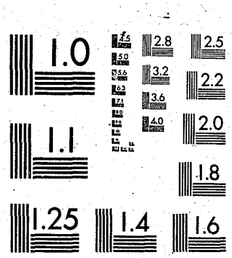

Note Copyright Material
in back of document
Last three pages

P.5
9-21-81

MF-1

es, Justice and Crime Victims

State of California
Department of Justice

George Deukmejian
Attorney General

PREFACE

This handbook contains an article, "Of Judges, Justice and Crime Victims," by Attorney General George Deukmejian. It formed the basis for a speech delivered to the Fifth Annual Roger J. Traynor Lecture at the 1980 California Judicial College on July 23, 1980.

One example of the emerging awareness of and concern for the needs and rights of crime victims by the judiciary is contained in People v. Browning, 4 Crim. 10515, decided in July 1980.

In the Browning case, the Court of Appeal, Fourth Appellate District, refused to order a shooting victim to undergo surgery to remove bullets left in his body. The accused gunman wanted the bullets removed for tests to possibly support his alleged self-defense theory.

Presiding Justice Robert Gardner, who wrote the Browning opinion, observed the California Supreme Court has ruled that a certain, very innocuous and medically accepted process to be performed on a criminal defendant violated his constitutional right to be protected against unreasonable searches. The Supreme Court said such a test invaded the defendant's "personal dignity and privacy." That case, People v. Scott (1978) 21 Cal.3d 284, involved a test (requiring a prostate massage) for venereal disease. The criminal defendant was charged with incest and his victim had the disease.

Justice Gardner concluded, "It appears to us that simple considerations of common sense and fair play would indicate [the victim in this case] should be entitled to at least the same Fourth Amendment protection as was the defendant in Scott."

It seems the courts have only now begun to rediscover their duty to recognize crime victims and to provide them with justice. That duty was most aptly expressed more than 40 years ago by United States Supreme Court Justice Benjamin N. Cardozo. Justice Cardozo then declared, "Justice, though due the accused, is due the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."

Society has a long way to go before balance between criminals and their victims is restored. At the very least, however, progress is being made in the search for fair, just and humane treatment of crime victims.

For some ideas about how journalists can help improve the administration of justice and promote fairness for all, accused and victim alike, see "A Plan to Send the Media to School," authored by noted legal scholar B. E. Witkin, published on July 3, 1980, in the Los Angeles Daily Journal, and "The Larger Job of Journalists in Courts," by Oakland Tribune editor Robert C. Maynard, published in the Tribune on July 13, 1980. Both articles are reproduced following page 11 of this handbook.

For additional copies, contact:

CRIME PREVENTION CENTER
Office of the Attorney General
555 Capitol Mall, Suite 290
Sacramento, California 95814

OF JUDGES, JUSTICE AND CRIME VICTIMS

by

GEORGE DEUKMEJIAN
Attorney General
State of California

I am pleased to have this opportunity to address you on two related topics of concern not only to me as the chief law officer of California, but to the entire criminal justice community, our elected representatives in the Legislature and particularly the people of the State of California. These two topics are mandatory prison sentences and the responsibility we share to victims of crime.

In discussing these two matters, I recognize that, as judges, you are a critical link and a vital partner in an emerging new order of criminal justice dedicated not exclusively to the rights of the accused, but just as surely and vigorously to the protection of the public and rights of the victims of crime.

During the past two decades, we have witnessed a constant expansion of the rights of the accused. At the same time, little heed was paid to the criminal justice rights of the public in general and crime victims in particular.

The sentiment of the past 20 years is changing, as it must. This is not to suggest that we wish to trample on basic rights or the particular protections due those accused of crime. Rather, it is because of the special protections accorded the accused that we owe a particular obligation to assist crime victims and must maintain a constant vigilance on public safety.

There is a new emphasis on the right of the public to be free from crime and the special obligations a free and just society owes to the victim of crime. Mandatory prison sentences and fulfilling the responsibility to crime victims are major aspects of this new order.

