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Victims' Rights

In This Issue

LETTER FROM THE EDITOR

We are pleased to bring you an issue of the *United States Attorneys' Bulletin* dedicated solely to victim-witness matters. During the Warren Court era, there was great attention and respect paid to the individual rights of defendants that caused us to constantly reevaluate how an enlightened society proceeds against a person accused of a crime. Unfortunately, at that time, there was not a corresponding awareness of the rights and the role of victims in our criminal justice system. Over the last two decades, these issues have begun to be addressed. As this issue chronicles, there have been major pieces of legislation passed that provide procedural and remedial rights to victims and impose corresponding responsibilities on prosecutors, judges, and, in the restitution area, directly on defendants.

No piece of legislation can remove the devastating effects of crime on victims. But what we, as prosecutors, can do is become familiar with our legal responsibilities to crime victims, react sensitively to their needs, and recognize their important role in the criminal justice system. This issue will give you the tools to guide you on this important journey. In recognition of the vast landscape in this area, this special issue of the Bulletin is larger than our standard edition. Many of the authors have provided contact numbers and have generously agreed to make themselves available should you have questions.

Our thanks go to our authors who toiled diligently to address the important issues that you will encounter. Special thanks go to Julie Breslow and Kim Lesnak who helped coordinate and edit this issue. Many thanks to all of you who continue to give us your comments, criticisms, and suggestions for the *Bulletin* and our publications program. Please feel free to call me with your comments at (340) 773-3920 or on e-mail at AVIC01(DNISSMAN).

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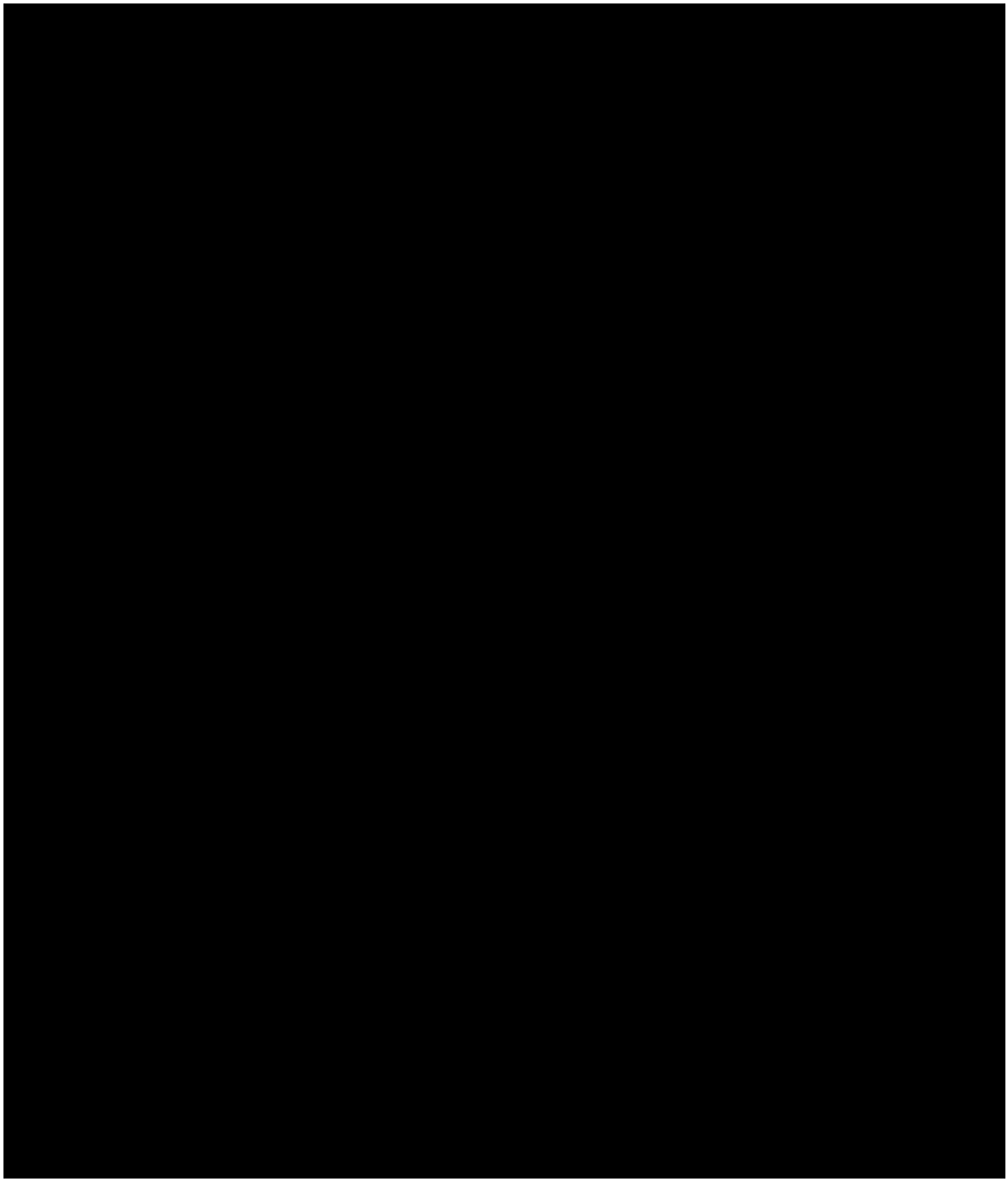

“Survivor Tree and Message from Rescue Team 5.” Photo of the side of the Journal Record Building, which is across the street from the leveled Alfred P. Murrah Federal Building. Photo taken in 1997 by David Allen and reprinted with his permission.

LETTER FROM THE ATTORNEY GENERAL

It is with great pride that I present to you this Victims' Rights issue of the *United States Attorneys' Bulletin*. Victims' rights are a high priority within the Department of Justice, and your efforts to prosecute crime are very important to our society's interest in living in a safe environment. For crime victims, however, your efforts are far more personal. Often, you are the only voice the victim has in the courtroom. When you convict a defendant who has committed a violent crime, you help the victim heal and regain a feeling of security. Even when the Government is not successful in its efforts to prosecute a case, crime victims treated with dignity and compassion may at least come away from the experience with a sense of respect for the criminal justice process.

There are many laws giving legal rights to victims and governing Department of Justice attorneys' obligations to victims. Victims are becoming increasingly educated about their rights and, in many cases, are insisting that those involved in the criminal justice system respect these rights. The Department has taken several steps to help prosecutors understand and comply with victims' rights laws. For example, this issue of the *Bulletin* contains many practice tips and strategies. Additionally, the Executive Office for United States Attorneys (EOUSA) recently published a comprehensive book of victim-related statutes, which is a useful tool for both prosecutors and Victim-Witness Coordinators. The Office of Legal Education is adding victim-related topics to many of its training seminars. Finally, EOUSA received funding to hire 93 new Victim-Witness Coordinators or Victim Advocates. These factors combine to make it easier for you to ensure that victims are well treated by the United States Attorneys' offices.

Prosecuting crime is a challenging and rewarding task. I hold all of you to a very high standard in the way that you treat victims. I am also confident that in living up to this standard, and working to ensure that the criminal justice system "revictimizes" no victim of crime, you will take even greater satisfaction in your duties.

Why (and What) Do Prosecutors Need to Know about Victims' Rights?

Julie Breslow, Attorney Advisor
Executive Office for United States Attorneys
Law Enforcement Coordinating Committee/Victim-Witness Staff

The victims' rights movement began as a response to the difficulties many victims and their families faced as they negotiated the criminal justice system in the aftermath of a crime. Victims reported feeling slighted by, or left out of, the criminal justice process, and they lobbied for laws that would give them participatory rights and protections in the criminal justice system. They have also lobbied for a federal constitutional amendment to establish and protect victims' rights. Because of this movement, law makers have had to balance securing rights for victims with protecting the rights guaranteed to defendants. Likewise, Assistant United States Attorneys (AUSAs) face the challenge of making sure they protect victims' rights during the prosecution of federal crimes.

Victim-Witness Coordinators (VWCs) can help prosecutors fulfill their responsibilities by providing victims with service referrals and notifying victims of court proceedings and case developments. Prosecutors should, however, be aware of several key victims' issues. A full understanding of these issues will enable prosecutors to protect and respect the rights of victims, as required by various statutes and the *Attorney General Guidelines for Victim and Witness Assistance* (*Guidelines*).† This article will discuss the *Guidelines*, and will provide an overview of some laws and rules governing victims' rights.

A. The Attorney General's Guidelines for Victim and Witness Assistance

The *Guidelines* were first issued in 1991 and updated in 1995. Currently, they are being revised under the supervision of the Deputy Attorney General's Victims' Rights Working Group. The *Guidelines* govern the interaction between victims and "those components of the Department of Justice engaged in the detection, investigation, or prosecution of *all* federal crimes." *Guidelines*, Article IC. The *Guidelines* are available electronically on USABook by selecting "V/W *Guidelines*" from the program menu.

Why do prosecutors need to be familiar with the *Guidelines*? There are at least two answers to this question. The first answer is that prosecutors have statutory responsibilities under the victims' rights laws, and the *Guidelines* provide direction and instruction to help prosecutors meet these responsibilities. Second, victims are becoming ever more aware of their rights and are beginning to take legal action when those rights have been infringed upon or denied.

Ochran v. United States, 117 F.3d 495 (11th Cir. 1997), provides one example of why it is so important for prosecutors to be familiar with the *Guidelines*. In *Ochran*, the plaintiff provided information to the police concerning her ex-boyfriend. The information led to the arrest and prosecution of the ex-boyfriend for federal drug charges. The night before his arraignment, the ex-boyfriend threatened the plaintiff and her family. The plaintiff reported the threat to an investigative agent who referred her to the AUSA assigned to the case. The plaintiff's father reported the threat to the AUSA.

