

12-15-1989

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### Recommended Citation

Marlene A. Young *Emerging Issues in Victim Assistance*, 17 Pepp. L. Rev. Iss. 1 (1989)  
Available at: <https://digitalcommons.pepperdine.edu/plr/vol17/iss1/6>

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# Emerging Issues in Victim Assistance

Marlene A. Young\*

## I. INTRODUCTION

The origin of the victim assistance movement in the United States developed from a number of different events. In 1972, three victim service agencies were established: the Bay Women Against Rape in San Francisco; Aid to Victims of Crime in St. Louis; and the D.C. Rape Crisis Center in Washington, D.C. In 1974, the Law Enforcement Assistance Administration awarded the first grants to establish victim/witness programs in prosecutors' offices and sponsored the first national conference on victim assistance. Moreover, California passed the first victim compensation legislation in 1965, followed shortly thereafter by New York, in 1966. Regardless of the events used to mark the beginning of the movement, the last fifteen or twenty years have been filled with change and innovation as a result of the momentum created by victims, survivors, and their advocates.

The nascent victim assistance programs of the 1970s struggled to survive despite unpaid staff and inadequate budgets. Today, almost 7,000 programs exist, and many receive funding from state and local governments as well as the Crime Victims Fund created by the Victims of Crime Act of 1984.<sup>1</sup> In addition, guidelines for the development of new programs and training curricula for novice victim service practitioners have been established.<sup>2</sup>

In 1972, Chief Probation Officer James Rowland recognized the necessity of furnishing judges with victim impact statements at criminal sentencing hearings. Consequently, supplying judges with victim im-

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\* Ph.D., J.D., Executive Director, National Organization for Victim Assistance (NOVA); J.D., Willamette University College of Law, 1975; B.S., Portland State University, 1967.

1. The Act has been codified at 18 U.S.C. § 3013 (1985 & Supp. 1989); see *infra* note 23; see also NATIONAL ORGANIZATION FOR VICTIM ASSISTANCE, VICTIM RIGHTS AND SERVICES: A LEGISLATIVE DIRECTORY 43 (1988) [hereinafter LEGISLATIVE DIRECTORY].

2. See generally M. YOUNG & J. STEIN, MODEL VICTIM ASSISTANCE PROGRAM BRIEF (1988) (available from NOVA).

pact statements is now either required or permitted in forty-seven states.<sup>3</sup> In 1975, the district attorney for Philadelphia, Pennsylvania, focused public attention on victim concerns by organizing a "Victim Rights Week." By 1989, governors in forty-eight states and two presidents of the United States had proclaimed similar weeks.<sup>4</sup> In addition, forty-five state legislatures have translated the "Victim Rights" rhetoric into legislative action through the establishment of victim bills of rights.<sup>5</sup>

Although such innovations have been useful, the lessons learned from victims indicate that more changes are needed if victims are to be treated with dignity and provided with justice. The victim assistance movement has witnessed the emergence of new issues which warrant legislative attention. An understanding of these issues is aided by a review of the trauma of victimization and the services implemented to address such trauma.

## II. VICTIMIZATION AND ITS IMPACT

Crime victims typically suffer three types of injury: financial, physical, and emotional. Unfortunately, the scope of these injuries continues to expand.

Financial loss is reflected in property damage or theft of goods. The average residential burglary results in a monetary loss of \$991. Cash and property losses from robberies, personal and household larcenies, household burglaries, and privately owned motor vehicle thefts totaled slightly more than \$13 billion in 1985. In addition, economic hardship is also manifest in medical bills. The Bureau of Justice Statistics reported that in 1981 medical expenses incurred by violent crime victims totaled \$223 million.<sup>6</sup>

However, there are also costs which are less obvious and more difficult to assess. Such costs may include expenses incurred for a child victim of chronic sexual abuse or payment for clean-up services necessitated by a brutal murder. Moreover, some victims may lose wages for taking time off from work to file insurance claims, to supervise property repairs, or to testify in court.

Furthermore, in some cases, the victim may pay ongoing costs for

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3. LEGISLATIVE DIRECTORY, *supra* note 1, at 9.