From these and other similar measures, a true and proper balance is emerging. Indifference to crime victims should be replaced by compassion and measurable assistance. The protection of the public is coming to share equal prominence with the rights of the defendant. In the end, we can anticipate fulfilling Judge Cardozo's direction that, "Justice, though due the accused, is due the accuser also."

In 1975, I authored Senate Bill 278 which mandates a state prison sentence for any criminal who uses a gun in the commission of a serious felony. The Legislature adopted this measure and as Attorney General I convinced the Supreme Court the Legislature meant what it said. It is of historic note that my legislation was not the first mandatory prison sentence law. In fact, between 1923 and 1957, prison terms were required for those who used deadly weapons in committing crimes.

Since the "Use a Gun, Go to Prison" law was adopted, other mandatory prison statutes, some of which I authored, have been enacted. A prison sentence is now required for: those who commit forcible rape, sodomy or oral copulation; those who sell over a half-ounce of heroin or possess such a quantity of heroin for sale; repeat heroin sales offenders; those who intentionally inflict great bodily injury, with special application to those cases where the victim is over 60 years old or is blind or severely handicapped; finally, certain third-time offenders are subject to mandatory imprisonment. The Legislature currently has under consideration a bill requiring a prison sentence for those involved with trafficking in PCP or Angel Dust.

In addition to these mandatory laws, there are also statutes, principally Penal Code Section 1203, Subdivision (e), which direct a prison sentence except in highly unusual cases. In general terms, these include offenses involving deadly weapons, the infliction of great bodily injury, repeat offenders, manufacturers of PCP and, notably, public officials guilty of accepting a bribe, embezzling public money or extortion. This spring, the Legislature enacted a measure which will bring nighttime residential burglary into this category of offenses.

While these directory statutes do permit a grant of probation, the legislative intent, and indeed the public will, that a prison term should nearly always be imposed is clear and certain.

I would be less than candid in speaking with you as judges regarding mandatory prison statutes, if I were to avoid the objection posed in some judicial quarters that these laws deprive a sentencing court of what has come to be viewed as a discretion normally invested in it. However, I submit that this objection is not well founded for a number of reasons.

First, according to the Constitution, the power to prescribe penalties for crimes has always been vested in the Legislature. Indeed, the power to grant probation is not an inherently judicial right, but a creation of the Legislature. Therefore, whether probation should be an available alternative to confinement as to any criminal offense is a legislative determination.

Mandatory prison statutes do not take away or detract from judicial jurisdiction. It is the Legislature which has the responsibility to prescribe punishments for crime, be it prison, local confinement or probation. It is the judicial responsibility to impose the prescribed punishment to the offender.

Each of the mandatory and directory prison sentence laws is a pointed response to a particular and serious crime problem.

The public is being terrorized by gun-wielding criminals, thus the "Use a Gun, Go to Prison" law.

Rape and sexual assaults have been the fastest growing violent crimes. Therefore, the Legislature responded by requiring prison sentences for these crimes against women and children.

The aged, blind and handicapped, easy prey for the criminal, have come under attack with greater frequency. Accordingly, the Legislature enacted a mandatory sentencing law in an attempt to protect these most vulnerable of victims.

Most recently, residential nighttime burglary, a crime scourge from which none of us are free and which affected 110,000 families in Los Angeles in 1978 alone, became the target of such legislation.

You may ask why these laws permit no exceptions, since trial court judges must surely be aware of the crime problem and need for a strong response. The answer is simple.

Certainty of punishment is an effective deterrent. Removal from the community is an effective deterrent.

A law which provides that "if you use a gun, you go to prison" is obviously a greater deterrent than a law that says "if you use a gun, you <u>might</u> go to prison."

Criminologists generally agree that the certainty of punishment is a more effective deterrent than its severity.

Mandatory prison laws insure certain punishment. The stakes are clear, and the criminal is able to make an informed choice.

