jurisdictions around the country. Rarely however have these efforts been viewed in the context of victims of *arson*.

This booklet is about *arson victims*. It is addressed to those law enforcement and fire department officials whose officers are in frequent contact with arson victims, but who may not fully recognize the potential implications of that contact for both the victim and the system. Little of the information and few of the suggestions it contains are new. In fact, a number of agencies have already established internal and cooperative programs to capitalize on the tremendous mutual assistance which arson victims and law enforcement/fire service providers can give to each other. The authors applaud these existing efforts, and draw upon them in describing realistic assistance programs and the mutual benefits likely to result from such programs. Their hope is that this booklet will encourage similar efforts in and between the many other agencies which have not yet directly addressed the issue of arson victims, and provide guidance to others wishing to reassess current policies and programs in light of recent victim-oriented reforms.

¹*Arson and Arson Investigation: Survey and Assessment*, U.S. Department of Justice, 1977.

ARSON, VICTIMS, AND THE SYSTEM

There are some 75,000 residential arson fires annually.¹ Statistics for 1975 indicate that economic losses due to incendiary building losses were over \$1 billion, and that arson-related deaths and injuries numbered approximately 1,000 and 10,000 respectively.²

The substantial publicity given to the widespread burning of business and residential structures for insurance and other economic motives sometimes gives the impression that in arson cases, the "victim" and the perpetrator are one. In fact, relatively few targets of arson belong to the arsonist; most belong to (or are) *innocent* victims of the crime.

Arson victims come in all sizes, shapes, colors and from all economic levels.

There are no racial, economic, age or sexual barriers against arson. While a disproportionate number of victims are poor and live in multi-family dwellings, victims also live in expensive, single family dwellings. Many are "third party" or "incidental" victims, i.e., not the direct target of the arson.

Arson is committed for a variety of reasons.

Economic gain is certainly the motive behind many arsons. For the individual who actually sets the fire, this may be in the form of a fee for service. The individual paying for this service may have insurance or tax-loss objectives. However, non-economic motives also underlie many instances of arson. These include spite or grudge against an owner, landlord or tenant; covering evidence of another crime; and commission of another crime (e.g., homicide). On occasion, a deranged or drunken individual may "torch" a restaurant, bar, or other meeting place because of some real or imagined slight that took place on the premises. Some terrorists resort to arson through utilization of incendiary explosive devices. Juvenile vandals, as well as some adults, often commit arson for the "thrill of it."

¹See "Firehouse" Magazine, June, 1981.

²See *Arson and Arson Investigation: Survey and Assessment*, National Institute of Law Enforcement and Criminal Justice, Department of Justice, October, 1977.

Arson victims have many of the same problems of other crime victims.

Physical and psychological injuries, death, property loss or damage, and loss of earnings all result from arson. In addition, "secondary victimization" resulting from contact with the criminal justice system is common to arson victims just as it is in the case of other crime victims.

Theoretically, the needs of arson victims may be addressed through the same agencies and reforms which assist other crime victims.

Over the past decade, there have been a number of efforts around the country to assist crime victims and witnesses. These include:

- Private victim assistance projects (e.g., church, community, social service programs)
- Public victim/witness assistance projects (e.g., police, prosecutor or court-sponsored programs)
- Victim compensation boards or agencies (37 states and the District of Columbia have programs to provide some financial assistance to victims of violent crimes, primarily for injuries and loss of income)
- Increased use of restitution as a sentence or condition of probation
- Use of "victim impact" statements in pre-sentence reports
- Litigation on behalf of victims, particularly in the area of lawsuits against third parties whose negligence caused or failed to prevent the victimization.

In fact, however, the nature of the crime and the circumstances of the victim often make it more difficult to address arson victims' needs.

For instance,

- Aside from coping with medical emergencies, residential arson victims are usually immediately and primarily concerned with securing safe shelter for themselves and their families. They may leave the scene of the crime (their home), without leaving a forwarding address which might otherwise be used by victim assistance agencies or investigative agencies.
- Once a building has been burned, there is a paramount need to secure it or to remove its contents to ensure that further victimization (e.g., looting) or damage does not occur. The victim cannot do this if he or she is seriously injured or incompetent, or cannot be located. Many fire departments and police departments do not see this as their responsibility and victim assistance projects generally lack the authority or means of assuming it.