4. *See generally* Proclamation No. 5953, 54 Fed. Reg. 15,157 (1989) (President Bush labeled the week beginning April 9, 1989, as Crime Victims Week); Proclamation No. 5797, 53 Fed. Reg. 13,094 (1988) (President Reagan ordered that the week beginning April 17, 1988, be called Crime Victims Week); Proclamation No. 5322, 50 Fed. Reg. 15,859 (1985) (President Reagan declared the week of April 14, 1985, to be Victims of Crime Week); Proclamation No. 5182, 49 Fed. Reg. 15,055 (1984) (President Reagan proclaimed that week of April 15, 1984, would be known as Crime Victims Week).

5. LEGISLATIVE DIRECTORY, *supra* note 1, at 6-7.

6. BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT, THE ECONOMIC COSTS OF CRIME TO VICTIMS (1984).

years. For example, Harlie Wilson sustained severe financial loss as a result of a robbery. Harlie Wilson's nightmare began on November 30, 1978, when he entered a grocery store just as a robber walked up behind him. After Wilson turned to face his assailant, he was shot and subsequently paralyzed from the waist down. Wilson writes:

The shooting me was the smallest of what happened. . . . I lost everything. I had but my home which is worth around \$10,000. It's just a place to live. I spent all my savings and retirement fund, cashed part of my insurance and sold my barber store. That was about to get the best of me giving up what I had worked over 32 years, I almost went into depression. . . . I have spent over \$500,000 in hospital bills and spent over 500 days in 5 hospitals. . . . Please don't feel sorry for me, I am 69 years old and time will run out before long. There must be a better place.<sup>7</sup>

In many cases, physical injuries are grossly underestimated. Violent crimes killed 19,000 and injured 1.7 million people in 1985. Thirty percent of all rape, robbery, and assault victims sustained physical injury. Fifteen percent required some kind of medical care, while eight percent needed hospital care.<sup>8</sup> However, these statistics fail to address the physical injuries inflicted upon victims of family abuse: partners, children, and elders. Reliable estimates concerning the amount of family violence or its impact on our society can often be difficult to find. Moreover, chronic and severe physical injuries are often the norm.

When victims incur severe physical injuries they may face a lifetime of pain as well as a shortened life span. Some victims must not only change their lifestyles but also vocations because of physical impairments. In addition, victims of severe physical injury often find that the injuries place serious strain on relationships with family members or loved ones.

Survivors of serious physical injuries often talk about their change in identity. As an individual's identity is tied to physical appearance, either actual or personally perceived physical alteration often affects a victim's ability to function.

For example, Pamela Small was a victim of an attempted murder in 1973. Her assailant smashed her head with a hammer, exposing her skull in five places, and then stabbed her five times before slashing her throat. Miraculously, she survived. Although cosmetic surgery has minimized the scars, Ms. Small wears high-necked blouses

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7. Letter from Harlie Wilson to Marlene A. Young (1988) (located in current NOVA case files).

8. BUREAU OF JUSTICE STATISTICS, REPORT TO THE NATION ON CRIME AND JUSTICE 25 (2d ed. Mar. 1988) [hereinafter REPORT ON CRIME].

most of the time, and says she still has days when she feels "like nothing but a mass of scars."<sup>9</sup>

Victimization also causes emotional upheaval. The reaction to crime follows a fairly universal pattern,<sup>10</sup> involving both physical and mental responses. A period of shock and disbelief, accompanied by a sense of unreality in which the victim may feel numb and disoriented, often occurs. Thereafter, the victim usually experiences a turmoil of overwhelming emotions, including anger, outrage, fear, terror, confusion, frustration, guilt or self-blame, and grief. Events which remind the victim of the crime may trigger another episode of emotional upheaval at any time.

Serious emotional reactions may cause difficulty in sustaining relationships with loved ones or in maintaining concentration on the job. Some victims report excessive sleeplessness, nausea, headaches, and other physical dysfunctions.