The AUSA spoke with the ex-boyfriend and his attorney about the threats and stated her intention to seek revocation of his bond if the threats persisted. The ex-boyfriend remained out on a bond and later

† All references in this article are to the 1995 *Guidelines*. More details about the *Guidelines* revision project can be found in "Revising the Attorney General's Guidelines for Victim and Witness Assistance" by Heather Cartwright, in this issue of the *Bulletin*.

kidnapped the plaintiff at knife point, choked her, stabbed her, and severely injured her. The plaintiff brought an action against the United States under the Federal Tort Claims Act (FTCA), and the United States defended by relying on the discretionary function exception to the FTCA. The district court dismissed the case, but the Eleventh Circuit reversed the dismissal.

In its review of the case, the Eleventh Circuit emphasized that the *Guidelines* stated:

> . . . information on the prohibition against intimidation and harassment and the remedies therefor *shall* routinely be made available to victims and witnesses.

Guidelines, Article IIID(2). Based on this directive and the facts alleged, the Eleventh Circuit 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." *Ochran*, 117 F.3d at 506. The case is currently on remand to the district court for further proceedings.

B. The Victim Witness Protection Act of 1982

- ❑ 18 U.S.C. § 1512—Tampering with a Witness, Victim, or an Informant
- ❑ 18 U.S.C. § 1513—Retaliating Against a Witness, Victim, or an Informant
- ❑ 18 U.S.C. § 1514—Civil Action to Restrain Harassment of a Victim or Witness
- ❑ 18 U.S.C. § 3663—Order of Restitution

The Victim Witness Protection Act (VWPA) criminalized tampering with or retaliating against victims, witnesses, and informants, and provided a mechanism by which the Government may seek a restraining order against this harassment. The VWPA also established the framework for discretionary restitution pursuant to 18 U.S.C. § 3663. The VWPA required prosecutors and other Department of Justice employees to ensure that they gave rights and protections to victims and witnesses "where possible." Subsequent legislation imposed a much stronger standard of victim-witness responsibility on prosecutors and other Department of Justice employees. *See* Section E below.

C. The Victims of Crime Act of 1984

- 42 U.S.C. § 10601—Crime Victims Fund
- 42 U.S.C. § 10602—Crime Victims Compensation
- 42 U.S.C. § 10603—Crime Victim Assistance
- 18 U.S.C. § 3013—Special Assessment on Convicted Persons

The Victims of Crime Act of 1984 (VOCA) established the Crime Victims Fund (the Fund). Pursuant to VOCA, fines and assessments imposed on defendants convicted of federal offenses are deposited into the Fund. The money in this fund is disbursed through grants to state and local victims' assistance and compensation programs, creating a connection between obtaining convictions and providing services to victims.

D. Federal Rule of Criminal Procedure 32

Federal Rule of Criminal Procedure 32 relates to sentencing and judgment and is very important to victims because it governs some ways in which they can express the crime's impact to the court. Rule 32 should be read with the *Guidelines* because the *Guidelines* contain several provisions which make the United States Attorneys' offices (USAOs) responsible for notifying victims of their rights at sentencing.

1. *The Presentence Report*

Rule 32(b) requires the probation officer to submit a presentence report to the court. Besides containing information about the defendant and his or her history, the report must contain information about the victim and the financial, social, psychological, and medical impact of the crime on the victim. Article IIID(3)(g) of the *Guidelines* requires prosecutors to notify victims when the Government will present information to the court about the effect of the crime on the victim.

2. *Allocution by the Prosecutor*

Rule 32 (c)(3)(D) relates to a prosecutor's opportunity to allocute at sentencing and to advise the court of the impact of the crime on the victim.

Article V of the *Guidelines* states, "[c]onsistent with available resources and their other responsibilities, federal prosecutors *shall* advocate the interests of victims, including child victims, at the time of sentencing."

3. *Allocution by the Victim*

(a) At the sentencing hearing

Rule 32 (c)(3)(E) requires the court to ask victims of violent crime and sexual abuse (if they are present in court at the time of sentencing) and whether they want to address the court or offer information at the sentencing hearing. Although it is the court's responsibility to find out if a victim wants to speak in court, Article IIID(3)(h) of the *Guidelines* requires prosecutors to notify all victims of the date and time of the sentencing hearing. The *Guidelines* also require prosecutors to notify all victims that the court will ask whether they want to make a statement or present information at the sentencing hearing. *Guidelines*, Article IIID(3)(i).

(b) At the pretrial release hearing

Title 18, United States Code, Section 2263 states that a victim ". . . shall be given an opportunity to be heard regarding the danger posed by the defendant" at a pretrial release hearing for a federal domestic violence or stalking offense. Prosecutors may want to consider using an expert witness to supplement the information provided by the victim or if the victim chooses not to speak.

4. *Victim Impact Statements*

Rule 32(c)(2) states that Federal Rules of Criminal Procedure 26.2(a)-(d) and (f) (governing production of witness statements) apply at sentencing hearings. Pursuant to Article V of the *Guidelines*, prosecutors are required to provide the probation officer with any information in the Government's possession and necessary to prepare the Victim Impact Statement and the Presentence Report. Furthermore, Article V of the *Guidelines* states, "[t]he victim *shall* be apprised by the federal prosecutor that the U.S. Probation Officer is required to prepare a Victim Impact Statement which includes a provision on restitution. The victim *shall* also be advised as to how to communicate directly with the Probation Officer if he or she so desires."

E. The Crime Control Act of 1990 and The Victims' Rights Clarification Act of 1997

1. *The Crime Control Act of 1990*

42 U.S.C. § 10606—Victims' Rights
42 U.S.C. § 10607—Services to Victims

The Crime Control Act of 1990 (CCA) established seven rights of and listed services that must be provided to crime victims. The CCA dramatically increased the victim responsibilities of Department employees by changing the standard from a "where possible" requirement to a "best efforts" requirement, as reflected in the language of 42 U.S.C. § 10606(a).

The seven rights of crime victims established by the CCA are also incorporated in Article IIA of the *Guidelines*. In this regard, 42 U.S.C. §10606(b), requires prosecutors to make their "best efforts" to ensure that crime victims are:

1. treated with fairness and respect for the victim's dignity and privacy;

2. reasonably protected from the accused offender;

3. notified of court proceedings;

4. present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial;

5. permitted to confer with [the] attorney for the Government in the case;

6. restitution; and

7. entitled to information about the conviction, sentencing, imprisonment, and release of the offender.

Title 42, United States Code, Section 10607 sets forth various services that the Government and

investigative agencies "shall" provided to victims. While these services essentially parallel the seven rights set out in § 10606, § 10607 reiterates that the Government must ensure that the victim is fully informed. The flow of information must include, but is not limited to, referrals for victims services and complete details concerning the progress of the case and the offender's status. The statute also requires that the Government provide victims with "a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses." 42 U.S.C. § 10607(4). Employees should consult the statute for a complete listing of all services that must be provided.

2. *The Victims' Rights Clarification Act of 1997*

18 U.S.C. § 3510—Rights of Victims to Attend and Observe Trial

Two sections of the CCA explicitly state that failure to provide the listed rights and services to a victim does not give rise to a cause of action. *See* 42 U.S.C. §§ 10606(c) or 10607(d). Despite these provisions, victims have tried to enforce their rights under these statutes.[†] For example, in *United States v. McVeigh*, 106 F.3d 325 (10th Cir. 1997), victims of the Oklahoma City bombing appealed a pretrial sequestration order which prohibited those likely to testify at sentencing from attending the trial. The Tenth Circuit held that the victims lacked standing for this appeal and that no private cause of action arises out of failure to accord victims the rights enumerated in 42 U.S.C. § 10606(b). In response to this decision, the Congress passed The Victims' Rights Clarification Act of 1997. *See* 18 U.S.C. § 3510 (Rights of victims to attend and observe trial). Subsequently, in *United States v. McVeigh*, 958 F. Supp. 512 (D. Colo. 1997), the district court amended its prior witness sequestration order to allow victims and witnesses who were likely to be witnesses at sentencing to observe the trial proceedings.

F. The Antiterrorism and Effective Death Penalty Act of 1996

1. *42 U.S.C. § 10608—Closed Circuit Televised Court Proceedings for Crime Victims*

This section of the Antiterrorism and Effective Death Penalty Act of 1996 sets out the general parameters under which victims in cases where venue is changed are permitted to observe trial proceedings via closed circuit television. In cases where the venue has been changed to a location more than 350 miles from the original location, the court shall order closed circuit televising of court proceedings. People with a "compelling interest" can view the closed circuit broadcast if they are unable to travel to the new location because of expense or inconvenience. For example, after ordering a change of venue, the court permitted victims of the Oklahoma City bombing to view trial proceedings via closed circuit television.

2. *The Mandatory Victims' Restitution Act of 1996. (MVRA)*

18 U.S.C. § 3663A—Mandatory Restitution to Victims of Certain Crimes

The MVRA was enacted as Title II of the Antiterrorism and Effective Death Penalty Act of 1996. Mandatory restitution under the MVRA, other types of mandatory restitution, and discretionary restitution are fully discussed in "If You Don't Have a Dime, Who Pays for the Crime? The Mandatory Victims' Restitution Act" by Kristin I. Tolvstad, in this issue of the *Bulletin*.

G. The Crime Control Act of 1990 (Child-Victims' and Child-Witnesses' Rights)[††]

[†] Although Ochran concerned a victim's right to reasonable protection from an accused offender, the lawsuit was not filed under 42 U.S.C. §§ 10606 or 10607. Rather, Ochran was filed under the Federal Torts Claim Act, which looks to state law for a determination of whether a cause of action exists. Ochran is currently before the district court on an order of remand for a determination of the merits of the plaintiff's case.

[††] For additional information, see Kathryn Turman & Jane Dinsmore, Child Victims and Witnesses: A Handbook for Criminal Justice Professionals (*USABook* vers. 2.09, 1998). This handbook

18 U.S.C. § 3509—Child-Victims' and Child-Witnesses' Rights

Testifying in a trial can be a terrifying experience for a child. Frequently, children are called upon to testify against a relative or other trusted person, or to testify about a crime committed against someone the child knows. Pursuant to 18 U.S.C. § 403, "[a] knowing or intentional violation of the privacy protection accorded by [18 U.S.C.] § 3509 . . . is a criminal contempt. . . ." Prosecutors litigating cases with child-victims or child-witnesses must therefore be familiar with the requirements of 18 U.S.C. § 3509.

