AID TO VICTIMS:
RESTITUTION AND OTHER ASSISTANCE PROGRAMS

The American Experience

by

Caroline S. Cooper

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Aid to Victims:  
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Since 1980, the justice system in the United States has begun to pay much closer attention to the special problems and needs of victims of criminal incidents. In 1981, President Reagan initiated the National Victims of Crime Week, held annually, to focus attention on victim problems, in part in response to his own status as a victim of an assassination attempt. In 1982, President Reagan established the President’s Task Force on Victims of Crime which published numerous recommendations to address victims’ problems. That same year, the Omnibus Victim and Witness Protection Act was passed, requiring use of victim impact statements at sentencing in federal criminal cases, as well as restitution by offenders to victims of federal crimes and greater protection of federal victims and witnesses from intimidation by defendants. The Comprehensive Crime Control Act and the Victims of Crime Act of 1984 authorized federal funds for state victim compensation and victim assistance programs.

Within the past decade, more than 35 states have enacted legislation to protect the interests of victims and more than 43 states and the District of Columbia now have local victim compensation programs and victim assistance services. Considerable research has also been conducted on the effects of crime on victims, the impact of programs to help victims recover psychologically and financially, and on ways of helping victims through the criminal justice process.

In addition to focusing upon the problems of the individual victim of criminal activity, considerable attention has also been given to requiring the criminal offender to compensate society at large for his or her criminal actions. Offenders are frequently required to make restitution to the community as well as the victim, through various community service programs imposed as conditions at sentencing, and through the government seizure of assets derived from criminal activity, used most notably for drug trafficking offenses.

This paper summarizes a variety of governmental and private sector efforts to assist victims of crime in the United States and to effect restitution from criminal offenders that have been initiated during the last decade. Some of these programs focus on the victims of specific classes of offenses: sexual assault or domestic violence, for example. Others focus on the nature of injuries suffered: psychological trauma, or economic loss, for example. Still others have attempted to more closely involve the victim in the resolution of the criminal case. Concurrent with the use of these various victim-oriented programs has been a concerted effort to require the criminal offender -- particularly in situations in which he or she is not incarcerated -- to compensate society through a prescribed schedule of "community service" work as well as forfeiture of the property which enabled the criminal activity to be conducted. While there is still no systematic mechanism to assist victims of crime in the United States, there have been a variety of responses to victim needs which suggest that a comprehensive victim assistance program in local communities is not far off.
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I. INTRODUCTION

I join with my American colleagues in expressing our deep appreciation for this opportunity to share experiences and ideas regarding justice system issues and innovations and I look forward with great excitement to the deliberations of this conference.

We have all reviewed with great interest the "Report on the Need to Humanize Conditions of Detention and Treatment of Delinquency in the Community" which provides the foundation for our presentations. My colleagues have already noted many of our observations regarding the comparisons which we noted between American and Belgian criminal justice practice in topics addressed by that paper so I will include only a few additional comments which pertain specifically to my topic: "Aid to Victims: Restitution and Other Assistance Programs: The American Experience" and then describe the range of victim assistance programs currently underway in the United States.

A. Injuries to Victims of Criminal Offenses: A Brief Overview

In 1990, 24% of U.S. households were victimized by a rape, robbery, assault, theft, burglary, or motor vehicle theft. Theft comprised almost two-thirds of these victimizations. Five percent of U.S. households had at least one member age 12 or older who was the victim of a violent crime. Five percent of all households also experienced at least one completed or attempted burglary, and 17% experienced a completed or attempted theft. Households with high incomes were more likely to experience a crime than households with less income and households in urban areas more likely to be crime victims than those in the suburbs or rural areas.¹

Between 1979 and 1986, an estimated 63 million persons in the United States became victims of rape, robbery or assault. According to the National Crime Survey (NCS), a continuing survey conducted nationwide of a sample of households, almost 30% of these persons suffered an injury during the crime and approximately one in six of these injured victims survived serious injuries -- gunshot or knife wounds, broken bones, teeth knocked out, loss of consciousness, internal or other injuries requiring a hospital stay of at least two days. On average, 2.2 million persons were injured from crime each year between 1979 and 1986. Although the injury rate per 1,000 persons over

age 12 remained fairly constant during the period, the rate of violent crimes for the period has declined 11%, suggesting that a higher proportion of crime victims are also being injured.

The physical injuries suffered by individual victims of crime present only a part of the picture of victim losses; for each victim of a criminal incident there are additional psychological injuries as well as economic losses occurring as a result of criminal activity, let alone the loss to society in terms of economic costs and diminished quality of life resulting.

B. Role of the Victim in the Criminal Justice Process: Recent Developments

For many years, however, the victim of a criminal incident in the United States played little if any role in the process of adjudicating the alleged offender. While prosecutors were concerned to ascertain the immediate injury suffered by the victim as a result of the criminal incident which would, of course, often determine the nature of the charges brought, there was little if any concern given to working with the victim to address the direct as well as indirect injuries suffered, such as psychological trauma, impact on the family, etc. The victim was only one of a number of individuals whose input had to be obtained in order to process the case and the victim was rarely involved in the adjudication process. Frequently, a victim was never even notified about the ultimate outcome of the case.

Since 1980, however, the justice system in the United States has begun to pay much closer attention to the special problems and needs of victims of criminal incidents as well as to community interests in receiving some compensation from criminal offenders. In 1981, President Reagan initiated the National Victims of Crime Week, now held annually, to focus attention on victim problems, in part in response to his own status as a victim of an assassination attempt that year. In 1982, President Reagan established the President's Task Force on Victims of Crime which published numerous recommendations to address victims' problems. That same year, the Omnibus Victim and Witness Protection Act was passed, requiring use of victim impact statements at sen-

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tencing in federal criminal cases, as well as restitution by offenders to victims of federal crimes and greater protection of federal victims and witnesses from intimidation by defendants. The Comprehensive Crime Control Act and the Victims of Crime Act of 1984 authorized federal funds for state victim compensation and victim assistance programs.