The financial, physical, and emotional injuries caused by crime are often exacerbated by the "second assault" occasioned by societal institutions and individuals coming in contact with the victim. The vast range of stimuli causing second assaults have been addressed by societal and legal changes in an attempt to minimize the problems caused by the second assault. The following illustrate some examples of the second assault:

(1) In the aftermath of the Edmund, Oklahoma, postal shooting, a survivor lying in the hospital with gunshot wounds was notified by the Office of Workers' Compensation that "information submitted is insufficient to establish that you sustained an injury at the above-shown date."<sup>11</sup>

(2) When Denise Maslund's body was found in 1975, a year after her murder, her mother arranged a funeral. However, investigators told her no burial could occur because they needed the evidence and, therefore, she could only "borrow" the remains. For ten years Maslund's mother pressed the police to return her daughter's body. Ultimately, she was told that her daughter's remains had been lost.<sup>12</sup>

(3) On March 4, 1989, the second assault cost Lisa Bianco her life.

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9. Ringle, *Memory and Anger: A Victim's Story*, Wash. Post, May 4, 1989, § B, at 8-9.

10. See generally M. BARD & D. SANGREY, *THE CRIME VICTIM'S BOOK* (1986); M. YOUNG, *CRIME, VIOLENCE, AND TERRORISM, PSYCHOSOCIAL ASPECTS OF DISASTER* (1989); M. YOUNG & J. STEIN, *THE VICTIM SERVICE SYSTEM: A GUIDE TO ACTION* (1983); Kilpatrick & Otto, *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 WAYNE L. REV. 7 (1987).

11. Madigan, *Living With the Scars of a Massacre*, Fort Worth Star-Telegram, Aug. 9, 1987, § 1, at 16, col. 5.

12. Johnson, *For Families, Killer's Death Eases Doubt But Not Pain*, N.Y. Times, Feb. 13, 1989, § A, at 1.

Bianco had been beaten for years by Alan Matheney, her ex-husband, who eventually was imprisoned because of his attacks. Despite her pleas to corrections department officials to warn her if he was ever set free, on March 4, Alan Matheney received an eight-hour furlough pass from the state prison. He promptly went to Bianco's house, broke in, chased her into the street, and in front of horrified neighbors and her two daughters, beat her to death with the butt of a shotgun.<sup>13</sup>

### III. EXISTING VICTIM SERVICES AND RIGHTS

The three types of injuries suffered by victims because of criminal attacks, and the injuries sustained as a result of second assaults, have prompted the development of victim services and rights.<sup>14</sup> Over the last fifteen years, the concept of assistance has developed beyond simple crisis intervention or witness management in the court system. Victim assistance now encompasses a broad range of services designed to aid victims from the commission of the crime until after case disposition and beyond. These services are designed to alleviate financial hardship; they include victim compensation programs, assistance with insurance claims, legal referrals for civil recourse, and restitution programs.

Victim compensation programs also provide relief for physical injuries to victims. Many programs go beyond reimbursement for medical expenses and provide compensation for vocational rehabilitation and physical therapy. In addition, victim assistance programs place great emphasis on providing individual and peer group counseling services. Also, mental health referrals are included as a part of the range of services.

Support for victims during criminal investigations, prosecutions, sentencings, appeals, and other stages of the criminal justice process exists in the more sophisticated programs and reflects an attempt to mitigate the second assault. Such support is augmented by hundreds of recent laws which require that victims receive information, notification, and, in some cases, an opportunity to participate in criminal proceedings. Despite improvements in laws and social programs, thousands of victims still receive inadequate services or, even worse, no services at all. Part of this deficiency is a direct consequence of

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13. Wilkerson, *Indianian Uses Prison Furlough to Kill Ex-Wife*, N.Y. Times, Feb. 13, 1989, § A, at 1.

14. See generally M. YOUNG & J. STEIN, *supra* note 2.

the alarming number of victims injured each year. While the percentage of households affected by criminal activity has steadily declined since 1975,<sup>15</sup> statistics still paint a staggering picture of victimization. For example, in 1986 alone, 34,118,000 individuals were victims of crime; 13,235,000 were victims of thefts; 4,476,000 were victims of assaults; 1,009,000 robberies took place; 130,000 rapes occurred; 20,613 people fell victim to nonvehicular homicide, and 5,557,000 homes were burglarized.<sup>16</sup>

Even when victims are provided with services or are aware of legal protections, they still may be treated inappropriately. New laws may not have adequate implementation provisions. Moreover, lawsuits have ensued over the interpretation of some laws. In addition, programs may lack sufficient resources to provide quality assistance. Often, victim service providers, their professional allies in the criminal justice system, the physical and mental health professions, and social service systems lack the training or information necessary to do an effective job.