Section 3509 protects the privacy of child-witnesses and presents ways to make testifying less frightening for children. For example, § 3509(b)(1) sets forth the specific findings which the court must make before permitting a child to testify via live, two-way, closed circuit television. Additionally, § 3509(b)(2) authorizes the videotaping of a child's deposition. Before allowing the use of closed circuit television or a videotaped deposition, the court must make case-specific findings regarding the child's fear, the trauma the child will suffer from testifying, or other factors listed in §§ 3509(b)(1) and (b)(2). The trial court's failure to make these findings may result in the reversal of a conviction. *See United States v. Moses*, 137 F.3d 894 (6th Cir. 1998).

Section 3509 contains several other key provisions, which assist in the prosecution of cases involving child-witnesses and lessen the trauma to a testifying child. For example, consistent with Federal Rule of Evidence 601, § 3509(c) states that child-witnesses are presumed to be competent and a competency examination may only be requested in a written motion offering proof of incompetency, thus sparing most child-witnesses from a competency examination.

Section 3509(d) contains various steps which Department of Justice employees (including investigative agents), court employees, and the defendant and employees of the defendant (including the criminal defense attorney) must take to protect a child-witness's privacy. For example, these parties must file under seal all documents bearing the child-witness's name or other identifying information. They also must keep any such records in a secure place. Court orders are not needed to comply with these requirements. Additionally, the court may issue protective orders and close the courtroom during a child's testimony. These protections shield the child-witness from unnecessary privacy intrusions.

The statute also offers several ways in which adults who are not attorneys in the case can help a child-witness. First, § 3509(g) encourages the use of multi-disciplinary child abuse teams in the investigation and prosecution of child abuse and exploitation cases. Second, pursuant to § 3509(h), the court can appoint a guardian ad litem, who will advocate for the child's best interests and can offer recommendations regarding the child's welfare. Third, under § 3509(i), a child is allowed to testify with the assistance of an adult-attendant with whom the child feels comfortable. The adult-attendant is permitted to be near the child, and even touch the child, while the child is testifying.

Section 3509(j) permits the court to expedite a trial in which a child will be testifying and to consider the child's age when deciding whether to grant a continuance. The logic of this provision is obvious: a continuance of a few weeks or months may seem like a short time for an adult; however, it may be a long time for a child to have to worry about an upcoming trial.

Prosecutors often report feeling caught between trying to minimize harm to the child and making all necessary efforts to prosecute the case successfully. The *Guidelines* recognize this tension and state:

> [t]hese *Guidelines* are intended to assist every federal law enforcement officer, investigator, and prosecutor in becoming aware of the difficulties encountered by child-victims and child-witnesses who are forced to relive their trauma all over again by testifying in court. The goal of such officials, therefore, must be to *make their best efforts* or take whatever valid action necessary, to reduce the trauma to the child-victim caused by the criminal justice system while at the same time increasing the

provides invaluable information and practical tips for working successfully with child victims and witnesses.

successful prosecution of child abuse offenders.

Guidelines, Article VII(A).

H. The Federal Constitutional Amendment for Victims' Rights

President Clinton and Attorney General Reno have stated their support for a Constitutional Amendment for victims' rights. The most recent version of this proposed amendment, SJ 44—The Victims' Rights Amendment (the Amendment), was cosponsored by Senator Jon Kyl [D-AZ.] and Senator Diane Feinstein (D-Calif.]. In July 1998 the Amendment went to markup in the Senate and was voted out of committee. The goal of the Amendment is to achieve a national, uniform baseline for victims' rights.

Conclusion

The Executive Office for United States Attorneys (EOUSA) recently published a handbook titled *Victim and Witness Rights: United States Attorneys' Responsibilities*. The handbook contains a summary of the laws governing victims' and witnesses' rights, representative case law, and the text of relevant statutes. EOUSA distributed the book to all USAOs and it should be a valuable tool for prosecutors and Victim-Witness Coordinators.

EOUSA's Law Enforcement Coordinating Committee/Victim-Witness Staff is available to help prosecutors and Victim-Witness Coordinators with victim and witness related matters. They can be reached at 202-616-6792. ❖

ABOUT THE AUTHOR

Julie Breslow joined EOUSA's LECC/Victim-Witness Staff as an attorney-advisor specializing in victims' issues in January 1998. She provides assistance and training to Victim-Witness Coordinators and Assistant United States Attorneys. Before joining EOUSA, she served as the Director of Court Services for the District of Columbia's Child and Family Services Agency. Before that, she was a trial attorney in the District of Columbia's Office of the Corporation Counsel, where she prosecuted civil child abuse and neglect cases, juvenile delinquency cases, and sought the enforcement of child support orders. She is a 1989 graduate of Albany Law School. *The author wishes to thank Jacquelyn Melius, a student at the John Marshall Law School, for her invaluable help in compiling the material discussed in this article.* ✠

Revising the *Attorney General's Guidelines for Victim and Witness Assistance*

Heather Cartwright, Attorney Advisor to the Director
Office for Victims of Crime
United States Department of Justice

As an Assistant United States Attorney (AUSA) for the District of Columbia, I dealt with many crime victims and witnesses. Recently, I served as a detailee to the Justice Department's Office for Victims of Crime (OVC) to work on a Presidentially-mandated, Department-wide initiative to improve the treatment of federal crime victims. One of the most significant tasks of the initiative is revising the *Attorney General's Guidelines for Victim and Witness Assistance (Guidelines)*.

In the very first federal victims' rights law, passed in 1982, the Congress directed the Attorney General to develop and implement guidelines for the Department on the treatment of crime victims and witnesses. The *Guidelines* were likewise first issued in 1982 and have developed as the victims' rights laws have evolved. The Congress also instructed the Attorney General to ensure that all non-Department federal law enforcement agencies adopt similar guidelines.

The organization spearheading the *Guidelines* revision is the Deputy Attorney General's Victims Rights Working Group (the Working Group). The Working Group is composed of representatives of the Drug Enforcement Agency, Federal Bureau of Investigation, Immigration and Naturalization Service, U.S. Marshals Service, Office of the Inspector General, Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Environment and Natural Resources Division, Executive Office for United States Attorneys (EOUSA), Tax Division, and the Bureau of Prisons. A group composed of myself and one representative each from OVC, the Office of Policy Development, and EOUSA developed the first draft of the modified *Guidelines*. The larger working group then submitted its comments on the proposed revisions. The group also distributed the first draft to the Attorney General's Advisory Committee's subcommittee on Victim-Witness issues. The Working Group received a second draft on July 1, 1998, and a third draft in August 1998.

Working Group members took part in one of four smaller working groups to address specific revision issues. One group is addressing guidelines for cases with large numbers of victims. The group leader is Howard Blumenthal of the Antitrust Division. That group came up with suggested language to guide notice and services in cases with large numbers of victims. A second group is addressing miscellaneous prosecution issues including consultation about plea bargains, notification of appellate proceedings, and victim privacy protections. Robert Lindsay of the Tax Division leads the miscellaneous prosecution issues group, which has also developed language for inclusion in the revised *Guidelines*. The other group is addressing the question of liability and the definition of "victim."

The revised *Guidelines* will have a new format which has separate sections for investigators' offices, prosecutors' offices, and correction agencies. Thus, it should be easier for employees to find the applicable guidelines.

Soon, each agency head will receive a final draft of the *Guidelines* for their approval, which will reflect all components' comments. The Working Group will then forward the draft to the Attorney General for her approval. The planned

distribution date for the revised *Guidelines* is the Spring of 1999. ❖

ABOUT THE AUTHOR

Heather Cartwright was an Assistant United States Attorney in the United States Attorney's office for the District of Columbia for eight years. In 1997, she was detailed to the Office for Victims of Crime, where she recently accepted a permanent position. Before coming to Washington, D.C., she was a law clerk for the Honorable George M. Marovich, United States District judge in the Northern District of Illinois. She completed her undergraduate degree at University of Illinois at Champaign-Urbana, and earned her law degree from the University of Illinois Law School. ✠

UPCOMING SYMPOSIUM
VICTIMS OF FEDERAL CRIMES

OVC will sponsor the Second Biannual National Symposium on Victims of Federal Crime in Washington, D.C, during the week of February 8-12, 1999. This event is the largest training conference for federal law enforcement victim and witness assistance personnel in the country. This year there will be special emphasis placed on assisting victims of mass casualty incidents and domestic terrorism.

Invited speakers at the Symposium include the Attorney General, the Deputy Attorney General, and the Director of the FBI, as well as experts in victim assitance issues from other federal agencies. For more information contact Christopher Greenslade, Symposium Coordinator, at 202-232-6682.

Victim-Witness Coordinators: Their Roles and Responsibilities

Barbara A. Walker, Deputy Assistant Director
Executive Office for United States Attorneys
Law Enforcement Coordinating Committee/Victim-Witness Staff

There has been a great deal of debate about the role of the Victim-Witness Coordinator (VWC) in United States Attorneys' offices (USAOs). Much of the debate centers around the duties and responsibilities associated with the VWC position. Since the Department hired the first VWCs in the early 1980s, they have assumed different responsibilities such as managing witnesses, notifying victims and witnesses, providing victims with referrals for services, training USAO personnel about victims' rights, and developing model and emergency assistance programs for victims and witnesses. Besides those responsibilities, VWCs work closely with other federal, state, and local entities to ensure cooperation on victims' issues. The most important responsibility of the VWC is to ensure the USAO's compliance with victims' rights laws, which is an imperative step toward treating victims fairly and giving them a voice in the criminal justice system.

The Executive Office for United States Attorneys (EOUSA) recognizes the importance of the Victim-Witness Program and has sought to increase the program's resources and staff to meet the growing need for victim and witness services in USAOs. Because of the increased interest in the Federal Government's treatment of victims and witnesses by victims' rights groups, defense attorneys, and the media, it is critical that the Department clarify the role and responsibilities of the VWC.