Within the past decade, more than 35 states have enacted legislation to protect the interests of victims and more than 45 states and the District of Columbia now have local victim compensation programs and victim assistance services. Considerable research has also begun on the effects of crime on victims, the impact of programs to help victims recover psychologically and financially, and on ways of helping victims through the criminal justice process.

In addition to focusing upon the problems of the individual victim of criminal activity, considerable attention has also been given to requiring the criminal offender to compensate society at large for his or her criminal actions. Offenders are frequently required to make restitution to the community as well as to the victim, through various community service programs imposed as conditions at sentencing, and through the government seizure of assets derived from criminal activity, most notably from drug trafficking offenses.

The rest of my remarks summarize a variety of governmental and private sector efforts to assist victims of crime in the United States and to effect restitution from criminal offenders that have been initiated during the past decade. Some of these programs focus on the victims of specific classes of offenses: sexual assault or domestic violence, for example. Others focus on the nature of injuries suffered: psychological trauma, or economic loss, for example. Still others have attempted to more closely involve the victim in the resolution of the criminal case. Concurrent with the use of these various victim-oriented programs has been a concerted effort to require the criminal offender -- particularly in situations in which he or she is not incarcerated -- to compensate society through a prescribed schedule of community service work as well as forfeiture of the property which enabled the criminal activity to be conducted. While there is still no systematic mechanism to assist victims of crime in the United States, there have been a variety of responses to victim needs which suggest that a comprehensive victim assistance program in local communities is not too far off.
C. Observations Regarding the Criminal Justice Process in the United States Which Bear on Victim Assistance Efforts

As I reviewed the "Report on the Need to Humanize Conditions of Detention and Treatment of Delinquency in the Community", it became evident that certain aspects of the criminal justice philosophy and process in the United States need to be highlighted in order to meaningfully exchange ideas regarding the role which the victim - and victim assistance efforts -- play in that process. These are summarized below.

1. Multiplicity of Justice "Systems"

First, we have two levels at which criminal offenses are prosecuted: one for federal crimes and one for state crimes. Since there are fifty separate states plus the District of Columbia (i.e., Washington D.C.), this means that we have actually fifty-two separate criminal justice "systems" -- one federal system and fifty separate state systems and an additional system for the District of Columbia. Although the legal principles upon which these separate systems operate are fairly similar, the administrative structures within which they operate may differ significantly and this has particular relevance to the variety of approaches currently underway for addressing victim needs. For the purpose of this paper, I will distinguish simply between the federal system and the state systems, with occasional reference to a specific state.

2. Increasing Interest in and Need for Sentencing Alternatives

Second, as other presenters have noted, compared with the Belgian experience, United States courts appear to be more actively experimenting with a range of sentencing options, in addition to straight probation or incarceration, for those defendants who are convicted. Many of the victim restitution programs being developed in the United States are, perhaps, as much a response to the fact that incarceration is simply not feasible for all the defendants who might otherwise have received prison sentences as they are to concern over meeting victim needs. As my colleagues have indicated, the problem of prison and jail overcrowding in the United States, as well as the recognition that incarceration can be a very negative experience for both the defendant as well as society, has forced many justice system officials to consider alternatives to incarceration which will impose meaningful sanctions upon the offender.
It is in this vein, that much of the effort to address victim needs, at least as far as restitution is concerned, has evolved and it is by incorporating into these sentencing options the requirement that the offender make restitution to the victim as well as to society that the potential for expanded victim compensation efforts lie.

The sentencing options being used in the United States fall into three broad areas:

- **straight incarceration**: i.e., the offender is sentenced to a period of straight incarceration following which he or she will be released and placed on parole but no restitution will be required. This approach is generally used for the most serious crimes and/or offenders with the most serious records.

- **split sentences**: i.e., the offender is sentenced to a period of incarceration plus a period of probation which is supervised by probation officers under the direction of the sentencing court. This probation period can include a variety of conditions which the offender must satisfy, including the requirement of restitution to the victim and/or the community.

- **straight probation**: i.e., the offender receives no executed incarceration time but must comply with stated conditions of probation which can include restitution and he/she may have a period of suspended incarceration imposed which will need to be served if the conditions of probation are not complied with.

3. **Distinction Between Criminal Cases in Which the Perpetrator Is/Is Not Apprehended**

Third, a distinction must be made between (a) cases in which an offender is apprehended and subsequent judicial proceedings ensue and (b) cases in which no offender is apprehended. When a criminal incident occurs and is reported, law enforcement officers investigate and prepare a report. In those situations in which a perpetrator is identified and apprehended, they also make an arrest and refer the matter to the prosecutor, along with the police report, which generally includes sufficient information regarding the victim’s injury and loss to support the arrest and provide a foundation for charging action by the prosecutor.

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3 *It is estimated that one-third of criminal incidents in the United States are unreported.* *Ibid.*
In the vast majority of criminal incidents, however, the offender is not apprehended and the prosecutor therefore never is involved. If the incident is reported, contact with the victim is limited to that of the law enforcement officer at the time he/she takes the report of the incident. In some situations, such as domestic violence or sexual assaults, the police officer may refer the victim for appropriate assistance, often provided by a police department staff unit; in other situations, however, the victim generally receives no further assistance, although he/she may seek out help from various victim assistance organizations and/or, if eligible, file a claim with the state victim compensation board. Many victims, however, are either unaware of such programs, do not have needs which fall within the services these organizations provide, or lack the capacity to follow-through on obtaining available victim services.

For those incidents in which an offender is, in fact, arrested, the prosecutor will then contact the victim to ascertain more specifically the nature of the offense committed and the injuries suffered. Some prosecutor offices will refer the victim to various social service or other agencies that can provide immediate assistance.

Depending upon the results of the prosecutor’s initial investigation (“screening”), the case may be (a) dropped altogether; (b) referred for diversion; or (c) referred for prosecution with formal charges filed. Victims in cases which are “dropped” are, essentially, in the same situation as victims in cases in which a perpetrator is never apprehended; their cases will not proceed through the justice process.