Regrettably, the struggle to ensure rights and services for crime victims in the United States has just begun. The future must be marked by even greater change. While prediction of the exact nature of the change remains difficult, many victims rights activists believe that attention will be focused on the issues discussed below.

#### IV. EMERGING ISSUES

##### A. *Trauma Research*

First, a growing need exists for research on the trauma of victimization. Although a fair amount of knowledge concerning the crisis reaction to victimization exists, little is known about the effectiveness of crisis intervention. Most victim service practitioners would attest to the apparent usefulness of immediate crisis counseling after a crime. However, such testimony would be based on anecdotes rather than scientific studies. While victims often admit that crisis intervention helps, it would be useful to know if such intervention actually assists victims in coping with the trauma of victimization over time. A comparative study conducted between a group of victims receiving support services and a control group receiving no services would be enlightening.

Contemporary understanding of the long-term effects of crime victimization is minimal. Post-traumatic stress disorder did not become part of the *Diagnostic and Statistical Manual of Mental Disorders of*

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15. REPORT ON CRIME, *supra* note 8, at 14.

16. BUREAU OF JUSTICE STATISTICS, CRIMINAL VICTIMIZATION 1986 (Oct. 1987).

the American Psychiatric Association until 1980.<sup>17</sup> Little data exists concerning effective assessment of long-term stress reactions and appropriate interventions. This issue is important for several reasons. First, increased knowledge would aid in the development of more appropriate treatment. Second, the debate has increased over the use of variants of long-term stress reactions as evidence in criminal cases. For example, rape trauma syndrome has been used to corroborate the occurrence of a rape and as evidence of nonconsensual sexual intercourse.<sup>18</sup>

Moreover, courts have taken sharply different views of the use of the battered women's syndrome.<sup>19</sup> A 1986 case, attracting a great deal of attention, involved a jury's acquittal of a woman who was charged with murder. The defendant argued that she suffered from the battered women's syndrome, even though the history of the abuse demonstrated only verbal violence, not physical abuse.<sup>20</sup> Research concerning long-term stress reactions would help to establish the legitimate use of psychological assessments through expert testimony on behalf of victims.

Research on the effects of victim rights legislation in the criminal

17. See AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-III)* (1980).

18. See generally Massaro, *Experts, Psychology, Credibility, and Rape: The Rape Trauma Syndrome Issue and Its Implications for Expert Psychological Testimony*, 69 MINN. L. REV. 395 (1985); Ross, *The Overlooked Expert in Rape Prosecution*, 14 U. TOLEDO L. REV. 707 (1983); Comment, *Expert Testimony on Rape Trauma Syndrome: Admissibility and Effective Use in Criminal Rape Prosecution*, 33 AM. U.L. REV. 417 (1984).

19. See generally Eisenberg, *The Self-Defense Plea and Battered Women*, 14 TRIAL 34 (July 1978); Kultgen, *Battered Woman Syndrome: Admissibility of Expert Testimony for the Defense*, 47 MO. L. REV. 835 (1982); Thompson, *Defending the Battered Wife*, 22 TRIAL 74 (Feb. 1986); Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267 (1985); Walker, Thyfault & Browne, *Beyond the Juror's Ken: Battered Women*, 7 VT. L. REV. 1 (1982); Note, *Self-Defense: Battered Woman Syndrome on Trial*, 20 CAL. W.L. REV. 485 (1984); Note, *The Battered Wife's Dilemma: To Kill or To Be Killed*, 32 HASTINGS L.J. 895 (1981); Note, *The Admissibility of Expert Testimony on Battered Wife Syndrome: An Evidentiary Analysis*, 77 NW. U.L. REV. 348 (1982); Comment, *Expert Testimony on the Battered Wife Syndrome: A Question of Admissibility in the Prosecution of the Battered Wife for the Killing of Her Husband*, 27 ST. LOUIS U.L.J. 407 (1983); Comment, *A Woman, a Horse, and a Hickory Tree: The Development of Expert Testimony on the Battered Woman Syndrome in Homicide Cases*, 53 UMKC L. REV. 386 (1985); Comment, *The Expert as an Educator: A Proposed Approach to the Use of the Battered Woman Syndrome Expert Testimony*, 35 VAND. L. REV. 741 (1982); Comment, *The Battered Spouse Syndrome as a Defense to a Homicide Charge Under the Pennsylvania Crimes Code*, 26 VILL. L. REV. 105 (1980-1981).