The extent to which these laws deter crime and curtail certain criminal acts is impossible to gauge. We cannot reach those who were deterred. Unquestionably, the legal limbo that occurred during the litigation of the <u>Tanner</u> case did little to promote this goal. In the end, our mutual determination, as prosecutors and judges, to carry out these laws will determine their effectiveness in deterring crime.

In addition to general deterrence, mandatory prison laws serve another, significant purpose - incapacitation. In contrast to deterrence, we can estimate the positive impact, in terms of reducing crime, of putting actual offenders in prison away from society.

A Rand Corporation study released in April of this year, entitled "Doing Crime: A Survey of California Prison Inmates," provides us with truly startling evidence.

On the average, an incoming prisoner in California committed 14 serious crimes per year during the three years before his prison term.

A typical group of 100 inmates convicted of robbery would have committed 490 armed robberies, 310 assaults, 720 burglaries, 70 auto thefts and 100 forgeries in the previous single year of street crime.

The Rand study extrapolated these figures and showed that incarceration of the California prison population in 1976 prevented approximately 13,000 armed robberies, 60,000 burglaries, 27,000 forgeries, 13,000 auto thefts and 700,000 drug sales.

The incapacitation effect of imprisonment is certain and has now been calculated with some degree of precision. Prison does prevent crime. In fact, for every year that each convicted offender spends in prison, a dozen some serious crimes will not occur, on the average. This result alone justifies mandatory state prison sentences as to serious offenders.

Additionally, as a counterpoint, the Rand study noted that "highly active offenders were more likely to have been placed repeatedly on probation." This finding itself lends further justification to the legislative decision to prohibit probation in the case of these serious offenders. The wisdom of granting probation to serious offenders, even in the first instance, is extremely dubious.

As to your individual determination to apply these laws, I realize the mandate of your judicial offices to do equal and measured justice. When an individual convicted offender comes before you, a range of interests and considerations are presented.

But, behind every such offender standing there before you in the flesh, there are the forgotten victims and their families.

A proper and just balance, justice for the accused, as well as the accuser, calls for your application of these laws.

Mandatory prison sentences are appropriately strong medicine for the intractable disease of serious crime. There should be no hesitation in bringing them to bear.

Because we will never, no matter how vigilant, dedicated and wise, prevent all crime, we must be prepared to aid those individuals who are victims of crime.

Our history in dealing with crime victims is marked with indifference, if not maltreatment. In many instances, these people have been victimized twice; first by the criminal and then by the criminal justice system. The lives of victims of violent crimes are often shattered. They have also been subjected to unconscionable delays and anxiety, indignities and inconveniences, and in the end fully half report that they do not believe justice was carried out.

Moreover, there has been little forthcoming in the way of assistance to these people. In contrast, the convicted criminal receives food, clothing, shelter, medical care and rehabilitation services.

Public officials, community organizations and governmental agencies are beginning to discover that crime victims are essential parties to the criminal justice process. The law enforcement community and the Legislature have begun to respond to this realization.

There are recent developments which tend to indicate this regrettable chapter in the history of criminal justice may be drawing to a close.

Steps are being taken to make the system more responsive and sensitive to the views and needs of crime victims. This action is long overdue, because although many criminals may escape punishment, their victims never do.

While we have far to go before we achieve a proper balance between criminals and victims, progress is being made in the search for fair, just and humane treatment of crime victims.

I would like to share with you a number of the measures which have been taken and some of the legal developments regarding crime victims. I hope to elicit your support for and commitment to these actions and ask that you join in the effort already undertaken by the Legislature and law enforcement community. Additionally, I wish to share with you some thoughts I have on what you, as judges, can do to fairly respond to the needs of crime victims.

In 1965, the California Legislature enacted this country's first victim compensation law. It followed by only a year the first two such laws enacted in New Zealand and England. Since then many other foreign jurisdictions and over 20 states have adopted victim compensation programs. Notably, the federal government has so far failed to enact a victim compensation measure. Under current law, a victim may receive up to $23,000 in compensation for medical bills, lost wages or support, and rehabilitation services.

