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The Attorney General Guidelines for Victim and Witness Assistance: United States Attorneys' Offices' Responsibilities to Victims

"Justice while due the accused, is also due the accuser."
- Justice Benjamin Cordoza

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I. Introduction

I get a number of questions about the United States Attorneys' Offices' responsibilities to victims. The first place I always look for answers is the *Attorney General Guidelines for Victim and Witness Assistance 2000 (AG Guidelines)*. The *AG Guidelines* are based upon the federal victims' rights laws and provide guidance about how these laws should be applied. Although the *AG Guidelines* are written in a clear and concise manner, it is not always easy to determine how to apply certain provisions to real-life situations. Below is a discussion of the *AG Guidelines* and a summary of the United States Attorneys' Offices' responsibilities to victims under these guidelines.

II. Definition of victim

Perhaps one of the most difficult aspects of providing victims with assistance is first determining who is a "victim." Under the *AG Guidelines*, it is the investigative agency's responsibility to identify victims. However, there may be situations where a United States Attorney's Office gets a case in which the victims are not identified, or in which a decision is made to treat certain persons as victims, even though they were not originally designated as such by the investigative agency. It is therefore important for United States Attorneys' Offices' personnel to be familiar with the legal definition of victim. "Victim" is defined under the statute and the *AG Guidelines* as a "person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime . . . ." *AG Guidelines,* page 5. The definition seems self-explanatory but it can be difficult to apply in certain cases. This is especially true when trying to determine who is a "direct" victim of a particular crime.

Are there any victims of a possession charge (i.e. possession of an illegal firearm)?

No, however, you can still treat persons as victims even if they do not meet the statutory definition. Possession charges are technically "victimless" crimes and, therefore, you are not mandated to provide anyone with notification or other services. However, under the *AG Guidelines*, employees can make "reasonable determinations" about who to include as a victim depending upon the circumstances of the case. *AG Guidelines,* page 8. Employees can then provide these individuals with services such as notification or referrals for services. Remember that the *AG Guidelines* set a floor, not a ceiling, for victim services in the federal system.

III. Non-culpable victims

The *AG Guidelines* clarify that the definition of a victim excludes persons who are culpable for the crime being investigated or prosecuted. This definition, however, does not exclude persons who may be culpable for some other offense or crime.

We have a person who knew he was being brought into this country illegally and entered voluntarily to work. Can he be considered a victim of trafficking?

It depends on the circumstances. It can be difficult to distinguish trafficking from alien smuggling. Often times, these two crimes are intertwined. Under certain circumstances, a person may have been voluntarily smuggled into this country, and was not a victim of any crime. In other cases, a person may be forced to pay off a debt to the smuggler once he or she enters the United States. A person's initial agreement to travel or perform labor does not allow an employer to later restrict that person's freedom or to use force or threats of violence to obtain repayment. This is a trafficking situation and the worker would be a victim of trafficking. Therefore, it is important to carefully examine the facts of a case to ensure that persons who are victims are not being overlooked simply because they initially came to the United States illegally.

IV. Mandatory services to crime victims

A. Notice of case events

Starting with the filing of charges, the United States Attorneys' Offices are required to provide victims with the earliest possible notice of case events, including the scheduling of court proceedings and the acceptance of a guilty plea.

Are there any exceptions to the requirement to notify victims when there are thousands of victims and the harm is relatively minor (a few dollars a person)?

No, there is no exception for the mandatory provisions of the *AG Guidelines*. The *AG Guidelines* state that employees "should use the means, given the circumstances, most likely to achieve actual contact with and notice to victims." *AG Guidelines,* page 11. Toll-free numbers, websites, or the use of representative victims, are all examples of ways to notify large numbers of victims with relatively small losses. United States Attorneys' Offices have discretion to choose which method of notification they believe would be most effective in a given case. Also, under 18 U.S.C. § 3555, defendants who are convicted of fraud may be ordered by the court to spend up to $20,000 to provide notice to victims explaining the conviction.

What can we tell victims of juvenile offenders?

Very little. Under the *Federal Juvenile Delinquency Act*, 18 U.S.C. §§ 5031-5032, and the *AG Guidelines*, the court proceedings are closed and no information about the proceedings or the defendant will be publicly disclosed. 18 U.S.C. § 5038(a)(6). This means that you may not reveal the juvenile's name to anyone, even after the finding of delinquency. During the prosecution, the prosecutor can only provide the victim with information related to the final disposition of the juvenile. Victims can give the prosecutor their views about the appropriate disposition of the case, but the dialogue should remain one-way, with the Assistant United States Attorney soliciting input from the victim without violating the juvenile defendant's confidentiality. *AG Guidelines,* page 9. While not mandatory, according to the *AG Guidelines*, victims in these cases may also prepare victim impact statements. *Id.*

B. Right to attend trial

The United States Attorneys' Offices are required to make reasonable and diligent efforts to inform victims about the victim's right to attend the trial regardless of whether the victim intends to allocute at sentencing.

Can a victim who is also a witness still attend the trial of his case?

No. If a victim is testifying as a witness in the

actual case, the defense will likely make a motion under Fed. R. E. 615 to exclude the victim from the courtroom. The purpose of this rule is to ensure that a witness's testimony is not affected by viewing another witness, which could jeopardize the prosecution of the case. If, however, a victim is only allocuting at sentencing, and not testifying at trial, then he or she has a statutory right to attend trial. 18 U.S.C. § 3510.

C. Referrals for services

Both investigators and prosecutors are required to provide victims with referrals for services in the community. These can include referrals to state compensation programs, mental health counseling, and medical treatment.

Should Victim-Witness Coordinators provide counseling to victims?

No. It is important to remember that Victim-Witness Coordinators in the United States Attorneys' Offices are not therapists. They should instead refer victims to the appropriate mental health resources in his or her community. If Victim-Witness Coordinators counsel victims, there is always a chance the victim will discuss the substance of the crime with the Coordinator. The Victim-Witness Coordinator could then run the risk of being called as a witness by the defense in the case.

D. Victim allocution

Victims of crimes of violence or sexual abuse have a right to allocute at sentencing. United States Attorneys' Offices must inform victims of this right.

What is considered a crime of violence or sexual abuse for purposes of allocution?

Under Fed. R. Crim. P. 32, victims of "crimes of violence or sexual abuse" have the right to allocute at sentencing. This is defined as crimes that involve "the use or attempted or threatened use of physical force against a person or property of another." Fed. R. Crim. P. 32(c). For certain crimes, the use of force is an element of the offense. For other crimes, even if the use of force is not an element of the actual offense, force (or threat of force) may have been used in the actual commission of the crime. Consequently, one could argue that if the actual crime involved force, even if it was not an element of the crime, the victim is entitled to allocute under Rule 32.

In addition, even if the victims are not covered under the Rule 32 definition, a prosecutor can still request allocution for victims through a motion to the court.

E. Separate waiting area during trial

During the trial, the prosecutor and the U.S. Marshals must ensure that the victim is provided a waiting area removed from the defendant and the defense witnesses.

Are there any cases which address the Assistant United States Attorneys' legal responsibilities to victims?

Yes. *See Ochran v. United States*, 117 F. 3d 495 (11th Cir. 1997). In *Ochran,* the plaintiff provided information to the police about her ex-boyfriend, which led to the arrest and prosecution of the ex-boyfriend for federal drug charges. *Id*. at 498. The night before his arraignment the ex-boyfriend threatened the plaintiff and her family, which the plaintiff reported to an investigative agent who referred her to an Assistant United States Attorney (AUSA). *Id*. The plaintiff's father reported the threat to the AUSA. *Id*. The AUSA spoke with the ex-boyfriend and his attorney about the threats and stated that she would seek revocation of his bond if the threats persisted. *Id*. at 499. The ex-boyfriend remained out on bond. *Id*. While out on bond, he kidnaped the plaintiff at knife point, choked her, stabbed her, and left her for dead. *Id*.

The plaintiff brought an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b). The United States defended, citing the discretionary function exception to the FTCA. *Ochran* at 499. The District Court dismissed the case and the Court of

Appeals reversed citing to the 1995 version of the *AG Guidelines* provision which provided "information on the prohibition against intimidation and harassment and the remedies therefor *shall* routinely be made available to victims and witnesses." *Id*. at 503, emphasis added. These remedies include "informing the U.S. Marshals Service of the threat, obtaining a restraining or protective order against [defendant], revoking [defendant's] bond, or protecting [the victim] through the Witness Security Program." *Id*. at 504, n. 5.

Based on the *AG Guidelines* directive and the facts alleged, the court held that "the discretionary function does not bar a cause of action based on the alleged negligent failure of the AUSA to inform the victim of available remedies against intimidation and harassment." *Id.* at 506. The Court of Appeals remanded the case back to the Middle District of Florida.

On remand, the government filed a summary judgment motion based on the misrepresentation exception to the FTCA. The misrepresentation exception bars claims arising out of the government's failure to use due care in obtaining and communicating information. The district court dismissed Ochran's case holding that because the essence of her claim was that the AUSA failed to provide her with information about available remedies, the misrepresentation exception applies. *Ochran v. United States,* No. 94-0092-CV-FTM-29D (M.D. Fla. October 18, 2000).

The plaintiff appealed the decision back to the 11th Circuit. The Court of Appeals affirmed the dismissal, but on different grounds. *Ochran v. United States*, 273 F. 3d 1315 (11th Cir. 2001). In FTCA cases, the court must look to the law of the state where the act occurred. *Id*. at 1317. In this case, the court looked at Florida law to analyze Ochran's negligence claim. *Id.* Specifically, the court analyzed whether or not the AUSA owed a duty of care to Ochran. *Id*. Under Florida law, whether or not the government owes a duty of care to a person depends upon the presence of a special relationship. *Id.* Because the AUSA did not undertake the responsibility to protect Ochran, no special relationship was formed. *Id*. at 1318. Therefore, Ochran had not alleged facts which would support a cause of action under Florida law and the case was dismissed. *Id*.

What does Ochran tell us about our responsibilities to victims and witnesses?

The procedural history of the *Ochran* case is confusing, and no subsequent case has applied the initial holding of the original *Ochran* case. In addition, the 2000 version of the *AG Guidelines* changed the word "shall" to "should" in the provision directing that victims and witnesses be provided with information regarding remedies for threats and intimidation. The new version of the *AG Guidelines* also places the responsibility to inform victims about these remedies on the investigative agency. The bottom line with respect to *Ochran*, however, is that the original 11th Circuit Court of Appeals decision held that a cause of action can be based on the failure to follow a mandatory provision of the *AG Guidelines*. Therefore, it is always important to be aware of, and comply with, your responsibilities under the *AG Guidelines* and federal laws relating to victims and witnesses.

V. Additional services to crime victims

In addition to the mandatory provisions outlined above, United States Attorneys' Offices have a number of other non-mandatory responsibilities to victims of crime. These include providing victims with general information about the criminal justice process, notifying victims about postsentencing filings and court proceedings, consulting with victims about major case decisions including plea bargains, notifying victims and witnesses employers and creditors, protecting victims' privacy, and providing victims and witnesses with logistical information. The following are several other areas in which United States Attorneys' Offices have responsibilities to victims:

A. HIV testing of a defendant

Prosecutors should inform victims of sexual assault that the court may order the defendant to be tested for the HIV virus. A sample of how to request this test is contained in Appendix E of the *AG Guidelines.*

For what crimes can we ask for the defendant to be tested for HIV?

Title 42 U.S.C. § 14011(b) does not specify which crimes are covered for testing purposes. All that it provides is that the defendant must be charged with a crime and the court must determine that the alleged conduct of the defendant created a risk of transmission of HIV. In addition, the defendant must have notice and the opportunity to be heard regarding testing.

Can we use the results of the test in the trial against a defendant?

No, under 42 U.S.C. § 14011(b), the results of the tests cannot be used as evidence in a criminal trial.

B. Victim impact statements

Prosecutors should inform victims that they are entitled to submit a victim impact statement which will be included in the presentence report. This statement will outline the effect the crime has had on the victim's life.

Can victim impact statements be considered witness statements which can be used to cross-examine a victim when he or she testifies as a witness?

Yes. If the United States Attorney's Office has the victim impact statement before the victim testifies, then it is considered a witness statement under the *Jencks* Act and therefore needs to turned over to the defense. 18 U.S.C. § 3500. The defense may then use it in their cross-examination of the victim. As a general rule, victims who are going to be trial witnesses should not complete victim impact statements until after the trial is over and the defendant has been convicted. After the victim has testified, and the defendant has been convicted, the victim should fill in the victim impact statements which will then be turned over to the probation department to be incorporated into the presentence report.

C. Restitution

The Mandatory Victims Restitution Act (MVRA) requires defendants to pay victims restitution for a number of crimes. Under the MVRA and the *AG Guidelines*, prosecutors must follow the procedures set forth in 18 U.S.C. § 3664 in imposing restitution for crimes which occurred after April of 1996. First, the prosecutor should "to the extent practicable" consult with all identified victims in a case to determine their losses. 18 U.S.C. § 3664(d). Second, the prosecutor must provide the probation office with a listing of the amounts subject to restitution. *Id.* Third, the burden of demonstrating the amount of loss a victim has suffered is on the prosecutor. 18 U.S.C. § 3664(e). Therefore, it is important that he or she works with the investigative agency in an attempt to confirm or verify the amount of losses suffered by each victim. Fourth, prosecutors must consider restitution in plea agreements. *AG Guidelines*, page 47.

Can we get restitution for crimes for which the defendant was not charged?

No, only victims of the offense of conviction are legally entitled to restitution. *See, e.g., Hughey v. United States*, 495 U.S. 411 (1990). This, however, does not preclude a defendant from agreeing in a plea agreement to pay restitution to persons who were not victims of the offense of conviction. *See, e.g., United States v. Williams,* 128 F.3d 1239 (8th Cir. 1997). Restitution should therefore be a consideration for attorneys when they enter into a plea agreement with a defendant.