20. *Georgia v. Norman*, No. A84933 (Fulton County Sup. Ct., Nov. 1986); see Cook, *Georgia Jury Accepts Verbal-Abuse Defense*, Nat'l L.J., Dec. 1, 1986, at 3, col. 1.



justice system is also needed. Evaluation of victim impact statements and their usefulness to the victim and to criminal proceedings would aid in the development of better implementation programs. Analysis of the impact of court attendance on victims, plea participation, involvement in parole decisions, and mandatory restitution laws would assist in policy development and in the initiation of practical programs.

Research on the relationship between victimization and substance abuse also is needed. Evidence indicates that much of crime is drug-related. In Washington, D.C., sixty-four percent of the people arrested for criminal violations tested positively for cocaine. The metropolitan police department estimated that eighty-five percent of all criminal homicides involved drugs.<sup>21</sup> Assisting the victims of such crimes is especially difficult for a number of reasons. The victims are often stigmatized and blamed for their victimization because they also were involved with drugs. Moreover, the victims may be more fearful of reporting crimes because they were committed by persons involved in drugs. In addition, providing assistance to victims who live in drug-infested neighborhoods often endangers and frightens service providers. Thus, development of new strategies to assist this group is critical.

Finally, research is needed to develop appropriate and effective interventions to prevent future acts of criminal violence. This research would identify individuals who have a high risk of becoming violent and develop methods to reduce this tendency toward violence. Resources for new research should be allocated through both the National Institute of Mental Health and the National Institute of Justice.

### *B. Standards of Service*

A second issue for the future is the development and implementation of a standard of service. Little data exists suggesting that services are similar or comparable from one jurisdiction to another. Well-defined standards of service are needed to ensure quality treatment for victims. These standards should be forged from research findings, evaluation of service effectiveness, and the knowledge and experience of existing practitioners and victim activists. The standards should address not only the requisite levels of knowledge and skill, but also the criteria for ethical conduct.

There are three areas in which standards should be developed. First, victim assistance programs should be required to meet certain standards for funding. These standards would enumerate the types

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21. Berke, *Capitol Offers Unlimited Turf to Drug Dealers*, N.Y. Times, Mar. 28, 1989, § A, at 1.

of services that would be provided, as well as ensure the continued quality of those services. Second, victim assistance professionals, paid and unpaid, should be required to receive certain levels of training or education, and continuing education programs should be mandated. Third, professionals, such as lawyers, nurses, and law enforcement officers, who work with victims, should be provided information as part of a required educational curricula. In addition, certification tests through which each professional group receives admission to the profession should contain victim-related questions.

This last suggestion could be implemented by the integration of information on victim-related legislation into criminal law and criminal procedure courses in law schools. Questions relating to such legislation could be included on bar examinations. Moreover, if each state which has legislation for victim services funding would include provisions for the establishment of standards of service, training and technical assistance for service programs, a major advancement toward improving the quality of such programs would be seen. Congress should assume a leadership role in this area by refining the Victim and Witness Protection Act of 1982<sup>22</sup> and the Victims of Crime Act of 1984 to include adequate support for technical assistance and training and to mandate the development of model standards of service.

### *C. Violence Prevention Programs*

A third issue for the future is the incorporation of violence prevention programs into victim assistance programs. Violence prevention should be interpreted as more than "crime prevention" and should encompass more than "target-hardening," "Operation Identification," or "Neighborhood Watch." Violence prevention should involve a variety of new activities, including: violence prevention classes from kindergarten through high school graduation; violence prevention education for adults; and intervention and treatment for persons who are violent—within institutions as well as in community settings.

Intervention and treatment should be mandated for batterers as part of sentencing or diversion programs. It also should be mandated for child abusers as well as those who abuse elders. In addition, victim offender reconciliation programs and victim awareness education programs for offenders should be on every correctional program agenda.

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22. Victim & Witness Protection Act of 1982, 18 U.S.C. §§ 1503, 1505, 1510, 1512-1515, 3146, 3579, 3580 (1982 & Supp. 1989).