What is ironic about this relatively recent development is that it is not a new idea. In 1775 B.C., the Babylonian Code of Hammurabi provided for the government to compensate victims for loss of property and life. More recently, the 19th century political philosopher Jeremy Bentham advocated victim compensation. It is telling that it has taken America so long to act.

Since the inception of California's Victim Indemnification Program, which entails an $8 million annual budget allocation, 13,500 victims of violent crime have received compensation totaling $25 million.

However, during that same period, nearly two million violent crime victims in California were potentially eligible for aid, but went unassisted because they were not aware of that eligibility or were unable to complete the application process.

We in the law enforcement community, as well as the Legislature, are striving to correct this situation. My office, in cooperation with the California District Attorneys Association, has undertaken a massive effort to inform victims of their right to compensation. Legislation currently pending in the Assembly will streamline the procedures for applying for and securing assistance. Our resolve to make victim compensation work is firm.

As judges, you have an obligation to all the parties who appear before you. Crime victims should be considered and treated as parties, also. I submit that in light of the litany of advisements given to criminal defendants, you can and should take the time to advise victims of their rights, in particular, their right to appropriate compensation. Additionally, you should make the offices of your court available to assist victims in securing compensation.

Another measure you can take to compensate victims for pecuniary losses is ordering restitution. The Legislature has enacted laws and is considering additional legislation to provide full restitution by criminals to crime victims whenever possible.

Restitution, where appropriate and feasible, offers you as judges, an excellent tool for at once punishing the offender and making the victim whole. Determining and securing restitution will require your involvement and direction to court personnel, particularly probation officers. It is an effort I strongly commend to you.

Another important step being taken in the effort to redress the imbalance in the criminal justice system are victim/witness assistance programs. These programs recognize and respond to the needs of victims and witnesses for consideration, understanding, information and guidance, as well as counseling services, financial aid and rehabilitation programs.

Specific efforts, in many areas, include establishment of crime victim "hotlines" to provide 24-hour counseling and referral services. A number of these programs have developed simplified methods for contacting crime victims and witnesses, delivering subpoenas and arranging for their presence in court at appropriate times.

Additionally, victim/witness service centers, rape crisis centers and domestic violence shelters have been established to provide advice, information on court proceedings, coordination of court appearances to minimize inconvenience, assistance in obtaining the return of property used in court proceedings and help in filing claims for victim compensation.

Alameda County's program, which is administered by District Attorney Lowell Jensen, was one of the first in the nation and is now perhaps the finest. The Alameda County program is directed at meeting the needs of victims and witnesses, as well as enhancing the effective operation of the criminal justice system.

The program provides general information, an ongoing notification system, property return services, reception centers for witnesses, special assistance for sex crime victims and senior citizen victims, assistance with indemnification applications and special assistance to the families of homicide victims, among other things.

It is of particular note that such programs not only meet the needs of victims and witnesses, but at the same time improve the administration of the courts.

At present these programs are in operation in 21 out of 58 California counties. Some, like the Alameda County program, are operated by the district attorney. Others are operated by probation departments, and some are conducted by community-based groups, such as the National Conference of Christians and Jews, under a grant from the Law Enforcement Assistance Administration.

The Legislature has now acted to support these programs. Last year SB 383 was passed and took effect on January 1, 1980, to provide funding for these programs, which the Legislature first called for in 1977. The legislative findings with respect to victim/witness assistance programs are embodied in Penal Code Section 13835, and I direct your attention to that statute.

Although we are committed to making these programs work, the ultimate success of our efforts depends on the cooperation of the courts. A court can very easily make these programs impossible to function properly. Permit me to cite a couple of examples.

In one court, a judge demanded that prosecution witnesses be present before jury selection on the theory that their presence would encourage a disposition short of trial. This practice stymied the telephone alert and witness standby system of the victim/witness assistance program.

One Southern California judge put an end to a witness reception center because it was not convenient to his court, being on a different floor of the same building.

The point is that attitudes and policies of the courts can directly or indirectly affect every victim or witness who enters the court process.