D. Responsibilities to child victims and witnesses

Child victims and witnesses need special attention when they encounter the criminal justice system. Title 18 U.S.C. § 3509 grants certain protections to child victims and witnesses and also provides several tools which prosecutors can use to lessen the harm children may suffer when they testify. For example, prosecutors may use videotaped depositions or closed circuit television as alternatives to requiring a child victim or witness to testify in open court. Where possible, AUSAs shall consult and cooperate with multidisciplinary child abuse teams as a means of better assisting child victims and witnesses. The statute also authorizes the court to appoint a guardian ad litem who is entitled to attend all proceedings and access reports and records as a means of protecting the best interests of the child victim or witness. The law further requires that the prosecutor protect the privacy and rights accorded to a child victim or witness by not disclosing the name or information concerning a child in any unsealed documents. Prosecutors should make extra efforts to ensure that files and documents with a child's name or other identifying information are not left unattended. Failure to protect the privacy rights of children can result in the imposition of a fine, imprisonment, or both. 18 U.S.C. § 403.

I have a teenager who was the victim of an armed robbery, can we use the provisions of 18 U.S.C. § 3509 when she testifies?

No, for purposes of 18 U.S.C. § 3509(a)(2), a child is a person who is either a victim of physical or sexual abuse or exploitation, or a witness to a crime committed against another person. If you feel that the teen's identity should be protected and the pleadings should be filed under seal, then prosecutors can file for a protective order under Fed. R. Crim. P. 16.

Who pays for a Guardian Ad Litem?

Unfortunately, there is no designated fund of money to pay for the services of a Guardian Ad Litem (GAL). GALs represent the "best interests of the child" and are impartial. Therefore, it would probably be best if the United States Attorney's Office does not pay for the GAL because it could lead to attacks on the GAL's impartiality. Districts should instead explore other options for payment. For instance, because GALs are "court appointed," some courts are willing to pay for them. In addition, there are attorneys who will act as a GAL on a pro bono basis.

Can adult attendants attend grand jury proceedings with a child witness who is testifying?

No. Title 18 U.S.C. § 3509 permits adult attendants to accompany a child witness when that witness is testifying in a court proceeding. However, this section does not apply to grand jury proceedings. The rules governing grand jury secrecy take precedence over the Section 3509 provision.

VI. Additional questions

Victim-Witness Coordinators and AUSAs often look for ways other than those listed in the *AG Guidelines* to assist victims in their districts. The following are questions about other areas of the law and how they may be used to benefit victims of crime.

Can a federal defendant benefit financially by writing about his crime? Is there a statute we can use to get him to forfeit his profits?

Yes, you can probably use the MVRA for this purpose. There is a federal forfeiture statute which requires a defendant to forfeit his profits from any movie, book, etc. which relate to his crime. 18 U.S.C. § 3681. This statute, however, may not be constitutional. The Supreme Court struck down a similar state law in *Simon and Schuster, Inc. v. Members of the New York State Crime Victims Board*, 502 U.S. 105 (1991), as violative of the first amendment. Because of this similarity, the federal statute has never actually been used. The good news is the MVRA allows restitution orders to be enforced like liens. 18

U.S.C. § 3613(c). In enforcing the restitution order, the government can seek a lien against any of the defendant's assets, regardless of the source. So if a defendant writes a book about his crime and makes money from the book, the government can go after this money to enforce the restitution order.

Are there federal laws that require sex offenders to register with their states? Is there a national sex offender registry?

Yes, there are three statutes that collectively require states to strengthen the procedures they use to keep track of sex offenders: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (enacted in 1994), the Federal version of "Megan's Law" (enacted in 1996), and the Pam Lychner Sexual Offender Tracking and Identification Act (also enacted in 1996). In brief, the statutes require states to establish registration programs so local law enforcement will know the whereabouts of sex offenders released into their jurisdictions, and notification programs so the public can be warned about sex offenders living in the community. The Lychner Act also mandates the creation of a national sex offender registry, and it requires the FBI to handle registration in states that lack "minimally sufficient" programs. According to the Lychner Act, the FBI may release relevant information to federal, state, and local criminal justice agencies for law enforcement purposes only. Public notification will only be made if it is necessary to protect the public. Information on this national registry can be found on the FBI's website at http://www.fbi.gov/hq/cid/cac/registry.htm

We have a victim-witness who is being sued for malicious prosecution. Is there anything we can do to help this victim from being harassed in this manner?

No. This is a civil suit to which the United States Attorney's Office is not a party and, therefore, there is not much you can do to help the victim. If the suit is meritless, then hopefully the victim's private attorney can get it dismissed early in the case, and perhaps even have the court order the defendant to pay the victim's attorneys' fees. Remember, if the defendant is harassing the victim in other ways, 18 U.S.C. § 1514 provides that the government can seek a restraining order against him or her.

We have a witness whose employer is threatening to fire him if he takes off work to testify pursuant to a court subpoena. Are there any federal laws that protect this employee from being fired?

No, there are no federal laws which protect employees from this sort of action, but a number of states have laws that make it a misdemeanor for an employer to fire an employee because he missed work to testify pursuant to a subpoena.

How do we pay for HIV testing of a victim?

Title 42 U.S.C. § 10607(c)(7) requires the Attorney General to pay for up to two tests of a victim for sexually transmitted diseases and a counseling session, during the twelve months following a sexual assault that poses a risk of transmission of these diseases. United States Attorneys' Offices can pay for these tests with funds from the Fees and Expenses of Fact Witnesses Appropriation, Fact Witness allotment.

We have a case that has dozens of victims. Many of these victims would like to attend sentencing. Can we ask an airline to donate air tickets to these victims to attend sentencing?

No, such a solicitation by government officials would be prohibited, whether you viewed it as a gift from the airline to the individual victim or as a gift from the airline to the government. If solicitation of the tickets was on behalf of the individual victim, who is not otherwise entitled to travel payments, this would be a misuse of position, under 5 C.F.R. § 2635.702, use of public office for private gain. If the ticket was being given to the United States Attorney's Office by the airlines, this would also be an inappropriate solicitation of a gift on behalf

of the government. 5 C.F.R. § 2635.202. Only the Deputy Attorney General can authorize such a solicitation for a gift under Department of Justice Order 2400.2. Under that Order, the Assistant Attorney General for Administration has the authority, on behalf of the government, to accept a gift. Additionally, other restrictions may prohibit government employees from soliciting assistance from private entities to assist the government in accomplishing its mission.

You can explore other ways to pay for these tickets, including state compensation programs or the Federal Crime Victims Assistance Fund.

VII. Conclusion

Every case that you work on raises new and unique victim-related questions. I encourage you to utilize all of the LECC/Victim-Witness Staff's resources to assist you in addressing these issues. In addition to the *AG Guidelines*, your office should have copies of the brochure entitled *Victim and Witness Rights United States Attorneys' Responsibilities.* This publication, also located in the USABook on-line, contains all of the victim-related statutes, commentary on these statutes, and important case law. The LECC/Victim-Witness Staff's website, located at http://www.usa.doj.gov/staffs/lecc/ also contains a number of important legal and nonlegal victim-related resources. Please do not hesitate to contact me with whatever questions you may have. ❖

ABOUT THE AUTHOR

❑**Camille Bennett** joined EOUSA's LECC/Victim-Witness Staff as an attorney-advisor specializing in victims' issues in May of 2000. She became Acting Assistant Director in September of 2002. Her duties include advising and training U.S. Attorneys' Offices' employees on victim-related legal issues. She has experience assisting victims of child abuse and neglect as a Court Appointed Special Advocate, and served as a legal advocate for domestic violence victims at a battered women's shelter.✠

Are We Law Enforcement Leaders or Community Leaders - Why Not Both?

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I. Background

United States Attorneys are very comfortable viewing our role as "law enforcement leaders" but what about our role as "community leaders?" The United States Attorneys' mission statement clearly states that each United States Attorney (USA) is the chief federal law enforcement officer of the United States within his or her particular jurisdiction. Yet, are not we also called to be

community leaders in the statement that "each USA exercises wide discretion in the use of his/her resources to further the priorities of the local jurisdictions and the needs of their communities?"

Since the events of September 11, the Justice Department has shifted its focus from prosecution to prevention of crime, namely terrorism, as its number one priority. While prosecutions and litigation on behalf of the government will always be the foundation for our offices, our success in crime prevention, and particularly the prevention of terrorism, will ultimately be the measure by which we will be judged. Our role as community leaders has become critically important in the area of crime prevention. The Attorney General's Advisory Committee (AGAC) Subcommittee on Law Enforcement Coordination/Victim Witness/ Community Issues urges every United States Attorney's Office (USAO) to "jump on the band wagon" of community involvement through speaking engagements and task force formation. Not only will USAOs see benefits to investigations and subsequent prosecutions, but the staff members from our offices who participate in the community will reap intangible benefits, both personally and professionally. The subcommittee challenges USAOs to view prosecution as only half of the equation in a successful criminal justice system. The other half of the equation is how we prevent crime from occurring in the first place, and how we treat the victims of crime.

While other AGAC subcommittees focus primarily on prosecution, our subcommittee's focus is on crime prevention, law enforcement coordination, and victim/witness issues. The subcommittee USA members are: Jane Boyle, Northern District of Texas; Margaret Chiara, Western District of Michigan; Thomas E. Johnston, Northern District of West Virginia; Gregory Lockhart, Southern District of Ohio; Anna Mills Wagoner, Middle District of North Carolina; Miriam Miquelon, Southern District of Illinois; Susan Brooks, Southern District of Indiana; and First AUSA Michelle Tapken, District of South Dakota. We are assisted by the Executive Office for United States Attorneys' (EOUSA) staff of Camille Bennett and Chris Chaney. This group of enthusiastic, community-minded USAs tackle issues involving the following topics: Weed and Seed, Project Safe Neighborhoods, Office of Justice Program Grants, Law Enforcement Coordinating Committees, Victim Witness Issues including the Victims' Rights Amendment, the Victim Notification System, and Juvenile Justice Issues.

Why is it important for USAOs to be involved in crime prevention or community affairs? We need only to look to our colleagues in the law enforcement community to find the answer. Police learned long ago that community policing is the strategy for success in driving down crime rates. In our urban communities, in particular, when police work cooperatively with the neighborhoods and the communities they police, crimes rates drop. Once law enforcement recognized the value of a true partnership with the community, then trust of law enforcement increased and crime rates decreased. This trust between citizens and law enforcement has resulted in more useful crime tips and more tangible support of law enforcement. This partnership between the community and police sends a message to criminals that the residents will not tolerate crime. Community policing has created a bond between people and the police.

Our district or county-elected prosecutors also have reaped the benefits of community prosecution and street advocacy programs. This strategy places deputy prosecutors side by side with law enforcement in the community, solving a specific neighborhood problem. This direct, grass-roots community involvement by state prosecutors has alleviated the negative "downtown city hall mentality" view of elected officials.

If local law enforcement and local prosecutors have benefitted from community involvement and community policing, why should we, as federal

prosecutors, not follow their lead and become community oriented as well? How do we reach into the community to truly effect change? How do we determine if the efforts in our community are making a difference? How do we measure success? This article will explore programs and strategies that further the goals of USAOs as community leaders.

II. Project Safe Neighborhoods

President George W. Bush and Attorney General John Ashcroft provided us with a road map for community outreach and involvement in May 2001 when they unveiled Project Safe Neighborhoods (PSN). It is a unique approach that emphasizes not only aggressive prosecution for violations of existing gun laws, but also focuses upon the importance of connecting law enforcement with community members to create specific prevention strategies for each community. PSN recognizes that, while many law enforcement agencies have been engaged in gun violence reduction measures for years, communities, as a whole, have not been engaged in solving the gun violence problem.

Gun violence has traditionally been viewed as a law enforcement problem, rather than a community problem. Therefore, current grant dollars given to the PSN Task Force to craft customized community media messages are providing the USAOs with an opportunity to be community advocates on the issue of gun violence. When the Attorney General instructed each USA to create a PSN Task Force, the purpose was to bring disparate views to the table and to invite new strategies to reduce gun violence.

USAOs have the opportunity through PSN to publicize successful law enforcement strategies, including federal prosecutions for gun crimes, and to highlight the community's role in preventing further gun crime. The formation of the PSN Task Force led by USAs is a logical vehicle for USAOs to be viewed as action-oriented proponents of violence reduction in our communities.

One advantage, among the many, of this mandate from the Attorney General was that it required USAs to instantly engage with community leaders, elected officials, faith leaders, educators, and youth-serving organizations in their districts. Each district takes a different approach to the development of our PSN Task Forces, which was contemplated in the design. The PSN program was not intended to be a "cookie-cutter" approach to gun violence reduction. The purpose is to enable USAs to customize the appropriate message for their community, its young people and potential perpetrators of violence.

USAOs must be mindful of ethics rules and potential conflicts of interest when working in the community. Our subcommittee, General Counsel for EOUSA, and the Office of Justice Programs (OJP), have identified potential problems if the PSN grant dollars for the research partner and the community/media partner flowed directly to the USAO for distribution, as originally planned. While direct control of grant dollars may initially appear beneficial, the subcommittee was concerned that those organizations who were not funded might question the fairness or equity of the process, and possibly the integrity of the USAO. Our subcommittee worked with PSN Coordinator Reagan Dunn, as well as the General Counsel's Office of EOUSA and OJP, to create a process which required USAs to appoint a grant selection committee from the PSN Task Force. Ultimately, the selection committee chose the grant recipients. This procedure removed the USAO from the selection process and helped to ensure that our ethics would not be questioned by the community. The subcommittee acknowledges that this is a protracted and time consuming process to choose the grant recipient. However, we believe this method, which continues through new grant cycles, prevents ethical peril which may have jeopardized the success of the PSN program in our districts.

