

CHAPTER 9

The Legal Community

Members of the legal profession play a variety of critical roles in the criminal and juvenile justice systems. They serve as judges, prosecutors, defense counsel, and victim advocates. The President's Task Force on Victims of Crime focused its discussion of the legal profession to members of the bar who function within the criminal justice system, including bar committees addressing issues within the criminal justice system.¹ Most members of the legal profession, however, serve in positions outside of the justice system in private law firms, corporations, law schools, and government offices. These lawyers frequently come into contact with crime victims in their work. Trusts and estates lawyers encounter domestic violence victims or survivors of homicide. Civil rights lawyers encounter victims of assault, rape, and hate crimes. Personal injury lawyers encounter victims of drunk driving crashes and other personal crimes.² Moreover, a growing crime victims bar has emerged as civil litigation involving crime victims becomes an increasingly well-established and recognized specialization. These lawyers need to understand the dynamics of victimization, and they should know how to refer their clients to victim services that are appropriate for their needs.

Over the past 15 years, attorneys and the organized bar associations to which they belong have begun to recognize that they are important conduits to victim services. Attorneys have worked to improve access to the justice system for victims; they have developed programs that help victims respond to the crimes that affect them; and they have explored options within the legal system that can expand the relief available to victims of crime.

The American Bar Association (ABA), the largest membership organization for attorneys in the United States, established a Victims' Committee within its Criminal Justice Section in 1976 and encouraged state and local bar associations to set up similar committees that would ensure victims a voice in policymaking by lawyers.³ While some bar associations followed suit, efforts at the national and local level have increasingly moved toward identifying and assisting specific groups of crime victims whose needs within the legal system are quite distinct. For example, victims of domestic violence may need immediate assistance to obtain a temporary restraining order and long-term assistance to work out divorce and custody issues. Victims of drunk driving crashes may need long-term assistance with criminal and civil actions, and victims of child abuse may need a range of legal assistance

Attorneys have an obligation to their clients, to their profession, and to justice itself. They are obligated to use their expertise to guarantee that the system does not stray from the principle that lies at the heart of the law: justice for all who seek it.

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in family, juvenile, and criminal court. Each legal area demands specialized training and knowledge of the law. The past 15 years have seen the growth of bar-sponsored programs that target such specialized areas. Lawyers are reaching out to form and participate in alliances with other professionals working to meet the needs of crime victims. Thus, while victims' committees have not proliferated, lawyers' responsiveness to the actual needs of victims has.

This section highlights these promising efforts of the legal community to respond to the needs of crime victims and makes recommendations for future action.

Private and Legal Services Attorneys Serving Crime Victims

Many lawyers have devoted their careers to serving victims of crime through nonprofit legal services programs around the country that provide free or low-cost legal assistance.

- In the Navajo Nation, DNA People's Legal Services, Inc., provides free legal and other services to crime victims from the Navajo and Hopi Nations. Through its nine offices in Arizona, New Mexico, and Utah, the organization serves victims in some of the most remote and impoverished places in America. The group's Family Violence Prevention Project has been instrumental in creating safe homes, support groups, shelters, and crisis counseling programs for victims, and it has drafted arrest protocols for the Navajo Nation police force and culturally appropriate domestic violence laws for the Navajo and Hopi Nations. DNA lawyers and other staff have established and maintained an effective network with community service providers to help domestic violence victims.
- The New York City Gay and Lesbian Anti-Violence Project in New York City provides counseling, advocacy, and legal representation to men and women who have been victims of anti-gay or anti-lesbian violence, sexual assault, domestic violence, HIV-related violence, and other forms of crime.

Many other organizations in communities across the country provide critically needed legal services to crime victims.

- The California Crime Victims Legal Clinic helps victims of violent crime and their families understand their legal rights and of the criminal and civil justice systems. The Clinic advocates in court at all stages of legal proceedings, including for victims' rights to restitution and victim impact statements, assesses cases for possible civil and other claims, makes appropriate referrals, and files amicus briefs in significant cases affecting victims' legal rights. The Clinic is also

The 340,000-member American Bar Association has been working for nearly a quarter of a century to improve the plight of crime victims and witnesses.

