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Critical Dimensions of Victim Participation
at Sentencing Hearings

by

Virginia V. Neto

McGeorge School of Law 3200 Sth Ave.
University of the Pacific
Sacramento, California
95817

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Introduction

In the archives of criminal justice research and legal developments, the 1980's will be remembered--at least for a while--as the era of the victim, as this panel itself attests. In this decade, many states have passed statutes providing victims with new or improved access to the courts, with new services, and with renewed recognition. This paper will address new developments in California in light of a recent study of victims' response to the right to appear at sentencing hearings.

Background

The contemporary victims' movement arose after World War II, when society and especially social reformers were able to turn from international strife to focus on domestic problems of crime, crime prevention, and civil order. The early victim researchers and victim advocates were primarily interested in one or more of the following objectives:

1. To prevent and control crime by understanding victim characteristics, reducing risk taking, and encouraging behavioral change on the victim's part to avoid criminal incidents;
2. To differentiate innocent victims from those who had precipitated the crime;
3. To initiate compensation or restitution programs.

The perspectives which prevail in the literature derive from victimology, on the one hand (objectives 1 and 2 above), and the practical recognition of the need for victim compensation, on the other (objective 3). In the Von Hentig

tradition, most of the literature on victims in the 1960's was written from the perspective of victimology and examined victimization as part of a social interaction, often with emphasis on the willing participation of the victim or on the victim's contribution to his or her own loss, injury, or demise. In a sense, the criminologist changed the research target from criminal to victim but applied similar theories of social deviance to the victim as had been applied to the criminal. At the same time, Margery Fry in England saw the victim as an injured party in need of financial assistance. (Fry, 1959)

Largely through Fry's efforts, legislation to provide victims with compensation was passed throughout the British Commonwealth from 1963 to 1965. California followed suit in 1965. However, the California compensation measure was not adequately funded or widely publicized until the 1980's. There was little or no discussion of the victim's role in the court process at that time, although, in a remarkable piece of foresight, Justice Goldberg described the dangers of failing to provide for victims while acting to protect defendants.

Whenever the government considers extending a needed service to those accused of crime, the question arises: But what about the victim? We should confront the problem of victim directly; his burden is not alleviated by denying necessary services to the accused. Many countries throughout the world, recognizing that crime is a community problem, have designed systems for government compensation of victims of crime. Serious consideration of this approach is long overdue here. The victim of a robbery or an assault has been denied the "protection" of the laws in a very real sense, and society should assume responsibility for making him whole. -- Arthur J. Goldberg, Equality and Government Action, 39 NYU Law Review 205, 224.

Focus on Crime

Crime became an important political focus in the 1960's. To determine more accurately the dimensions of crime which appeared to be seriously underreported, the U.S. Bureau of the Census undertook the first victimization surveys in the country, which provided, beyond their intended purpose, the first extensive data base on victims of crime in the United States. Along with the civil turmoil of that decade, the results of the survey, which verified that, indeed, citizens were reluctant to report crime, heightened concern for the legitimacy of the criminal justice system and led to federally supported interventions to improve police-community relations and to enhance law enforcement capability.

By the early 1970's, the stage was set for the first victim/witness programs, which were developed on an experimental basis by district attorneys and probation departments in selected sites across the country. Directly aimed at victims as witnesses and reporters of crime, these programs were established primarily to manage and support the victim/witness in the court process.

The women's movement of the 1970's also played an important role in substantially increasing the stature of the victim, primarily through the development of new methods for handling rape cases and responding to domestic violence. The impact on traditional police and prosecutorial procedures has been dramatic, both in terms of increased arrests and prosecutions and in more respectful, humane treatment of victims.

The lack of concern for victims per se became a topic of scholarly as well as popular interest. McDonald, Zeigenhagen, and others explored the historical role of the victim as well as current trends and future options for meeting victims' needs and modifying the victims' attitudes and actions.

During the same period, the courts were also subject to citizen purview by "court watchers" who reported to the community on judges who appeared "soft on crime." Legislators passed laws mandating longer sentences for many types of felonies; mandatory sentencing was passed in California and other states to reduce the discretion of judges and parole boards.

Finally, victims themselves began to organize into groups and to gain a great deal of media attention. In particular in California, Mothers Against Drunk Drivers became very active in seeking the most severe penalties possible for those whose drunk driving resulted in the death of a child. Victim advocacy was real and highly visible.