Those cases which are diverted are placed in an inactive status for a brief period of time to permit the offender to satisfy certain conditions imposed by the prosecutor which generally require the offender to make restitution to the victim and perform a required period of community service, after which the case will be dismissed. Cases which are diverted generally involve minor offenses, such as shoplifting or petty theft, and offenders who have no serious criminal records. The disposition of diverted cases generally results in restitution for the victim, often some payback to society through the community service hours which the defendant performs, and no criminal record for the offender. For those offenders who are diverted at the commencement of

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4 In approximately 75% of the crimes reported in the United States no perpetrator is ever apprehended. Ibid.
the adjudication process, the restitution requirements are generally worked out by the prosecutor's office which designates certain types of offenses and offenders as eligible for diversion. If the offender does not comply with the diversion conditions, his/her case is then prosecuted like any other criminal matter.

For those cases which have formal charges filed, a series of court "events" will then occur which generally include:
- the arraignment of the defendant, at which time he/she is informed of applicable constitutional rights, including the right to counsel, and, if the defendant is in custody\(^5\), a determination made as to the conditions upon which he/she might be released;
- a preliminary hearing, (often called "probable cause hearing") at which time the defendant is informed of the charges and initial discussion between counsel of the strength of the case and of a possible plea agreement occurs;
- the trial of the matter; and
- a subsequent hearing at which time the court sentences the defendant.

Approximately 90 - 95% of the criminal cases in the United States are disposed of without a trial -- mainly by the defendant's plea, i.e., admission to the offense. Most criminal cases are disposed of within 180 days of the arrest, with the criminal case process in some jurisdictions proceeding much faster -- sometimes, for cases which plea, in as little as 60 or fewer days, depending upon the nature of the offense and the degree of evidence necessary for adjudication.

Although some assistance can be given to a victim prior to the final case disposition, the court cannot, of course, impose any conditions of restitution until a finding of guilt is made.

4. Frequent Use of Pre-Sentence Investigations

Fourth, pre-sentence investigation reports are commonly required by United States courts prior to sentencing. The extent of information required in these reports may vary, depending upon the nature of the offense and the practice of the

\(^5\) In many cases, a defendant may be released prior to the arraignment on his/her own recognizance or payment of a money bail.
court, but they generally include information on the criminal incident for which the defendant is charged, the defendant’s prior criminal record, his/her educational, family and employment background, and financial resources that might be used for restitution purposes, if appropriate. These "psi’s", generally completed by the probation department, provide essential information on the defendant and the criminal incident which the judge uses in sentencing but they do not consistently address the range of needs which the victim has suffered as a result of the incident. They are, however, a vehicle for doing so in the future.

5. **Court as the Vehicle for Imposing Restitution Requirements**

Finally, the Court serves as the major vehicle for imposing restitution requirements upon the offender. It can order restitution as a condition of the defendant’s sentence and the defendant’s compliance will then be monitored by the probation officer assigned. In most states, however, orders involving conditions of probation cannot extend beyond five years so that any restitution required must be paid within that period. This, of course, presents a problem in cases involving defendants who lack the means to pay such restitution orders within that period, and most defendants are in this situation.

The following is an overview of various efforts that have been undertaken in the United States to address the needs and injuries suffered by victims of criminal incidents. Many of these efforts are being undertaken within the conventional adjudication process. Others, however, reflect activities of the legislature, community groups, or other organizations seeking to provide additional avenues for victim aid and restitution. The summary of these efforts presented in this paper is by no means exhaustive; it is, however, designed to provide a synopsis of the range of activities currently underway to assist victims. All of these programs do not exist in toto in any one jurisdiction but, bits and pieces of them function in various jurisdictions and, taken together, they provide an outline of the direction which efforts to address victim needs have been taking in the United States.
II. EFFORTS TO AID THE INDIVIDUAL VICTIM

A. Judicial Initiatives

1. Imposing Restitution Requirements

The practice of imposing restitution requirements on a criminal offender is rooted in ancient cultures and has resurfaced in the United States during the past twenty-five years. The acceptance of restitution as a sentencing condition is increasing because it helps compensate victims for their losses as well as encourages offender responsibility for criminal conduct and provides a viable alternative to incarceration.

A number of judges impose restitution as a sentencing condition upon the defendant in situations in which such restitution is feasible -- i.e., where the defendant has resources or a potential source of income from which the restitution payments may be made. A recent U.S. Supreme Court decision has held, however, that a defendant cannot be imprisoned because of the lack of financial resources and the failure to comply with restitution orders because of financial circumstances beyond the offender's control cannot, therefore, be a cause of imprisonment.

In situations in which the restitution amount exceeds a defendant's present ability to pay, some judges also require a defendant to execute a consent civil judgment for the restitution amount which can then be filed and will have affect for twenty years - i.e., far longer than the Court's ability to enforce a restitution order made at time of sentencing as a condition of probation. A sample Consent Judgment used to supplement the probation order is included in Appendix C.

For most victims of violent crime, however, orders of restitution have little impact because the offenders have little if any resources to pay. However, the restitution orders, imposed together with the civil judgment, can remain in effect for a

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United States courts are generally limited in restitution orders that can be issued by several considerations: (a) the prevailing philosophy that criminal courts are not to be used as collection agencies and that victims should proceed with civil actions to obtain compensation for their injuries; (b) that restitution orders must be commensurate with an offender's ability to pay; and (c) that a restitution order cannot extend beyond the period for which the court can have probation jurisdiction over a defendant -- usually a maximum of five years.
substantial period of time and will be applied to any subsequently acquired assets -- i.e., through inheritance, the lottery, etc. -- that the defendant may acquire.

2. **Incorporating Victim Needs Into the Judicial Process**
   Much effort has been made to sensitize judges to victim needs in addition to that of restitution and other direct assistance. A number of jurisdictions have developed court-based programs to address victim and witness concerns, including special attention to handling nervous, frightened or distraught witnesses; providing them comfortable and secure waiting areas, and assuring their meaningful input into legislatively required victim impact statements.