Susan Hillenbrand,
American Bar Association
Criminal Justice Section

active in legislative issues of importance to crime victims and is available as a media resource for crime victims' rights issues and for families of victims of violent crime.

- AYUDA is a community-based agency in Washington, D.C. that provides legal, advocacy, and educational services to low-income Latino and foreign-born families. In addition to providing direct legal services, AYUDA provides free legal advice, consultations, referrals, translation, and other related legal services to foreign-born victims of domestic violence. AYUDA also assists pro bono attorneys and government and community agencies on issues related to domestic violence and immigration law.

Additionally, individual attorneys have established practices that specialize in serving crime victims. They include domestic violence attorneys, child abuse and neglect lawyers, civil rights lawyers who take on hate and bias cases or police brutality cases, and a variety of civil attorneys who specialize in personal injury, premises liability, and insurance cases, to name a few. Others represent crime victims in civil matters and provide representation to victims during the course of criminal proceedings to ensure that they are informed of and offered a meaningful opportunity to exercise their rights.

As the number of lawyers involved in helping crime victims has grown, national organizations have emerged to support the work of attorneys helping crime victims.

- The National Association of Counsel for Children (NACC) is a nonprofit professional membership association dedicated to quality representation and protection of children in the legal system. NACC trains and educates children's attorneys and advocates for improvements in public policy and the legal system. In addition, it is dedicated to the development of the field of children's law as a legal specialty. Its membership includes nearly 2,000 attorneys, judges, and other professionals who take a multidisciplinary approach to representing the interests of the children they serve.
- Similarly, the Carrington Victims' Litigation Project (CVLP), an initiative sponsored by the National Victim Center, helps crime victims who are seeking remedies in the civil justice system find professionals who can refer them to resources to aid physical and emotional healing. CVLP also helps attorneys, experts, consultants, and victim service professionals provide sound and sensitive representation. CVLP includes a membership arm, the Coalition of Victim Attorneys and Consultants (COVAC), that coordinates the efforts of attorneys who represent crime victims in civil matters and professionals from other fields who serve as experts or consultants in civil cases involving crime victims. COVAC members have access to CVLP's Civil

Justice Case Law Database, which contains over 9,000 case summaries of reported appellate decisions relating to civil litigation by crime victims. They also receive updates on the field of victim litigation through a monthly case digest and a quarterly law journal.

As professionals whose work is bound up in the workings of the nation's justice system, members of the legal community carry a special responsibility to ensure that crime victims have the services and support they need. Whenever legal professionals work to provide services and support for the victims of crime, they make a contribution that enhances the public trust in the justice system. Because that trust is the ultimate source of the system's efficacy, it is difficult to imagine a more important contribution that could be made.

Reginald L. Robinson
Acting Director
Office for Victims of Crime

Increasing Victim Access to the Justice System

Many barriers prevent the full participation of victims in the criminal and juvenile justice systems, including lack of information, lack of resources, and physical, cultural, and language barriers. The legal profession has been at the forefront of creative efforts to overcome these barriers.

- The Asian Pacific American Bar Association (APABA) in Washington, D.C., working with Asian-American groups in the D.C. metropolitan area, responded to a rash of violent robberies and homicides of Asian-American storekeepers in 1993 by instituting the No More Violence—Reclaiming Our Communities project. Language barriers and lack of information in the community about the crimes were making it difficult for both prosecutors and victims to move forward with investigations and prosecutions. APABA, in conjunction with the Department of Justice and The George Washington University, developed a videotape that explained how the D.C. criminal justice system works and used vignettes with Asian Americans to encourage Asian-American victims and witnesses to cooperate in the judicial process. The video, available in Mandarin, Vietnamese, and Korean, has been distributed widely in the D.C. Asian-American community.⁴
- The Pro Se Divorce Clinic for Domestic Violence Victims has operated in New York City since 1994, empowering battered women who are unable to afford legal representation to leave their abusive partners and work toward self-sufficiency. Law firms host the clinic's classes, offering pro bono a conference room, refreshments, and the services of paralegals and word processors to prepare the women's divorce papers. A pro se divorce manual has been developed by the clinic and provided to the law firms on computer disk for easy input into their word processing systems. Paralegals team with domestic violence victims to guide them through the pro se divorce process, assist them in drafting their divorce papers, and prepare their final court papers using the law firms' word processing system.