The Responsibilities of the VWC

Although each district is unique, the 1995 *Attorney General's Guidelines for Victim and Witness Assistance* (*Guidelines*) identify specific

victim- and witness-related tasks that the USAOs are responsible for performing. These responsibilities include:

- ❏ Consultation with victims;
- ❏ Providing notice and information to victims;
- ❏ Providing victims and witnesses with a secure waiting area during court proceedings;
- ❏ Advising violent crime victims of their right to allocute and present information to the court;
- ❏ Informing victims of their right to an order of restitution; and
- ❏ Ensuring a victim's privacy when possible.

While the ultimate responsibility for these tasks lies with the United States Attorney (USA), the Assistant United States Attorney (AUSA) must handle some of these responsibilities personally and delegate others to the VWC.

The VWC's Role

The VWC should be the USA's top advisor on victim and witness issues. The VWC can look to EOUSA, the Office for Victims of Crime (OVC), and other federal, state, and local victim agencies for assistance and guidance. Each VWC is responsible for understanding current office policies and procedures, pending and new victim and witness-related legislation, and Department programs for victims and witnesses.

Resources, Support, and Training Available to VWCs

VWCs routinely receive memoranda, articles, and resource materials from EOUSA and the OVC resource center, which is accessible via the Internet at www.ojp.usdoj.gov\ovc. OVC also provides training opportunities to VWCs through conferences, academies, and seminars. For example, EOUSA's Law Enforcement Coordinating Committee/Victim-Witness Staff (LECC/Victim-Witness Staff) holds a national

training conference for VWCs. The LECC/Victim-Witness Staff also publishes an electronic newsletter, *The UPDATE*, which addresses current victim and witness issues, and provides helpful suggestions for victim and witness management.

In 1998, OVC funded an LECC/Victim-Witness Attorney Advisor position to provide guidance and assistance to VWCs and AUSAs on legal issues involving victims. Finally, each VWC is assigned an LECC/Victim-Witness Staff program manager, who is available to answer questions and provides guidance on program issues.

Training Coordinated by the VWC

Article VIII of the *Guidelines* mandates training on the responsibilities set forth in the many different laws establishing victims' rights. This training is mandatory for all Department components subject to the *Guidelines*, including all presently-employed and new attorneys. The training should also include support staff who have routine contact with victims and witnesses. VWCs can coordinate this training and establish methods of updating USAO staff members on these matters. The VWC should be readily available to all attorneys and support staff to answer questions and work with victims organizations when appropriate.

Establishing policies and procedures

The VWC is responsible for establishing procedures for handling victim-witness matters, such as developing notification letters, compiling referral directories, structuring witness management, and implementing the Emergency Witness Assistance Program protocol. The VWC should have a clearly defined method for notifying victims and witnesses of relevant proceedings. VWCs often work closely with the secretarial staff and paralegals in the office to help with notification and witness management. The VWC should develop written procedures that USAO staff members can use to provide assistance to victims and witnesses in the VWC's absence.

The Role of Liaison

The VWC should serve as a liaison to victim service agencies and be familiar with the types of services provided by federal, state, and local agencies. As a professional representative, the VWC is responsible for establishing contacts which foster cooperation between the USAO and victims' services organizations, participating in training programs, and explaining the USA's responsibilities to victims and witnesses. When asked, the VWC also must serve as the USA's representative at meetings and conferences on victims' issues.

Conclusion

The role and responsibilities of the VWC are ever changing. As victims' laws and victims' needs evolve, so must the role of the VWC. If you have any questions about VWCs, please contact the LECC/Victim-Witness Staff at 202-616-6792.❖

ABOUT THE AUTHOR

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If You Don't Have a Dime, Who Pays for the Crime? —The Mandatory Victims Restitution Act

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On May 13, 1998, the Honorable Richard P. Matsch convened a pre-sentencing hearing in *United States v. Nichols*. The purpose of this hearing was to make preliminary determinations regarding the imposition of a restitution order on convicted defendant Terry Nichols. Judge Matsch decided to base the restitution order on the cost of the building which Nichols and his codefendant, Timothy McVeigh, destroyed. In so deciding, Judge Matsch made the following comment regarding the extent of the human suffering which resulted from a tragic crime—the Oklahoma City bombing:

> *I'm reminded of a most compelling argument that I once heard . . . the issue was the net pecuniary loss rule being applied in wrongful death where a baby was killed. And one of the justices, I recall, was outraged and said to counsel, who was arguing, "Do you mean that this baby's life is worthless?" In a response that I will never forget, the advocate said, "No, it is not that this baby's life is worthless; it is that it is priceless." I'm reminded of that here; that the human suffering involved in this case is priceless. There is no way to put a price tag on it.*

Reporter's Transcript of Hearing on Motions, May 13, 1998, *United States v. Nichols*, 958 F. Supp. 512 (D. Colo. 1997).

In 1996, following the Oklahoma City bombing, the Congress turned restitution law, as we knew it, on its head with the enactment of the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified at many locations in Title 18). Title II of this legislation, the Mandatory Victims Restitution Act (MVRA), which became effective on April 24, 1996, significantly reformed the law of restitution and the manner of enforcement of restitution orders. The MVRA expanded the scope of mandatory restitution, provided consolidated procedures for the issuance of restitution orders, and provided enhanced, post- conviction enforcement of restitution orders. This article attempts to give prosecutors a basic outline of the MVRA's

requirements concerning restitution orders.

Brief History of Restitution

Restitution is one of the oldest sanctions for criminal behavior still in use today. The idea of providing restitution to victims has survived for centuries, passing through many civilizations. The notion of "an eye for an eye" dates back to at least the eighteenth century and the law of the Babylonian King Hammurabi. Linda F. Frank, *The Collection of Restitution: An Often Overlooked Service to Crime Victims*, 8 ST. JOHN'S J. LEGAL COMMENT. 107, 109 (1992).

Initially, courts did not recognize restitution as a separate term of a criminal sentence. When the Congress passed the Victim-Witness Protection Act of 1982 (VWPA)[†] this changed. Before enactment of the VWPA, imposition of an order of restitution was completely within the discretion of the trial court. Further, courts could only order restitution as a condition of probation. In enacting the VWPA, the Senate Judiciary Committee in its report stated:

> As simple as the principle of restitution is, it lost its priority status in the sentencing procedures of our federal courts long ago. Under current law, 18 U.S.C. § 3651, the court may order restitution for actual damage or loss, but only as part of a probationary sentence.
>
> As a matter of practice, even that discretionary grant of authority is infrequently used and indifferently enforced. In this respect, federal criminal courts have gone the way of their state counterparts, reducing restitution from being an inevitable, if not exclusive, sanction to being an occasional afterthought.

S. REP. No. 97-532, at p. 50 (1982), *reprinted in* 1982 U.S.C.C.A.N 2515.

During the ten years following enactment of the VWPA, the Congress attempted to refine the enforcement mechanisms for restitution, but there were only minor amendments to the substantive law provisions. It was not until 1992, with the enactment of the Child Support Recovery Act (CSRA),[††] that the Congress introduced the idea of "mandatory" restitution into federal law. The CSRA mandated that courts impose restitution on defendants convicted of willful failure to pay past due child support. Two years later, in 1994, the Congress passed the Violence Against Women Act (VAWA).[†††] Through VAWA, the Congress identified certain other types of crimes which were specifically subject to mandatory restitution, i.e., sexual abuse, sexual exploitation and other abuse of children, domestic violence, and telemarketing fraud.

The MVRA is the latest step in the promulgation of mandatory restitution. The MVRA establishes offenses which require, or grant discretion to, the court to impose restitution. The new law also outlines procedures courts must use to decide how much restitution the defendant must pay, how the defendant will pay it, and how to enforce the restitution order.

Categories of Offenses

The MVRA establishes three categories of offenses related to the imposition of restitution: (1) mandatory restitution offenses, (2) discretionary restitution offenses, and (3) other non-specified offenses.

Mandatory Restitution Offenses

The MVRA brought a more comprehensive notion of mandatory, loss-based restitution to the federal criminal system. The MVRA created a new 18 U.S.C. § 3663A, which requires courts to order a defendant, convicted of or who plead guilty to enumerated offenses, to pay full restitution without regard to the defendant's economic situation. The offenses included within the scope of this

[†] Pub. L. No. 97-291, 96 Stat. 1248 (1982)

[††] 18 U.S.C. § 228 (originally enacted as Pub. L. No. 102-521, 106 Stat. 340 (1992).

[†††] 42 U.S.C. § 1391-14040 (originally enacted as Pub. L. No. 103-322, 108 Stat. 1904) (Violent Crime Control and Law Enforcement Act of 1994).

mandatory restitution are:

❏ a crime of violence (as defined in 18 U.S.C. § 16);

❏ an offense against property under Title 18, including any offense committed by fraud or deceit; **or**

❏ an offense described in 18 U.S.C. § 1365, relating to tampering with consumer products; **and**

❏ where there exists an identifiable victim[†] or victims who have suffered a physical injury or pecuniary loss. 18 U.S.C. § 3663A(c)(1)(B).

There is, however, one exception to the mandatory restitution rule listed above. The exception applies only to those cases involving offenses against property and only if the court makes a specific finding that:

❏ the number of identifiable victims is so large as to make restitution impracticable; or

❏ determining complex issues of fact related to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

See 18 U.S.C. § 3663A(c)(3).

Four areas of mandatory restitution enacted under VAWA still exist:

❏ Sexual abuse—18 U.S.C. § 2248;

❏ Sexual exploitation and other abuses of children—18 U.S.C. § 2259;

❏ Domestic violence—18 U.S.C. § 2264; and

❏ Telemarketing fraud—18 U.S.C. § 2327.

When the MVRA was first enacted, it was unclear whether convictions under the CSRA would still qualify as "mandatory restitution" offenses. Before enactment of the MVRA, the law required courts to impose restitution, pursuant to 18 U.S.C. § 3663, on defendants convicted for failure to pay child support. *See* 18 U.S.C. § 228. When the Congress drafted the MVRA, the reference to 18 U.S.C. § 3663 remained, though the amended § 3663 now refers to discretionary restitution. The Deadbeat Parents Punishment Act of 1998 has corrected this apparent oversight,[††] by amending 18 U.S.C. § 228 to provide that "the court shall order restitution under section 3663A."