III. Weed and Seed

Community outreach is not an entirely new

concept for USAOs. USAOs have led the way in the national strategy of Weed and Seed, which has been in existence for over ten years. The premise of this strategy is to "weed" out the crime in neighborhoods through community approved law enforcement strategies and "seed" the communities with economic development and other neighborhood improvements. Weed and Seed has enjoyed tremendous success nationally in helping to reduce the crime rate in many of our districts' neediest neighborhoods. Weed and Seed places the USAOs at the center of a community based, multi-agency approach to crime prevention, law enforcement, and neighborhood restoration. The USAOs have been integral in the success of over 300 Weed and Seed sites throughout the country. Although it is common for our Law Enforcement Coordinators (LECCs) to participate on the boards of the Weed and Seed steering committees, it is not uncommon for a USA personally to co-chair the steering committees for the sites. Active participation in the Weed and Seed Steering Committee is a natural way for a USA and the USAO to become engaged in true grass-roots problem solving for our local communities.

The subcommittee became aware that some USAs were expressing frustration with their Weed and Seed sites and were looking for guidance from the AGAC or from the Executive Office for Weed and Seed (EOWS) to assist them. In the Spring of 2002, the subcommittee conducted a survey of USAs regarding the Weed and Seed sites in their districts. The subcommittee thanks the sixty-five districts that returned the survey because your responses will guide the evolution of the Weed and Seed strategy.

One purpose of this survey was to ensure that the EOWS could assist those districts that were experiencing problems with their sites. The survey asked questions such as "[t]he extent of each United States Attorney's Office's involvement with the sites, concerns about the sites, the level of satisfaction of the service from the Executive Office for Weed and Seed, and United States Attorneys' Offices desire to learn more about Weed and Seed or other grants offered through the Office of Justice Programs (OJP)." Most districts were positive about their Weed and Seed sites, the benefits of the Weed and Seed strategy, and the support that USAOs were getting from the EOWS. The EOWS has made a commitment to respond to requests for more information about Weed and Seed and to educate USAs more directly regarding our role in this strategy. EOWS received copies of the survey results and is reaching out to those districts that expressed frustration or concerns about their funded sites. The subcommittee is satisfied with the level of cooperation that we have received from EOWS.

Deborah Daniels, Assistant Attorney General for the Office of Justice Programs (OJP), has made it clear that USAs should have a prominent and defining leadership role in the direction of each Weed and Seed site in their districts. Ms. Daniels met twice with the AGAC to discuss Weed and Seed issues and once with our subcommittee. She presented her views on the USA's role in the Weed and Seed strategy at the 2002 United States Attorneys Conference in New York City. She stressed the importance of USAs leading the policy direction of their sites. Ms. Daniels reiterated that if a USAO disapproves of the funding of certain programs within a site, then the USA or the LECC should contact the Executive Office for Weed and Seed and express those concerns to EOWS. EOWS will take the appropriate steps to remedy the problem and communicate the resolution of the issue to the USAO. USAOs enjoy tremendous support from Ms. Daniels, a former USA and the first Executive Director for the Weed and Seed Program under President George H. Bush.

Some USAs expressed concern about the ethical dilemmas surrounding USAOs' involvement in Weed and Seed. The subcommittee met with General Counsel of EOUSA to identify issues of common concern. As a result, new guidance has been promulgated which was distributed to the USAOs in December 2002. This new guidance should clarify to USAOs the appropriate scope of involvement. Our role traditionally has been to: work directly in designating a Weed and Seed site; certify official recognition of a site when appropriate; and serve on Weed and Seed steering committees (which may include state and local agencies and nonprofit organizations). Questions arose as to how closely a USAO may work with a charitable or not-for-profit organization. The Department of Justice guidance precludes USAOs from "establishing" non-profit organizations, which are often the most appropriate vehicle to carry out the Weed and Seed strategy. USAOs can neither draft the by-laws nor serve on the board of directors of not-for-profit organizations. Furthermore, we should not participate in specific budget decisions of an organization, including decisions regarding the expenditure of funds, and the day-to-day operations of the non-profit organization. Although USAOs provide some level of supervision to the non-profit organizations of the Weed and Seed steering committees, our supervision should be broad-based and focused on the mission of the program consistent with our law enforcement mission. In practical terms, if a USAO encounters a situation where one of its Weed and Seed sites is not spending funds appropriately, and its practices are not in accordance with the overall mission and strategies promulgated by the Weed and Seed steering committee, then the USAO should contact the program manager at EOWS. USAOs should not specifically delve into or veto budget decisions.

If a Weed and Seed site happens to be an incorporated 501(c)(3), a USA or a USAO representative may not serve on the board of directors unless, in accordance with state law, the corporation's articles of incorporation or by-laws make clear that the USA's fiduciary duty is to the United States only. Even then, such service must still be approved by the Deputy Attorney General.

The guidance provides a laundry list of "permitted activities." It encourages USAOs to do the following:

- Speak and meet with interested community leaders to educate them about Weed and Seed;
- Provide public information and statistics to non-profit organizations and educate them on the role of federal law enforcement to further advance the success of the cooperative effort;
- Assist with the formation of the Weed and Seed Steering Committees. USAs' involvement is vital to encouraging community leaders, law enforcement officials, service providers, and residents to cooperate, form partnerships, and to serve on the steering committee.
- Serve as chair or co-chair of the Weed and Seed Steering Committee. As the Weed and Seed governing body, the steering committee develops, monitors, evaluates, and modifies the Weed and Seed strategy. The committee helps the site develop an appropriate and consistent strategy for the official recognition application. At this stage, USAs help ensure that the Weed and Seed site is a good investment for funding.

Besides the standard role of co-signing letters of intent for prospective Official Recognition for applicants, other duties that are not so obvious but equally important include:

- Requesting technical assistance from EOWS for sites that are experiencing difficulties;
- Flagging issues for EOWS to review and consider when reviewing funding applications;
- Informing EOWS of site implementation difficulties to enable EOWS or OJP to take appropriate action.

With respect to suspected improprieties, USAs should not act on behalf of EOWS. This new guidance should be reviewed carefully by all USAs and LECCs and, possibly, the Weed and Seed Steering Committees. All parties will then have a better and clearer understanding of the role of the USAO, as established by OJP, EOWS and EOUSA.

IV. Anti-Terrorism Task Forces (ATTF)

After the events of September 11, 2001, each USA was ordered by Attorney General Ashcroft to form an Anti-Terrorism Task Force (ATTF). The ATTF is another example of the importance of combining the law enforcement leader role and the community leader role. The ATTF's primary purpose is to integrate and further coordinate anti-terrorism activities in the field with the community outreach components.

The ATTF's purpose is one of information dissemination, and it is intended to be the primary conduit for information between federal law enforcement and our local and state partners. One way to ensure a strong community partnership is for the ATTF to establish defined coordination with the governor of each state, as well as the mayors of all major cities in our districts. The ATTFs also provide the opportunity for the USAOs to reach out to the leaders of the state's utilities, hospitals, and emergency organizations such as the American Red Cross to ensure that there is coordination in the event of a terrorist attack. Through the work of the ATTF, we identify our most vulnerable geographic and critical infrastructures, and are given the opportunity to learn which officials are in charge of these sites. If this type of community outreach is started long before a terrorist attack, the role of the USAO will become much clearer if a disaster strikes.

The USA has the ability through the ATTFs to develop a working relationship with elected officials prior to a catastrophic event. This relationship is critically important according to trainers in emergency preparedness. In the event of an attack or mass disaster, the citizens of America should see a united front from their federal, state, and local government leaders. Relationships count and if terrorists attack American soil again, the USA, through the ATTF, has established plans in place to communicate and to respond to future acts. Reaching out to the community, particularly other government leaders, through our ATTFs should be a foregone conclusion.

V. Office of Justice Programs and Grants

There is little written in the United States Attorney's Manual about the Office of Justice Programs (OJP). *See* USAM 1-2.305. Why is it important to have a working knowledge of OJP and the grant opportunities that OJP offers to our local and state partners? USAOs are viewed in many communities as the "voice" of the Department of Justice. Many of our local and state law enforcement partners rely heavily on grants from the Justice Department to fund equipment, new hires, technology, overtime projects, and even their community policing efforts. It is common for a police department to ask USAOs about the Local Law Enforcement Block Grants, Weed & Seed grants, or PSN grants. Local law enforcement view the USAs as being "in the know" about government funding opportunities. If your office is able to assist local law enforcement with grant issues, which may be as simple as pointing them in the right direction for a contact person, those law enforcement agencies will view your actions as a sign of true partnership and commitment.

The Office of Justice Programs provides federal leadership in developing the nation's capacity to prevent and control crime and delinquency, improving the criminal and juvenile justice systems, increasing knowledge about crime and related issues, and assisting crime victims. The Assistant Attorney General and five bureau heads work together with line staff to ensure that OJP policies and programs reflect the priorities of the President, the Attorney General, and Congress. For a thorough overview of OJP

and to learn more about the five bureaus--Bureau of Justice Assistance (BJA), Bureau of Justice Statistics (BJS), National Institute of Justice (NIJ), Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Office of Victims of Crime (OVC), go to http://www.ojp.usdoj.gov. The website also describes the other offices which administer major programs: Corrections Program Office (CPO); Drug Courts Program Office (DCPO); Violence Against Women Act Office (VAWO); Office of State and Local Domestic Preparedness Support (OSLDPS); Office of Police Corps and Law Enforcement Education (OPCLEE); American Indian Alaskan Native Affairs Office (AI/AN); and Executive Office for Weed and Seed (EOWS).

It is helpful to our local partners when USAOs understand the difference between the types of funding available through OJP and publicize grant opportunities to our partners. There are two main categories: formula grants and discretionary grants. Formula grants are awarded to state and local governments based on a predetermined formula that might be based upon a jurisdiction's crime rate, population, or other factors. Discretionary grants are awarded on a competitive basis to public and private agencies and private non-profit organizations. There are strict deadlines for the grant opportunities so forwarding information to our local partners as soon as we receive notification is great outreach.

The Victim Assistance and Victim Compensation grant programs are funded through the Crime Victims Fund, which is derived from fines, penalty assessments, and bail forfeitures collected from federal criminal offenders, not from taxpayers. The United States Attorneys' Community Page is another website with helpful community information. It states, "Over the past three years, the $1.6 billion deposited into the Crime Victims Fund has been returned back to communities in the form of much needed community outreach programs and support." The financial litigation units (FLUs) of USAOs are to be commended for their hard work and dedication in securing additional funds from criminal defendants to ensure our victims are receiving some compensation for their suffering.

LECCs and Victim Witness Coordinators are on the front lines of the grant work in USAOs. It is beneficial to our state and local partners if our LECCs and Victim Witness Coordinators are knowledgeable about the grants process. One of their responsibilities should be to share grant information with respective community and local government partners, either through newsletters, e-mail communication, or during public speaking engagements.

USAs receive copies of Grant Award Announcements from the OJP's Office of Congressional and Public Affairs on a regular basis. Depending upon the nature of the grant, the amount of the grant and, particularly, if it is funding a district priority, the USA may choose to issue a press release or even hold a press conference to announce the grant award. This should be coordinated with the Office of Congressional and Public Affairs. There are tremendous benefits to everyone involved--the grant recipients are receiving much needed resources for promising programs, and the Department of Justice is able to extol the virtues of effective crime prevention programs and demonstrate a true commitment to our state and local partners.

VI. Conclusion

It is the hope of the LECC/VW/Community Issues Subcommittee of the AGAC that USAs and those who work in USAOs will view the role as law enforcement leader and community leader as one and the same. We have been given the tools, the privilege, and opportunity to truly make a difference. Will we?❖

ABOUT THE AUTHOR

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An Update on Restitution Issues

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I. Brief summary of the MVRA and subsequent restitution legislation

The Mandatory Victims Restitution Act of 1996 (MVRA) was the most significant change to the federal restitution statutes since the Victim Witness Protection Act of 1982 (VWPA), which it amended. The MVRA was actually Title II of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

The MVRA was effective April 24, 1996. Its enactment clause stated that it "shall, to the extent constitutionally permissible, be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act [April 24, 1996]." Section 211 of Pub.L. 104-132. Most circuits and Department of Justice policy agree that any substantive provisions of the MVRA, i.e. those that would make the amount of restitution imposed larger, are applicable only to offenses completed on or after the date of enactment of the Act, while all procedural provisions are applicable to convictions on or after the enactment of the Act. *See, e.g., U.S. v. Siegel*, 153 F.3d 1256 (11th Cir. 1998). However, in the Seventh and Tenth Circuits, the entire Act is

effective to all convictions after its enactment, because those circuits find that the MVRA is primarily compensatory rather than punitive in nature, and thus exempt from any restrictions of the ex post facto clause. *See, e.g.*, *U.S. v. Newman*, 144 F.3d 534 (7th Cir. 1998); *U.S. v. Nichols*, 169 F.3d 1255 (10th Cir. 1999).

As for imposition and enforcement, the MVRA significantly amended the primary restitution statutes of the VWPA, 18 U.S.C. §§ 3663 and 3664 (all § symbols refer to Title 18 unless otherwise indicated), and particularly enlarged the provisions in § 3664. New § 3664 provisions include those regarding the postsentencing discovery of new losses, delay of the determination of restitution for ninety days, and third party victim-compensation provisions. The MVRA also amended the debt collection statutes, §§ 3572-3574 and 3612-3615, to make them equally applicable to collection of restitution and fines, and clarified that a restitution order lasts the later of twenty years from judgment or release from imprisonment (§ 3613(b)). The Department also began a policy of collecting restitution for private victims in the wake of the MVRA, which has widened the responsibility of the Financial Litigation Units substantially.

The MVRA added other provisions that would result in a greater amount of restitution being imposed than before. Most obviously, it created new § 3663A, which mandates restitution for most federal crimes (i.e. violent crimes and Title 18 property crimes). The MVRA also provided, for the first time, a definition of a victim: a person "directly and proximately harmed" by an offense, for both discretionary (§ 3663) and mandatory (§ 3663A) restitution. This may eventually change slightly the analysis of the scope of harm for an offense, with its reference to the concepts of "proximate cause" and "reasonably foreseeable" harm. The MVRA did not, however, change the listing in § 3663 (and replicated into new § 3663A) of harms that are compensable with restitution. (Physical injury thus may still be required for psychological treatment to be compensable - unless courts conclude such harms are "proximately" caused, or otherwise compensable under § 3664(f)(1)(A), as discussed below.)