Assisting Victims of Violence and Abuse

Over the past 15 years, the private bar has become increasingly active in providing legal services to specific victim populations that are prevented from participating fully in the justice system because of a lack of information and resources. A number of bar associations and

private firms have concentrated their efforts on children, developing mentoring programs, adopting schools and, significantly, identifying ways in which the resources of the profession can be marshaled to assist victims of child abuse.

- Founded in 1994 by attorneys working for Aetna Life & Casualty in Hartford, Connecticut, Lawyers for Children is a nonprofit organization that recruits and trains volunteer lawyers to represent abused and neglected children in juvenile court proceedings. The group also implements and supports peer-based mediation programs in middle and high schools. The advocacy component is uniquely multidisciplinary: lawyers are trained in legal, child development, and other key psychosocial issues that affect child victims of abuse and neglect. Lawyers for Children assigns a social worker to assist each case's legal team, which provides the child with an adult voice in court and an advocate in the system of social services outside of court. The organization operates in Miami, Florida, and Washington, D.C., and plans to expand to other cities.⁵
- The Juvenile Law Committee of the State Bar of Georgia created the Children's Legal Advocacy Coalition (CLAC) to advocate and provide effective representation for abused and neglected children in Georgia. Advocates working with CLAC represent and work with a child until he or she reaches age 18, rejoins his or her family, or is legally adopted after termination of parental rights.⁶

Lawyers have also become increasingly involved with domestic violence victims as activists and attorneys recognized that women trapped in battering relationships were often further imprisoned by a web of legal issues that kept them dependent upon their abuser. Bar associations have developed pro bono programs in which volunteer lawyers handle domestic violence victims' cases at no charge, and law schools have instituted clinical programs that offer representation and advocacy to victims of domestic abuse.

- Project L.I.F.E. (Legal Initiative for Freedom and Empowerment) in New York City was begun in 1995 to galvanize the efforts of private law firms to meet the legal needs of battered women. At the time, the Mayor's Commission to Combat Family Violence identified contested divorce as the most difficult legal service to obtain for battered women. Waiting lists were extremely long and few publicly funded legal services offices provided assistance. In response, 14 corporate law firms signed on as charter members of L.I.F.E. Each firm made a commitment to accept five cases and to recruit another firm to the project. Within a year, more than 70 women were being served by the program.

In 1994, the ABA established a Commission on Domestic Violence, which is developing a national model for communities responding to domestic violence. The Commission is comprised of medical, legal, and

law enforcement professionals, and includes among its goals public education, legal and judicial reforms, and encouraging a coordinated community response to domestic violence.⁷

Legal groups at the local level have also taken action to help victims of domestic violence. Clinical programs in law schools are providing free representation to domestic violence victims while at the same time training a new generation of lawyers to be victim advocates. A 1997 ABA report identified dozens of law school clinics that provide legal assistance to survivors of domestic violence, and many of these programs have developed innovative approaches to meeting domestic violence victims' needs.

- The Domestic Violence Advocacy Project at the George Washington University Law Center in Washington, D.C., emphasizes an interdisciplinary approach. Courses are co-taught by a professor of law and a clinical psychologist, and case supervision and consultation includes input from the psychologist. Students handle civil protection order cases and work with local public defenders' offices on battered women's self-defense cases. Students also coordinate their work with the George Washington University Hospital's emergency room, and are on call to respond in cases of suspected domestic violence to act as advocates for the women and inform them of the legal action they can take to protect themselves. Other students in the clinic work on broader law and policy reform initiatives to improve the treatment of domestic violence victims in the justice system.
- Students in the Domestic Violence Law Clinic at the University of Arizona, College of Law in Tucson, Arizona, provide representation to women seeking orders of protection, temporary child custody, and child support. Students also assist members of the nearby Pascua Yaqui Tribe in obtaining and upholding orders of protection through the Tribal Court. In addition, students provide representation to victims of domestic violence in the criminal courts, acting either as advocates for their rights from initial appearance through sentencing or as defenders of victims charged with domestic violence offenses who were acting in self-defense.