3. **Reducing Delay in Case Adjudication**
   In addition to sensitizing judges to victim needs, a number of United States courts are instituting programs to reduce unnecessary delay in the adjudication process generally and, specifically, to differentiate among criminal cases involving victims (Differentiated Case Management) to assure that these cases are adjudicated as promptly as possible and that unnecessary court appearances and/or waiting time for victims is eliminated.

4. **Appointment of Guardians Ad Litem**
   The concept of appointing a guardian ad litem authorizes the appointment of a representative for the victim in certain criminal proceedings in which the Court determines the victim needs to be represented. These situations generally involve child abuse and neglect proceedings. The guardian ad litem functions as a counselor, interpreter, advocate, investigator, social services broker and protector for the victim.

B. **Constitutional and Legislative Approaches**
   1. **General**
      Although there is no amendment to the U.S. Constitution that guarantees the rights of victims in judicial proceedings, a number of state constitutions guarantee such rights. These rights include the right to participate in the criminal justice process, the right to restitution and compensation for losses suffered due to the crime,
notification of key events in the case process, and the right to submit victim impact statements. Some statutes deal with the victim’s right to also participate in the case process, including plea negotiations, trial proceedings, and parole hearings. A number of statutes also aim at countering victim and witness intimidation, mandate secure witness waiting areas at court, and prohibit employers from retaliating for a victim’s taking time off from work for testifying in court.

2. **Widely Used Initiatives**

   a. **State Victim Bill of Rights Legislation**

   In 1982, the California Legislature enacted a Victim’s Bill of Rights which included provisions that victims had the right to appear and be heard at felony sentencing proceedings and at parole eligibility proceedings. A follow-up study on the impact of the California legislation, however, found that many victims were never notified of these proceedings and very few victims were aware that they had the right to appear and speak at them. In response to these findings, much greater effort has been made on the part of system officials to notify victims when these proceedings are scheduled.

   Most states have now enacted similar legislation which provides for
   
   - providing information to victims about available financial aid and social services;
   
   - victim notification of case status and scheduling;
   
   - protection of victims from harassment and intimidation;
   
   - separate waiting areas for victims in court facilities; and
   
   - speedy return of property held as evidence.

   We are only beginning to study how the legislative intent of these statutes is being carried out.

   b. **Victim Injury Compensation Boards**

   Many states have followed England’s and New Zealand’s lead in establishing crime victims’ compensation boards, requiring that a hearing be held, establishing eligibility criteria, etc. for victim compensation claims. These boards are
generally designed to compensate crime victims, good Samaritans, and their families. The amount and manner of award payments, residency requirements, and crimes and losses covered vary from state to state. Almost all of these state compensation programs have been established since 1980.

While the programs differ from state to state, they share certain common characteristics. Most programs have a specified maximum allowable award, which ranges from a minimum of $5,000 to an unlimited amount. Most of the programs require some minimum loss, i.e., $100-$200, that the victim must incur before the claim will be approved. While the programs differ in terms of the losses covered, all of them make hospital and medical expenses eligible for reimbursement. Most of the programs exclude awards for pain and suffering and property loss or damage resulting from theft or vandalism and some also exclude "culpable victims". Every program has a specified time limit within which victims must file a claim for an award. A few states restrict compensation to those victims demonstrating financial need.

The compensation boards are generally administered by a separate executive branch department within the state social service agency. Funding for these agencies is provided through fees assessed upon criminal offenders, often supplemented by additional appropriations.

c. **Victim Impact Statements**

Rule 32(c)(2) of the Federal Rules of Criminal Procedure requires U.S. Probation Officers to prepare victim impact statements to "fully reflect the effects of the crime upon victims as well as the appropriateness and amount of restitution." Almost all states also require the opportunity for a victim to submit a victim impact statement to be submitted at the time of sentencing. This statement is generally completed by the victim and deals with both the immediate and long-term impact of the criminal offense on the victim and his/her family.

In New Jersey, for example, a probation officer is required by law to notify each victim in a criminal matter at least 20 days before the sentencing hearing, of the date, time and place of the sentencing hearing and of the victim's right to present to the sentencing judge any information he or she feels relevant to document the nature and impact of the injuries he or she has suffered, including out-of-pocket expenses
incurred. A sample copy of a form letter sent by the Probation Department to a victim to ascertain information on their injury and a sample victim-impact form completed by a victim are attached in Appendix A and B.

The victim impact statement is considered to be a very effective means of assuring that the victim is an active participant in the judicial process, promoting psychological recovery of victims as well as helping prosecutors and judges understand the true impact of the crime. Originally intended to provide an objective description of the financial, medical and emotional injuries resulting from the criminal incident, many jurisdictions have expanded the concept of victim impact statements to allow the statements to be prepared by the victims themselves. Forty-eight states have legislation allowing input by crime victims at sentencing.

Very little research, however, has yet been done to ascertain the impact which these statements have on the ultimate case disposition or on the degree of assistance which the victim receives. One fact is clear, however; that the role which a victim impact statement has in the case disposition process will depend primarily upon the vigor with which the probation officer makes known to the victim his/her right to prepare this statement and provides whatever assistance may be necessary to assure its complete and accurate preparation, and the degree to which the court insists that it becomes a meaningful part of the sentencing process.

3. Other Initiatives

Several other legislative approaches are being tested in an attempt to provide additional avenues for victim restitution in the states. Two such approaches are described below:

a. "Son of Sam" Laws

In 1977, a serial killer who became known as the "Son of Sam" terrorized New York City residents. When it became apparent that "Son of Sam" stood to profit substantially from his crimes by recounting his story in various magazine articles, the New York State Legislature enacted what has come to be known as the
"Son of Sam" law\textsuperscript{7} which prevented those accused or convicted of a crime from receiving profit from communications concerning their crimes until the proceeds had been held in escrow for five years and made available to satisfy any civil judgment obtained against them. The U.S. Congress and numerous other state legislatures have enacted similar statutes although many of them make no provision for return of the funds to the offender when the statutory period for the victim's claims runs.