I encourage you to coordinate your courtroom policies with those of any available victim/witness assistance program. In fact, I would hope that you would turn to these program administrators as resources of your court.

In the end, your coordination and cooperation with these programs will maximize the efficiency of your court and go far in enhancing the community's attitude toward the justice system.

One problem you should be constantly aware of is victim/witness intimidation.

The American Bar Association Committee on Victims, chaired by Judge Eric Younger of Los Angeles, has recently completed an exhaustive study of this problem and recommended model legislation to deal with it.

The ABA study found that nearly one-third of all noncooperating witnesses cited fear of reprisal as the reason for noncooperation. Victim/witness intimidation is a particularly acute problem in gang-related cases and cases arising in closely-knit ethnic communities or within families.

Unfortunately, our laws for dealing with victim/witness intimidation, principally Penal Code Section 136, are almost unenforceable. Judge Younger observes, "It is the one crime in which only unsuccessful attempts are ever reported or discovered, and it is a crime which inherently thwarts the processes of the justice system itself."

In 1977, I authored legislation to improve our intimidation laws. However, after passing the Senate, the measure was killed in the Assembly.

Today, in the entire California prison populace, there are only 11 inmates serving a sentence for violating the intimidation law. Yet, it is something which occurs daily in the hallways and parking lots of our court buildings. Every prosecutor in this state could cite you numerous examples.

Nevertheless, there are measures you, as judges, can take to combat this problem.

The ABA committee recommends, and I concur, that judges must be vigilant in the courtroom to detect intimidating conduct.

The judge, in his inherent power to maintain decorum in the courtroom, should address such conduct by reprimand, removal, use of the contempt power or referral for prosecution.

Further, courts should be cautious against dismissing cases in which intimidation may be the reason for the nonappearance of witnesses, and be prepared to grant continuances, if necessary, to secure a witness absent because of intimidation.

Finally, a court should not hesitate to order persons appearing before it who appear to be engaged in intimidation to avoid contact with victims or witnesses.

In addition to criminal intimidation of victims and witnesses, there is a form of intimidation which is perhaps more widespread and insidious. I refer to this as institutional intimidation, and by that I mean the procedures, practices and policies of the criminal justice system which annoy, inconvenience and humiliate crime victims and witnesses.

The need for repeated court appearances; numerous and lengthy continuances; long delays in starting court proceedings; impolite court personnel; the absence of information or explanation; abysmal physical conditions

for witnesses and victims; and the harassing investigation and examination of witnesses are but a few of these intimidating factors.

We have fought to combat these practices. This year, with backing from my office, the Legislature outlawed Ballard examinations and legislation is pending to curtail additional harassment of sex crime victims.

Time and again we have petitioned the Legislature to require omnibus pretrial hearings to cut down on the number of court proceedings.

As a general policy, prosecutors oppose trial delays and continuances, as we are committed to expeditious justice.

However, the elimination of many of these intimidating practices is the responsibility of you, the judges.

Proper and determined court administration can reduce delays and continuances. An explanation and apology for a continuance, particularly to lay witnesses, should be a normal part of your courtroom etiquette.

Although not required by statute, your local court rules or personal practices may require omnibus pretrial hearings.

In ruling on discovery motions and witness examinations, you should be as solicitous to the privacy and security rights of any affected lay party or witness as you are to the same rights so often raised by the defendant.

You should strive to make your courtroom and courthouse an accessible, comfortable and dignified environment.

Elimination of such institutional intimidation is particularly in your hands, and it is as important a measure as any other in establishing a new order and balance in the administration of criminal justice.

For my part, the Attorney General's Office is moving on a broad front to reestablish the balance between the criminal and society and to address the problem of crime victims.

Principal among these efforts is the statewide plan to restore public safety in the 80's. It is called CALIFORNIA CRIME WATCH and is coordinated by my office's Crime Prevention Center. The Legislature has already passed a resolution endorsing the program.

The chief goal of this program is to prevent people from becoming victims in the first instance by reducing the incidence of crime.