Other attorneys work to address the problem of gun violence, assisting communities and individuals affected by gun violence.

- Following the 1993 shooting at the firm of Petit & Martin in San Francisco, California, volunteer attorneys, including survivors of the shooting, created the Legal Community Against Violence (LCAV) project. LCAV worked to raise funds and secure pro bono legal services to help victims and survivors of that shooting pursue civil actions for damages. LCAV has remained active, serving as a clearinghouse to help victims of gun violence in California find volunteer lawyers to provide representation in their cases. LCAV also works

with grassroots organizations in communities victimized by gun violence and local and city governments to address gun violence through appropriate local ordinance and regulations.

Helping Communities

Too often, the criminal justice system's response to criminal activity—the investigation, prosecution, and incarceration of individual offenders—does not reach the roots of the activity. New people simply pick up the illegal activity, continuing the victimization. This is particularly true with drug trafficking. Recognizing that vacant or abandoned properties in cities provide fertile ground for drug trafficking, lawyers have joined forces to use civil legal remedies to close crack houses and to address neighborhood nuisances that are contributing to drug problems.

- “Operation Crackdown” of the Young Lawyers’ Section of the Bar Association of the District of Columbia uses a network of trained volunteer attorneys to provide free legal assistance to local community organizations victimized by illegal drug activity. Active throughout the District of Columbia, Operation Crackdown attorneys work closely with community members to address and resolve problems in a neighborhood. Operation Crackdown represents organizations, rather than individuals, allowing people victimized by drug trafficking to come forward and take action without fear of retaliation. Volunteer attorneys coordinate with local prosecutors, the Metropolitan Police Department, and local officials to identify and use all administrative and judicial remedies possible to meet the community’s needs.⁸

Nonprofit legal clinics, such as the Community Law Center in Baltimore, Maryland, are providing similar services.⁹ In addition, communities are forming alliances among prosecutors, citizens’ coalitions, and local bar associations to address the crime and violence that accompany illegal drug trafficking. For example, the Alliance for a Safer Greater Detroit has used the skills of volunteer lawyers and legal services organizations to eliminate crack houses and other dangerous buildings from crime-plagued neighborhoods.¹⁰

Recommendations from the Field for the Legal Community

LEGAL COMMUNITY RECOMMENDATION FROM THE FIELD #1

The legal community should expand its commitment of resources to victims to ensure that the barriers to meeting crime victims’ needs are removed.

Lawyers are uniquely situated to provide crucial information and assistance to a range of crime victims. Lawyers have an obligation to give to their community and should be encouraged to do so by lending their skills, time, and energy. The programs outlined in this report provide good models for communities, law firms, corporate legal departments, and individual lawyers to examine when exploring how best to assist crime victims. In particular, programs that target special population groups should be fostered. Initiatives should include expanded volunteer lawyer programs, impact litigation on victims' issues, and litigation and nonlitigation projects that address the needs of language minorities, the disabled, and those with limited financial resources.

LEGAL COMMUNITY RECOMMENDATION FROM THE FIELD #2

Bar associations and members of the legal community should produce and distribute informational materials, including videotapes, to help crime victims understand court proceedings and how to pursue their rights in the justice system.

In many instances, victims simply need information to help them understand the legal system and determine whether and how to exercise their legal remedies. Lawyers should use their expertise to help educate crime victims by assisting in the preparation of informational materials that will help victims understand the court process and how to represent themselves. Law firms can also contribute the pro bono services of paralegals and support staff to help crime victims exercise their rights in court.

LEGAL COMMUNITY RECOMMENDATION FROM THE FIELD #3

Bar associations and members of the legal community should develop multidisciplinary alliances and networks among attorneys and other service providers within the community to identify and meet the needs of crime victims.

Lawyers' work with victims of crime has been most effective when a multidisciplinary approach is taken. Lawyers should reach out to allied professionals in cases in which they are advocating for victims of crime. In particular, prosecutors, civil attorneys who represent crime victims, and victim service providers should build coalitions to ensure that adequate referrals and options for networking are available to crime

victims. Victim service providers also can serve as expert consultants in civil and criminal matters and work closely with crime victims and their attorneys to develop and present their cases at trial. More multidisciplinary membership organizations such as the Coalition of Victim Attorneys and Consultants and the National Association of Counsel for Children should be established to enhance training and to facilitate communication among victims, lawyers, and other service providers.