Perhaps the most significant amendment to the restitution statutes in MVRA was the addition to § 3664 of a phrase that previously had only occurred in mandatory restitution statutes for specific Title 18 offenses. The MVRA added § 3664(f)(1)(A), that provides: "In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant," (emphasis added). Prosecutors should urge courts to utilize this provision in supporting restitution orders.

There have been some statutory amendments regarding restitution since the MVRA. In 1998, Congress passed the Deadbeat Parents Act of 1998, that amended the Child Support Recovery Act, 18 U.S. C. § 228, to clarify the mandatory nature of restitution for past due support obligations (it changed the outdated reference to § 3663 to § 3663A). In 2000, Congress added a few mandatory restitution provisions for specific offenses: § 1953 for human trafficking; and 21 U.S.C. §§ 853(q) and 856 for methamphetamine and other drug labs (see each provision for varying descriptions of the kinds of restitution authorized).

II. Two distinctly different types of restitution orders

There are two "types" of restitution orders: that which is imposed as a separate sentence (with a life of its own), and that which is imposed *only* as a condition of supervision (with a life coexistent with supervision by the court).

A. Restitution imposed as a separate sentence

There are several ways statutory language confirms that restitution imposed pursuant to a restitution statute is a separate sentence.

Restitution is "in addition" to the rest of the sentence, pursuant to 18 U.S.C. § 3663(a)(1)(A). It is a final sentence under 18 U.S.C. § 3572(c), and the defendant is "sentenced" to pay a fine or other monetary penalty, including restitution, pursuant to various provisions, including 18 U.S.C. § 3571(a). Case law confirms that the obligation to pay restitution is separate from the existence of a term of supervision. *See, e.g.*, *U.S. v. Rostoff*, 164 F.3d 63 (1st Cir. 1999).

Mandatory restitution is when the court must impose restitution for the full amount of harm to identifiable victims of the offense, without consideration of the defendant's ability to pay. Mandatory restitution is required for the offenses listed in 18 U.S.C. § 3663A(c) (crimes of violence as defined in 18 U.S.C. § 16; tampering with consumer products under 18 U.S.C. § 1365; and all property offenses under Title 18). Restitution is also mandatory for specific offenses: sexual abuse (18 U.S.C. § 2248, for offenses at 18 U.S.C. §§ 2241-2245); sexual exploitation of children (18 U.S.C. § 2259, for offenses at 18 U.S.C. §§ 2251-2258); domestic violence (18 U.S.C. § 2264, for offenses at 18 U.S.C. §§ 2261-2262); telemarketing fraud (18 U.S.C. § 2327, for offenses at 18 U.S.C. §§ 1028-1029 and 18 U.S.C. §§ 1341-1345); child support cases (18 U.S.C. § 228); peonage, slavery, and human trafficking (18 U.S.C. § 1953, for offenses in Title 18, chapter 77); methamphetamine labs (21 U.S.C. § 853(q)); and drug manufacturing operations (21 U.S.C. § 856). Some of the specific-offense restitution statutes contain their own listing of what kinds of harms are compensable as restitution.

Discretionary restitution is a sentence of restitution for which the court must consider both the harm to the victims of the offense and the defendant's financial resources, in deciding whether to impose restitution (18 U.S.C. § 3663(a)(1)(B)(i)). However, if the court decides to impose restitution, it should be imposed for the "full amount of the victims' harms," just as for mandatory restitution (18 U.S.C. § 3664(f)(1)). The following offenses, listed in 18 U.S.C. § 3663(a)(1)(A), are eligible for discretionary restitution: all Title 18 offenses *not* listed in § 3663A; drug offenses, with or without identifiable victims; and air piracy under Title 49.

B. Restitution imposed solely as a condition of supervision

Although *any* restitution sentence imposed pursuant to a restitution statute is a mandatory condition of probation (18 U.S.C. § 3563(b)(2)) and a discretionary condition of supervised release (18 U.S.C. § 3583(d)), restitution may be imposed solely as a condition of supervision. This is available for *any* offense, but should only be utilized where a sentence of restitution is not otherwise available. For example, Title 31 offenses are not listed as being eligible for restitution to be imposed as a sentence under any restitution statute. Restitution could, however, be imposed solely as a condition of supervision for these offenses. *See, e.g.*, *U.S. v. Dahlstrom*, 180 F.3d 677 (5th Cir. 1999); *U.S. v. Bok*, 156 F.3d 157 (2d Cir. 1998).

The statutory authorization of such restitution states: "The court may provide, as further conditions of a sentence of probation ... that the defendant ... (2) make restitution to a victim of the offense under section 3556 (*but not subject to the limitation of section 3663(a) or 3663A(c)(1)(A)*). . . ." 18 U.S.C. § 3563(b)(2)(emphasis added). "Discretionary conditions" of probation are cross-referenced at 18 U.S.C. § 3583(d) as a discretionary condition of supervised release. The excepted provisions pertain to offenses eligible for discretionary and mandatory restitution sentences.

Such restitution is discretionary, in that the defendant's finances are a consideration, and it must otherwise conform to criteria for restitution regarding victims and harms, i.e., it must be imposed for harm caused by the offense to victims of the offense, for harms that are statutorily

compensable as restitution. *See, e.g., U.S. v. Cottman*, 142 F.3d 160 (3d Cir. 1998); *U.S. v. Khawaja*, 118 F.3d 1454 (11th Cir. 1997).

Again, this kind of restitution should only be imposed where the offense of conviction is not eligible for restitution as a separate sentence, because the obligation to pay such restitution expires with the supervision term.

III. How long do restitution orders last, and who enforces them?

A. Restitution imposed as a separate sentence

For all restitution sentences imposed post-MVRA (i.e. convictions on or after April 24, 1996), it is undisputed that the restitution obligation lasts for the later of twenty years or twenty years after release from imprisonment, based on the following two statutory provisions (as well as the repeal of 18 U.S.C. § 3663(f)): (1) 18 U.S.C. § 3664(m)(1)(A)(i), which is substantially the same as the (repealed) pre-MVRA provision 18 U.S.C. § 3663(h)), and provides: "An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or (ii) by all other available and reasonable means;" and (2) 18 U.S.C. § 3613(b), unchanged by the MVRA, which is in the part of Title 18 referenced above (subchapter B of chapter 229), that provides: "The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined." This is applicable to restitution as well, pursuant to 18 U.S.C. § 3613(f). The MVRA also removed a source of previous confusion on the life of a restitution order (see below) by repealing former § 3663(f).

In most circuits, the result is the same for pre-MVRA sentences (i.e. convictions prior to April 24, 1996), based on (now repealed) 18 U.S.C. § 3663(h): "An order of restitution may be enforced (1) by the United States (A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of this title; or (B) in the same manner as a judgment in a civil action." *See e.g.*, *U.S. v. Rostoff*, 164 F.3d 63 (1st Cir. 1999); *U.S. v. Berardini*, 112 F.3d 606, 611 (2d Cir. 1997); *U.S. v. Payan*, 992 F.2d 1387 (5th Cir. 1993). However, there were a few cases in the 4th, 6th, and 10th circuits that were sometimes interpreted to hold that restitution expired at the end of supervision or in five years, based on (now repealed) 18 U.S.C. § 3663(f). *See U.S. v. Diamond*, 969 F.2d 961, 969 (10th Cir. 1992); *U.S. v. Joseph*, 914 F.2d 780, 786 (6th Cir. 1990); *U.S. v. Bruchey*, 810 F.2d 456, 459-60 (4th Cir. 1987).

When restitution is imposed as a separate sentence, it can be enforced during incarceration of the defendant by the Bureau of Prisons' case manager (through the Inmate Financial Responsibility Program), by the Financial Litigation Unit (FLU) of the U.S. Attorney's Office, and by the court. During supervision, it can be enforced by the probation officer (on behalf of the court), by the FLU, and by the court. After supervision, it can be enforced by the FLU and by the court.

B. Restitution imposed solely as a condition of supervision

Restitution imposed only as a condition of supervision necessarily expires with the supervision term. Note, however, that such restitution should not be terminated whenever the supervision is modified, extended, or vacated and reimposed, and the court should rearticulate the obligation to pay restitution for clarification purposes at such proceedings. When restitution is imposed solely as a condition of supervision, it can be enforced only during the period of supervision, by the probation officer (on behalf of the court), the FLU, and by the court.

IV. Selected case law update

More cases join the landslide prohibiting "delegation" to the probation office of the responsibility of setting a payment schedule and/or requiring that the court set a payment schedule for the payment of restitution or fines: *U.S. v. Davis*, 306 F.3d 398, 424-26 (6th Cir. 2002) (*but see Weinberger v. U.S.*, 268 F.3d 346 (6th Cir. 2001), *contra*, for pre-MVRA cases); *U.S. v. Overholt*, 307 F.3d 1231, 1255-56 (10th Cir. 2002); and *U.S. v. Prouty*, 303 F.3d 1249 (11th Cir. 2002). [*Note*: Hopefully, Congress will eventually amend 18 U.S.C. §§ 3572 and 3664 to reverse these unintended consequences of the MVRA that only make enforcement by the government (and during incarceration) much more difficult.]

Interesting case analyzing who is a "victim" of a bank robbery: In *U.S. v. Moore*, 178 F.3d 994 (8th Cir. 1999), the court held that a bank customer (who did not lose money or suffer bodily injury in the bank robbery) was nonetheless a "victim" due to his proximity to the teller being robbed, and having "looked down the barrel of a gun." The customer's victim-status authorized the court's order of restitution to pay for the customer's expenses in participating with the investigation and prosecution of the case under 18 U.S.C. § 3663A(b)(4).

Welcome (and rare) case on what measures the court can use to order payment of restitution: In *U.S. v. Gallant*, 306 F.3d 1181 (1st Cir. 2002), the court upheld the district court's order that a condition of defendant's supervised release be that the defendant surrender certain assets to the government to be sold for payment of the restitution imposed. The defendant had argued that the order was an unlawful forfeiture, especially given that government agencies were victims in the case. [*Note:* A strong plea agreement, in which the defendant agreed he owned certain assets and would take steps to make those assets available for restitution, probably helped support the order. Such an agreement would assist later enforcement, where known assets exist at the time of the plea.]

Recent, continued confirmation that restitution cannot be challenged on a 28 U.S.C. § 2255 motion can be found in *U.S. v. Thiele*, 314 F.3d 399 (9th Cir. 2002).

V. Q & A's on miscellaneous restitution issues

Q. Under what circumstances, and authority, might the court increase the amount of restitution imposed after sentencing?

A. The court might do so if it finds that a victim has discovered a new loss and had sufficient reason for not raising it at sentencing, pursuant to 18 U.S.C. § 3664(d)(5).

Q. Who can notify the court of a material change in the defendant's circumstances? Who has the responsibility to do so?

A. The defendant, the government, or the victim may notify the court. The defendant has the responsibility to do so, all pursuant to 18 U.S.C. § 3664(k).

Q. Under what circumstances, and authority, can restitution be imposed after sentencing?

A. Restitution can be imposed after sentencing pursuant to a ninety-day continuance under 18 U.S.C. § 3664(d)(5).

Q. Could restitution be imposed for a violation of supervision? Why or why not?

A. No, because a violation of supervision is not an "offense" for which restitution is statutorily authorized.

Q. Under what authority can the court require the defendant to disclose assets not owned by the defendant, or assets owned by other family members, and for what purposes?

A. The defendant must disclose (and the court must consider) the defendant's "resources," to include "*assets owned or controlled by the defendant*," under 18 U.S.C. § 3664(d)(3), and any "*assets ... jointly controlled*" by the defendant, under 18 U.S.C. § 3664(f)(2)

(emphasis added). This disclosure is relevant to determining some monetary penalties and to the manner of payment of all monetary penalties (presumably at any time).

Q. Under what authority can a court order payment toward restitution or a fine of any large amounts of funds made available to a defendant during his or her incarceration, and when might the court enter such an order?

A. Title 18 § 3664(n) authorizes such an order at any time during incarceration or, presumably, even afterward if that is when the court learns of the receipt of assets.❖

ABOUT THE AUTHOR

❑**Catharine M. Goodwin**, prior to becoming an attorney-advisor for the EOUSA, was an Assistant General Counsel with the Administrative Office of the U.S. Courts for eight years. There she wrote on criminal issues, trained probation officers, and helped to staff a Judicial Conference Committee of federal judges. She developed a specialty in restitution, and has written and trained widely on restitution for the past five years. She now works primarily on restitution issues through the EOUSA. Prior to working with the courts, she was a criminal division AUSA for ten years in the Districts of Colorado and Northern California.

Project Safe Homes: An Opportunity to Focus on Domestic Violence Using Federal Law

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I. Introduction: Project Safe Neighborhoods comes to Northern West Virginia

Project Safe Neighborhoods (PSN) is, at least to some extent, patterned after successful local programs like *Project Exile* in Richmond, Virginia, which is designed for more urban types of gun crime: street gangs, gun wielding drug dealers, drive-by shootings, and street crime in general. Indeed all of those issues are national problems and PSN is a carefully and thoughtfully designed program which should make our cities' neighborhoods safer. While PSN may have had its origins in local urban programs like *Project Exile*, one of the advantages of PSN is the ability of the U. S. Attorney in each of the ninety-four districts to tailor the program to the needs of the district each serves.

The Northern District of West Virginia is different. We have no big cities. The largest city in the district, Wheeling, has fewer than 35,000 people. Consequently, although we do have pockets of drug activity which sometimes produce violence, we do not have the degree of gun and drug problems more often associated with more populated areas.