- Arson victims may not even be aware that the fire was an arson, i.e., a crime. Indeed it may be several days before an official determination of arson is made. (This is particularly true when the building in question is a large, multi-family dwelling.) Consequently, such individuals may not view themselves as crime victims and might not think to contact victim assistance agencies or crime compensation programs even in the unlikely event they are aware of their assistance.
- Since arson victims who are not able to provide information about the crime are rarely subpoenaed as state witnesses, they are generally not offered assistance from public (i.e., police, prosecutor, court) victim/witness assistance projects.
- Arson victims who are not eyewitnesses to the crime may suspect that they have been the target of a grudge or revenge. Accordingly, they may be reluctant to come forth to help investigators or to request assistance, fearing that such action may increase the possibility of implicating themselves either directly or indirectly with the crime and/or the perpetrator. (In fact, it is not uncommon for arson victims to be suspects in arson cases.)
- Even arson victims who do wish to report information about the crime may be confused as to whether the police department or fire department has jurisdiction over the investigation; initial frustrations resulting from this confusion may discourage the victim from seeking assistance.
- Arson causes devastating personal property damage—yet even in the 37 states and the District of Columbia which have victim compensation programs, coverage is generally limited to medical expenses and loss of income. While real property may be insured by the landlord or owner, the contents of individual apartments or rooms are often not insured, even when occupied by middle-income tenants.
- Offender restitution to the victim is increasingly being imposed by the courts as a sentence or as a condition of probation. However—although the situation is improving—arrest and conviction rates in arson cases are extremely low. Consequently, such redress is rare for arson victims. (Even when restitution is ordered by the court, many arsonists—as is the case with other offenders—are unable or unwilling to comply. Some states have tried to ameliorate this situation as regards juvenile offenders by making their parents liable. However, limits are usually imposed. For example, in New Jersey and Pennsylvania, the parents of a juvenile offender are liable

for restitution up to \$300. The liability of parents in Arizona and Montana is statutorily set at a maximum of \$2,500 and in Maryland at \$5,000.

- State legislatures and individual judges are increasingly allowing or requiring "victim impact" statements to be incorporated into the probation department's pre-sentence report to ensure that the sentencing body is aware of the consequences of the crime from the victim's perspective. Again, low arrest and conviction rates in arson cases usually preclude arson victims from using this avenue to seek financial restitution for losses associated with the crime.

THE CRIME SCENE

Once the immediate danger from the fire is under control and emergency law enforcement needs are met, previously-designated officials on the scene should:

- Attend to the victim's immediate well-being,
- Elicit immediate victim cooperation, and
- Lay the groundwork for future cooperation.

These goals are not mutually exclusive; in fact, they are generally interdependent. To achieve them, however, an *explicit advance* understanding between the fire and police departments about primary responsibility for various aspects of on-the-scene victim contact is important. This will eliminate much confusion, duplicity of effort, and failure to deal adequately with victims who "fall through the cracks" of the two agencies' uncoordinated efforts. The best division of responsibility in this first contact with the victim may not be as obvious as in later stages when primary investigative authority has been determined. The important point, however, is not so much who does what but that responsibilities be assigned. (It has been suggested that the battalion chief or senior officer may be in a better position than the line officer or service provider to make the initial contact with the victim.)

Tending to the Victim's Well-Being

Of immediate concern, of course, is the *physical condition* of the victim. In emergency situations, it may involve first aid and, if necessary, providing transportation or seeing that transportation is provided to take the victim to the hospital. When there is no emergency, the victim may still require some medical attention and should be referred to one or several appropriate medical facilities.

In addition to being left at least temporarily homeless, the arson victim is often unable to enter his or her dwelling to retrieve money, checkbooks, clothing, etc. Referrals to *sources of emergency financial and welfare assistance* as well as *emergency shelters* should therefore be provided. These might include local victim assistance agencies, welfare

office, Salvation Army, YMCA, Red Cross, church or other community groups suggested by the Department of Social Services.

In recognition that he or she may have no further contact with the system for any of a number of reasons, addresses and telephone numbers of general assistance programs and crime victim compensation agencies should be made available to the victim.

Finally, a name and telephone number of a contact within the criminal justice system is extremely important in case the victim needs or wishes to provide additional information.

All of the above referrals may be pre-printed on a small wallet-sized card and, in most instances, simply handed to the victim at the scene of the crime. The card probably should be developed through the mutual effort of police and fire agencies, and distributed by the on-scene liaison(s). Additional cards should be available at hospitals, shelters, etc. where the victim may be taken immediately after the fire.