LEGAL COMMUNITY RECOMMENDATION FROM THE FIELD #4

Bar associations and members of the legal community should develop information about victims' rights and programs and disseminate it widely in the community.

Lawyers have been active in creating and supporting innovative programs for victims of crime, including those highlighted in this report. The majority of crime victims, however, have little opportunity to learn of these services. Lawyers and bar associations can take advantage of events such as “Law Day” (held the first week of May each year in communities across the country) to expand outreach and awareness of victim assistance programs by holding community forums and disseminating literature in appropriate languages. Additionally, they should work with community leaders to develop strategies for publicizing services and programs that assist crime victims.

LEGAL COMMUNITY RECOMMENDATION FROM THE FIELD #5

Legal professionals who serve in the criminal, juvenile, and civil justice systems should work with one another and with victim service providers to adequately inform crime victims of all of their legal options, including civil litigation.

In both the criminal and civil justice systems, cooperation between prosecutors and civil attorneys benefits crime victims who are involved in litigation. Furthermore, failure to cooperate can severely impact the outcome of some proceedings. Brochures, referrals to victim support networks, and informational materials describing possible civil litigation options should be made available to victims when they initially contact prosecutors. Bar associations of criminal and civil legal professionals should develop joint programs and training on the intersection of criminal and civil litigation for crime victims. Similar information should

be provided by victim service providers, and these professionals should develop networks with civil and criminal justice attorneys to facilitate the referral of crime victims with legal questions or needs.

LEGAL COMMUNITY RECOMMENDATION FROM THE FIELD #6

Attorneys in the private sector who, due to the nature of their practice, have frequent contact with crime victims (for example, personal injury attorneys, insurance attorneys, and premises liability attorneys) should be encouraged to develop or join coalitions of attorneys who serve crime victims in the civil justice process.

Specialized continuing legal education classes, as well as other products and services such as case digests and legal periodicals that deal specifically with civil litigation involving crime victims, should be developed as a means of increasing membership in the crime victims bar and enhancing the quality of representation for victims.

LEGAL COMMUNITY RECOMMENDATION FROM THE FIELD #7

Bar associations should establish victims' issues committees to address issues in the criminal and civil justice systems, and they should ensure that the members of the committees represent victims' interests.

Echoing the *Final Report* of the 1982 President's Task Force, this recommendation strives to institutionalize the representation of victims' views in all activities related to the criminal justice system. Similar attention should be paid to addressing issues that affect crime victims who are litigating cases in the civil justice system. To do this, some bar associations have established victims' committees, an approach that has been effective in ensuring that victims' issues are addressed broadly and included in every dialogue on changes and enhancements to the criminal and civil justice system.

LEGAL COMMUNITY RECOMMENDATION FROM THE FIELD #8

Bar associations and law schools should offer courses on victims' rights and issues, incorporating multidisciplinary curriculums.

In addition to attorneys working within the justice system, lawyers in many areas of practice are likely to encounter crime victims among their clients. Educating law students about victims' rights and the basic concepts of victimology will enable students once they become attorneys to better fulfill their mandate to seek justice for all. Providing continuing legal education on serving victims to practicing lawyers will enhance their ability to discharge their duties to their clients. Increasing lawyers' awareness of victims' rights and sensitivity to victims' needs will be of immeasurable benefit to crime victims, whether they come into contact with the criminal justice system as a witness or seek civil legal assistance as a result of the crime. The American Bar Association has developed model curriculums on victims' rights, and legal institutions around the country offer courses on victims' issues.