The mandatory restitution provisions of the MVRA can also apply if a plea agreement so provides. For instance, when an indictment contains both charges for which restitution is mandatory and those for which it is not, an acknowledgment by the defendant in the plea agreement that a mandatory restitution charge led to the plea agreement will trigger the mandatory restitution provisions of 18 U.S.C. § 3663A. Section 3663A(c)(2) provides that the mandatory restitution provisions will apply even in cases where a defendant enters a guilty plea to a non-mandatory offense, if the plea agreement specifically states that a mandatory offense led to the plea agreement.

Discretionary Restitution

The MVRA amended the provisions of 18 U.S.C. § 3663 to include discretionary restitution offenses. That section now provides that a court may order restitution:

❏ for any title 18 offense not covered by the new mandatory restitution provisions of 18 U.S.C. § 3663A(c);

[†] The definition of "victim" is expanded by the new law to include those "directly and proximately" harmed as a result of the commission of the offense, 18 U.S.C. §§ 3663(a)(2) and 3663A(a)(2), or victims who have suffered a physical injury or pecuniary loss. 18 U.S.C. § 3663A(c)(1)(B).

[††] 18 U.S.C. § 228 (originally enacted as Pub. L. 105-187, 112 Stat. 618 (1998).

❑ for drug offenses[†] under 21 U.S.C. §§ 841, 848(a), 849, 856, 861, and 863, as long as the victim is not a participant;

❑ for air piracy offenses (unless they fall within the new mandatory restitution provisions of 18 U.S.C. § 3663A(c)); and

❑ in any criminal case to the extent agreed to by the parties in a plea agreement.

18 U.S.C. § 3663(a).

In determining whether to award restitution in these cases, the court is required to consider the:

❑ amount of the loss sustained by each victim because of the offense; and

❑ financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

Thus, if the court concludes that the complication and prolongation of the sentencing process involved in ordering restitution outweighs the need to provide restitution to any victims of a discretionary offense, the court may decline to order restitution. *See* 18 U.S.C. § 3663(a)(1)(B).

Non-specified offenses

There are crimes that can be prosecuted under titles other than Title 18 of the United States Code,[††] which do not fall into the restitution categories established by §§ 3663 or 3663A. A court may order restitution for these offenses as a discretionary condition of probation. *See* 18 U.S.C. § 3563(b)(2). The court may also order restitution as a condition of supervised release under 18 U.S.C. § 3583(d).

Plea Agreements

In all plea agreements negotiated by the Government, prosecutors should give consideration to "requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the count to which the defendant actually plead[s]." The Sentencing Reform Act of 1984, Pub. L. No. 104-132, § 209 (codified as a Note under 18 U.S.C. § 3551). Pursuant to the requirements of § 3551, the Attorney General on July 24, 1996, issued guidelines to the Department of Justice requiring compliance with this provision. These guidelines appear in the *United States Attorneys' Manual* (*USAM*) at § 9-16.320.

Procedures for Ordering Restitution

No matter how the court imposes restitution, prosecutors must follow the procedures set forth in 18 U.S.C. § 3664. In addition, courts must impose restitution orders that reflect the full amount of each victim's loss, without consideration of the defendant's economic circumstances. *See* 18 U.S.C. § 3664(f)(1)(A). Consequently, though restitution may not be mandatory, once the court determines that it will order restitution, it must do so for the full loss amount without regard for the defendant's ability to pay.

For example, for discretionary restitution under 18 U.S.C. § 3663, the court may consider the loss amount and the defendant's economic circumstances when deciding to award restitution. Once, however, the court decides to order restitution, those considerations are irrelevant to the issue of how much restitution the defendant must pay. Additionally, the burden of demonstrating the loss sustained by a victim is on the Government. *See* 18 U.S.C. § 3664(e).

Probation officers must include enough information in the presentence report to allow the court to decide the issue of restitution. If requested by the probation officer, not later than 60 days

[†] An order of "community restitution" for certain drug offenses may be imposed in cases where no identifiable victim exists. The amount of community restitution will be based on the amount of the public harm caused by a defendant and in accordance with guidelines promulgated by the Sentencing Commission. 18 U.S.C. § 3663(c) and U.S.S.G. § 5E1.1(d).

[††] Examples of non-Title 18 offenses include: Title 26 criminal tax prosecutions and Title 15 consumer law prosecutions.

before sentencing, the prosecutor must promptly give the probation officer a list of the amounts subject to restitution. Before providing this list, the prosecutor should consult, "to the extent practicable," with all identified victims. *See* 18 U.S.C. § 3664(d).

If the losses of the victim(s) cannot be determined within 10 days of the sentencing hearing, the prosecutor or the probation officer should so inform the court, and a date for final determination of the losses can be set for up to 90 days after the sentencing. *See* 18 U.S.C. § 3664(d)(6). The ultimate effect of this delay on the loss determination and the finality of the sentence will be subject to the court's interpretation.

Even after a final determination of restitution, a victim may petition the court for an amended restitution order within 60 days after discovering additional losses. The victim must make a showing of good cause for failure to include such losses in the initial claim before the court will grant the amendment order. *See* 18 U.S.C. § 3664(d)(5).

Payment Provisions

After the court determines the amount of restitution owed to each victim, the court must, pursuant to 18 U.S.C. § 3572, establish the restitution payment structure and schedule. *See* 18 U.S.C. § 3664(f)(2). Although this provision appears to require the court to establish a payment schedule, the reference to § 3572 is an important one to remember. Section 3572(d)(1) requires the payment of restitution immediately, unless, in the interest of justice, the court provides for payment on a date or in installments. *See* 18 U.S.C. § 3572(d)(1). The court's consideration of the financial resources and other assets of the defendant (including whether any assets are jointly controlled), the projected earnings and other income of the defendant, and the defendant's financial obligations all factor into the required "interests of justice" determination. *See* 18 U.S.C. § 3664(f)(2)(A) - (C). Even if the court does establish a payment schedule for restitution, the length of time over which the defendant can fulfill the restitution order must be the shortest time in which the defendant can make full restitution. 18 U.S.C. § 3572(d)(2).

The court has several payment options to choose from when structuring a restitution order, including: payment of a lump sum, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. 18 U.S.C. § 3664(f)(3)(A). The court can set up different payment schedules for different victims and, in cases where the United States is a victim, the defendant must make restitution to private, non-federal victims before making restitution to the United States. *See* 18 U.S.C. § 3664(i).

If the "economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments," the court may order the defendant to make nominal periodic payments. 18 U.S.C. § 3664(f)(3)(B). This way, a court may alleviate any perceived negative effect on the defendant resulting from the entry of a restitution order for the full amount of a victim's loss. The one court to address the nominal payment provision of the MVRA interpreted this provision to permit a court to order less-than-full restitution, if it finds that the defendant is financially incapable of making payment. *United States v. Golino*, 956 F. Supp. 359, 364-65 (E.D.N.Y. 1997) (dictum). This decision appears to ignore the express language of § 3664(f)(1)(A), which requires the imposition of restitution for the full amount of each victim's loss. Thus, the two distinct processes of setting the amount of restitution and determining a restitution payment schedule can be confusing.

Post-Sentencing Enforcement Provisions

The MVRA incorporates the enforcement provisions available for criminal fines as the enforcement tools for restitution orders. Besides those found in 18 U.S.C. § 3664, the main enforcement provisions of the MVRA are found at 18 U.S.C. §§ 3571-74 and §§ 3611-15. The United States may also enforce an order of restitution through "all other available and reasonable means." *See* 18 U.S.C. § 3664(m)(1)(A)(ii).

The liability to pay a criminal fine or restitution lasts 20 years from the judgment's entry plus any period of incarceration, or until the death of the defendant. 18 U.S.C. § 3613(c). During that time, the United States must enforce the restitution order to the fullest extent of the law. 18 U.S.C. § 3551.†

The criminal fine statutes that provide for payment and collection of a fine (18 U.S.C. §§ 3611-15), all of which have been incorporated for enforcement of restitution orders, have also been substantially rewritten by the MVRA. Some of the significant changes are:

❑ Payments for fines, restitution, and special assessments must be made to the clerk of the court. 18 U.S.C. § 3611;

❑ As statutorily mandated, the court must apply restitution payments in the following order:

✓ special assessments,
✓ restitution to all victims,
✓ all other fines, penalties, costs and other payments required under the sentence, 18 U.S.C. § 3612(c);

❑ Delinquency and default penalties apply to restitution and fines. 18 U.S.C. §§ 3612(d) and (e); §§ 3572(h) and (i);

❑ Interest accrues on restitution, 18 U.S.C. § 3612(f); and

❑ The court can resentence a defendant under 18 U.S.C. § 3614 for knowingly failing to pay a fine or restitution.

An order of restitution is a lien in favor of the United States on all property and rights to property of the person fined, as if it were a liability for unpaid taxes. *See* 18 U.S.C. § 3613(c). This lien arises on the entry of judgment and continues for the duration of the liability (20 years plus the period of incarceration or until the death of the defendant), or until the obligation is satisfied, remitted, or set aside. *See* 18 U.S.C. § 3613(c). The lien becomes effective against third parties upon filing notice of a lien in accordance with 26 U.S.C. § 6323(f)(1) and (2). *See* 18 U.S.C. § 3613(d). Section 3613(d) also provides that notice of a lien which is registered, recorded, docketed, or indexed, in the manner in which state court judgments are recorded, will also be considered properly filed.

Either state or federal procedures may be used to effect enforcement for restitution (or criminal fines). 18 U.S.C. § 3613(a). This provision should allow the United States to enforce fines and restitution using the post-judgment procedures in the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. §§ 3203-06.†† The exempt property provisions of the FDCPA, however, do not apply to collection of criminal debt. 18 U.S.C. § 3613(a)(1).

The only property which is exempt from enforcement of the lien imposed for fines and restitution is, with some exceptions, property exempt from levy for federal taxes. 18 U.S.C. § 3613(a)(1). This means that a defendant has no right to exempt, for example, a homestead from enforcement of a restitution order. In fact, few exemptions are available for defendants. Generally, the following property is considered exempt from the execution of a restitution order:

❑ wearing apparel and school books, 26 U.S.C. § 6334(a)(1);

❑ fuel, provisions, furniture, and personal effects up to $1,650, 26 U.S.C. § 6334(a)(2);

❑ books and tools of a trade, business, or profession up to $1,100, 26 U.S.C. § 6334(a)(3);

† Originally enacted as Pub. L. No. 104-132, § 209.