Under the New York "Son of Sam" law, any person accused or convicted of a criminal offense who contracts to speak or write about the crime was required to turn over the proceeds to the state crime victim compensation board for placement in an escrow account. These funds were to be held in the escrow account for a five-year period to satisfy any money judgment obtained by the victim during that time. At the expiration of the five-year period, the funds could be returned to the offender.

The "Son of Sam" statute has undergone substantial constitutional challenge and, on December 10, 1991, was declared by the United States Supreme Court to be an unconstitutional infringement on the right to freedom of speech guaranteed by the first amendment to the U.S. Constitution.\textsuperscript{8}

"Had the "Son of Sam" law been in effect at the time and place of publication, it would have escrowed payment for such works as "The Autobiography of Malcolm X" which describes crimes committed by the civil rights leader before he became a public figure; "Civil Disobedience", in which Thoreau acknowledges his refusal to pay taxes and recalls his experience in jail; and even the "Confessions of Saint Augustine" in which the author laments "my past foulness and the carnal corruptions of my soul", one instance of which involved the theft of pears from a neighboring vineyard."\textsuperscript{9}

\textsuperscript{7} Book 18, McKenney's Consolidated Laws of New York (Executive Law, Sec. 632(a)). "Son of Sam" was the name taken by David Berkowitz who had been accused of committing a series of murders in New York City during the 1970's and was the subject of numerous books and articles. He was never deemed competent to stand trial and remains confined to a mental institution.


\textsuperscript{9} ibid.
New York officials are of the opinion that the Supreme Court opinion leaves open the possibility for the "Son of Sam" statute to be rewritten with a more narrow focus so that it can comply with both the Constitution and the goals that New York sought to accomplish.\(^\text{10}\)

b. **Non-Judicially Imposed Restitution for Victims of Retail Shoplifters**

A Maryland state law which took effect July 1, 1991, allows retail merchants to obtain twice the value of stolen merchandise valued between $50 and $500 in lieu of prosecuting a shoplifter or store employee. Thefts of merchandise over $500 continue to be prosecuted criminally.

Prior to enactment of the law, a merchant would have to call police as soon as the theft occurred in order to have a chance for reimbursement. The new law is an extension of a 1987 law enabling merchants to collect three times the face value of a bad check in civil court (as well as to institute a criminal proceeding).

Under the new law a merchant-victim must take the following steps:
- apprehend the offender and obtain his or her identification.
- send a letter to the offender that identifies where the theft occurred and describes what merchandise was taken and its value;
- include the amount of the penalty in the letter and tell the offender how damages were calculated;
- state in the letter that payment does not preclude criminal prosecution and that payment will not be admissible in a criminal proceeding;
- if payment is not received within 15 days, send a second letter and include the same information as in the first letter but state that if payment is not received within 10 days the offender will be taken to small claims court and sued for damages, penalties, court costs and attorney’s fees;
- obtain a certificate of mailing from the post office for both letters.

If the offender fails to pay, the merchant has one year to refer the matter to the prosecutor to press criminal charges.

Although not enough time has elapsed to assess the impact of this legislation, many merchants feel that it may deter the timid shoplifter although not the

professional thieves who are the real problem. There is also concern that the law does not deal with thefts of less expensive merchandise, i.e., the $20.00 camera, which, cumulatively, can have a devastating economic impact on a merchant. However, given the limited scope of the legislation, it theoretically provides a merchant-victim with a chance to obtain compensation without also having to expend time at a court trial which (a) will probably occur weeks after the theft, and (b) not result in any imposition that restitution be paid. The legislation may also provide the foundation for later expansion into other areas of retail theft.

C. Prosecutorial Initiatives

1. Victim/Witness Coordinators

   Each federal prosecutor's office has a Victim Witness Coordinator and most state prosecutor offices also have at least one staff person who serves in this capacity. The victim/witness coordinator is responsible for notifying victims of prospective court dates, answering questions they may have regarding the proceeding, and assuring that they have transportation to and from the court.

2. Involvement of the Victim in Plea Negotiations

   Although a number of states have enacted legislation requiring the victim to be notified of the progress of the case and key events in the adjudication process, a few jurisdictions have experimented with including the victim in plea negotiation conferences. These conferences, although often determining case outcomes, are generally not considered formal events in the case process. Follow-up studies have found that about one half of the victims invited to such conferences actually came. Generally, those victims who came commented only on the facts of the case and did not demand unreasonable punishment.

D. Activities of Victim Assistance Agencies and Organizations

1. Activities of Government Agencies

   Most jurisdictions have established some type of victim assistance division within the police department and/or the prosecutor's office. In addition, many jurisdictions have special centers to assist victims of certain types of crimes, primarily
domestic violence and/or sexual assault. These programs are generally established locally, i.e., by the city or county, and are often operated by social service offices. Victims can be referred to these centers by law enforcement officers, probation officers or can go to them directly. Most commonly, these programs provide medical assistance, psychological counselling, emergency shelter for the victim and his/her children, and legal advice. Many will also assist the victim in locating employment and a place to live.

2. **Private Organizations**

A number of victim assistance organizations have become active during the past decade. Most of these organizations are privately funded through private donations and corporate contributions; some function in association with religious groups. Most of these agencies or organizations focus upon specific classes of victims and/or offenses and act primarily as advocacy groups, providing information, public education, and legislative testimony. Among these victim assistance organizations are:

- the Center for the Prevention of Sexual and Domestic Violence
- Child Find of America, Inc.
- Clearinghouse on Abuse and Neglect of the Elderly
- Clearinghouse on Family Violence Information
- Clearinghouse on Child Abuse and Neglect Information
- Incest Survivors Resource Network International
- Mothers Against Drunk Driving ("MADD")
- National Aging Resource Center on Elder Abuse
- National Center for Missing and Exploited Children

Only a few of these organizations provide direct victim assistance, however. The diffusion of sponsoring agencies for these programs and the absence of a central coordinating mechanism for victim referral makes it imperative that a more systematic approach to assessing and responding to victim needs be developed.

