



OFFICE OF RESTORATIVE JUSTICE,
CATHOLIC ARCHDIOCESE OF GREATER LOS ANGELES

LOYOLA
LAW SCHOOL | LOS ANGELES
CENTER FOR RESTORATIVE JUSTICE

REPORT OF THE

Victim's Rights

CONFERENCE



11.05.10

On November 5, 2010, Loyola Law School and the Office of Restorative Justice of the Archdiocese of Los Angeles sponsored a Victim's Right Conference. The Conference served as the inaugural event of the law school's Center for Restorative Justice (CRJ). The theme of the Conference was "Protecting Victims' Rights in California: How Should It Be Working?" Several legal professionals and victims gathered to explore victims' rights in the criminal justice system and how these rights are served in practice. Suzanne Neuhaus, a victim services specialist with the California Department of Corrections and Rehabilitation, chaired the Conference. The Conference exposed the injustices that can occur if victims' rights are not respected—or even ignored.

I.

EXECUTIVE SUMMARY

This Report serves two functions; first, to summarize the victims' rights from the perspective of professionals working in different phases of the criminal justice system, and second, to review the very moving stories of the family members of murder victims who spoke about how they were treated by the system.

The Conference demonstrates that while victims have significant rights in California, the criminal justice system has not fully developed the practices and procedures needed to respect victims' rights. The cause of this may be one or more of the following factors:

- Limited enforceability of victims' rights
- Lack of training in how to deal with the emotional trauma victims experience
- The system's focus on apprehension and conviction of the perpetrators of crime
- The relatively recent enactment of victims rights

The Conference showed some of the areas that need to be improved which include:

- (1) Education of professionals in the justice system regarding the rights of victims and how these rights should be implemented.
- (2) Training of professionals in the justice system in how to respond to the emotional state of victims and the psychological impact of crimes on them, with training programs which include victims as participants.
- (3) District attorneys need to provide the information necessary for judges to impose restitution orders as required by law.
- (4) The Victims Advocate appointed by the Office of the Governor should play a stronger role in assuring that agencies and departments adopt the programs needed in order to educate their staffs on victims' rights and train them to provide these rights.
- (5) At the time of the trauma of a crime, victims are not able to absorb information about their rights. There should be further outreach to victims later when they are more receptive to this information.

THE CRIMINAL JUSTICE PROFESSIONALS' PERSPECTIVE

A] A POLICE OFFICER'S PERSPECTIVE

Alex Vargas, an LAPD officer working with gangs, expressed satisfaction with the increasing emphasis on victims' rights because officers are currently trained to focus on suspects' rights. He explained that officers must safeguard a victim's identity, protect them from threats, allow them to be interviewed on-scene or at the station, and inform them that a crisis response unit is available to help. Officer Vargas also discussed the investigative process and emphasized that victims must be put in touch with the investigation team, understand the process, and continue communication after the field investigation is complete.

Most importantly, he emphasized that victims must know and understand their rights. They each receive a pamphlet containing information on Marsy's Law, although the victims may be emotionally traumatized when they receive this information. Victims should also be aware of their right to compensation and the option in some cases to relocate as well. Finally, victims must be updated frequently so they know the status of the perpetrator's prosecution.

B] A PROSECUTOR'S PERSPECTIVE

Kathleen Cady, a deputy district attorney, explained how prosecutors relate to victims and work with victims' rights. Although a district attorney will listen to victims, she must make decisions based on the evidence because she is an advocate for the community. Victims have a right to know if their offender has been released, and they can receive information through the Los Angeles Sherriff's VINE program. They also have a right to make a victim impact statement to the court, which could have a significant impact on the defendant's sentence. Also, victims have a right to be safe. A court may remove those who threaten or intimidate a victim, and a prosecutor may seek a protective order to protect the victim during pending proceedings. Finally, victims have a right to relocation through the Victims of Crime program. District attorneys may also help relocate a victim if her life is in danger.

Ms. Cady also spoke about how prosecutorial policy benefits victims. A case may not be filed unless there is ample evidence to meet the burden of proof. This helps prevent a victim's certain disappointment after a "not-guilty" verdict. Determination of the charges, bail, and sentencing scheme must be established within 48 hours. Victims receive information on Marsy's Law after their offender's case is filed. Although a few victims' rights are automatic, most must be requested. For example, information on upcoming court dates and the offender's location is available by request.

A prosecutor should also assist a victim with her impact statement, but she should not put words in the victim's mouth. Rather, the prosecutor should advise that testifying in court is stressful and the victim should put everything that she wants to say in writing to be sure she does not forget something. Sometimes, however, the prosecutor will not recommend what the victim wants, and the victim must know this. Regardless, whether a sentence is appropriate will be decided by the judge.