†† In United States v. Bongiorno, 105 F.3d 1027, reh'g en banc denied 110 F.3d 132 (1st Cir. 1997), the First Circuit Court of Appeals held that the United States, in a pre-MVRA case, could not use the FDCPA to enforce a restitution order imposed in favor of a nonfederal victim, upon the defendant's conviction of failure to pay child support. This decision should not, however, be applied to limit the enforcement of restitution for nonfederal victims for convictions in the First Circuit after April 24, 1996.

❑ unemployment benefits, 26 U.S.C. § 6334(a)(4);

❑ undelivered mail, 26 U.S.C. § 6334(a)(5);

❑ certain annuity and pension payments, 26 U.S.C. § 6334(a)(6);

❑ workmen's compensation, 26 U.S.C. § 6334(a)(7);

❑ judgments for support of minor children, 26 U.S.C. § 6334(a)(8);

❑ certain service-connected disability payments, 26 U.S.C. § 6334(a)(10); and

❑ assistance under Job Training Partnership Act, 26 U.S.C. § 6334(a)(12).

Besides the specific exemptions listed above, the MVRA also gives defendants the same protections against wage garnishments afforded civil defendants under the Consumer Credit Protection Act (CCPA), codified at 16 U.S.C. § 1673. *See* 18 U.S.C. § 3613(a)(3). Although it is technically not an "exemption" statute, the CCPA generally allows 25 percent of a defendant's earnings to be garnished under a judicial wage garnishment, thus giving the defendant an additional exemption for 75 percent of his or her periodic wages or earnings.

Under the former versions of § 3663, victims had a right to enforce a restitution order in the same manner as a civil judgment. Now, the MVRA entitles a victim named in the restitution order to an abstract of judgment that, upon registering, recording, docketing, or indexing in accordance with state law, becomes a lien on the defendant's property in that state, to the same extent as a judgment in state court. 18 U.S.C. § 3664(m)(1)(B). The precise rights that this provides a victim are subject to state law.

Effect of Default

A new section has been added to the criminal fine statutes to deal with the effect of default. This section also applies to restitution orders. The section states that upon a finding that the defendant is in default of a payment toward a fine or restitution, the court may:

❑ revoke the defendant's probation or supervised release pursuant to 18 U.S.C. § 3565;

❑ modify the terms of the defendant's probation or supervised release;

❑ resentence a defendant under 18 U.S.C. § 3614;

❑ hold the defendant in contempt of court;

❑ enter a restraining order or injunction;

❑ order the sale of property of the defendant;

❑ accept a performance bond;

❑ enter or adjust the defendant's payment schedule; or

❑ take any other action necessary to obtain compliance.

See 18 U.S.C. § 3613A(a)(1).

In determining what action to take upon a defendant's default, the court must consider the defendant's employment status, earning ability, financial resources, and willfulness in failing to comply with the order. *See* 18 U.S.C. § 3613A(a)(2). A magistrate judge may hold default hearings and, to the extent practicable, must conduct them without removing an incarcerated defendant from prison. 18 U.S.C. § 3613A(b).

Changes in Defendant's Circumstances

One final enforcement provision of the MVRA may have a substantial impact on the United States Attorneys' offices (USAOs). The MVRA provides

that a restitution order must require the defendant to notify the court and the Attorney General (through the USAO) of any material change in economic circumstances which might affect his or her ability to pay restitution. *See* 18 U.S.C. § 3664(k). Victims and USAOs may also notify the court of any change in the defendant's economic condition. 18 U.S.C. § 3664(k). After receiving notice of any material change in the defendant's economic circumstances, the USAO must notify all of the victims of this change in circumstances, and must certify to the court that the USAO has notified the victims. After receiving this notification, the court may on its own, or on motion of any party, adjust the repayment schedule. 18 U.S.C. § 3664(k). In addition, if an incarcerated defendant is obligated to pay restitution and receives "substantial resources from any source," the defendant is required to apply the value of the resources to any unpaid restitution or fine. *See* 18 U.S.C. § 3664(n).

Effective Date of the MVRA

The changes to the law made by the MVRA "shall, to the extent constitutionally permissible, be effective for sentencing proceedings in cases the defendant is convicted on or after the date of enactment. . . ." MVRA at § 211.

Because the MVRA makes substantive and procedural changes to restitution law, ex post facto questions may arise with respect to convictions occurring on or after April 24, 1996, if the offense occurred before that date. The Department believes that any provision of the MVRA, regarding the decision to impose restitution or the amount of the obligation, must apply prospectively, to offenses completed on or after April 24, 1996.[†] Other provisions of the MVRA can apply to offenses committed before its effective date. Attorneys for the Government should seek to apply the new law where it would be constitutionally permissible to do so. A simple test is to ask "Will applying the new law increase the amount of restitution?" If the answer is "yes," the Ex Post Facto Clause prohibits application of the MVRA to offenses completed before April 24, 1996.

Many courts have agreed (usually in a footnote to the decision) with the Department's position regarding the ex post facto issue. At least two circuit courts have issued written rulings regarding the ex post facto issue. In *United States v. Baggett*, 125 F.3d 1319 (9th Cir. 1997), *cert. denied*, 118 S. Ct. 1089 (1998), the court stated that the application of the MVRA had the potential to increase the amount of restitution the defendant must pay, and so applying the mandatory provision would violate the Ex Post Facto Clause of the Constitution. The court noted, however, that application of the MVRA may not create such constitutional problems, if the defendant was already subject to mandatory restitution under the Senior Citizens Against Marketing Scams Act of 1994 (SCAMS Act).

Likewise, in *United States v. Williams*, 128 F.3d 1239 (8th Cir. 1997), the court stated that an order of restitution under the MVRA is punishment for application of the Ex Post Facto Clause. The court, however, held that a restitution order for the full amount of a victim's loss, according to a plea agreement, did not violate the Ex Post Facto Clause, because the offense to which he plead occurred after the effective date of the act, even though the amount of restitution included in the loss calculation was a result of conduct which occurred prior to the effective date of the Act. *See also United States v. Sclafani*, 996 F. Supp. 400 (D.N.J. 1998) (Application of the mandatory restitution provisions of the MVRA to offenses before its effective date was prohibited).

At the date of this publication, one court issued a reported decision which disagrees with the Department's position regarding ex post facto concerns. In *United States v. Newman*, 144 F.3d 531 (7th Cir. 1998), the Seventh Circuit Court of Appeals, while disagreeing with the Eighth Circuit Court of Appeals in *Williams*, held that restitution authorized under the Victim Witness Protection Act and mandated under the MVRA, is not a criminal punishment for the purposes of invoking the Ex Post Facto Clause. Consequently, the *Newman* court upheld the imposition of mandatory restitution for an offense which occurred prior to April 24,

[†] *See* Memorandum to All Federal Prosecutors from John C. Keeney, Acting Assistant Attorney General for the Criminal Division, dated June 3, 1996.

1996. *See also United States v. Ledford*, 127 F.3d 1103 (6th Cir. 1997), *cert. denied*, 118 S. Ct. 1388 (1998) (Since full restitution was allowed under the Victim Witness
Protection Act before the 1996 amendments, there was no ex post facto violation in applying the full restitution provisions of the MVRA amendments).

Conclusion

Although there may be no way to put a price on all of the losses incurred by victims of crimes, prosecutors must think about those costs every time an indictment is filed. The law now requires that courts impose mandatory, full loss-based restitution for convictions on many federal crimes. Further, the enactment of the MVRA is clear evidence of the Congress' intent that the evolution of the law of restitution favors victims' right to reparations. As recently noted, the history of restitution is not "marked by a steady erosion, but rather by constant expansion of the restitution remedy." *United States v. Martin*, 128 F.3d 1188 (7th Cir. 1997). The USAOs must be able to adapt their view of criminal prosecutions to include restitution as an important component of the sentencing process.❖

ABOUT THE AUTHOR

Kristin I. Tolvstad began her legal career in 1982 as an Assistant United States Attorney in the Northern District of Iowa. From 1988 to 1989, she served as an Assistant United States Trustee in Cedar Rapids, Iowa, but rejoined the United States Attorneys' office in 1989, where she has handled financial litigation, bankruptcy cases, and general civil litigation. She served on the standing faculty for bankruptcy for the Department's Legal Education Institute, and has done extensive teaching for EOUSA's Office of Legal Education and other agencies regarding criminal collection matters. She received the Department of Treasury's Award for Distinction in Credit Management and Debt Collection, and a Crime Victim's Fund Award for significant collection of a criminal fine. She has served on two separate temporary detail assignments with the Executive Office for United States Attorneys and specializes in general financial litigation matters and bankruptcy. *The author thanks AUSA Mark Exley, EDVA, for the background information he provided on this article*. ✠

The Emergency Witness Assistance Program

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In early 1995 a Criminal Division study team, composed of representatives from the Office of Policy and Legislation and the Office of Enforcement Operations, began evaluating federal witness security programs. The purpose of the study was to enable the Criminal Division to be more responsive to the increasing need for witness security. As the study progressed, it became apparent that existing programs were too restrictive to allow the Department to satisfy the evolving needs of threatened or intimidated witnesses. Further, there appeared to be no options available which the Department could use readily to fill those needs.

Because of their preliminary findings, the study team met with the Attorney General's Advisory Committee (AGAC) in March 1995 to brief them and seek their ideas. AGAC members concurred that witness protection and assistance needs in the field were considerably broader than those addressed by the stringent programs administered under the provisions of the Witness Security Reform Act of 1984. Accordingly, the Criminal Division expanded the scope of its inquiry to include an evaluation of the types of services the United States Attorneys' offices (USAOs) need to provide to threatened and intimidated witnesses.