The general crime rate in our state, including the Northern District, is relatively low. For example, in *Crime in the United States 2001*, published by the Federal Bureau of Investigation, West Virginia ranks in the bottom ten states in the

murder rate and the bottom fifteen in violent crime. The high quality of life in West Virginia is substantially enhanced by the fact that the crime rate is low. However, in spite of the low overall crime rate, the rate of the incidence of domestic violence in our state, including our district, is among the highest in the nation according to a recent study by the Centers for Disease Control, Surveillance for Homicide Among Intimate Partners – United States, 1981-1998 (October 12, 2001). Victim advocates estimate that ninety-five percent of victims of domestic violence are women.

I have had the opportunity to talk personally with almost all of the law enforcement agency heads in our district, including every sheriff and many of the police chiefs in the thirty-two counties of the Northern District of West Virginia. Local law enforcement is inundated with calls for domestic violence incidents. As one police chief said, "Our streets are really pretty safe; it is our homes where the violence is." One sheriff estimated that seventy percent of his department's time was spent on domestic calls.

Obviously domestic violence is dangerous and distressing for the victims. However, it is also very hazardous to the law enforcement officers who respond to the calls. This danger was tragically illustrated in October, 2002, when a West Virginia State Trooper, responding with three other troopers to a domestic violence call, was shot in the head and nearly killed.

Once we identified domestic violence as a serious law enforcement issue in our district, it was necessary to assess the resources available in order to design a strategy to address it through PSN. A portion of this assessment came from the culture of our state itself.

II. *Montani Semper Liberi*

The State motto of West Virginia is "*Montani Semper Liberi*": Mountaineers are Always Free. In the view of many West Virginians, an important part of that treasured freedom is a belief in the right to keep and bear arms. Indeed, firearms ownership is an integral part of the unique culture of West Virginia. West Virginian's National Rifle Association estimates that about eighty-five percent of West Virginia households have firearms of some kind. Although our citizens own guns for many reasons, hunting is also an important part of West Virginia culture. One of the most anticipated times of the year in our state is Thanksgiving week deer-hunting season. West Virginia has the highest percentage of hunters, per capita, in the country.

This cherished right to own guns brings with it a familiarity and respect for firearms that is instilled in many West Virginians beginning at a very young age. The result is that a substantial portion of West Virginia youth know how to handle, use, and clean, firearms safely and appropriately at a relatively young age.

Recognizing these important West Virginia cultural attitudes will play an important part in designing the deterrent element of Project Safe Homes (PSH), as will be discussed below. However, we recognized early on that, because of those attitudes, there might be a fine line between law abiding gun owners either supporting this program or being hostile to it. PSH is not gun control, but crime control. Therefore, we sought and received the endorsement of PSH by West Virginia's National Rifle Association.

Gun control advocates often call for tougher laws, potentially impacting law-abiding gun owners, as a result of the activities of individuals committing crimes with guns. PSN and PSH actually seek to serve law-abiding gun owners, as well as all citizens, by cracking down on those who commit crimes with guns. No new gun laws have been passed or proposed as a result of PSN or PSH. Instead, these programs seek to marshal new and existing resources in an effort to enforce existing law.

III. Federal law and domestic violence

A. Firearm statutes relating to domestic violence

Title 18, United States Code, Section 922(g), makes it unlawful for any person -

* * *

(8) who is subject to a court order that -

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

A person falling under either subsection (g)(8) or (g)(9) (or any of the other seven subsections of Section 922(g)) is subject to a firearms disability. For persons subject to such a firearms disability, possession of firearms is a federal felony and brings penalties identical to those for felons in possession. Both subsections (g)(8) and (g)(9) have been held to be constitutional. *United States v. Bostic,* 168 F.3d 718, 722-24 (4th Cir. 1999) (upholding constitutionality of Section 922(g)(8)); *United States v. Mitchell,* 209 F.3d 319, 322-24 (4th Cir. 2000) (upholding constitutionality of Section 922(g)(9)).

Perhaps the most significant difference between subsections (g)(8) and (g)(9) is the duration of the disability. Like a convicted felon, a person convicted of a misdemeanor crime of domestic violence incurs a lifetime firearms disability. On the other hand, subsection (g)(8) applies to persons who are "subject to a court order", indicating a present disability which is dependent upon the existence of a qualifying protection order, lasts only during its pendency, and ends when the order is no longer in effect.

Each of the disabilities related to domestic violence is subject to various noteworthy qualifications and issues.

Section 922(g)(8)

In order for the protection order to qualify under Section 922(g)(8), it must meet several conditions. First, the order must have been issued after the defendant had actual notice of a hearing and an opportunity to participate in that hearing. 18 U.S.C. § 922(g)(8)(A). Thus, the notice must actually be given but the defendant's participation in the hearing is not necessary. All that is required is that the defendant have the opportunity to participate and that the hearing be held.

Second, the order must contain language restraining the one or more of the enumerated behaviors in Section 922(g)(8)(B) and either the finding set forth in subsection (g)(8)(C)(i) or the prohibition found in subsection (g)(8)(C)(ii), *supra*. The language in the order need not be identical to the statutory language. *See Bostic,* 168 F.3d at 722 ("The Order's directive that Bostic 'shall refrain from abusing . . . .' unambiguously satisfies subsection (C)(ii)'s requirement that the court order prohibit the use, attempted use, or threatened use of physical force.")

As used in Section 922(g)(8), an "intimate partner" means a current or former spouse, a person with whom the defendant has a common child or a person with whom the defendant has, at

any time, cohabited. 18 U.S.C. § 921(a)(32).

Most protection orders are entered by state courts. In West Virginia, there is a Family Court system and the protection orders are forms approved by the West Virginia Supreme Court of Appeals. Although not required for the application of Section 922(g)(8), it is helpful if an otherwise qualifying protection order contains a warning about the federal firearms disability. While ignorance of the law is no excuse, it makes a plausible argument for jury nullification.

Finally, Section 922(g)(8) does not apply to law enforcement or military personnel in possession of government issued firearms while they are on official duty. 18 U.S.C. § 925.

Section 922(g)(9)

A "misdemeanor crime of domestic violence" is an offense which is a misdemeanor under either federal or state law and

> has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

18 U.S.C. § 921(a)(33)(A)(ii). Interestingly, the class of potential victims under subsection (g)(9) is broader than under (g)(8) in that it includes children.

It has been held that convictions occurring prior to the enactment of Section 922(g)(9) are valid predicates to its application. *United States v. Mitchell,* 209 F.3d 319, 322-23 (4th Cir. 2000). The possession must simply occur after the conviction.

The defendant need not be convicted of a crime called "domestic violence". Instead, the crime of conviction must include, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, which was committed against one of the specified classes of persons as a factual matter. For example, the First Circuit upheld the use of a misdemeanor conviction for general assault and battery as a predicate for prosecution under Section 922(g)(9), even though the statute did not require a relationship between the parties. *United States v. Meade,* 175 F.3d 215, 219 (1st Cir. 1999).

There are several qualifications to such a misdemeanor conviction of domestic violence. The defendant must have had counsel or knowingly and intelligently waived the right to counsel. 18 U.S.C. § 921(a)(33)(B)(i)(I). Further, the person must have been convicted by a jury or knowingly and intelligently waived the right to a jury trial as a result of a guilty plea or otherwise. However, the jury trial requirements apply only to convictions in jurisdictions where the defendant was entitled to a jury trial for such an offense. 18 U.S.C. § 921(a)(33)(B)(i)(II). Finally, a conviction will not qualify if it has been expunged, set aside, pardoned, or the person's civil rights have been restored, unless the expungement or other such document specifically maintains the firearms disability. 18 U.S.C. § 921(a)(33)(ii).

There is no exception to the application of Section 922(g)(9) for law enforcement or military personnel.

B. Other legal issues and resources

Although they are no firearms statutes per se, there are other federal laws relating to domestic violence which we expect will form the basis of prosecution under PSH. These statutes proscribe interstate domestic violence, 18 U.S.C. § 2261, interstate stalking, 18 U.S.C. § 2261A, and interstate violation of a protection order, 18 U.S.C. § 2262. The aforesaid statutes are particularly useful in border areas of states and especially in northern West Virginia, where we have two "panhandles" or narrow areas bordered by at least two other states.

Be careful with the definitions of the terms "firearms" and "interstate", in the various federal domestic violence statutes, as they often have different definitions statute to statute or even subsection to subsection.

Finally, although the foregoing firearms and interstate domestic violence statutes are the primary legal tools for PSH, they are not the only laws under which charges may or will be brought within this program. We will prosecute other types of charges, especially firearms violations, even when these statutes are not applicable, if there is a domestic violence context to the case. We are also mindful of the priorities of the Attorney General for *Project Safe Neighborhoods* and recognize that there are other firearms crime issues in our jurisdiction, including trafficking. Therefore, domestic violence cases are the primary, but not exclusive, focus in PSH, and we are certainly committed to prosecuting other types of firearms cases as they arise, including felons in possession, stolen firearms, Section 924(c) cases, and cases arising from false applications for firearm purchases that are forwarded to the National Instant Check System, among others.

IV. The role of the victim advocate

Because domestic violence is such a complex issue, the role of the domestic violence victim advocate is crucial. Victim advocates are trained in the dynamics of violent relationships, and therefore, are empathetic, and well equipped to assist with the various emotional issues with which the victim is faced. Often victim advocates become the support system that a battered woman may not have from her family or friends.

Victim advocates assist the victim in dealing with the court system, including providing assistance with completing paperwork necessary for obtaining protection orders. They often attend hearings with victims who may otherwise be too intimidated to attend, knowing their abuser will be present.

Victim advocates are extremely knowledgeable of the various resources available to battered women, and when the victim becomes more knowledgeable, they become more empowered. This knowledge may assist them in their attempt to leave the abusive relationship. It may also assist them in reaching out to entities and programs they never even knew were available to provide assistance.

We provide training to the victim advocates in our district to better apprise them of federal law, heighten their awareness of PSH, and assist them in case development and referral for federal prosecution. Training victim advocates has a direct impact on victims of domestic violence. A victim advocate working at a domestic violence shelter in rural West Virginia states, "Project Safe Homes has brought awareness and attention to the firearms issue with advocates and victims."

Project Safe Homes is designed to be, among other things, a useful tool in reducing many of the obstacles victims face when leaving a violent relationship. The fear of retaliation can be lessened when the victim knows that if their abuser has been convicted of domestic violence or is under a qualifying order of protection, and possesses a firearm, they face significant time in prison.

Finally, it is extremely helpful to PSH that our office has a former victim advocate serving as Victim/Witness Coordinator. Her background and skills have been very helpful in working with victims, some of whom are reluctant to participate in a criminal proceeding. Moreover, she has been very helpful in building bridges from an office filled with prosecutors to the world of victim advocates and social workers. Building relationships between such diverse groups is the essence of effective partnerships.

V. Project Safe Homes: The two-fold strategy

The essential PSH strategy is built upon prosecution and outreach. As was demonstrated in *Project Exile*, the two approaches complement one another and the two operating together are more effective than either individually.

Internally, our office instituted new firearms prosecution guidelines which provide for a broad range of prosecutions, and a limited range of cases for declination. PSH involves a commitment from the outset to vigorously prosecute firearms cases, particularly those directly or indirectly related to domestic violence. PSH will include prosecutions under the statutes discussed above, and it will also include prosecution of cases where there is a domestic violence context to the case, but where the only charges available are not related to domestic violence. For example, officers may respond to a domestic violence call and the investigation may reveal that the perpetrator had a firearm and a dishonorable discharge from the military, a prohibition under Section 922(g)(6). Under PSH, we would treat this case as a domestic violence case and prosecute it.

Of course, our office cannot prosecute cases without our law enforcement partners. As is the case nationwide, our federal partner is the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). It is important to recognize the effort of the ATF in the development and implementation of PSH. The ATF leadership in the Louisville Field Division and within our district embraced the program and purposes of PSH, and they have worked tirelessly to investigate a greater volume of cases as a result of PSH. The cooperation and assistance of state and local law enforcement, by referring cases and working with us for prosecution, is essential to this effort. Therefore, we have gone to considerable lengths to reach out to state and local law enforcement in order to let them know that this program is a priority and that it offers substantial opportunities to get offenders off the street and behind bars. We have already begun providing training to local law enforcement on PSH and federal firearms laws. We will continue to provide that training in both group meeting and roll call settings.

We have made a special effort to reach out to domestic violence shelters and advocacy groups to assist us in this program. There are seven active domestic violence programs providing various services to victims in our district. At the state level, the directors of each of these programs sits on the board of directors of the West Virginia Coalition Against Domestic Violence (Coalition), an organization whose functions include supporting the local programs by providing various forms of assistance, as well as governmental relations. Because these local programs often are the first contact the victims have with the combined criminal justice and victim services system, they are in a unique position to assist in PSH.

All of these efforts are designed to raise awareness of the existence of the federal laws, our willingness to vigorously prosecute cases under those laws, and the potential penalties, in order to encourage referral of appropriate cases for federal prosecution through PSH.

Our efforts at increased prosecution are already producing results. In 2002, our office doubled the number of defendants indicted on firearms charges in 2001. However, we recognize that increased prosecution is but one very early indicator in this type of program, and demonstrates only that a serious commitment has been made by our office. Ultimately, the goal is to reduce the overall incidence of domestic violence and gun crime in our district. The strategy for the accomplishment and measurement of that goal will be designed in the near future by the West Virginia Statistical Analysis Center, the Research Partner grantee for our program.

The second part of our strategy is outreach to the community. Our Community Outreach grantee, not surprisingly, is the Coalition. We have developed a good working relationship with the Coalition and its Team Coordinator, Sue Julian. The Coalition has hired a public relations firm to assist in refining our message and, importantly, developing the best means by which to get that message out.

The overall outreach strategy is currently in development, but the essential message will be:

"If you beat your wife or girlfriend, you will lose your guns, all of them, for life." In West Virginia, the prospect of losing one's guns has the potential to be a powerful deterrent, and is designed to have the effect, combined with the substantial threat of prosecution, of preventing at least some potential domestic violence incidents.