Utilizing media, community-based programs and groups, as well as the mechanisms of the criminal justice establishment, the program aims to inform and educate the public about crime and crime prevention and to develop a more responsible administration of criminal justice. We believe these measures, particularly citizen involvement, will effect a reversal in the upward trend of serious crime and ultimately reduce the number of crime victims.

I encourage your input into this program at the statewide and community level. Further, my office is prepared to assist you and your courts at the local level.

I believe that your position in the judicial branch summons you to join in this effort to reduce the incidence of crime. Your knowledge of the law, the problems of crime and criminal justice and the prestige of your office are invaluable and necessary resources in this campaign.

In order to elevate public and institutional awareness of crime victims, my office, in partnership with the California District Attorney's Association, has annually, since 1977, sponsored "California's Forgotten Victim's Week." This multifaceted, statewide program, which focuses on the plight of crime victims and the need to improve society's treatment of these innocent people, has improved and expanded each passing year.

I believe that this effort has done much to produce the legislation and programs aimed at deterring and preventing crime and meeting the needs of crime victims.

"Forgotten Victims Week" has markedly improved the climate for dealing with our crime problem as evidenced by: broadened legislative initiatives; strengthened crime prevention efforts; expanded victim compensation; and improved victim/witness assistance programs.

Additional measures we have undertaken as part of this overall effort include the formation in my office of an Appellate Action Group. This small cadre of attorneys has taken a page from the organized defense bar's battle plan and is seeking out important legal issues capable of judicial resolution to raise in carefully selected test cases. The aim is to achieve much needed changes and reforms in our criminal law to enhance the ability of police and prosecutors to successfully prosecute criminals, particularly violent ones.

At the district attorney level, career criminal programs have been put into operation and targeted at the small segment of offenders who perpetrate the greatest number and most serious of crimes. Through vertical prosecution, these programs are achieving remarkable results in terms of conviction rates and sentence lengths. The San Diego County District Attorney's Major Violator's Unit has won national praise for its accomplishments.

Finally, this past April, my office filed an unprecedented lawsuit in the Los Angeles Superior Court to restore safety in the schools. This lawsuit is a specific attempt to deal with the crisis of school violence in the Los Angeles Unified School District and to thereby establish legal principles which will then apply to all school districts.

This suit was prompted by the virtually unchecked violence and vandalism in our schools which has not only choked off meaningful education, but quite simply turned some schoolyards into battlefields.

Obviously, the filing and maintenance of this lawsuit calls for the judicial branch to assume its legitimate burden in our mutual struggle against crime.

Over the past 25 years, the judiciary has played an active part in insuring civil rights in voting, education, employment and housing. Now we are invoking that same power to insure the most basic civil and personal right of all - the right to be protected from domestic violence. It is our hope and the hope of the public that you will take up this just cause with equal vigor.

In a similar vein, individual victims and their families are opening a new frontier by filing civil actions against those whose negligence might have led to their victimization. This new but emerging trend of victim's rights litigation will also test the judiciary's resolve to protect the innocent individual from crime and to compensate him for his loss.

In the end, you, the judges, will determine the full extent of society's obligation to the victims of crime. From the simple wisdom and justice of Hammurabi's 3700-year-old code, we may, by the end of this decade, finally arrive at our definition of true and equal criminal justice for the accuser as well as the accused. Let us hope that our legacy to future generations is as worthy of emulation.

The first steps in redressing the imbalance between the criminal and the victim in establishing a new order have been taken. Mandatory prison sentences and fulfilling the social obligation to crime victims are important measures in this endeavor.

Our resolve to carry out and complete this undertaking is fixed. As judges, you are now called upon to assume an active part in this effort.

I welcome you as partners. As an officer of the court, I pledge myself and my office to your service in accomplishing this noble goal.

State of California

CRIME PREVENTION CENTER
Office of the Attorney General
555 Capitol Mall, Suite 290
Sacramento, CA 95814

CALIFORNIA
CRIME
WATCH

RESTORE PUBLIC SAFETY IN THE 80'S

END