Eliciting Victim Cooperation

Immediate:

From the victim's perspective, the period immediately following the crime is generally not the best time for official interviews. Victims are usually emotionally upset and preoccupied with their personal situation. Nevertheless, law enforcement and fire service investigators may need to ask them some questions that are best answered in the minutes and hours after the fire, while memories are still fresh and the prospects for identification and apprehension are greatest. In doing so, investigators need to:

- Be aware that their own immediate concerns and the immediate concerns of the victim—while both legitimate—are probably not the same;
- Coordinate efforts within and among agencies so as to preclude unnecessary questioning; and
- Remember that the victim's perception of his or her treatment at the crime scene may well determine the degree of future cooperation.

For the Future:

Obviously, if the investigative agency does not know who the victims are or how to locate them, it will not even be able to request their cooperation in the future. Therefore a system for identifying and tracking arson victims who are forced to relocate is essential from an official

viewpoint. From the victims' viewpoint, a tracking system may help ensure their safety, and will enable the investigators to keep them advised of major events in the case. An explanation of such benefits prior to requesting specific tracking information is likely to result in victims' immediate cooperation. The elements of an identification and tracking system might include:

- Recording the names of all victims (whether or not present at the time of the fire) and their permanent or temporary addresses, plus a limited amount of identifying information (e.g., place of employment);
- Recording the name and address of the victim's closest friend or relative;
- Recording the name of the victim's insurance company and, if possible, the insurance agent;
- Providing the victim and other appropriate persons with the name, address and phone number of a contact person within the police department, fire department, or local victim service agency.
- Giving the victim (or a friend, family member, etc.) a self-addressed prepaid postcard for use in notifying the police/fire department of a new permanent address.

In addition, some immediate record should be made to identify occupied rooms or apartments destroyed or damaged by the fire. This will facilitate later efforts to ensure that all victims have been identified. Moreover, whether or not the occupants have insurance, some estimate of damage to their property should be made for their use in seeking restitution from the offender, if he or she is apprehended and convicted. (Most state crime victim compensation statutes exclude property damage from coverage; consequently, such estimates generally would not be of relevance in collecting state compensation. However, on a broader scale, they might be extremely useful in developing statistics on arson's true impact on its victims—a statistical "dry hole" at present.)

THE INVESTIGATION

Once a fire appears to be of suspicious origin, an investigation will be undertaken. In some jurisdictions, the police have primary responsibility for investigating arson cases; in other jurisdictions, this falls under the authority of the fire department. Still elsewhere, investigations are joint efforts. Regardless of how the responsibility is split, cooperation between the agencies is extremely important.

Investigative Agency

During the investigation, the primary investigative agency will probably be in touch with the arson victims for several reasons:

- To verify information obtained at the scene of the crime;
- To ascertain whether the victim has additional information which might be helpful to the investigators;
- To determine whether the victim appears to have been intimidated and, if so, to take steps to reduce such intimidation so that the victim will be properly protected and make a reliable witness; and,
- To ensure that the victim continues to keep the investigative agency informed of his or her address.

When dealing with the victim at this stage, the investigator will probably find the victim still upset but less agitated than at the scene of the crime; therefore, it may be important to reiterate some of the information and advice previously provided, such as that regarding crime victim compensation and assistance. Victims filing insurance claims may need the case number and the investigator's name. It is also extremely important at this stage to give the victim some idea of what may be expected of him or her by the criminal justice system and what he or she can realistically expect in return.

For example, the investigator may discuss:

- The importance of the individual victim's testimony to the case;
- Possible remedies for victim intimidation, such as increased police protection or pressing charges against those who may be intimidating the victim;

- The possibility of a "victim impact" statement at the plea negotiation or sentencing stage;
- The possibility of financial restitution if the offender is convicted and financially able to repay the victim; and
- The possibility of litigation against negligent third parties who may have had a duty to prevent the victimization.

Providing such information at this early stage should not be thought of as "premature," as it may provide the incentive needed by the victim to participate as a willing witness. Investigators should be cautioned, however, to be wary of false testimony by vindictive victims or by non-victims eager to "cash in" on potential restitution.

Non-Investigative Agency

There is no active role that the non-investigative agency (police or fire department) should take during this stage other than to be helpful to any victim who might call with or for information.