In the end, the goal of *Project Safe Homes* is to demonstrably reduce domestic violence and gun crime in the Northern District of West Virginia and thereby make the lives of women and children, the work of police officers, and the homes of the district safer.❖

Special thanks to AUSA Margaret Groban of the District of Maine for her assistance in the preparation of Section III of this article.

ABOUT THE AUTHOR

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Effective Management of Large Victim Population Cases

Lisa Diaz
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I. Introduction

Computers, the internet, e-mail, cell phones, and other technological advances, have succeeded in making our lives easier and our workers more efficient, but have also unintentionally created a medium in which criminals can reach large groups of victims with the stroke of a key. Large scale fraud cases are complicated enough without having to deal with the multitude of issues that arise when the victim population consists of hundreds or thousands of people who reside throughout the country. However, careful planning and a coordinated multi-agency effort can avoid many of the cumbersome problems associated with large victim populations. The purpose of this article is to identify tools and

techniques that will aid in transforming a large victim case from an insurmountable challenge to a manageable task.

II. Starting out right

The keys to successfully managing a case with a large number of victims are organization and multi-agency cooperation in the early stages. Once a case has been identified as having the potential for a large group of victims, an initial planning meeting should be scheduled to discuss victim information that needs to be collected, notification responsibilities and methods, and other logistical details. The initial meeting should be attended by the Victim Witness Coordinators at the United States Attorney's Office, the case agents, and the Assistant United States Attorneys and paralegals assigned to the case. When possible the investigative agency Victim Witness Coordinator should be invited to attend. The agency Victim Witness Coordinator can be instrumental in the flow of information between the agencies. With the exception of the FBI, the victim witness duties within the investigative agencies are collateral. The victim witness liaison may be an agent or a Confidential Informant Coordinator, but regardless of the role played, this person can be instrumental in identifying the agency's resources that can assist with managing the case. One means of identifying the Victim Witness Coordinators at the various agencies is to implement a Victim Witness Task Force that is composed of the various federal agencies and their respective coordinators and hold periodic meetings, to address the need for accurate and comprehensive victim information.

The Department of Justice has created Victim Notification System (VNS), a nationwide application, designed to assist the Department in meeting victim notification requirements as provided by statute and the Attorney General Guidelines for Victim/Witness Assistance. Implementation of the VNS has facilitated the flow of victim information between the FBI and the United States Attorney's Office. Currently, the FBI is the only federal investigative agency that is linked to VNS. However, other agencies, such as the United States Postal Inspection Service and the United States Secret Service, also investigate cases involving large groups of victims on a regular basis. The goal is to collect the maximum amount of victim information without having any two agencies duplicate efforts. One way to efficiently gather information is to construct a questionnaire for victims that contains information for both investigative and prosecutorial purposes. It is important to obtain accurate and current victim information and loss amounts as early as possible in each case in order to avoid delaying restitution judgments, pre-sentence reports, and other important court deadlines. The collection of identifying information such as full names, dates of birth, social security numbers, addresses, and alternate contacts makes it easier to keep track of victims, even if the case takes a number of years to prosecute. The initial strategy meeting's agenda should address the following issues:

- What type of information needs to be collected? For example, the broker who sold the investment, the age of the victim, the loss amount, how they heard about the investment, insurance claim information, claim or file numbers, and any income they received during the course of their investment.
- What type of system, in addition to VNS, may be used to manage the data collected? For example, the Access database system allows the user to create a customized database that can do complicated calculations and query a variety of information. Access can generate labels and is compatible with VNS and other accounting programs.
- Who will be responsible within the United States Attorneys' Office for maintaining the victim information over the course of the case once the addresses have been updated by the investigative agency? For example, will the Victim Witness Coordinator be solely responsible or will the case paralegal provide support?

III. Notification tools

The implementation of VNS has automated the United States Attorneys' Offices' notification procedures for a standard group of court events, such as trial dates, guilty pleas, and sentencing dispositions. VNS has the capability of providing notifications via fax, e-mail, incoming and outgoing phone calls, and letters. However, there will be instances when large fraud cases or identity theft cases require the dissemination of additional information that may be unique to the case and beyond the capabilities of VNS. Websites, print ads, and toll-free information lines, are just a few methods that should be considered when determining the most efficient way to disseminate information.

Most United States Attorneys' Offices have a website that can play a key role in circulating information to a large group. Since not everyone has access to the internet, this should not be the primary source of information, but it can be used to provide supplemental information to victims. A systems manager can create a victim notification section on the District's website where case updates can be displayed allowing victims to easily track the progress of the case. Additionally, links to other resources can be added to aid the victim in locating other pertinent information.

While not all victims may have access to computers, most people do have access to the newspaper. A large group of individuals may be notified by placing an advertisement in a nationwide publication, such as USA TODAY, though this may be cost prohibitive. If all the victims reside in one region, another option is to advertise in a local paper. This is a particularly beneficial way to reach victims if the defendant originally advertised in this medium to lure victims into a fraudulent investment.

Finally, toll-free information lines may be the most helpful tool a coordinator can employ to answer questions or concerns that victims may have regarding the case. The toll-free number can be provided to victims in the initial written correspondence as a way to obtain supplemental information not provided by VNS. An experienced coordinator will anticipate the standard types of questions asked by victims. This information is not traditionally included in a normal VNS letter and may result in the coordinator being inundated with calls. Some typical questions may include the following:

- ID Theft Victim - How did the defendant get my personal information?
- ID Theft Victim - Was my personal information given to other people?
- Fraud/ID Theft Victim - How many other victims were involved?
- Fraud/ID Theft Victim- Was there any money recovered?
- Fraud/ID Theft Victim - How did the defendant get caught?
- Fraud/ID Theft Victim - Is the defendant in custody?
- Fraud Victim - How did the scheme work?
- Fraud Victim - How long will it be before I get my money back?

Victims will often ask the same basic questions. Accordingly, messages can be placed on the information line that address these questions, leaving the coordinator free to deal with individual problems.

IV. Techniques for locating missing victims

It is not unusual for a complicated fraud case to take several years to prosecute. The address information that was submitted by the investigative agency at the inception of the case may no longer be valid due to victims who have relocated or who have died. Regardless of the numerous letters that request current contact information, victims may fail to notify the United States Attorney's Office of their current address. Subsequent mailings may be returned due to insufficient address information. Many of the search engines require additional identifying

information in order to verify that the correct person has been located. When using these systems, it is important to obtain additional verification from the individual in order to ascertain that he is indeed the person referenced on the victim list and not someone with the same name. Additional verification can be achieved by creating a form that requests that the located person confirm that he is a victim in the case and requires a copy of a photo ID and a signature on a notarized statement. There are a number of search programs that can assist in locating lost victims. These programs include, but are not limited to, ChoicePoint, Lexis-Nexis, and Postal Tracers.

ChoicePoint, formally know as CBD Infotek, is a search program that uses credit headers and other public record information to locate a person's last known address. The information is based on the address an individual used when he applied for credit. This information may include, but is not limited to, name, address, social security number, and previous addresses. There is no financial information contained in the search result. This system is user friendly and contains relatively current and accurate information. The only downside is, because the search is so thorough, it may be time consuming. However, ChoicePoint will accept a large victim list and perform address searches for a fee based on the number of victims. The list must be sent in Excel and will be returned in the same format.

Lexis-Nexis is a relatively quick system, which also uses credit headers and other public records. However, if an individual has moved extensively, another system should be used to verify that the information is current. Like ChoicePoint, this system is user friendly.

Finally, postal tracers may be another cost effective alternative for locating missing victims. A written request must be sent to the Postmaster located in the zip code where the victim last resided. The Postmaster will identify whether the victim's address is still current and if a forwarding address is on record, it will be provided to you by the Postmaster. Due to the time consuming nature of this process ChoicePoint or Lexis-Nexis may be better alternatives.

V. Additional resources

When dealing with large groups of fraud victims, it can be helpful to create an informational sheet of precautionary measures the victims can take to protect their credit in the future and to identify a specific problem that may have resulted from the crime being currently prosecuted. The Federal Trade Commission and the Internal Revenue Service each have websites to assist victims in locating relevant information and resources. Identity theft victims should be instructed to call all three credit bureaus and request a copy of their credit reports. They should then review the reports to verify that there are no credit card accounts that were opened without their knowledge. Victims should be advised to indicate that they are a possible victim of identity theft and there should be no charge for the reports. It is necessary to contact all three bureaus because different vendors subscribe to different bureaus. Victims should also be advised that they may want to place a fraud alert on their credit report. The alert will advise credit grantors to contact the victim prior to extending any new credit. If for some reason the victim would like to have this alert removed from his file, a written request will need to be submitted. The three major bureaus are listed below:

Trans Union
Fraud Victim Assistance Department
POB 6790
Fullerton, CA 92834
or simply call (800) 680-7289

Experian
Consumer Fraud Assistance Department
POB 1017
Allen, TX 75002
(888) 397-3742

Equifax
Fraud Assistance
POB 740256
Atlanta, GA 30374

(800) 525-6285

Victims should be informed that each Bureau intakes requests for credit reports differently. Trans Union has a department specifically established to deal with fraud victims. In cases where there are a large number of victims, TransUnion will create a customized Fraud Victim Authorization Form that is designed specifically to simplify the intake of the victim information.

VI. Conclusion

Cases involving large groups of victims are always a considerable undertaking. With organization and interagency cooperation the information management does not become overwhelming. It is crucial that victims receive the rights and information they are entitled to regardless of the number of other victims that are involved in the case.❖

ABOUT THE AUTHOR

❑**Lisa Diaz** has served as Victim-Witness Coordinator for the United States Attorney's Office in the Northern District of Illinois for the past five years. Lisa administers the Emergency Witness Assistance Program and provides assistance and support to victims of crime. During her tenure with the USAO, she has provided training to numerous federal law enforcement agencies and currently facilitates a Victim Witness Task Force comprised of representatives from investigative agencies, Bureau of Prisons, and Probation. Prior to her arrival in Chicago, Lisa worked as Victim Specialist for the National Center for Victims of Crime (NCVC), a national non-profit organization in Arlington, Virginia. At the NCVC, Lisa provided crisis intervention and referrals to victims, supervised a victim hotline, and coordinated statewide victim programs.✠

Law Enforcement Officers as Victims

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I. Introduction

All too often, police officers, whose daily duty is to serve and protect citizens to ensure that they do not become victims of crime, end up being victimized themselves. According to the National Law Enforcement Officers Memorial web site there are approximately 740,000 sworn law enforcement officers serving in the United States. Since the first recorded police death in 1792 of Deputy Sheriff Isaac Smith, there have been more than 15,000 law enforcement officers killed in the line of duty. "While progress in officer safety has been, and continues to be, a prime objective in law enforcement agencies, law enforcement clearly remains a high risk profession." U.S. DEP'T OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, IN THE LINE OF FIRE: VIOLENCE AGAINST LAW ENFORCEMENT 1(October 1997). This article gives an overview of the risks associated with being a law enforcement officer and describes the resources that are available to assist officers and their families.

II. Assaulted and killed law enforcement statistics

Law enforcement officers are assaulted and killed each year.

> The number of law enforcement officers feloniously killed in the line of duty was up 21.4 percent in 2000 as fifty-one officers were slain in 2000, and forty-two officers were killed in 1999. Thirteen officers were feloniously killed while responding to traffic pursuits/stops, twelve were killed in arrest situations, ten in ambush situations, eight while responding to disturbance calls, six while investigating suspicious persons/circumstances, and two while handling or transporting prisoners. Twenty-nine of the forty-seven officers feloniously slain with a firearm were wearing body armor. Twenty-five of the forty-seven officers who were killed with a firearm were within five feet of their assailant. Twenty-eight percent of the officers assaulted were injured. Personal weapons such as hands, fists, feet, etc. were used in 81.7 percent of the 56,054 assaults on law enforcement officers. Disturbance calls, including domestic complaints, accounted for 30.7 percent of the assaults.

U.S. DEP'T OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED Forward (2000).

Terrorism is another situation where law enforcement officers can be victimized. September 11, 2001, was the most devastating day in law enforcement history. Seventy-two officers were killed while responding to the terrorist attacks on America. This information was obtained from the National Law Enforcement Officers Memorial web site. But September 11 is not the only time that law enforcement officers have been injured by acts of terrorism. Detective Anthony S. Senft of the New York City Police Department became a victim of terrorism in December 1982. Detective Senft was severely injured while trying to render safe one of five bombs planted by a terrorist organization in New York City. He lost vision in one eye and has hearing damage, fractured his hip, and suffered post traumatic stress disorder. Detective Senft is the President of the Police Self Support Group which was founded in New York City in the fall of 1983, to assist severely injured police officers. Telephone Interview with Detective

Senft (May 2, 2002)

III. The Police Self Support Group

The Police Self Support Group is one of a number of important resources available to assist injured law enforcement officers and surviving family members. The Group began with approximately ten officers and, unfortunately, over time, has grown to over 150 members. The Group has helped police departments in many areas, such as Yorkshire, England and Suffolk County, New York, organize their own support groups. "The long term goal of the Police Self Support Group is to provide support and counsel to officers suffering from severe emotional or physical injuries, or catastrophic diseases, and to promote programs that help prevent suicide among officers." POLICE SELF SUPPORT GROUP PAMPHLET 3. For more information on the support group, write to: Police Self Support Group, P.O. Box 30, Ft. Hamilton Station, Brooklyn, New York 11209.

IV. Concerns of Police Survivors, Inc. (COPS)

> COPS assists survivors of law enforcement officers killed in the line of duty. Founded in 1984, COPS is a nationwide non-profit 501(c)(3) organization that provides resources to assist survivors in the rebuilding of their lives. COPS' programs for survivors include the National Police Survivors' Seminars held each May during National Police Week, scholarships, peer-support at the national, state, and local levels, "C.O.P.S. Kids" Summer Camp, COPS' Outward Bound experience for young adults, Siblings Retreat, Spouses Getaway Weekend, Parents' Retreats, trial and parole support, and other assistance programs. Furthermore, COPS provides training to law enforcement agencies on survivor victimization issues and educates the public on the need to support the law enforcement profession and its survivors.