C] A DEFENSE ATTORNEY'S PERSPECTIVE

Judge Henry H. Hall, a former public defender, spoke about victims' rights from a defense attorney's point of view. A defense attorney must withhold the victim's contact information or tell his client not to contact the victim if they know each other. The defense attorney should minimize his interaction with and impact upon the victim, but she should give the victim her contact information. If the defense attorney must interview the victim as a witness, she should do so as quickly as possible to minimize the victim's involvement.

D] A JUDGE'S PERSPECTIVE

Judge Phillip Argento explained that a judge's primary responsibility is to faithfully and fairly apply the law to a case's facts while adhering to the Constitution. Judge Argento educated the audience on the Victim's Bill of Rights (CAL. CONST. art 1. § 28(a) (2)) and provided valuable insight on a victim's rights at each stage of the criminal proceedings from arraignment through sentencing. During all stages of court proceedings victims must be treated with respect and dignity. Victims have a right to be present at a bail hearing, and the victim's concerns, including safety, must be considered when the judge determines the amount of bail. Even negotiated pleas are subject to a judge's mandatory consideration of victim impact statements before finally approving of a negotiated plea agreement. The judge must take into consideration a victim's impact statement that appears in the probation and sentencing report before signing that report. Victims may make an oral, written, or recorded impact statement at a sentencing hearing, and the judge must consider such statements in arriving at a sentence, subject to the requirements of specific sentencing laws and a general rule of reasonableness. In addition, the judge must order victim restitution during sentencing.

E] A VICTIM ADVOCATE'S PERSPECTIVE

Tony Sarabia, an attorney in private practice specializing in victims' rights, noted that the biggest challenge is ensuring that victims are aware of their rights. He also took note of rights that had not been mentioned: privacy of the victim's address, medical/psychological confidentiality, and the right to express/withhold opinions. Forcing a victim to tell her story repeatedly can be traumatic and re-victimize her again and again. He said that Marsy's Law is a valuable tool for informing victims of their rights, but it may not be enough.

Victor Vega, a victim's advocate for the Los Angeles City Attorney's office, explained in detail how he helps families of homicide victims. He helps them file for compensation and restitution, pay out-of-pocket expenses, and pay for relocation (up to \$2,000). Mr. Vega assists victims with their impact statements. He also helps provide security to victims who need protection and do not wish to relocate. Perhaps most importantly, Mr. Vega helps prepare victims for the realities of the criminal justice system—not the fictions observed on television. Everything he learns is confidential unless it is material to the outcome of the case.

III.

THE EXPERIENCES OF VICTIMS

The Conference included stories from Tracy, Jeanette, Veronica and Agnes. Each of these brave women lost a loved one in the past few years and described how her rights were observed or disregarded at various points in the criminal justice system. Their presentations demonstrate the importance of listening and learning from the stories of people directly impacted by crime.

When Jeanette received word that her daughter had been shot, she rushed to the hospital where she was informed that her daughter had died. After she burst into tears, a deputy sheriff warned her to stop crying or she would be ejected from the hospital. Jeanette also described the court proceedings during which the defendant's family blew kisses to the defendant, a supporter of the defendant wore a T-shirt reading "Snitches Gets Stitches," and others threw gang signs. One gang member was eventually handcuffed but continued to stare down witnesses and the grieving family.

In Tracy's case, she reported her 22 year old daughter missing. The police called and told her they had found her daughter's van and to come and move it as it was parked behind the police station in a space reserved for detectives. When Tracy and her son arrived, she saw through the open window of the van that her daughter's belongings were in disarray and saw a leg – the leg of her murdered daughter – sticking out under the belongings. Rather than offering condolences or apologies, the police held Tracy and her son at the station for 12 hours, ordering them not to speak to each other, providing no food or water, and denying an aspirin. After her daughter's murderer was convicted and sentenced, the van and its belongings were sold without advance notice to Tracy.

Veronica was not informed by the district attorney that the person charged with murdering her brother had made a plea bargain that sent him to prison for only four years. She was told that she could not make an impact statement in court because a plea had been reached. This was incorrect and eventually she was allowed to make her statement. She appreciated the actions of the defense attorney who got the convicted defendant to listen respectfully to what she said. She felt that even if the defendant was not sincere, it meant a lot to her to be able to speak to him and feel that he was listening intently to what she had to say.