E. **Civil Actions**

Theoretically, crime victims can always seek to obtain restitution for their losses through a civil suit against the offender and/or against other parties who may have tort liability. Practically, however, this avenue is meaningless for most victims. The process of proceeding with a civil suit in the United States is very time-consuming and generally requires legal assistance -- if not representation -- a cost which most victims cannot afford and the costs for which can often exceed the amount of the claim. Moreover,
generally taken two forms: (a) required community service which the offender must complete; and (b) forfeiture of the property used to commit the crime. These programs are described briefly below.

A. Performance of Community Service By the Offender

As I have already noted, it is very common for defendants to be ordered to perform some form of community service as a condition of their sentence. For those offenders deemed eligible for diversion, the community service usually involves 24 - 50 hours of work at some community agency or for some charitable organization, such as working at a soup kitchen, collecting money at a Salvation Army depot, or raking leaves at a church. Generally, it is the defendant’s responsibility to locate an agency which will accept his/her services and provide the offender with a statement to be submitted to Court that he/she has completed the prescribed community service hours.

Those offenders who are ordered to perform community service as a condition of their probation are generally convicted of non-violent crimes and the extent of community service required can vary. Those convicted of minor crimes, such as petty theft, may be required to perform 30 - 60 hours of community service; those convicted of more serious crimes may be required to perform as much as 1,000 hours.

One important consideration in utilizing community service as a sentencing condition has been the widespread concern among potential recipient agencies over possible liability for acts performed by the offender. Liability that can be incurred by community service agencies includes negligence for failure to adequately train, improper assignment, failure to supervise, failure to direct, and negligent entrustment. Community service agencies may also be liable to third parties for injuries caused by offenders and liability to offenders may also occur due to injuries incurred during the course of job performance, for example.

For this reason, the use of community service has to be very carefully worked out so that (a) offenders who may pose serious risks to participating agencies are not included in such programs and (b) those offenders who do participate do not present potential liability risks to the participating agencies.

The most common method to address liability concerns has been through protection derived from workers’ compensation laws, liability or self insurance,
participant waivers of liability, and state laws providing immunity from liability. One such law passed by the New Jersey State Legislature which provides immunity to any agency accepting a defendant for community service\textsuperscript{11}, significantly expanded the pool of participating community agencies as well as the range of jobs assigned. Community service requirements were thereby transformed into a very tangible payback to the community by permitting the offender to be assigned to perform a broad range of functions, many of which would otherwise require hiring paid staff. Assigned offenders wear a bright orange vest with the words "Community Service" imprinted on it; the vest serves a dual function: demonstrating to the community that offenders are paying back society for their crimes, and, potentially serving as a deterrent to future offenders who may be embarrassed by having to wear the vest.

B. Forfeiture of the Defendant's Assets

The federal government and many states have enacted legislative provisions which permit the government to seize any assets used to perpetrate a crime. Recently, these statutes have been invoked vigorously against drug traffickers. The asset forfeiture proceeding is generally a civil proceeding that occurs following a criminal conviction and has proven to be a very effective sanction which can be fairly rapidly invoked and can deprive drug traffickers of major assets derived from illegal drug activities including loss of real estate, businesses, cars and boats. In most jurisdictions, local law enforcement authorities work out an agreement as to how the proceeds from these proceedings shall be distributed; generally, most of the proceeds go to police departments.

The concept of "asset forfeiture" underlies many federal and state criminal statutes and provides for the government to seize any asset of a defendant which has been involved in the commission of the alleged crime or has been obtained with the fruit of the crime. Assets may be seized prior to trial, and upon conviction, the offender generally has the burden of proving by a preponderance of the evidence that the asset was not associated with the crime.

\textsuperscript{11} See Appendix D for a copy of the bill introducing this legislation.
Asset forfeiture has been considered an effective law enforcement tool to attack the economic base of criminal enterprises and to undermine the ongoing operations of criminal activity. For Fiscal year 1989, the U.S. federal government derived over $600 million from forfeited assets which was distributed as follows:

- $281 million for federal prison construction
- $174 million for state and local law enforcement agencies
- $85 million to federal law enforcement agencies
- $30 million to hire additional federal drug prosecutors

Of the over $600 million derived, approximately $520 million came from seized cash, bank accounts and other financial instruments.\(^\text{12}\)

Although the content of state asset forfeiture laws varies from state to state, they generally allow the police to seize and keep for their own use, or sell, any property used in the commission of a felony. Asset forfeiture provisions are generally included in statutes relating to drug trafficking as well as Racketeer Influenced and Corrupt Organization (RICO) laws. Enforcement of these provisions, however, requires the labor-intensive capability to trace assets and a legal staff to handle seizure actions -- requirements which many state governments do not have and which therefore limit the use of these powers.

Critics of these statutes argue that they may interfere with a defendant's right to counsel since there has been some case law extending the potential pool of seizable assets to the funds used by defendants to pay their legal fees. There is also concern that (a) innocent parties may lose property in asset forfeiture proceedings if they had no knowledge that their property was being used for criminal enterprise (i.e., a car loaned to an individual subsequently arrested for transporting drugs in it), (b) that asset forfeiture proceedings, which are civil in nature and require a lesser standard of proof than a criminal proceeding, do not provide adequate protection for the property owner, and (c) that law enforcement policy is skewed by the incentive which asset forfeiture provisions create.

IV. EMERGING ISSUES

Efforts to pay meaningful attention to victim needs in the United States have only recently begun. As I have indicated, there is a broad range of activity at the federal, state and local levels of government as well as in the private sector to address victim needs. Most of these activities, however, have evolved ad hoc, with little systematic coordination, referral process, or follow-up evaluation.

We have much to do during the next decade to translate our commitment to addressing victim needs into a meaningful program of assistance. I will highlight four of the most significant tasks I feel we need to address.

First, we need to develop mechanisms which assure that assistance to the victim is provided as soon as a criminal incident is reported and with the same vigor with which the incident is investigated. The most logical agency to take responsible for initiating the provision of victim services and referral of victims to appropriate victim assistance providers would appear to be the law enforcement agency to which the crime is reported and with whom the victim has his/her first -- and for many victims, the only -- contact with the justice system.