(National COPS Organization web site). For additional information on COPS, please visit the web site: www.nationalcops.org.

V. Public Safety Officers' Benefits (PSOB)

In 1976, the Public Safety Officers' Benefits (PSOB) Act (42 U.S.C. 3796 , et seq) enacted to assist in the recruitment and retention of law enforcement officers and firefighters. Congress was concerned that the hazards inherent in law enforcement and fire suppression, and the low level of state and local death benefits, might discourage qualified individuals from seeking careers in these fields, therefore hampering the ability of communities to provide public safety. The PSOB Act was designed to offer peace of mind to men and women seeking careers in public safety and to make a strong statement about the value American society places on the contributions of those who serve their communities in potentially dangerous circumstances. The resultant PSOB Program, which is administered by the Bureau of Justice Assistance (BJA), presents a unique opportunity for the U.S. Department of Justice, federal, state, and local public safety agencies, and national public safety organizations, to become involved in promoting the protection of public safety officers before tragedies occur.

Each year, the PSOB Program receives substantial information about line-of-duty deaths and encourages public safety agencies to adopt model policies that can help guide an agency through these tragic events. The PSOB Program provides a one-time financial benefit to the eligible survivors of public safety officers whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty. The PSOB Program provides the same benefit to public safety officers who have been permanently and totally disabled by a catastrophic personal injury sustained in the line of duty, if that injury prevents the officer from performing any gainful work. Medical retirement, workman's compensation, or social security benefits for a line-of-duty

disability do not, in and of themselves, establish eligibility for PSOB benefits. The PSOB Program also includes the Public Safety Officers' Education Assistance (PSOEA) Act (42 U.S.C. 3796d). This Act expands upon the former Federal Law Enforcement Dependents Assistance Program to provide financial assistance for higher education of the spouses and children of federal, state, and local, public safety officers permanently disabled or killed in the line of duty.

BJA BUREAU OF JUSTICE ASSISTANCE FACT SHEET (July 2001) 1,2. For additional information on the PSOB Program, please contact the Bureau of Justice Assistance, Public Safety Officers' Benefits Program, 810 Seventh Street, NW, Washington, DC 20531, telephone number 1-888-744-6513 or visit the web site: www.ojp.usdoj.gov/BJA

VI. National Law Enforcement Officers Memorial

To honor all of America's federal, state, and local, law enforcement officers that have lost their lives protecting citizens, the National Law Enforcement Officers Memorial was dedicated in 1991 by President George Bush. The Memorial was designed by architect Davis Buckley, and sits on three acres of federal park land called Judiciary Square in Washington, D.C. Each of the pathway entrances are adorned with a powerful statue of an adult lion protecting its cubs. They symbolize the protective role of our law enforcement officers and convey the strength, courage, and valor, that are the hallmarks of those who serve the profession. An inscription on the Memorial's east wall explains the uplifting spirit that is felt by every visitor to the Memorial: "In Valor there is hope."

The Memorial is open to the public every day of the year. Each year a candlelight vigil is held at the Memorial on May 13th to recognize officers who have made the ultimate sacrifice. In May 2002 the names of 480 officers who died in the line of duty were officially added to the Memorial. Among those engraved this year are the seventy-two officers who died in the September 11 terrorist attacks.

The National Law Enforcement Officers Memorial web site. For additional information on the National Law Enforcement Officers Memorial, please visit the web site: www.nleomf.com

Every day law enforcement officers are killed or injured protecting citizens. For the courage and dedication of these fine individuals, it is appropriate to remember the words of the inscription on the National Law Enforcement Officers Memorial in Washington, DC: "It is not how these officers died that made them heroes, it is how they lived."❖

ABOUT THE AUTHOR

❑**Angela P. Hammond** is a Program Manager with EOUSA's Law Enforcement Coordinating Committee/Victim-Witness staff. Prior to working with the LECC/Victim-Witness staff, she was a Program Manager for criminal courses for the Office of Legal Education. Her government career has included service with the Department of State, Department of the Army, and Department of Justice.✠

Understanding and Responding to the Spiritual Ramifications of Victimization: A Look at Faith-Based Initiatives for Victims of Crime

John W. Gillis
U.S. Department of Justice
Director, Office for Victims of Crime

When our Nation's victims' rights advocates first made their voices heard more than thirty years ago, their passion, focus, and perseverance revolutionized the way victims are served in America today. Their goal was simple: Better treatment for victims. That goal had its roots in the understanding that a victim is a person first—a now-wounded person who, in the wake of a traumatic event, must face the painstaking process of mending his or her life.

During the last three decades, many changes, research findings, and innovative initiatives have improved victims' access to appropriate and effective support services. More recently, one source of support for crime victims has undergone a quiet, but steady evolution in both the nature and breadth of the assistance it provides. Across America, through the work of clergy members, elders, and other spiritual leaders, faith-based communities have been attending to the spiritual dimensions of healing for victims of crime, including individual and mass violence incidents.

For many victims, feelings of senselessness and powerlessness often lead to questioning the basic principles and assumptions on which they based their view of the world. These core principles and assumptions often rest on a spiritual framework, which is damaged as a result of violent crime. The struggle to find meaning within such tragic and "unnatural" circumstances often raises spiritual questions encompassing life, death, and divine justice for victims. In the aftermath of a crime, the search for answers is often as important to the victims' and convicts' recovery as are the physical aspects of the healing process. This is where clergy of all faiths play a vital role, and where they provide much-needed assistance to victims who seek their counsel and support to regain meaning in their lives.

Before the late 1990s, faith-based organizations were not widely recognized for the support and guidance they provided to crime victims. However, in recent years, faith-based communities have established an increasingly visible presence in the landscape of victim assistance. Although the term "nontraditional" is still used by some when referring to service providers who are members of clergy, the role they play in local, state, and Federal Government emergency response teams cannot be denied.

The Justice Department's Office for Victims of Crime (OVC) has made it a priority to help crime victims in every possible way, to support victim advocates and service providers, and to ensure that the collective voice of victims is heard by our Nation's leadership. With this purpose driving all of our programs and actions, OVC has not only pursued countless initiatives that assist victims, but also relied on solid research and experience to identify and modify elements required for the delivery of appropriate and effective victim assistance.

We are developing a number of victim assistance initiatives that recognize the spiritual component of recovery. We released the OVC Fiscal Year (FY) 2002 Discretionary Program Plan in June 2002. This Program Plan has been designed to:

1. Reflect OVC's efforts to respond to input from the victims' field;

2. Address the long-term needs of victims and enhance the efficacy of victim assistance initiatives; and

3. Incorporate programs and projects that respond to recent amendments to the Victims of Crime Act (VOCA), as defined in the USA Patriot Act, which granted OVC expanded discretionary funding and authority.

At the core of the FY 2002 Discretionary Program Plan are the Five Global Challenges set forth in the 1998 OVC report *New Directions from the Field: Victims' Rights and Services for the 21st Century.* These global challenges influenced the development and selection of a series of new OVC programs designed to strengthen the victim assistance field. One of the report's chapters dealt exclusively with promising practices in faith-based organizations and listed nine recommendations from the victim assistance field to the faith community. These recommendations identified a number of promising practices and areas to develop or improve when assisting crime victims in a spiritual setting.

The FY 2002 Discretionary Program Plan describes a number of new faith-based projects that OVC funded during FY 2002. One of these projects is the Faith Community Professional Education Initiative. This initiative was designed to provide training and enhance faith-based practitioners' ability to understand and serve crime victims. It has been found that, while most clergy are educated in traditional grief counseling techniques, they also need training on issues specific to crime victims.

OVC will also create a multiyear project offering Training for Community-Based Grief Centers to clergy, victim service providers, law enforcement, mental health and social services professionals, schools, and nonprofit organizations. This project will focus on the development of protocols for creating grief centers to work with victims of violent crime and terrorism. OVC will assist communities by reinforcing the resources available to the millions of Americans who call upon religious leaders for spiritual guidance, support, and information in moments of personal crisis. In addition, instances of communitywide trauma caused by violent crimes or terrorist acts, such as the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City and the 1999 massacre at Columbine High School, demonstrate the need for reliable, long-term mental health and faith-based counseling and resources. The project will identify five pilot sites to work independently on the development of strategies for establishing grief centers capable of meeting the needs of victims of violent crime. An important parameter OVC included in the establishment of these pilot sites is that, collectively, the five sites must reflect multiple faith approaches and must include one ecumenical site.

A multiyear program on Law Enforcement Chaplaincy Services to Crime Victims will also be launched by OVC. Its underlying objective is to strengthen the law enforcement response to crime victims. Past experience has taught us that the role of clergy and other faith-based practitioners assumes even greater significance when it is combined with law enforcement personnel. Although chaplains in law enforcement agencies are uniquely positioned to guide the law enforcement response to crime victims, many law enforcement agencies do not use chaplains in this role. Through this program, OVC plans to modify an existing curriculum and develop a law enforcement-based model for providing chaplaincy services to victims of violent crime and terrorism. It will also equip

chaplains to support the law enforcement response to victimization.

The growing recognition of the importance of spirituality and faith issues for many victims is due, in part, to a better understanding of the multiplicity of trauma victims' experience and the diversity of crime victims. In the past, many people in the victim assistance field had taken a "one size fits all" approach to crime victims, in spite of their considerable cultural differences. Culture includes not only language or ethnicity, but also religion and belief systems. For a service provider, a thorough grasp of diversity principles entails, among other things, an identification and understanding of the religious and spiritual elements that are integral to a victim's cultural landscape, and that influence the victim's perception and attitude toward victimization, the recovery process, and his or her self-perception. Sensitivity and education must be the field's staple tools when assisting victims of diverse backgrounds and cultures. To enhance the level of diversity awareness in victim assistance, OVC is encouraging the development and funding of faith-based initiatives as they pertain to diverse and underserved victims of crime.

One such initiative is an OVC project that will focus on building a Collaborative Response to Crime Victims in Urban Areas. This program has its root in the challenges posed by the lack of resources that often hamper efforts by many clergy and faith-based communities to serve victims. OVC's objective for this particular initiative is to establish viable networks of faith-based victim assistance programs within communities that will collaborate with one another and with secular victim assistance programs to provide and enhance services to victims. Each community will develop a directory of faith-based victim assistance organizations with a list of the services (e.g., domestic violence assistance, transitional housing, individual and group counseling) that each provides, as well as plans for recruitment and training of volunteers from churches, mosques, and synagogues within communities to provide a variety of direct services to victims.

Today, more than ever, clergy and other spiritual leaders are in a unique position of trust and leadership that makes them likely sources of support for victims who seek a spiritual path to recovery. In some cases, victims may not disclose their victimization to traditional victim assistance providers and may confide solely in their clergy about their trauma, needs, and difficulties. In such cases, it is critical that this point of contact for the victim be as effective and resourceful as possible.

OVC will continue its capacity-building approach to faith-based communities so that they may pursue their work of offering victims a spiritual path to healing. Victim service providers and allied professionals appreciate more and more the services faith-based organizations have provided victims of crime and mass violence. This appreciation has also led to a recognition that faith-based organizations must be given tools that will enhance their effectiveness in the area of victim assistance. Faith-based organizations need to have access to knowledge and skills that respond to the legal, law enforcement, mental health, and other issues of concern to crime victims. They also need to forge fruitful alliances with victim advocates and other professionals, and this will ultimately enhance the contribution they make to the overall of support provided. Finally, clergy and other spiritual leaders are constantly challenged to provide effective assistance to victims in need, while maintaining the delicate balance called for by their primary mandate and responsibilities as leaders of their faith community. As OVC remains steadfast in its commitment to victims, we acknowledge and support the contributions of faith-based communities.

On a different front, while victim assistance has come a long way, victims' legal rights are being raised to a new level. Both the Attorney General and the President strongly support guaranteeing rights to victims of violent crime,

and the U.S. Department of Justice agrees and strongly supports the passage of the proposed Victims' Rights Amendment. Even though thirty-two states have constitutional amendments, it is believed that these legislative guarantees are not always adequate as the U.S. Constitution enumerates defendants' rights but does not mention victims' rights. The 1982 Final Report of President Ronald Reagan's Task Force on Victims of Crime proposed that the 6th Amendment to the U.S. Constitution be augmented to include victims and to ensure that in every criminal prosecution a victim shall have the right to be present and to be heard at all critical stages of judicial proceedings.

There is support for a Victims' Rights Amendment which would become the 28th Amendment to the U.S. Constitution. Sponsors of the proposed constitutional amendment believe that victims' rights can only be fully protected by amending the Constitution. Senators Feinstein of California and Kyl of Arizona introduced S.J. Res 35 and Representative Chabot of Ohio introduced H.J. Res 91 in the 107th Congress. The proposed constitutional amendment would provide such basic rights as the right to have reasonable and timely notice of any public proceeding involving the crime; the right to be notified of any release or escape of the accused; the right not to be excluded from such public proceeding; the right to be heard at public release, plea, sentencing, reprieve, and pardon proceedings; the right to adjudicative decisions that duly consider the victims' safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender. Only the victim or the victim's lawful representative would be able to assert the rights established by the amendment.

Hearings were held in the Senate and House. Unfortunately, no vote was taken on these amendments before the 107th Congress adjourned. On the first day of the legislative session of the 108th Congress in January, constitutional amendments ensuring the rights of victims were introduced both in the Senate and the House. S.J. Res 1 was introduced by Senator Kyl of Arizona and has bipartisan support with fourteen cosponsors from both sides of the aisle, while H.J. Res 10 was introduced by Representative Royce of California and has 1 cosponsor. We are hoping that these amendments will be voted on in the 108th Congress. To ratify the amendment, each House of Congress must pass it by a 2/3 vote, while 3/4 of the states must ratify it within a 7-year period. The amendment, as drafted, would not infringe on the constitutional rights afforded accused defendants and convicted offenders.❖

ABOUT THE AUTHOR

❑ **John W. Gillis** was confirmed as the new Director of the Justice Department's Office for Victims of Crime on September 14, 2001. Following the 1979 murder of his daughter Lourana, Mr. Gillis helped found Justice for Homicide Victims and the Coalition of Victims Equal Rights, a statewide organization that works on behalf of the rights of victims and their families. He is also the founder of Victims & Friends United and an active member of Memory of Victims Everywhere and Parents of Murdered Children, a support group for families of homicide victims.