In cooperation with the Law Enforcement Coordinating Committee/Victim-Witness (LECC/Victim-Witness) Subcommittee of the AGAC, the Criminal Division study team surveyed the USAOs, both to assess their experiences with existing programs and to learn their broader needs. In response to several questions, the districts provided examples of over 200 situations in which witnesses needed services of a much more limited nature than those available through the Department's formal Witness Security Program (WSP) and its derivatives. Summarized below are some important findings, many of which bear directly on the need for the Emergency Witness Assistance Program (EWAP):

❑ In recent years, many districts have seen changes in the types of cases they handle, and an increase in violence and gang involvement associated with such cases.

❑ Respondents expressed an almost universal need to be able to help threatened or intimidated witnesses immediately, without the administrative burdens and delays involved in getting investigative agencies to provide such assistance.

❑ Many districts wanted to be able to help witnesses leave the danger area by supplying funds for travel, subsistence, moving, or just a "bus ticket out of town." The USAOs wanted to be able to provide threatened or intimidated witnesses with things such as temporary telephone and home security services, referrals for counseling and rehabilitation services, and intermittent security escorts.

❑ Many districts wanted the Department to make funds for less-formal assistance options available within the USAOs. The districts suggested the Victim-Witness Coordinators as appropriate managers of witness assistance funds.

❑ Prosecutors felt they had little control over whether the investigative agencies would provide needed protection to witnesses who were not candidates for the WSP. In addition, they were concerned about how much time they (and other USAO staff) spend making arrangements for keeping witnesses out of harm's way and securing their cooperation.

Because of these findings, Michael Troop, United States Attorney for the Western District of Kentucky, headed a working group to consider the development and implementation of an Emergency Witness Assistance Program (EWAP). The working group met several times to decide the contours of the program.

Purpose

EWAP gives USAOs the flexibility to address a critical need: assistance to witnesses on an emergency basis to ensure their well-being and to ensure that they are available for court proceedings, or other activities related to an ongoing case. The program also addresses the physical, mental, or emotional reservations that witnesses or prospective witnesses have about participating in a specific matter before or after they have agreed to cooperate with, testify for, or be available for the Government. AUSAs must reveal to defense counsel as potential impeachment evidence any money expended on a witness.

EWAP was introduced to all USAOs as a pilot program on February 14, 1997, at the National Symposium on Victims of Federal Crime, held in Washington, D.C. The Department is currently evaluating the pilot program.

Features

EWAP's administrative features include:

❏ Funds budgeted through the Executive Office for United States Attorneys (EOUSA). EOUSA's Resource Management and Planning Staff allocates EWAP funds to the USAOs based on the number of violent crimes in the district, the population served by the USAO, past requests for witness assistance, and other similar factors.

❏ Each USAO may expend up to $4,000 per witness and must obtain prior approval from EOUSA if expenditures will exceed this amount. Authorized employees, such as the Victim-Witness Coordinator, can use the appropriate object classification codes to debit the USAO's allocation of the fund.

❏ Each USAO has an EWAP plan in place. Each United States Attorney (USA) has the discretion to

allow the Victim-Witness Coordinator and AUSAs to approve EWAP expenditures up to $250 without prior USA approval.

When first implemented, EWAP only allowed the USA, First Assistant United States Attorney, or an authorized person to approve proposed EWAP expenditures. At a meeting held at the LECC Asset Forfeiture/Resource Conference, in Miami, Florida, on September 11, 1997, the AGAC's LECC/Victim-Witness Subcommittee decided to expand the approval levels to include the Criminal Chief because he or she has extensive knowledge of pending criminal cases.

Eligibility

Any witness or potential witness who has fears about the repercussions of cooperating with the Government is eligible to receive EWAP benefits at the discretion of the USAO. Witnesses in civil matters or cases may also receive EWAP assistance when appropriate. The appropriateness of an EWAP expenditure depends on whether the expenditure furthers the mission of the USAO.

The only restriction on the use of EWAP funds, in terms of eligibility, is that the recipient of the funds must be a witness or potential witness in a USAO matter or case, and must be fearful about cooperating. Generally, a witness's extended family is not eligible to receive EWAP assistance. A witness's dependents and immediate family members living in the same household may, however, receive EWAP assistance indirectly if the USAO, in its sole discretion, determines such indirect assistance is reasonably necessary to further the goals and purposes of the EWAP and the prosecution.

If a witness is also a victim, he or she is not precluded from receiving EWAP assistance. A witness or potential witness, who may or may not be a victim, is eligible to receive EWAP assistance as long as the Government is involved in the matter and the witness signs an AAcknowledgment Form.@

What Can EWAP funds be used for?

EWAP assistance may not exceed one month or $4,000 per witness, unless there are extenuating circumstances. EOUSA's LECC/Victim-Witness Staff must authorize EWAP payments that exceed one month or more than $4,000. In certain cases, the LECC/Victim-Witness Staff will need to consult with the Office of Legal Counsel.

USAOs may provide the below-listed services to witnesses who qualify for EWAP assistance. USAOs may not provide any other services without specific authorization from EOUSA. In the expense categories that follow, unusual expenses are designated with an asterisk. Requests for EWAP expenditures of this nature must be in writing to the LECC/Victim-Witness Staff.

❑ **Transportation**—EWAP funds may be used to pay certain transportation costs of a victim, including money for a common carrier or privately owned vehicle, taxi, tolls, and parking. These services are commonly provided to help witnesses in relocation efforts.

*****Rental cars may be used when the witness's vehicle is recognizable by a defendant or his or her associate(s). In one case, the USAO relocated the witness to another part of the city, but the defendant found the witness by searching for the witness's car.

*EWAP funds also may be used to pay mileage for privately owned vehicles used by witnesses to move to another city, state, or town. Minor repairs on privately owned vehicles (repairs totaling $250 or less) can be provided to witnesses who use their own vehicle to move to another city, state, or town.

❑ **Emergency telephone service and cellular telephone service**—EWAP funds can be used to obtain emergency telephone service and cellular telephone service for maintaining contact between the witness and an AUSA or a Victim-Witness Coordinator. Likewise, the USAO may provide a pager to witnesses for the same purpose.

❑ **Temporary Subsistence**—EWAP funds may be used to give a witness temporary subsistence, including a reasonable portion of the federal per diem.

❑ **Temporary Housing and Moving Expenses**—EWAP funds may be used to provide temporary housing and moving expenses to a witness, including: one month's deposit on rental property, moving expenses, and truck rental. Application fees, first months' rent, and security deposits are the most common

services provided for witnesses when temporary relocation is necessary. Telephone activation and utility service may be provided when a witness is moved to another residence. EWAP funds cannot, however, be used to pay past due telephone bills or utilities.

NOTE: Subsidized housing is cost effective and can be supplied to victims and witnesses under EWAP. Some realtors have reduced rental rates for short term leasing. HUD also offers housing at a reduced rate to witnesses that qualify. To obtain HUD housing, consult with the Housing Authority in your district.

*****EWAP funds may be used to pay for furniture storage for witnesses who are being moved from their permanent residence to temporary housing.

*****Basic furniture can be purchased for those witnesses who are moved quickly and do not have enough time to pack their belongings. For example, a witness who was residing with the defendant was put at risk when she identified the defendant as a murder suspect. The USAO relocated the witness without her belongings. EWAP funds were used to provide her with basic furniture and clothing.

❑ **Child or Senior Care**—EWAP funds may be used to pay for child or senior care expenses incurred by a witness, when reasonably necessary to take care of a witness's dependents. Child care expenses can be paid when witnesses are moving or are busy organizing their affairs. It is irrelevant whether the provider is a relative or an agency.

*A care provider was used for a minor, foreign witness who did not speak English. The care provider served as an interpreter for the child and helped him attend court proceedings. The provider also assisted the child with meals and other needs.

❑ **Miscellaneous Expenses**—Up to $250 in EWAP funds can be used to pay a witness's miscellaneous expenses, including: window security, locks, repairs, and other small expenditures to alleviate the witness's physical, mental, or emotional concerns connected to cooperating with the Government.

*****Security doors were purchased for a family whose home was burglarized because they cooperated with the Government.

*Security lights were purchased for a witness who complained of hearing people on her premises at night; the security lights deterred outside activity around the witness's property.

*****Drug rehabilitation can be provided one week before trial to detoxify a witness for court proceedings or other matters. A USAO should not request this service unless the witness will not be competent for trial or any other proceedings without the treatment.

*****Minor medical or mental health treatment can be provided to a witness who does not require extensive treatment. In one case, this service was used for a key witness who became uncommunicative because of the threats made to her. EWAP paid for one week of counseling to prepare her for trial.

*Other transportation costs that are reasonably necessary for school or immediate medical or counseling needs can be provided to a witness.

*EWAP funds can be used to move a trailer home, but only if it is cost effective.

Other Witness Security Issues

EWAP is different from the WSP and its derivatives because its purpose is not to provide physical protection for witnesses. It addresses witnesses' fears, valid or not, about helping the Government. EWAP assistance does not include any protective services, custody arrangements, or law enforcement presence. The program only provides emergency assistance to help witnesses escape danger. EWAP assistance cannot exceed one month, unless there are extenuating circumstances. EWAP distinguishes between providing protection (such as a protective detail or entrance into the WSP) and providing financial or other assistance to witnesses to enable them to feel more secure about their circumstances and their cooperation with the Government. Witnesses receiving EWAP assistance may see leaving their immediate surroundings (with the concurrence of the USAO) as a way to alleviate their fears, and the USAO may give them financial assistance to do so. The USAO may not, however, give them physical protection.

EWAP is not surrounded by the statutory constraints and regulation of the WSP or other protection programs. EWAP addresses immediate, emergency needs of witnesses or potential witnesses, without delays. It enables USAOs to take immediate action to help witnesses testify confidently and without fear.