Two common viewpoints present in the victims' movement can be best described in terms of the underlying motivation of the parties: one has a predominant purpose of increasing arrests, convictions, and penalties, while the other is more concerned with aiding victims as an end in itself. Although not mutually exclusive, one emphasis often takes precedence over the other. Within some parts of the victims' movement, there is a strong anti-defense bias, that is, that defendants have "all the rights" and that only by reducing those rights can the victim gain rights of his own. In 1982 the U.S.

Supreme Court in Michigan v. Long reflected and enhanced the anti-defendant, pro-victim dichotomy. Limitations on search and seizure, formerly seen as a protection of "individual rights against government powers" was re-interpreted. As O'Neill states:

This model divides citizens into two groups -- those who are law-abiding and those who are criminal . . . The interests of the two groups are inversely related --gains for criminals result in losses for the law-abiding. (O'Neill, 1984)

The Victims' Bill of Rights in California also emerged from a co-mingling of anti-defendant and pro-victim concerns.

The very title of Proposition 8--the Victims' Bill of Rights--indicates the subtle awareness that what is at issue are fundamental concepts and practices of a constitutional scale related to the individual and the class of "victim".

Three problem areas in the administration of criminal justice have been evident throughout history and persist in the late twentieth century:

- 1) The rules of evidence--determining guilt and assessing the veracity of witnesses;
- 2) The relevance of the status of the persons involved--both victim and defendant--against the nature of the crime itself;
- 3) The proper measure of compensation to the victim and the appropriate punishment of the guilty.

These issues also underlie the drafting of Proposition 8 and are addressed in its provisions.

Specifically Proposition 8 addressed the following areas: Restitution; Right to Safe Schools; Right to Truth-in-

Evidence; Public Safety Bail; Use of Prior Convictions (in sentencing); Diminished Capacity; Insanity (defense abolished); Habitual Criminals (sentence enhancement); Victim's Statements: Public Safety; Sentencing (limitations to Youth Authority); and Prison Terms for Mentally Disordered Sex Offenders. Many observers believe that the heart of Proposition 8 was not the subsection on victims' statements nor the one on restitution, but rather the subsections on truth-in-evidence and limitation of plea bargaining.

This paper will discuss the effects of Penal Code Section 1191.1 which provides that the victim of a felony crime or next of kin must be notified by the local probation officer of sentencing hearings and has the right to appear and express his views about the crime, the person responsible and the need for restitution. In passing sentence, the court shall consider these statements.

Methodology

In order to assess the impact of the victim's right to appear, the project surveyed presiding court judges, district attorneys, chief probation officers and victim/witness program directors throughout the state. Of the 58 counties in California, sixty percent returned the judicial and the probation questionnaires (not necessarily the same counties returned both), while forty percent of the district attorneys responded to the inquiry. Sixty percent of the 35 victim/witness programs contacted also responded. The project also interviewed 171 victims in three counties.

The most difficult task was to identify and locate the

victims of felony offenses who exercised the right to appear, or who could have appeared. The district attorneys were the only central source for this information. Only ten district attorneys' offices in the state had computerized records. From these we selected three counties--one large urban, one agribusiness county that includes a large rural population, and one diverse county with a large government and military sector. The agribusiness county, a growing community with a relatively young bureaucracy, had the only complete file on victim information. In the other two counties the victim information files were only one-third to one-half as large as the number of felony cases disposed of in a given year. The main reason given for the incompleteness of the files was inadequate record keeping on the part of individual district attorneys. The second reason which we would offer is the apparently low priority given to maintaining victim information.

Agency officials estimated that less than three percent of felony victims actually exercised the right. Since no records are maintained, it was necessary to identify allocutors in a prospective manner. Superior court clerks in two of three selected counties provided sentencing orders on those cases in which it was noted that victims actually appeared; in the third county the clerk was able to provide the names of persons who had made written or oral statements concerning sentencing. Through this identification process, we increased the proportion of the victims in the sample who were actively involved at sentencing.

Of 1,005 letters that were mailed to the District Attorney sample, 17 percent were known to have been returned by the post office as not deliverable. Of the remaining 835 victims, 20 percent returned a signed post card indicating their willingness to be interviewed. Of these, 86 percent or 146 victims were actually interviewed. The Superior Court sample resulted in identification of 54 persons in three counties over a six month period; addresses were found for 49 of these; 10 percent of the letters were returned by the post office, and 24 of 25 victims contacted were interviewed. In total, 171 victims comprised the sample.