Second, we need to pay much greater attention to the needs of special classes of victims. For example, there has already been much effort to deal with the special needs of child-victims, particularly those who have been abused. Much research has been conducted regarding how best to assure reliable testimony from child witnesses while, at the same time, trying to respect their sensitivities to the impact of participating in the judicial process. Social service units are extremely vigorous in seeking to protect alleged child victims; some feel, however, that their vigor may place parental rights in jeopardy. In the same vein, do elderly victims have special needs which we need to meet? Might it be particularly difficult to recover from the trauma of being a victim if one is older? And does the system serve the needs of the poor and less educated to the same extent as it does the more affluent and sophisticated?

Third, we need to assure that victims have the same rights to protection and to participate Meaningfully in the judicial process as we have afforded the defendant. Included among these rights is the right to be represented by counsel and the recognition that the victim has standing to participate in all phases of the judicial
process. Affording victims such rights may well require constitutional and/or legislative action in many jurisdictions. At this point, much of the victim assistance efforts underway are discretionary, the result of the vigor with which particular prosecutors and/or judges implement victim assistance policies. These may well be abandoned or significantly diminished when new officials come to office.

Finally, we need to systematically evaluate what has taken place to date. What has been the impact of the variety of victim assistance and restitution efforts that have been undertaken? We know, for example, that most states have established victim compensation boards. But how many states have also appropriated funds for these boards to operate effectively and to provide compensation to all of the victims who are eligible to receive it? How easy is it for a victim to submit a claim for compensation? Are most victims aware of their right to submit such a claim? And how much "red tape" is there in order to process the claim? To what extent are the various victim assistance programs reaching out to eligible victims and, conversely, to what extent are victims aware of programs that might assist them?

We also need to be working on developing a long-term mechanism for assuring that victim assistance efforts will become institutionalized. For example, we need to explore what might be the most appropriate administrative locus for such programs (i.e., in police departments? social service agencies?); how the various victim assistance resources can be systematically coordinated to meet victim needs; and how the resources available through various victim assistance programs can be publicized to encourage all eligible victims to avail themselves of these services.

The criminal justice process in the United States is intimidating to most persons who do not deal with it on a regular basis. For those individuals who have also suffered the trauma of being victims, it can be an additional punishment. Our challenge is to transform the criminal justice process into an opportunity to meaningfully assist victims of criminal incidents and to try to make them whole. We look forward to the critical discussions of this seminar to advance us in this task.
REFERENCES


APPENDICES

A. Sample Letter from Probation Officer to Victim Requesting Victim Impact Information

B. Sample Victim Impact Interview Form, Prepared by the Prosecutor's Office, with Victim Comments

C. Sample Civil Consent Judgment

D. Bill Absolving County and Municipality from Civil Liability for Community Service Performed by an Offender as Part of a Court Ordered Sentence
Dear

The Middlesex County Probation Department is presently preparing a presentence report for the Court’s use in the sentencing of [redacted]. As part of our investigation for the Judge, we contact the victim in the case at hand, as provided by law. This provides you with the opportunity to have your comments considered by the Court at the time of sentencing. Information concerning the nature and extent of loss and/or injury incurred, the impact of the crime on you, and your feelings about the offense, the defendant, and the sentence to be given can be helpful to the Judge in reaching an appropriate decision.

You should be aware that copies of our report to the Judge are furnished to the Prosecutor, and to the defendant and counsel in accordance with Court Rules.

Our report must be completed by [redacted], therefore, we would like to hear from you by [redacted]. Would you please contact at [redacted] between [redacted] and [redacted] Monday through Friday.

Thank you for your anticipated cooperation and prompt response.

Very truly yours,

LYMAN H. O’NEILL
CHIEF PROBATION OFFICER

BY:
OFFICE OF VICTIM/WITNESS ADVOCACY
VICTIM IMPACT INTERVIEW FORM

Victim's Name: John Doe
Date of Interview: 01-01-0000
Case Number: 69-00-391
Indictment Number: 100-01-397
Assistant Prosecutor: Joe Jones
Charges:
Defendant(s) Name: Joe Jones

PERSON COMPLETING STATEMENT IF NOT VICTIM:
Name:
Address:
Phone Number:
Relationship to Victim:

I. PHYSICAL INJURIES

1. Were you injured? ( ) Yes ( ) No (If No, skip to # 5)
2. How extensive were your injuries? (Describe injuries)

3. Have your injuries affected your job/daily routine? If yes, how? (describe)

4. Were your medical costs covered by insurance? If no or only partially, estimate the cost you have to pay?

II. PROPERTY LOSS OR DAMAGE

5. Was there any loss of property (including cash) or damage to property? ( ) Yes ( ) No (If No, skip to # 8)
6. What was the extent of/cost of damage and/or loss? (Describe with dollar estimates)
   But not to me personally. Money was taken from the cash register of my boss. I do not know the amount taken.
7. Have these losses affected your daily routine or your job?  
   No

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III. LOST TIME FROM WORK/SCHOOL
8. Are you employed?   (☐) Yes   (☐) No
9. Do you attend school?   (☐) Yes   (☐) No
10. Has the crime caused you to miss work, school or other responsibilities? If yes, please explain. (Describe)
    No

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11. Will you lose any pay/have you lost any pay for the time you have missed or are missing from work?
   No

---

IV. EMOTIONAL EFFECTS
12. How have you been feeling since the crime?
   Since the crime, I do not feel as relaxed toward any strangers, let alone any strange customer who comes in the store. Even now if someone should make a certain kind of movement, I flinch.

13. Please explain how your life has changed as a result of the crime.
   Well as you can see I am a little slow responding to this letter for I get very upset to think about it. I am always looking at every situation coming, walking, talking on the phone and everything in my life differently. Very Caution.