Intervention programs must emphasize the responsibility of the offender, not only to society, but also to the victim of crime. Complete restitution to victims should be a part of intervention programs. Although victims can never be "made whole," in the aftermath of crime, evidence that offenders have some remorse and are held accountable for their actions is a source of comfort to most victims.

#### *D. Nature and Scope of the Programs*

Fourth, the nature and scope of victim assistance programs will become an issue in the future. Victim assistance programs should be prepared to work with victims on a long-term basis. While most programs were established to provide crisis intervention or assistance through the criminal justice system, experience has demonstrated the need for long-term services.

On one hand, even if victims cope well with the crisis, and function adequately in the aftermath, many victims suffer from long-term crisis reactions. These reactions encompass the re-experiencing of the emotional turmoil involved in the initial crisis when exposed to triggering events. Such reactions can occur months or even years after an attack. Thus, services should be available to provide assistance in response to such distresses.

On the other hand, some victims are involved in the criminal justice process for years. In cases in which a sentence of death or life without parole is obtained, criminal defendants are virtually guaranteed numerous appeals and alternative remedies. In other cases, recurrent parole hearings, pardons, or clemency proceedings may occur. Some cases may be delayed because of the defense of incompetency. Such cases can cause victims an inordinate amount of heartache and pain because of the lack of closure surrounding the proceedings. Services should be available to support victims throughout these ordeals.

Victim assistance programs also must be available and accessible for all victims of all types of crime. More shelters for abused spouses, children, and the elderly are needed. Rape crisis centers continue to be a vital need. Individuals closely associated with homicide victims and drunk driving casualties also need to be provided with assistance. However, some types of victims have received virtually no help. Burglarized citizens, often perceived as victims of minor crimes, may be completely ignored. Child victims, while the subject of much discussion, are still left unprotected in the traditional criminal justice system. Racial minorities have some of the highest victimization rates and yet remain virtually unassisted in many urban areas. Victims of hate violence receive little specialized care. Victims who live in rural

areas may have to travel miles to receive aid. More resources will be necessary if these groups are to be provided with adequate services.

More victim assistance programs likely will begin broadening their capacity to respond to community-wide victimization, which entails outbursts of violence that leave numerous victims in their wake. Examples include the shooting in the Edmund, Oklahoma, post office; the shooting in the elementary school in Winetka, Illinois; the shooting in the Cleveland school in Stockton, California; and the hostage-taking of a second grade class in Tuscaloosa, Alabama. The dynamics of community-wide violence pervade society more than individual crimes. Not only are the immediate victims of death and injury affected, but family members, witnesses, teams of law enforcement officers, and others also are affected by the tragedy. The more death and carnage resulting from such an attack, the greater the likelihood that a large number of persons will be at risk for high emotional trauma. New techniques for intervention, including large group debriefing sessions, must be developed for the future, and programs must begin to establish procedures for dealing with mass disasters.

#### *E. Reparations*

The fifth issue for future change will be in the area of victim reparations. Several aspects of reparation seem ripe for reform. Victim compensation programs have steadily expanded over the years. The Victims of Crime Act of 1984 was responsible in part for this expansion because it provided many programs with additional funds to make awards. Moreover, funding under the Act is contingent upon compensation programs eliminating residency requirements, allowing reimbursements for mental health counseling, removing exclusions of victims due to family or household relationships, and allowing recovery for victims of drunk driving crashes.<sup>23</sup> However, compensation programs still need more resources and an increase in benefits. Compensation programs represent insurance programs of last resort because they cover expenses which are not covered by any other source. In many cases, current programs adequately provide benefits to cover costs not included under health insurance programs because of deductibles or limits on major medical expenses. Unfortunately, victims who sustain severe injuries may incur costs far above their insurance coverage or costs which are not covered by insurance. Cur-

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23. Victims of Crime Act of 1984, 18 U.S.C. §§ 1512, 3031, 3671, 3672, 4207, 4215 (1985 & Supp. V 1987); 42 U.S.C. §§ 10601-10604 (1982 & Supp. V 1987).

rent compensation programs fall far short of being helpful in such instances. Most programs have a maximum award limit of \$25,000 or less.<sup>24</sup> Therefore, an overall liberalization of the maximum award amount is certainly an issue.