If the call concerns financial, medical or other needs not directly related to the investigation, the caller should be referred to an appropriate source of help, whether it be a victim assistance project, the crime victim compensation agency, or a community group such as the Salvation Army or Red Cross.

If the call is directly related to the investigation, one could reasonably expect that the non-investigative agency would at least have the name and number of a specific person in the investigating agency which could be given to the victim rather than just replying that "we don't investigate fires—call the police (or fire) department." In addition, the non-investigating agency could take the name, address and phone number of the caller and pass that information directly on to the investigating agency in case the caller, for whatever reason, does not contact the investigators.

Victim Assistance Programs

There are several types of victim assistance agencies. Those operated out of prosecutors' offices or the courts usually do not come into play at this initial stage of the investigation, since a formal case is not yet established. Recently, however, a number of prosecutor-based programs have begun reviewing police reports on a daily basis to improve their outreach capabilities.

Some police departments operate victim assistance projects. When this is the case and the police department is the primary investigative agency, the project should have immediate access to the victims' names and permanent or temporary addresses.

More often than not, however, if a victim is to receive assistance at this stage of the proceeding, it will be provided by a private or community-based project which may include crime victims among its varied clientele or be crime victim-specific. Whatever the agency, it is important that its counsellors be trained to be sensitive to special needs of arson victims.

While in certain instances—for example, when the investigative agency has provided the victim at the crime scene with the name and address of the assistance agency—the victim may initiate the contact, the victim service agency should itself assume the responsibility for initial contact since:

- Many victims (e.g., those not at the scene of the crime) may not be aware of the existence of the project;
- The victim may not be aware that the fire was the result of a crime, thereby making him or her eligible for assistance from crime victim assistance projects; and
- The victim may be intimidated or be wary of initiating a contact which may result in an unwanted involvement with the criminal justice system.

It is important, therefore, for private and community-based assistance projects to keep a close watch on the police and fire department blotters for cases of possible arson.

THE ARREST AND PRETRIAL STAGES

Although in theory, civil remedies are available once an (alleged) arsonist is identified, practically speaking, an uninsured arson victim has no hope of any compensation for property damage unless an arrest is made. (While this is true for most other property crime victims as well, the fact that the crime damaged or destroyed the property rather than removed it from the owner's possession precludes even the remote possibility of having it retrieved unharmed as a result, for example, of a police raid on a fencing operation.) Moreover, only an arrest may ease the fear of an arson victim who knows or suspects he was the target of the arson. Therefore, retribution sentiments aside, arson victims often have a very real and legitimate interest in learning about an arrest in the case.

Investigative Agency

Immediately upon making an arrest, the primary investigative agency (fire department or police department) should inform the victim. It should also provide the victim with the name and telephone number of a contact in the prosecutor's office which the victim may call to provide or request additional information.

At the same time, the investigative agency should turn over to the prosecutor's office the names, addresses and other information about the arson victims which it has collected. Information about non-witness victims as well as victim/witnesses should be included.

Prosecutor

The prosecutor is responsible for deciding whether to dismiss the case, charge a suspect or seek an indictment against him, or negotiate a guilty plea to a reduced charge. No amount of victim loss can justify prosecuting a case where there is insufficient evidence for a prosecution; however, if there is sufficient evidence to accept a case, the concerns of the victim—including non-witness victims—are an appropriate element of prosecutorial consideration both in determining the specific charges and in determining how to pursue the case.

If a case is to be either charge-negotiated or sentence-negotiated the prosecutor should consult with the victim *prior* to negotiations with the defendant's counsel. This is particularly important in arson cases where there are a number of victims who have nothing to offer as far as testimony is concerned, but who have suffered considerably as a result of the crime. At the very least, their restitution needs are relevant to any sentencing negotiation which might be reached with the defendant in the pretrial stage.

Reducing pretrial intimidation of victims is largely the prosecutor's responsibility. In 1980, the ABA approved a "package" of proposals to reduce victim/witness intimidation. Based on these proposals, a number of jurisdictions have now authorized the prosecutor to request a court order requiring the defendant to maintain a specified geographical distance from the victim or to refrain from communicating with the victim. Prosecutors may also seek additional law enforcement protection for intimidated victims. And, of course, when intimidation attempts are made, the prosecutor should, if possible, bring substantive charges.