Some of the problems which prevented a random sampling technique were the lack of data on victims, the voluntary nature of the request, the method of contact which interfered with our reaching transient persons, and the lack of response from non-English speaking persons. Nevertheless, the distribution of crime categories resembled the overall distribution of felony convictions in the subject counties. The crimes studied were felony burglary, robbery, assault, rape, child molestation, and homicide.

Measuring Victim Response

During the course of data collection, it became evident that allocution was part of a continuum of activities that victims might undertake as a result of their concerns regarding sentencing. The dependent variable, victim participation, was developed to reflect this range of victim behavior:

Sample
Distribution

- | | |
|---|---------|
| 0 -- Victim was not active regarding sentencing | (68.4%) |
| 1 -- Victim only attended sentencing hearing | (5.8%) |
| 2 -- Victim sent written statement to judge | (8.8%) |
| 4 -- Victim made an oral statement at sentencing hearing. | (17.0%) |

Although the original intent was to study only the last option, it would have been unrealistic and misleading to do so. The difference between written and oral statements was often a matter of personal preference or logistics related to time or distance. Not everyone is comfortable at center stage, or able psychologically to withstand the stress of a personal appearance, which involves confronting the convicted criminal.

Before proceeding with the analysis, it is important to keep in perspective the "17 percent" of allocutors in the sample. In the three study counties, there are over 2,000 felony convictions in a six-month period; during a similar time period the courts identified 54 persons as allocutors; roughly 2.5 percent of convictions (not even taking into account multiple victims) resulted in a victim appearance. In order to have a viable comparison group, the project deliberately identified a much larger proportion of allocutors than would be found at random.

The Sample

In demographic terms, victims interviewed were not notably different from other Californians. Women were slightly over-represented (58 percent to 51 percent) primarily because of their parental role in speaking for children who were victimized. Ethnically, Asians were underrepresented. Two-thirds of the victims had some college education or better; 70 percent worked in white collar occupations--a higher proportion than would be found in the population as a whole. However, median household income was similar to the statewide median of \$22,700 in 1983.

Overall, the experiences with crime which these victims reported reflected the crime picture in the study counties in terms of crime and sentence imposed. Where dispositions were known, 58 percent were prison sentences from 2 to 43 years, with an average of 5 years. In six out of ten instances, the criminal was a stranger about whom the victim knew very little. Six out of ten victims had never been victimized before.

Effects of the crime were most often characterized in terms of emotional impact, followed by a sense of insecurity, and then financial loss. Over one-third reported a loss to their insurance carrier; 38 percent applied for compensation and/or restitution, as provided by statute. Property damage and medical expenses were the most common types of loss reported. Over half of the victims knew about the county victim services program, usually learning about it after the

crime had occurred. Less than three out of ten victims actually received a service; most often they were helped to complete compensation forms or assisted with understanding court procedures. Despite the magnitude of publicity that surrounded the passage of the Victims' Bill of Rights in June, 1982, less than half of the victims interviewed knew about the right to appear at sentencing. (Had the sample been random, the proportion would probably have been much lower.) Half of those who were knowledgeable reported that they had been informed by the District Attorney.

More than half of the participants hoped to influence the court to impose a long sentence, although their underlying motivations included a desire to express their feelings as well as a sense of duty to contribute their views at the sentencing hearing. Six out of ten persons who expressed their opinions, either written or oral, had positive feelings afterwards. Some of those who thought their statements had not affected the sentence felt more frustrated or negative.

Victims who knew about the right to appear but did not make a statement often indicated that they had been satisfied with the system response to the criminal event, or thought that their appearance would make no difference. The latter implication was not necessarily a negative one but sometimes reflected an understanding of the way the system works.

Significant Factors in Participation

Given the consistently low rate of victim appearances at

sentencing--less than 3 percent, regardless of county, how does one explain the motivation of those who do appear?

No significant differences in participation were found in terms of gender, ethnicity, marital status, or educational level. Family relationship to the victim was significant; parents were more likely to be active participants than other relatives and to be involved with the most harmful crimes, such as manslaughter, murder, and child molestation. Occupational differences were also significant. Professionals were more likely to speak at the sentencing hearing; technical and clerical workers tended to send written statements.