Another type of reparation is restitution, characterized as payment by the offender to the victim for the damages caused. Restitution is available only to a minority of victims because most offenders are not apprehended or convicted. However, restitution remains important because it is connected to the offender's accountability and functions as a resource to the victim. Most restitution laws need substantial reform. Although fifty states have some type of restitution legislation, only twenty-three states attempt to make an order of restitution mandatory with every sentence.<sup>25</sup> In those states, the sentencing judge must order restitution unless an opinion is written delineating the reasons why restitution is inappropriate. Even with this legislation, convicted criminals often escape payment of restitution because after an offender has served time on probation or parole, the restitution order becomes moot.

Consequently, a growing number of people, including President George Bush, have asked for legislation which automatically converts an unpaid restitution order into a civil judgment and judicial lien at the end of a period of probation or parole. The judgment would last for the lifetime of the offender, and in the event the offender acquires future earnings, such proceeds would be used to pay the required restitution.<sup>26</sup>

Consistent application and collection would diminish the current growth of civil litigation seeking financial recoveries for victims. However, most restitution orders do not take into consideration compensation for pain and suffering or emotional distress. Therefore, it is reasonable to conclude that public interest in pursuing civil litigation will continue. Increasing numbers of victims are using legal recourse to obtain reparations. In most cases, suits for recovery target third parties who may have had special duties to protect victims from harm. This area of law continues to expand rapidly.<sup>27</sup>

#### *F. Permanent Victim Services*

The sixth issue for the next decade involves the goal to make victim services a permanent part of the social and governmental structure in the United States. In the early 1980s, when state legislative

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24. LEGISLATIVE DIRECTORY, *supra* note 1, at 46-55.

25. *Id.*

26. Speech by George Bush, President of the United States, in Trenton, New Jersey (Oct. 10, 1988).

27. See generally F. CARRINGTON & J. RAPP, VICTIMS' RIGHTS: LAW AND LITIGATION (1989).

action was sought to establish funding for victim services, many thought that funding alone was the key to permanence. However, the lesson learned over the last few years has been that while funding certainly has aided service development, the funding base in most states is insecure, particularly in states facing tough economic decisions. States that have used either penalty assessments or fines as the source of funding have demonstrated more financial stability for victim services, although some of these states have had to deal with legislators who want to divert the revenues to other projects.

Many victim activists now support the establishment of funding for victim services through a permanent entitlement fund which would not be subject to annual or biannual legislative reauthorization and which would have a base appropriation or standard source of funds each year.

Another way to establish a permanent structure to effectively support victim services is to integrate the victim service components in all departments of government. At the federal level, a National Victim Council has been suggested to coordinate such victim assistance units.<sup>28</sup> For example, victim services in the Department of Commerce could focus attention on providing assistance to tourist victims. The Department of Education might provide a unit to address victims of school violence. The Department of Labor might establish employee assistance programs which would offer victim assistance in addition to treatment for substance abuse, divorce counseling, and other employee aid.

### *G. Future Direction*

The final issue expected to dominate the future is the interpretation and expansion of victim rights. There are two key features to this issue.

First, the massive amount of legislation passed over the last few years affecting victim rights in the criminal justice system is substantially changing the manner in which victims are treated in many jurisdictions. However, defense attorneys seem to be viewing this legislation with a jaundiced eye. The result is an increasing amount of litigation over the constitutionality of certain types of victim rights legislation.

Some types of legislation receive more attention than others. For

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28. Speech by Marlene A. Young, Executive Director, National Organization for Victim Assistance, at National Victim Rights Week Forum (Apr. 7, 1989).

example, laws relating to victim involvement at sentencing have been under attack. The Supreme Court decision in *Booth v. Maryland*,<sup>29</sup> although narrowly written, gave rise to the thought that victim impact statements might be unconstitutional.<sup>30</sup> The *Booth* Court held that victim impact statements were unconstitutional in death penalty cases in which the sentence was decided by a jury. A case now pending at the Supreme Court, *South Carolina v. Gathers*,<sup>31</sup> has been promoted by some as a case which will allow the Supreme Court to reverse or affirm its decision in *Booth* on the constitutionality of victim impact statements. However, because *Gathers* is also a death penalty case, and involves a prosecutor's closing argument at sentencing rather than a victim impact statement, it seems unlikely that it will produce a dispositive opinion about victim impact statements in non-death penalty cases. Thus, victim involvement at sentencing probably will continue to be controversial.