Victim/Witness Programs

At the urging of the National District Attorneys Association, many local prosecutors offices established victim/witness assistance programs in the mid-1970's. The programs were established to assist victims and witnesses in coping with the demands of the criminal justice system. As previously mentioned, victims who come to the attention of these projects are primarily victims of cases in which an arrest has already been made.

Among the services offered by victim/witness assistance projects are:

- Mail subpoena systems;
- Expedited property return systems;
- Court escort services;
- Transportation services;
- Telephone witness alert systems; and
- Protection against intimidation.

Because of the nature of the crime of arson, some of these programs are of special importance to arson victims; others may have to be revised to meet their needs. For instance, a telephone alert system whereby the victim may initiate a call to find out when and where he must appear may be extremely valuable to a dislocated victim. A mail subpoena system, on the other hand, may have little or no value for an arson

victim with no fixed mailing address. An expedited return of unharmed property may similarly have little immediate value for an arson victim who has no place to store his few remaining possessions; in this instance, the victim/witness project may better assist by temporarily *keeping* the property for the victim.

Assisting victims in completing victim compensation forms and acting as an intermediary between the victim and the victim compensation agency are legitimate functions of a victim/witness assistance project.

As an arm of the people's legal representative, the prosecutor-based victim/witness assistance project might also advise the victim of possible civil remedies that might be pursued now that an (alleged) offender has been identified and arrested. Differences between the civil and criminal systems, the limitations of the criminal system in helping victims recover their losses and the initial steps to take in exploring the possibility of a civil action against the perpetrator and/or third parties are all possible subjects of discussion.

While, generally, victim/witness assistance projects may know how to locate their clients, this might not always be true in arson cases. The project should therefore make a special effort each time it is in contact with the victim to confirm or change the victim's address and telephone number for its records.

While any victim can "disappear" during the pretrial stages, it may be more common for arson victims to disappear unintentionally; therefore, victim/witness projects might consider preparing a victim impact statement for arson victims at the earliest possible stage. In this way, should the system lose track of the victim, it would still have some information for consideration during later decision-making.

THE TRIAL

Like other victims, arson victims are likely to have a considerable interest in the trial; nevertheless, unless they are witnesses for the state, they have no role to play at this stage, regardless of the losses they have suffered. Losses which were relevant to the charge being brought and which will be relevant to the sentence which might ultimately be handed down are not relevant to the question of the defendant's guilt or innocence.

Victims who testify as witnesses should, of course, continue to be accorded all of the courtesies and considerations that they have received during the pretrial stage, either by the prosecutor's victim/witness assistance project or by an independent assistance agency. Non-witness victims have the right to attend the trial, and should also be informed in advance of the date, time and place where it will occur. Afterwards, if they have not attended, they should be notified of its outcome.

SENTENCING

Whether or not victims have participated as witnesses in the trial or pretrial stages, their concerns, losses and needs should be a factor in the sentencing decision. This stage is particularly crucial for uninsured arson victims as the potential for restitution may be their only hope of obtaining even partial relief for property damage.

The court should not consider the victim's participation at this stage an unwelcome intrusion on judicial authority, but rather as an opportunity to ensure that the justice imposed is fair to the victim and society as well as to the defendant.¹

Prosecution

Many jurisdictions now require victims to be given a chance to have their losses considered by the sentencing court. Where this is not the case, the victim must often rely on the individual prosecutor to convey this information to the court informally.

The prosecutor must be mindful that at the sentencing stage, not only victim/witnesses but also non-witness victims should be consulted. This includes the families or representatives of deceased or incapacitated victims. The fact that a victim has not been able to provide information useful in investigating and prosecuting the crime should in no way limit his right (or his family's right) to consideration in the sentencing process.

In addition to assisting in the presentation of the "facts" to the court, the prosecutor can recommend restitution and other "alternative" sentences which might benefit the victim. These should be discussed with the victim in advance in the event there are legitimate victim objections which the prosecutor might not foresee. Prosecutorial recommendations may also take into account the community welfare which may be of special importance in arson cases where there have been multiple outbreaks in certain geographical areas.

After a sentence has been imposed, the prosecutor or the victim/witness assistance project should inform the victim about it and discuss

¹See "Proposed Guidelines for Fair Treatment of Crime Victims and Witnesses," approved by the American Bar Association Criminal Justice Section, February, 1983.

the implications that the sentence might have for the victim personally. If restitution has been ordered, the process by which the victim is to receive payment and available remedies if the defendant defaults should be explained.