As already suggested, the nature of the crime was a significant determinant of victim or next of kin activity. Crimes resulting in serious bodily injury generated the greatest levels of participation, while victims of burglary or assault were least likely to become involved.

Participants at sentencing were also more apt to have learned about the right through a personal contact with victim services staff, a private attorney, or another criminal justice personnel. The personal nature of the interaction, rather than a form letter, may have encouraged their decision to become involved.

Involvement and Satisfaction

Much of the recent literature on victims has focused on victim involvement and victim satisfaction with the criminal justice system. Appearing at sentencing hearings is, by

definition, a form of involvement which may be the culmination in a series of actions after the crime. Participation may arise from or result in feelings of satisfaction or displeasure with the system.

Hagen (1982), in a study of victim involvement in communities near Toronto, analyzed components of victim activity, such as contact with police, prosecutor, knowledge of disposition, etc., and their relationship to victims' attitudes toward the system, the defendant, and the disposition. Hagen's findings were suggestive, rather than conclusive, that victims who attend court are more likely to reduce their demands for severity in sentencing. Thus, a linkage was postulated between involvement and acceptance of the case disposition.

In a survey conducted by Lou Harris and Associates for the New York State Crime Victims Compensation Board (1984), Bucuvalas reported overall victim satisfaction with the police (92 percent), which was enhanced if the victim received victim services. A similar pattern at a lower rate was found with respect to the district attorney's handling of the case.

Victim/Witness assistance agencies, however, have continued to be concerned about the lack of witness cooperation. In seeing this as a "persistent phenomenon," Davis (1983) suggested that victims might be more cooperative were they given a chance to have their opinions heard in court.

In another recent study, Hernon and Forst (1984), after

reporting that 21 percent of victims interviewed wanted greater opportunity to express their opinions, concluded that "there is a high correlation between satisfaction and the victim's perception that he or she influenced the outcome . . . Victims are generally more satisfied with the way their case is handled when they are informed and have access to someone in the criminal justice system who listens to and appears to care about their opinions."

This study developed indices to measure both involvement and satisfaction, which could then be related to participation at sentencing. It was assumed that the more a victim were involved with the system the more likely s/he would know about the allocution right and exercise it as a vital player in the proceedings. A greater participatory role would, in turn, result in more satisfied "consumers," who would have a greater understanding of the way the system works and would feel a part of the process. Many would want to contribute personally to the adjudication, especially if they had had no opportunity to testify, such as the next-of-kin of murder victims. However, given the oft-stated view that the system fails to meet victim needs, it was also assumed that some dissatisfied victims would exercise their rights, feeling that the system had failed them.

A series of specific questions were developed which collectively measure the extent of a victim's involvement and satisfaction with law enforcement, the courts, the prosecutor, and other agencies from the time of the crime to the

sentencing. From these items, two measures were developed--the Criminal Justice Involvement Index and the Criminal Justice Satisfaction Index. Both indices were developed in an "a priori" manner, influenced by other studies as well as the researchers' assumptions. Our findings indicate that high victim involvement revolves around the courthouse and reflects a high level of interaction between the victim and the prosecutor; frequent attendance at court proceedings, and knowledge of the right to appear at sentencing. High satisfaction combines general feelings of relief with specific judgments that the prosecutor, defense counsel, and law enforcement officials handled the case well.

Involvement and satisfaction are significantly correlated ($r=.418$, $p<.001$), suggesting that persons actively involved with the adjudication process--those who have direct experience with officials and the court--are more often satisfied with their experience with the criminal justice system.

However, certain intervening variables, such as the nature of the crime, disrupt this relationship. The greater the harm done to the victim the less likely the victim or the next of kin will feel that the case was handled well and be contented with the outcome. Furthermore, being involved in the court process presents more opportunities for negative as well as positive experiences. A single negative incident in the long course between a crime and sentencing may result in an overall negative judgment amidst an array of positive

evaluations of individual officials. For example, persons who received services from victim/witness programs had more extensive involvement in the criminal justice process ($p < .001$), but were no more likely to feel satisfied. In fact, persons who received help in completing forms for compensation from the state were more often dissatisfied ($p = .001$). These persons were often the next of kin of murder victims. Again, the severity of the crime may provoke such intense feelings of anger, depression, or unhappiness that positive interventions have little impact on the victim's overall assessment of the system. It is also possible that the frustration encountered in dealing with the complex, slow process of collecting funds to pay medical or funeral expenses, which may take as long as 18 months, may counteract the benefits gained. Any efforts to improve services to victims may be readily undone by bureaucratic inefficiency or thoughtless treatment by officials in that agency or another.