Second, legislation which seeks to protect a child victim-witness in the courtroom is currently subject to much discussion. Forty-four states allow some type of protection for children through the use of videotape, closed circuit television, and screens.<sup>32</sup> These devices are used to prevent a child from looking at the accused. However, the argument has been made that the use of such technology interferes with the defendant's right to confrontation. The Supreme Court in *Coy v. Iowa*<sup>33</sup> seemed to confirm this view when it ruled that the use of screens to protect two child witnesses from viewing the defendant was an invasion of the right to confrontation.<sup>34</sup> However, once again, the majority opinion was not decisive. Because the trial judge failed to find that screens were necessary because the children were intimidated by the defendant, the Supreme Court indicated that in the absence of such a finding, the constitutional rights of the defendant had not been preserved. Thus, the question remains whether the opinion would be the same if an appropriate finding had been made by the trial court.

These two legal issues are good illustrations of what the future may hold. If victim rights legislation was the focus of the victims

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29. 482 U.S. 496 (1986), *reh'g denied*, 483 U.S. 496 (1987).

30. *Id.* at 509. "[T]he introduction of a victim impact statement at the sentencing phase of a capital murder trial violates the Eighth Amendment . . ." *Id.*

31. *State v. Gathers*, 295 S.C. 476, 369 S.E.2d 140 (1988), *cert. granted sub nom. South Carolina v. Gathers*, 109 S. Ct. 218 (1988), *reh'g denied*, 110 S. Ct. 24 (1989). "The solicitor's extensive comments to the jury regarding the victim's character [during closing argument] . . . conveyed the suggestion appellant deserved a death sentence because the victim was a religious man and a registered voter." *Id.* at 484, 369 S.E.2d at 144 (citation omitted). The court held that these remarks violated the eighth amendment rights of the appellant. *Id.* (citing *Booth v. Maryland*, 482 U.S. 496 (1986)).

32. LEGISLATIVE DIRECTORY, *supra* note 1.

33. 108 S. Ct. 2798 (1988).

34. *Id.* at 2802.

movement in the 1980s, it is not unreasonable to conclude that victim-related litigation will be a major dimension of the 1990s.

However, court litigation takes years, and victim advocates want to establish the validity and enforceability of victim rights more quickly. Thus, victim advocates are taking their case to the people and asking that victims rights be adopted in state constitutions.

For example, the State of Rhode Island passed an amendment to its constitution in November 1986, which reads in part: "A victim of crime shall, as a matter of right, be treated by agents of the state with dignity, respect and sensitivity during all phases of the criminal justice process."<sup>35</sup> In November 1988, two additional states, Florida and Michigan, passed their own constitutional amendments stating that victims have the right to be informed of, present, and heard at every critical stage of the criminal justice process.<sup>36</sup> Moreover, ten additional states are considering similar amendments.<sup>37</sup> The goal of many victim activists is to enact state amendments as a prelude to changing the United States Constitution.

## V. CONCLUSION

Confronting the above seven issues will be challenging and compelling. The vision of victim assistance has changed from a rather narrow perspective to one which encompasses a myriad of topics and concerns. The next decade probably will bring to the victims movement as many new questions as it does answers. Nevertheless, there is no chance to turn back. The progress of the past has propelled the nation into the future. As an Italian philosopher once said, "[t]here is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success than to take the lead in the introduction of a new order of things."<sup>38</sup> However, our success in establishing that order will be the measure of our generation. This success will be measured by how we address the emerging issues of the next decade.

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35. R.I. CONST. art. I, § 23.

36. See FLA. CONST. art. I, § 16(b); MICH. CONST. art. I, § 24.

37. States which have or are considering an amendment are: Alabama, Arizona, California (already passed a constitutional amendment directed at victims but not addressing the concerns of court attendance and participation), Delaware, Maryland, Missouri, New Mexico, Texas, Washington, and Wisconsin.

38. R. KENNEDY, *TO SEEK A NEWER WORLD* 232 (1967).