14. Please explain the affect of the crime on your family.
   Really not too much effect on my family. Just when I get upset they just listened and comforted me. I used to cry a lot. Now only when I think or talk about that day. Like now.
This matter having been brought before this Court by the plaintiffs, John _____ and Inez _____ and the consent of the defendant, John R. _____, appearing herein;

IT IS on this ___ day of __________, 1991;

ORDERED, that Judgment be and is hereby entered in favor of the plaintiffs, in the amount of thirty thousand and No/100 ($30,000.00) dollars, minus the amount paid by defendant at the time of sentencing, three thousand seven hundred and six and No/100 ($3,706.00), leaving the remaining sum of twenty six thousand two hundred and ninety four and No/100 ($26,294.00) dollars.

FURTHER ORDERED, that defendant, John R. _____, is to pay to the plaintiffs, John _____ and Inez _____, the amount of four hundred and seventy-five and No/100 ($475.00) dollars per month, through the Middlesex County Probation Department, while the defendant is on probation for a term of five (5) years and until this Judgment is satisfied in full; and it is
FURTHER ORDERED, that until this Judgment is satisfied in full; any property or funds received by the defendant as a windfall from any source, including but not limited to inheritance proceeds, gifts, tax refunds or rebates, gambling or lottery winnings, and law suit awards, shall be subject to execution to the extent of the amount of this Judgment as yet unpaid to the Plaintiffs, John and Inez; provided that if the defendant fails to notify the plaintiffs of any excess amounts received, then, and in that event, the Plaintiffs may seek execution of this Judgment via a wage execution or any other means available by law.

I hereby consent to the form and entry of this Judgment and to the jurisdiction of the Superior Court of New Jersey, Law Division, Middlesex County, State of New Jersey.

John R.
Defendant

Mario Apuzza, Esq.
Attorney for Defendant

Date 2/7/91
Absolves a county and municipality from any civil liability for community service performed by an offender as part of a court ordered sentence.

(COUNTY AND MUNICIPAL GOVERNMENT)

This bill would absolve a county or municipality of civil liability in connection with any community service performed by an offender as part of a court ordered sentence, penalty or other disposition imposed for the violation of a statute or ordinance. This bill also exempts the county or municipality from laws governing the provision of labor, workers' compensation, conditions of employment or insurance in connection with an offenders' community service.

The League of Municipalities supports this bill.

lk 2/1/89
KC 11/6/89
In Europe, It's Not an Issue

BY JUDITH HAVEMANN

Sitting on a row of tiny pink potties, 12 toddlers at Clair Logis, a day care center in suburban La Hulpe, Belgium, sing at the top of their lungs and wave their arms in accompanying gestures as three teachers direct 10 minutes of combination music and potty-training class.

The children, who range in age from 18 months to 2 years even the continent for jobs and many grandparents relocate after their working years to a warmer climate.

But even more striking are government programs geared to help encourage population growth and social safety nets so immense as to be nearly unimaginable to Americans.

- Most countries either offer or are in the process of providing two to three years of pre-elementary school education.
- Every country in the European Community except Brit-
Brussels, "the next vacancy will be in September 1992," said Liliane De Smet, the director. De Smet, a nurse, manages a staff of 16, including 13 aides who have the equivalent of a vocational high school diploma incorporating two years of training in child care. On a recent Monday, five were absent.

"You understand the difference between theory and practice," she said. "There's something wrong with the salaries."

Perrine Humblet, the Belgian representative in the European Commission's Childcare Network, said a typical child care worker for children under age 3 earns between $725 and $870 per month. There is no advancement. "You enter as a [child care worker], and you leave as a [child care worker] 25 years later," she said. "It is one of the problems with our system."

Even so, there is no shortage of workers. With national unemployment hovering persistently at nearly 10 percent, the Belgian government occasionally offers unemployed workers subsidized jobs in nonprofit organizations like day care centers, to augment the minimum ratio of one staff member to seven children. Virtually all new child care workers employed by publicly funded nurseries come from this source.

Although tales of waiting lists and low staff morale are numerous, Belgium is the largest of all European countries to offer child care, even in the early years. Peter Moss, the coordinator of the Childcare Network for the European Community, said Denmark ranks at the top—it also has the highest levels of employment for mothers—followed by Northern Italy.

As to quality, "day care in Europe ranges from the mediocre to the marvelous, in the U.S. from the horrible to the marvelous," said Alfred J. Kahn, a professor of social work at Columbia University and the author of numerous books comparing the care of children on the two continents.

Where it's not so good, according to Moss, a senior researcher at the University of London, often coincides with where there are negative attitudes toward working mothers.

Although mothers in all European countries work outside the home at an ever increasing rate and government child care policies are expanding, attitudes have not entirely caught up to the reality of the two-earner family, as shown by three studies recently cited in a European Commission report.

In a recent survey of German fathers, 80 percent agreed that "if there's a child, the father goes to work and the mother stays at home." In 1986, 54 percent of people surveyed in the Netherlands opposed women's employment, if it meant entering a child in a child care center. A 1987 British Social Attitudes survey found that "the ideal household is seen to be a breadwinner father, a homemaker mother and two children."

Yet the question of whether child care is bad for children is virtually never raised in Europe. Moss dismisses it as a "crude, unsophisticated research topic. It is not interesting." The Swedes, he said, with decades of experience with child care, have "never found any evidence for this."

French researchers, indeed, have amassed evidence to the contrary—that their system of child care actually helps children of all social groups and employment levels.

Seventy percent of infant and toddler care occurs in the home in France, but at age 3, children almost invariably enter free preschool, according to a 1989 report by the child care study panel of the French-American Foundation.

Teachers and other professional staff are all government employees with guaranteed salaries and benefits. All preschool teachers and directors have training equivalent to a master's degree in early child and elementary education. The government promotes licensing and inspections through incentives such as guaranteed benefits rather than relying on the legal system to catch illegal child care providers.

Family day care providers are entitled to employee benefits and social security if they are licensed. University students in preschool education have their schooling paid and receive cash stipends in return for agreeing to work for five years in the field after graduation, according to the foundation study.

The French have decided that staff training and experience—not staff-child ratios—are the key to high-quality child care. In preschool classrooms for children 3 and older.