Determinants of Participation at Sentencing

Table 7.3 presents the interrelationships between victim involvement, victim satisfaction, victim harm, and participation in sentencing. Criminal Justice Involvement is highly correlated with Victim Participation and with Satisfaction but not with the Victim Harm Scale. This occurs because some victims of crimes which are low on the Harm Scale, such as property offenses, became actively involved in the process because they wanted restitution, rather than to see that the criminal was severely punished. Satisfaction is

not associated with participation at sentencing, and, as already discussed, is inversely related to victim harm.

Table 7.3

Inter-Scale Correlation

	VHS	CJI	CJS	Vic. Part.
Victim Harm scale	1.000	.014	-.204**	.174*
Criminal Justice Involvement		1.000	.418***	.489***
Criminal Justice Satisfaction			1.000	.065
Victim Participation				1.000

* $p < .05$
 ** $p < .01$
 *** $p < .001$

Further analysis revealed that seven out of nine factors which made up the Involvement Index contributed significantly to victim participation. In contrast, only one Satisfaction factor was significantly related to participation, and all Satisfaction factors were related in a negative direction.

Summary

In summary, victims who participated at sentencing, either by writing a letter to the judge or by making an oral statement at the sentencing hearing had been involved with various public officials, especially the prosecutor, at different stages of the criminal justice process--from initial charging of the crime through prosecution and conviction. Most victims did not suddenly become interested when the sentencing date neared and they received a letter announcing the hearing. Active victims were much more likely to have had frequent contact with the district attorney, to have received

services from a victims' services program, to remember receiving notifications, to have applied for restitution or compensation, to have talked with the district attorney about the sentence, to have been encouraged to make a statement, and to have attended the court proceedings. A picture emerges of a person playing an active role in the prosecutorial and judicial phases, which culminated with a victim impact statement either written or delivered orally in the courtroom.

Parents of victims of serious crimes were the group most likely to become involved. Burglary and assault victims were notably under-represented.

Satisfaction or the lack thereof was not associated with participation at sentencing. It appears that some victims may take part in sentencing because they are dissatisfied with the actions or manner of the district attorney or the probation officer, while other victims may become involved because of satisfactory contacts with officials which motivate them to participate in a positive, pro-active way. Given the highest level of victim harm--homicide or manslaughter, it appears that no process or outcome (short of the death penalty, perhaps) would be sufficient to produce a satisfactory solution for the survivors in such cases. Being involved in the court process presents more opportunities for negative as well as positive experiences. A single negative incident may outweigh a generally positive evaluation of the criminal justice process.

Impact of Participation on Disposition

Contrary to expectations, victim participation did not apparently result in more severe sentences. In fact, in those cases where allocution occurred, the percentage of prison commitments was the lowest. This results in part from the financial motives of some active victims who preferred to receive restitution rather than send the criminal to state prison. The restitution provisions of Proposition 8 have given impetus for some persons to appear at sentencing. In addition, some allocutors pled for mitigation of the sentence, especially if the offender were a relative, employee, or friend.

There is no evidence that allocution, as provided by Proposition 8, is any more effective in meeting victim needs than methods previously available, such as written statements to the judge, judicial conferences, and permissive appearances at sentencing.

Comparative Findings

The findings support those of Harris (1984) and Hernon and Forst (1984) in several ways:

- 1) The majority of victims gave positive appraisals of their contacts with individual officials;
- 2) Greater involvement with the system throughout the proceedings resulted in higher levels of overall satisfaction with the criminal justice system.

The findings add some complexity to the supposition that participation would lead victims to accept the case

disposition (Hagen, 1982). In the most serious cases, which, because of their seriousness, led the survivors or next of kin to participate, no disposition appeared harsh enough to balance the scales of justice. Nor did victim compensation enhance satisfaction.

In the less serious cases, such as burglary, victims were not inclined to take the extra time and make the effort to participate. They relied on their insurance company to ameliorate the loss and on the criminal justice system to prescribe the appropriate sentence.

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