Agnes described how she was in a daze during the year after her son was murdered by a stray bullet from gang violence. She described her experience in trying to keep track of the location of her son's murderer after he was in prison. Victims have a right, upon request, to be informed

of the place of incarceration and release date of the defendant. Under the Victim Information and Notification Everyday System (“VINE”) of the Sheriff’s Department, an automated update and alert is supposed to be sent to the victim with regard to the inmates’ location. In Agnes’ case, she happened to hear that the inmate had been transferred but received no notice as to where he was. The CDCR did not seem to know. Agnes had to make many phone calls to various agencies to find out where the inmate was incarcerated. One employee even asked, “Why do you want to know,” when she inquired about the inmate’s location.

The victims’ stories provide a sampling of the experiences of victims whose lives were made more difficult by a system that should do the opposite. Undaunted by all they have been through, they made a number of suggestions. Police officers should be respectful and empathetic to victims who have lost a loved one. Bailiffs must be aware of a defendant’s family/friends sitting near a victim to prevent any intimidation or disrespect in the courtroom. Prosecutors should keep victims updated and inform them of any major events in a trial—such as a plea bargain for a lesser charge. Victims should not have to overcome bureaucratic obstacles to make a victim impact statement to the court. Finally, defendants should be required to listen to any statement a victim wishes to make to the court.

These four women represent a class of people who endured immensely difficult and emotional times. Because the criminal justice system failed each of them in one way or another, criminal justice professionals can learn from their stories about how to improve treatment of victims in the future.

IV.

ADDITIONAL NOTES

There is currently no law dictating what to do when a victim's rights are not enforced. A victim may not sue a judge for damages, but may complain to the Commission on Judicial Performance to discipline a judge. Victims may also complain to a district attorney's supervisor if their rights are violated.

A victim may apply to a state-funded program to receive restitution, which is subject to a limit. The judge will order restitution at the trial's conclusion, which may include property loss and lost wages. After an offender is released, a notice of paid restitution is sent to the court to determine the outstanding balance. A restitution order can be converted to a civil judgment without filing a civil lawsuit. If the defendant is employed, a victim may request an income deduction order which acts as a garnishment. An offender's failure to pay restitution may constitute a probation violation. An offender's inability to pay can affect whether there is a violation of probation, but it cannot affect the amount of restitution that is ordered. Finally, a restitution order does not expire and bankruptcy will not eliminate it.

IV.

RECOMMENDATIONS

The Conference exposed a number of areas where victims' rights are not being observed or respected. The following recommendations are made:

A] EDUCATION OF PROFESSIONALS IN VICTIMS' RIGHTS

Professionals in all phases of the criminal justice system need to know what rights victims have, particularly with respect to the phase of the criminal justice process in which the professional operates. It is not enough to simply hand the victim a pamphlet which sets forth victim's rights. The professionals need to know what these rights are and respond to the victim who is often traumatized by a crime.

B] SENSITIVITY TRAINING OF PROFESSIONALS

Professionals in the criminal justice system are not sufficiently trained to deal with the grief and emotional state of victims. Victims speak in terms of being re-victimized by the system which may treat their situation as simply a "case" without any human dimension. Victims are often grateful for simple words of kindness or concern such as "I am so sorry for your loss." Police departments train officers in the proper use of force, in advising suspects of their constitutional rights, but do not adequately train officers how to respond to emotional victims. Training programs should include victims as participants so that professionals hear firsthand the powerful stories of victims' experiences.

C] PROSECUTOR'S INPUT FOR RESTITUTION

Judges are required to order restitution. In order for them to do so, they need to be provided with the facts which, in our adversarial system of justice, should be provided by the district attorneys in consultation with the victims. Prosecutor's need to establish new practices and procedures that provide this type of input to judges on the Judicial Council form of the Order for Restitution.

D] STATEWIDE VICTIM ADVOCATE

In 2006, Governor Schwarzenegger appointed Susan Fisher as the Crime Victim Advocate of California. The Advocate has previously expressed opinions about the prison system and the issues of overcrowding. However, the Advocate should become more visible and work with agencies and departments in protecting victims' rights throughout this process and not only at the stage of incarceration.

E] OUTREACH TO VICTIMS AFTER CRIMES

At the time of the trauma of a crime, victims are not able to absorb information about their rights. Even though police often give information about victim rights at crime scenes, victims should be contacted later when they are able to be receptive to information about their rights. The Los Angeles County Sheriff has instituted just such a program, the Family Abuse Intervention Resource (F.A.I.R.) program. The program is just starting and is being administered by Chief Laing of the Sheriff's Department (e-mail: tmlaing@lasd.org).

IV.

CONTACT INFORMATION

*For further information about victims' rights and issues,
please contact one of the following:*

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