Probation/Parole

Recently, several national task forces have been among those calling for courts to consider "victim impact statements" prior to sentencing.² Over a dozen state legislatures have passed laws requiring such statements and, in addition, some local jurisdictions have themselves imposed this requirement.³

Several states (and some localities) allow the victim to appear personally before the court. More often, however, victim statements are included in the probation department's written pre-sentence investigation report that also contains information about the defendant which is considered relevant to the sentence. Again, the scope of these victim impact statements is not limited to those victims who have also served as witnesses. The probation officer must be aware that he or she may have to look beyond the list of witnesses provided by the prosecutor's office to ensure that the report is complete. In arson cases in which there are multiple victims scattered away from the site of the crime, this may prove difficult and time-consuming; it will, however, be simplified considerably if adequate tracking records have been maintained throughout the case.

Judiciary

No matter how well arson victims have been treated in previous stages of the case, it is the sentencing body (generally a judge, sometimes a jury) which will leave them with a lasting impression of the criminal justice system. Studies have shown that most victims do not want or expect unduly harsh punishments for those who have harmed them;⁴ they do, however, expect some personal consideration.

²See *Attorney General's Task Force on Violent Crime: Final Report*, U.S. Department of Justice, August, 1981, and *President's Task Force on Victims of Crime: Final Report*, December, 1982.

³See commentary to "Proposed Guidelines for Fair Treatment of Victims and Witnesses." *supra*.

⁴See e.g., "Victims' Reactions to the Criminal Justice Response," prepared by Deborah P. Kelly for delivery at the 1982 Annual Meeting of the Law and Society Association.

The sentencing court has the ability and the obligation to consider:

- the crime itself
- the offender who has been convicted
- the victim of the illegal act
- the needs of society as a whole.

Too often, the victim ranks a poor, if not non-existent, fourth in that consideration.

Restitution is the obvious and probably most relevant sentencing disposition that the court can impose directly to benefit an arson victim. The fact that complete restitution is not feasible should not in itself inhibit the court from requiring at least partial restitution.

Sometimes the court may be faced with a difficult decision as to an equitable allotment of restitution in arson cases. For example, in the case of a multi-family dwelling, both the structure and the contents of the individual apartments in the structure may have been damaged or destroyed. Dividing what may well be a small amount between the owner(s) and the tenants is likely to be an extremely frustrating and unrewarding experience for the court; worse, it could appear to the individual victim as a mockery of justice. In such cases, the court should be encouraged to use its imagination. If restitution to individuals is not feasible, perhaps financial or in-kind restitution to a community project may be appropriate—for example, the burn unit of a local hospital or the volunteer fire department.

POLICY REVIEW

Most of the problems in the handling of arson victims are not the result of deliberate attempts to exclude these victims from the system, but rather are the result of failing to take a focused look at the system's handling of such victims. Moreover, no single component of the system or branch of government has been either immune to the problem or especially deficient; nevertheless, all need to review their policies to evaluate what, if any, changes might be warranted.

Legislature

Among the issues to be reexamined by the legislative branch are the following:

- the existence of victim assistance programs and their eligibility requirements;
- the existence of compensation programs and their coverage and eligibility requirements;
- the existence of restitution provisions of penalty laws.

While many new programs and laws have greatly contributed to recent gains for crime victims, there has been difficulty in some instances in adjusting to the special needs of arson victims. The exclusion of victims who are not witnesses from victim/witness assistance programs and failure to compensate for property loss are two examples.

Executive Branch

The executive branch of government also needs to reassess the various victim programs that it administers to ascertain if they are meeting the needs of arson victims. In addition, enforcement and prosecution policies should be examined to determine if arson cases are receiving their fair share of resources and whether representatives of its agencies are working together with the victims of arson. Whenever possible, case-by-case decision-making ought to be reinforced by the knowledge of the impact of the crime on the victim and on the community as a whole.

Judicial Branch

Finally, the judicial branch of government should consider whether it has been as active as it could be in providing judges with information about the impact of the crime on the victim and on the community, in encouraging attorneys for the people to solicit and present the views of victims, and in confronting arsonists with the human costs of their crime.

* * *

The tremendous cost of arson—in lives, injuries and dollars—mandates that all involved take a second and indeed a third look at what they can do to assist the victims of this serious crime.

END