In a recent publication entitled *When Will They Ever Learn? Educating to End Domestic Violence*, the American Bar Association Commission on Domestic Violence noted the importance of training law students regarding domestic violence issues:

Domestic violence has a tremendous impact on the legal profession. Whether or not lawyers realize it, domestic violence permeates the practice of law in almost every field. Corporate lawyers, bankruptcy lawyers, tort lawyers, real property lawyers, criminal defense lawyers, and family lawyers, regularly represent victims of perpetrators of domestic violence. Criminal and civil judges preside over a range of cases involving domestic violence as an underlying or a hotly contested issue. Failure to fully understand domestic violence legal issues threatens the competency of individual lawyers and judges, as well as the legal profession as a whole

The vast majority of telephone calls received by the American Bar Association Commission on Domestic Violence indicate that lawyers, too, are not representing victims of domestic violence according to the standards dictated by the profession. Callers report that many family lawyers fail to address a client's safety needs where there is a history of domestic violence, or refuse to introduce evidence of the violence in court, despite the legal consequences. This hesitation to handle domestic violence cases, or to address domestic violence issues when they arise, stems in part from a lack of legal training. It is time

for law schools to fill this desperate gap in legal education by incorporating domestic violence law into core curricula courses, upper level courses, and clinical programs.¹¹

LEGAL COMMUNITY RECOMMENDATION FROM THE FIELD #9

Bar associations and members of the legal community should ensure adequate representation and involvement of minority, multicultural, and multilingual attorneys in order to respond more effectively to diverse populations victimized by crime.

Crime victims face many barriers to full participation in the criminal and civil justice system. Lawyers are an important link to providing crime victims a voice in the system. It is essential that lawyers have the capability to respond to the diverse needs of victims who are also language and cultural minorities. A central part of this response should be the hiring of trained multicultural and multilingual lawyers or other legal professionals in prosecutors' offices, victim service providers' agencies, and legal organizations, associations, and private law firms.

LEGAL COMMUNITY RECOMMENDATION FROM THE FIELD #10

Publishers of case reporters, legal compilations, and treatises should expand their issue coding and indices to include crime victim-related categories.

Currently, publishers of legal references and case reporters do not include victim-related issue codes or indices, making it extremely difficult to conduct legal research on cases and issues of concern to crime victims. An extension of these coding systems would enhance the ease and accuracy of legal research while encouraging legal scholarship in the field.

The recommendations in this chapter were based upon input from participants at public hearings and reaction and working groups, as well as papers submitted by experts in the field, identified in Appendix A. The recommendations do not necessarily reflect all of the views of the contributors, nor do they necessarily represent the official views of the Department of Justice.

Endnotes

- 1 President's Task Force on Victims of Crime, *Final Report*, Washington, DC: U.S. Government Printing Office, December 1982.
- 2 See generally, American Bar Association Commission on Domestic Violence, *The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook*, Washington, DC: American Bar Association Commission on Domestic Violence, 1996 (discussing range of legal practice areas impacted by domestic violence).
- 3 American Bar Association, *American Bar Association Criminal Justice Section: Victim/Witness Activities*, Flyer, Washington, DC: American Bar Association, 1997.
- 4 Asian Pacific American Bar Association, "No More Violence - Reclaiming our Communities" Video Project, Flyer, Washington, D.C.: Asian Pacific American Bar Association, 1997.
- 5 Lawyers for Children, "Lawyers for Children America - Serving the Nation's Youth," Flyer, Hartford: Lawyers for Children, 1997; "Children First," *The Connecticut Law Tribune*, March 25, 1996:13.
- 6 American Bar Association Special Committee on the Drug Crisis, *Lawyers As Volunteers: Addressing Substance Abuse and Violence in Communities*, Washington, DC: American Bar Association, June 1995:120.
- 7 American Bar Association, Domestic Violence Home Page, <http://207.49.1.6/domviol/home.html> (July 1, 1997)
- 8 "Cracking Down on Crack Houses," *The Legal Times*, Week of April 7, 1997:2, col 1; Bar Association of the District of Columbia, *Operation Crackdown*, Brochure, Washington, DC: Young Lawyers Section, Bar Association of the District of Columbia.
- 9 American Bar Association, *Lawyers as Volunteers*, 35.
- 10 *Id.* at 34.
- 11 American Bar Association Commission on Domestic Violence, *When will they ever learn? Educating to End Domestic Violence. A Law School Report*, Washington, DC: American Bar Association, produced with the support of the Office for Victims of Crime, U.S. Department of Justice, 1997.