Mr. Gillis served four years as a member of the California State Bar Association's Crime Victims and Corrections Committee and four years on the American Legislative Exchange Council's Victim Committee. His efforts also helped secure passage of California's Crime Victims Initiative. He has acted as a technical advisor in the area of training videos for law enforcement and is an active participant and advisor in the production of two training videos for law enforcement and crime victims. These videos are widely used throughout the United States.

A Victim's Perspective

Susan Urbach
Oklahoma City Bombing Survivor

I. Introduction

It has been almost eight years since the Oklahoma City bombing. Two trials have been held, two sentences imposed, and an execution carried out. Recently, the horrific events of 9/11 caused an even greater loss of innocent lives. Once again, our country is forced to deal with the grieving process and emotions ranging from anguish to anger.

Several years ago, in January, 1999, it was my privilege to contribute an article in a United States Attorneys' Bulletin issue devoted to victim's rights. That article dealt with the Oklahoma City trial and the manner in which the prosecution team and Victim Witness Unit (VWU) worked with victims during that proceeding. This article was also written from the perspective of a crime victim and includes reflections four years later.

I was seriously injured while in my office building directly across from the Murrah Building. My office was destroyed, and I found myself the head of an office dealing with traumatized employees. Many places that were important to me, and that were part of my daily life, were damaged or destroyed. Many others suffered a similar fate.

II. Grieving in America

We do not deal well with grief today. One hundred years ago, family members rarely lived far from each other and would rally together in times of tragedy. Today, more people die in the sterile environment of a hospital, as opposed to yesteryear when many died at home, surrounded by their loved ones. The family prepared the body for viewing, and had a watch in the family parlor. Large families gathered together to share their grief and lend support to each other.

Acts of terror affect people in different ways. From my observation, and in talking with others, particularly with Murrah Building survivors, it is different working through grief as a survivor, than it is for a family member who lost a loved one. I also think one of the worst griefs is a family losing a child. It is the natural order that the older generation ages and passes first, but for those who lose children and grandchildren, there is a truly deeper grief.

Most crime victims, and their families hate the word "closure." When I have talked with family members from New York City, they roll their eyes at the term. When a tragedy occurs, life is irrevocably changed and it is changed forever. There is no going back to the way it was. For the families and survivors, "closure" implies that you can just wrap up the experience, and it is over and done with. Talk about closure to a person who has lost a family member, and they will infer that you are asking them to forget about their loved one, as if he or she never existed. Of course, they are not willing or able to do so.

III. How do we grieve?

The first step is to recognize that you have experienced a loss. When catastrophic events occur, sometimes we do not have the time to sit down, recognize, and assimilate what has happened. Talk with any family member about the experience of losing a loved one and they will tell you that for a time they operated on autopilot, adrenaline, and shock. There are certain things that need to happen for the grief process to begin. I have been told, without exception, that until the body of their loved one was identified by the coroner, families maintained hope that their loved one would be found. Events like 9/11 prolong grief because there were so few bodies recovered.

Another step in the healing process is to

recognize that the tragedy has changed everything, whether tangible as in death or injury, or intangible such as thoughts, feelings, and view of life. As long as you hold onto the past, you will not get to the grieving.

Molly Wolf recently wrote about trauma and her own experiences, and states as follows:

> I've learned, too, that healing isn't being put back to rights, because the past is past and cannot be unwritten. And I've learned that healing isn't a linear progression but a sort of spiral. I find these days that I keep revisiting the past, and sometimes it feels as though I'm just going around in circles. But in fact I've changed enough, have enough in the way of new insights and understandings, that each visit to the same landscape sees it a little differently. And perhaps this process will go on for a long, long, time.

Molly Wolf, author of Angels and Dragons (Doubleday 2001).

The survivors of the Murrah Building tell me that not only did they lose people, but they lost a work community. You will hear employees talk about their federal family. Many had been friends and colleagues for years. Some of them have experienced grief and guilt that they survived and others did not. When you regroup in offices after a catastrophe, those who remain are uniquely bonded together. As time has passed, some employees have left, some retired, and some did not return to work. With each survivor that leaves and each new person that joins the group, there is a grief. The new employees do not understand what we went through. They don't know what it was like before. Each new person, in a sense, is not only a gain for the agency or company, but is a small loss to those who were there previously. The new employees dilute the experience shared by the original group.

We also seem to need other people in these times more than ever. We often speak of family, and yet through the bombing, we realized that family is not just our genetic relation, but can include those we choose, and sometimes those with whom we are thrown together by circumstance.

IV. The importance of ritual in grief.

In America, we have many rituals. When we graduate, we put on caps and gowns. We have marriage ceremonies and funerals. As a country, we put on a spectacular ritual when we inaugurate a new President. A ritual recognizes the closing of one chapter and the beginning of another.

There is value in these rituals. They are part of the grieving process and promote healing. In a society where there is always noise, silence in a crowd is extremely powerful. It is now tradition to have one second of silence representing each life lost. One hundred sixty eight seconds is not a long time, but because we are so rarely silent, it stretches for what seems like an eternity. The silence of loss is broken by the sound of church bells, calling us to life today and a life beyond this one. On the first anniversary of the Murrah Building bombing, one of my most moving experiences was walking the six to seven blocks from the site to the community service. There was something very powerful in taking that walk. Rituals and symbols can be used on a personal level as well, to aid in grieving and in healing. What I have seen here with our fence, with 9/11, and with places like the Vietnam War Memorial, is that we need symbols.

Saint Paul's Episcopal Cathedral was heavily damaged in the Oklahoma City bombing. In observance of Lent, in the temporary space used for the sanctuary, broken stones from our church were piled into small walls. Requests and concerns, on scraps of paper, were placed into crevices, rather like our own wailing wall. The papers were burned before Easter. During the first service in the restored sanctuary, there was quite a ceremony to rededicate the church. This particular ritual guided us forward and it is as if my own inward healing moved along as the church did.

V. Elements of healing

There is the old saying, "Time heals all wounds." However, time, by itself, does not heal large-scale trauma. The person relying on time alone probably has compartmentalized the trauma, put it in the back of the mind, and not worked on the issues. Time only covers it and, at some point, it will manifest itself as a mental or physical symptom.

Keeping busy, by itself, does not heal. When you keep busy, you can keep thoughts, emotions, pain, and grief at bay. Mental health professionals may term this avoidance or denial, but whatever the term, just as with time, keeping busy delays grief and healing. Tragedy must be faced, not avoided.

Money, by itself, does not heal. After suffering a major trauma, it is very comforting to know you do not have to cope with severe economic concerns as well. However, money brings all sorts of problems and issues with it. When you are dealing with trauma, it is hard to focus, and paperwork can be overwhelming. From a distribution of funds standpoint, there is the issue of how to allocate the available funds equitably. Death, personal injury, and the destruction of businesses all have an economic impact. While the easing of economic pressures certainly is important, it does nothing to heal the emotional scars of the victims and their families.

Justice alone will not help victims be whole again. I know that many of you have a statue of Lady Justice in your offices. On the seal of the Department of Justice are the Latin words "Qui pro domina justicia sequiter." This translates to "He (and she) who pursue on behalf of Lady Justice." Justice is spoken of frequently. Nevertheless, justice is limited. For all the things that justice can do, it cannot restore life, physically heal injuries, or rebuild structures.

The scales of Lady Justice represent a reckoning that, with all the evidence weighed and sifted, the person is either guilty or not guilty. The sword of justice metes out punishment to the guilty. There is great satisfaction in the finding of guilt. I was in Denver when the guilty verdict was announced for Timothy McVeigh. It was a momentous occasion to be among the crowd and then to go to a nearby church where the prosecution team arrived to the cheers, tears, and hugs of those assembled.

Justice has its limits. What if there is not a guilty finding? What if the punishment is not severe enough in the eyes of the victim? What if the case is unsolved?

Can justice help? Absolutely. There are, however, many unrealistic opinions about what justice can and cannot do. I think of one woman who lost family members. Throughout the years, she has talked about the satisfaction and closure she was going to feel when McVeigh was executed. Yet, she is still a hurting and angry individual. None of these external things alone, not money, not time, not justice, in and by themselves, have seemed to make her whole.

In the weeks before McVeigh's initial execution date, there was tremendous pressure building. It was an exhausting time and we were all looking forward to when it was over. I volunteer at the Oklahoma Memorial, and as the months and weeks drew closer, we had many visitors who were sympathetic to McVeigh and his kind. There was incredible pressure from the press, the blocks of satellite trucks, and people asking the victims why they had or had not chosen to view the execution. It was as if the whole community was holding its breath, waiting for the day to arrive so that it would be over and we could move forward again.

We were all very surprised when there was a stay of execution due to the failure to turn over all relevant FBI documents. We were equally surprised when McVeigh agreed to forgo any appeals and the judge set a prompt execution date. The pressure did not have a chance to rise to its previous level. Some people decided to be present at the closed circuit viewing of the execution, and of those who went, I have not heard that anyone regretted the choice. Most of us, for a number of

reasons, chose not to be present. Is there a difference with McVeigh gone? Yes. This crime was meant to be a public statement, and the bomber knew how to use publicity and reveled in it. His voice is silenced forever. He started no mass uprising against the government. However, there are 168 empty chairs and so many lives changed forever as a result of a senseless act of violence.

VI. Recovery

If you were a strong and healthy person emotionally before the trauma, the chances are good that you will be strong and healthy again at some time. If you were not emotionally healthy you may not rebound as well. A person suffering from depression is more likely to find that an act of terror will exacerbate the problem. People need people in times of trouble, and if they do not have a network of family or friends, recovery will be more difficult. Having a network of supportive family and friends will accelerate the healing process.

In this land of rugged individualism and independence it is easy to overlook the fact that we need each other. An old saying talks about how others can double our joys and halve our sorrows. I term this the luxury of suffering together. The people who do not reach out for help are prone to a longer and more difficult journey. The value of peer groups is enormous for it is there that others understand best and where there is no stigma. We see peer groups in many areas, ranging from the 12-step program, to breast cancer survivors, MADD, families of homicide victims, those dealing with specific illnesses and disabilities, and the list goes on. While these groups address different problems, they all stress peer support as an essential element of recovery.

As the Oklahoma Memorial and the Museum Center opened, we have become more "institutionalized." The people originally receiving support now provide support to others. There are many survivors involved in various committees at the Memorial, and who volunteer at the Museum. The Memorial Institute on the Prevention of Terrorism has an outreach committee consisting of many families and survivors who have extended a helping hand to others in places, such as Israel, where terrorism is a regular occurrence. We have had joint exchanges between family members and survivors of the United States's embassy bombing in Nairobi, Kenya. It was my privilege to be part of that, and in many ways it was a life changing experience to hear the stories that needed to be told, and pay my respects to those recovering in a country with an economy more fragile than our own.

The Memorial has become a place of pilgrimage, not only for those who come and pay their respects to us specifically, but also for those people attempting to alleviate their own losses and sorrows. At the Memorial, we have groups who come to have ceremonies and services, both individually and publicly. It is a place where we gather, such as after 9/11, when our community prayer service was conducted for those affected by that tragedy. When you come to the Memorial, it is natural to feel many different emotions, including sadness for the acts of violence that have changed so many lives. We also want you to know that this is a place where we have not been defeated, and here you will find comfort, hope, peace, strength, and serenity.

We have reached out in innumerable ways to those affected by 9/11. Oklahoma family members were dispatched quickly to assist the families in New York City. As New York City family members were ferried to the site, Oklahomans, who really did have an understanding of what they were feeling, greeted them. Lessons learned from law enforcement agencies, rescue efforts, mental health providers, charities, and dealing with funds, have been shared. The Red Cross is training a group of Oklahomans, through their disaster training, with an emphasis on events of mass destruction and terrorism.

This past April, several dozen families,

survivors, and rescue workers from New York City joined us in Oklahoma City and took part in the anniversary events. You could see the bonding and the sharing, and more importantly, the hope that was there. I heard two mothers who had children killed in our bombing tell others that it would get better. This is part of working through the loss and the grief.

I have chosen to wear the uniform of the volunteer at the Memorial. For a few hours each week I stand outside on the grounds greeting and talking to visitors. When I put on that bright blue shirt with the Memorial logo and National Park Service patch, I feel like I am donning a vestment. I represent not just me, but all of us here, and people connect with this place in different ways and on different levels. I tell people about the Survivor Tree Memorial. This tree is a living witness to the event. It was battered, burned, and left for dead. Several weeks after the bombing, the branches were cut off for safety, but the workers never got around to removing the charred, leaning, and pitiful looking trunk. The next spring, where the cuts were made, little rows of green appeared. That tree had been changed forever, just like us. It still lived, just like us. On the one side of the reflecting pool, we see the chairs of those now missing from their families and realize that life is precious and fragile. Yet to see that tree, tenderly cared for, flourishing, and touched by hundreds of thousands who have visited, is to see that life is also very tenacious. Around this symbol of hope is where we gather for anniversaries, ceremonies and services, and reflection. It has even been the scene of a wedding, when a daughter whose father was killed in the bombing, married a policeman who assisted in the rescue effort. They first met at the McVeigh trial in Denver. The inscription carved on the wall surrounding the tree says, "The spirit of this city and nation will not be defeated. Our deeply rooted faith sustains us."❖

ABOUT THE AUTHOR

❑**Susan Urbach** has been the Regional Director of the Oklahoma Small Business Development Center with the University of Central Oklahoma since 1988. During that time she has worked with thousands of established and potential small business owners in the central Oklahoma region. Prior to joining the SBDC, she worked for the Small Business Administration in the Portfolio Management Division. ✠

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