Conclusion

Since April 1997 more than 280 witnesses have received EWAP assistance. Witness intimidation is a growing concern in federal cases. EWAP is a resource to consider when a witness or potential witness has a perceived fear of cooperating with the Government. For more information on the EWAP in your district, speak with your Victim-Witness Coordinator or contact Crystal Gaines at 202-616-6792. ❖

ABOUT THE AUTHOR

Crystal Gaines has worked with EOUSA's Law Enforcement Coordinating Committee/ Victim-Witness Staff for eight years. She works with several victim-witness committees and working groups which focus attention on witness intimidation, domestic violence, crisis response, and expert and fact witness issues. She is the administrator of EWAP, a program recently nominated for a JUSTWORKS award. She is a member of the EWAP Committee and has been involved with the program since its implementation in February 1997. *This article was written with the assistance of AUSA Robert Marcovici, formerly of EOUSA's Office of Legal Counsel.* ✠

The Crime Victims Fund

Kathryn M. Turman, Acting Director
Office for Victims of Crime
United States Department of Justice

Prosecutors have a unique opportunity to help provide funding for critical services to help crime victims in the aftermath of a crime. Every time a defendant is convicted and pays a fine, the money is deposited into the Crime Victims Fund (the Fund), which was established by the Victims of Crime Act of 1984 (VOCA). The Fund serves as a major financial resource for victim services nationwide.

Each year, millions of dollars are deposited into the Fund from criminal fines, forfeited bail bonds, penalty fees, and special assessments collected by United States Attorneys' offices (USAOs), federal courts, and the Bureau of Prisons. These dollars come from convicted offenders, not from taxpayers, and are used to fund services such as: mental health counseling for victims of sexual abuse; domestic violence shelters where battered women and their children can take refuge and begin to rebuild their lives; money to pay doctor bills; and basic living expenses when they must miss work. Fund monies may also be used to pay for crime scene clean-up and funeral costs.

The Fund serves as the primary financial resource for all federally-supported victim programs. The Department's Office for Victims of Crime (OVC) administers the Fund and channels Fund monies to every state, who in turn fund nearly 3,000 victim agencies that provide services to nearly 2 million victims.

Deposits into the Fund fluctuate from year to year. The high water mark was 1996, when deposits totaled more than $528 million dollars, primarily due to aggressive prosecutions and improved collection efforts by USAOs. Two cases in particular resulted in historic funding levels that year. One criminal fraud case, arising out of illegal trading activity in New York, resulted in a $340 million fine against Daiwa Bank. That same year, Archer Daniels Midland Company paid a $100 million criminal price-fixing fine. While the 1997 deposits were much less than the previous year, they reached more than $362 million, the second highest level in the history of the Fund.

How the Fund is Used

OVC uses a formula to distribute approximately 90 percent of the Fund to States for supporting victim assistance and compensation programs that provide services to victims of crime at the federal, state, and tribal level. Many Native American organizations receive part of the Fund to improve the investigation and prosecution of child abuse cases. A small percentage is used for discretionary programs as well.

State Crime Victim Compensation

State crime victim compensation programs work much like private insurance funds. They reimburse crime victims for crime-related expenses such as medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. Other compensable expenses may include eyeglasses or other corrective lenses, dental services and devices, prosthetic devices, and crime scene clean-up. All 50 States and the Virgin Islands administer a crime victim compensation program, and these programs provide financial assistance to federal and state crime victims.

Although each state compensation program is administered independently, most programs have similar eligibility requirements and offer a comparable range of benefits. Maximum awards generally range from $10 to $25,000. The typical state compensation program requires victims to report crimes within three days and to file claims within a fixed time, usually two years. Most states can extend these time limits for good cause. Under the 1996 Antiterrorism Act, states must also provide compensation to residents who are victims of terrorist acts within or outside the United States.

Victim Compensation Program
FY 97 Claims by Dollar Amount

Category	Total Claims
Arson	$130,030,388
Homicide	$39,114,511
Child Sexual Abuse	$25,989,599
Domestic Violence	$15,665,861
DWI/DUI	$10,809,961
Sexual Assault	$8,466,243

State Crime Victim Assistance

All States and Territories receive an annual VOCA grant. States award VOCA funds to local community-based organizations to provide services directly to crime victims. Victim assistance agencies provide services such as crisis intervention, mental health counseling, emergency shelter, criminal justice advocacy, and emergency transportation. Nationwide, approximately 10,000 organizations provide these and other services to crime victims. About 3,000 of those organizations receive VOCA funds.

Discretionary Grants

The purpose of OVC's discretionary grant program is to improve and enhance the availability of victim services. Each year, OVC develops a Program Plan identifying necessary training and technical assistance projects, and demonstration initiatives, and funds these projects and initiatives on a competitive basis. OVC ensures that it dedicates at least half of all discretionary grant funds to improving the response to federal crime victims. Initiatives include training federal criminal justice system personnel on victims issues, developing materials that help victims understand their rights and available services, and supporting programs that establish and expand services for crime victims. The remaining discretionary funds support a variety of nationwide initiatives, including: developing training curricula and providing training to victim services, criminal justice, and allied professionals who work with crime victims; working to raise awareness of victims' rights and needs; and identifying and disseminating promising service practices.

The following are examples of programs that Fund monies support:

❏ In 1997 The Young Women's Christian Association (YWCA) Domestic Violence Prevention Center in Lynchburg, Virginia received a VOCA grant of approximately $116,000. The Center provides shelter for battered woman and their children for up to three months, and helps victims seek employment and secure longer-term housing. Caseworkers handle child abuse cases, and counselors guide groups for parents and batterers, and provide individual counseling. Family-child Coordinators run play activities and counseling for the victimized children. The program serves approximately 2,000 victims per year.

❏ Family Tree's Women in Crisis is the only domestic violence shelter in Colorado's Jefferson County (population 488,300). In 1995 Jefferson County law enforcement agencies made 2,113 arrests for domestic violence-related incidents, and 231 children who had witnessed or experienced domestic violence in their home entered the shelter. Of these children, 122 received counseling services, which included play therapy in individual and group sessions. During that year, this organization referred more than 438 families elsewhere due to lack of space in the shelter. They have conservatively estimated this number to have included more than 1,000 children.

❏ Honolulu's Mothers Against Drunk Driving office received a total of $64,000 in VOCA funding in FYs 1995 and 1996. They used these funds to provide comprehensive services to victims of drunk driving crashes and their families, as well as survivors of homicide victims. VOCA funds also support a Victim Advocate position in Honolulu. The Victim Advocate provides crisis counseling, accompanies victims to court, supplies victims with information

and referrals, and assists with crime victim compensation applications. The Victim Advocate also facilitates support groups for victims of homicide and negligent homicide, and individual grief counseling.

❑ In 1997 OVC awarded a grant to the Chugachmiut Indian Village to establish child protective teams, provide community education, and intervene in child abuse cases in the isolated Chugach region of Alaska. Many villages in this region are accessible only by air or sea travel, which results in service delivery gaps. The grant allowed project staff to help each village in the region to establish a Child Protection Team, offer training to village residents, increase community awareness and education, create a directory of service referrals, and develop a data collection and tracking system for reporting, referring, and responding to child sexual abuse.

Increasing Crime Victims Fund Deposits

Even in the years of its highest deposits, the Fund only serves a small fraction of the nation's crime victims. According to a report issued by the National Institute of Justice (NIJ), the total annual tangible cost of crime, including medical expenses, is about $105 billion. With intangible costs, such as ongoing mental health trauma, NIJ estimates the total cost to be $450 billion annually.[†] Victim service organizations need substantially more resources to provide comprehensive services to all crime victims.

Each year, the Attorney General presents special Crime Victims Fund Awards to Department employees who have made outstanding efforts to improve debt collection and increase deposits into the Crime Victims Fund. In 1997 Attorney General Reno presented awards to two groups and one individual whose combined efforts resulted in the Fund's largest deposits ever. The Daiwa Litigation Team, made up of four Assistant United States Attorneys from the Southern District of New York, received one award. The second award went to the federal Judicial Enforcement Team (JET), made up of a U.S. Attorney, a U.S. Deputy Marshal, an FBI agent, a U.S. Probation Officer, and three paralegals, who worked together to improve the recovery of criminal penalties in the District of Massachusetts dramatically. A Correctional Programs Administrator from the Bureau of Prisons received an award for her success in training Department employees on the Inmate Financial Responsibility Program and BOP's SENTRY, a computerized debt tracking system.

These ongoing efforts by prosecutors and other Department employees are critical to the continuing availability of services for victims all across America. For more information about the Crime Victims Fund and OVC, visit the Office for Victims of Crime Web site at http://www.ojp.usdoj.gov/ovc, or call the Office for Victims of Crime Resource Center at 1-800–627–6872. ❖

ABOUT THE AUTHOR

Kathryn Turman is the Chief of the Victim-Witness Assistance Unit at the United States Attorney's Office for the District of Columbia. Currently, she is on detail to the Office for Victims of Crime, where she serves as the Acting Director. She previously served as the Director of the Missing and Exploited Children's Program in the Office of Juvenile Justice and Delinquency Prevention. Her accomplishments include receiving an EOUSA Director's Award for Outstanding Victim-Witness Assistance in 1996 and publishing a variety of materials about victims, witnesses, and children. ✠

[†] Ted R. Miller, Mark A. Cohen, & Brian Wiersema, Victim Costs and Consequences: A New Look, 1996 NIJ Research Report 1-22.

The Drug Victim Initiative: Empowering Communities to Fight the War Against Drugs

Faith T. Coburn, Victim-Witness Coordinator
United States Attorney's Office
Eastern District of Wisconsin

In June 1995, using a grant from the Department's Office for Victims of Crime (OVC), the United States Attorney's Office for the Eastern District of Wisconsin (the USAO) created The Model Federal Victim- Witness Program (the Program). A major component of this Program was the creation of the Drug Victim Initiative, which enhances the role of the community in the fight against drug-related crime and encourages residents to support drug enforcement and prevention efforts. The Program is based on the premise that residents are often witnesses to neighborhood drug trafficking and can play a key role in confronting drug problems.

To encourage community participation in the Program, its staff created methods of notifying residents of the neighborhoods where federal drug crimes have occurred. For example, following a drug arrest, the USAO distributes a Drug Arrest Flyer to residents living near defendants indicted for drug trafficking. The flyer notifies neighbors that "Someone in Your Neighborhood was Arrested for Dealing Drugs," and gives the relevant case number. It encourages residents to call for information about the case and to report other drug activity in the neighborhood.

Following a drug dealer's conviction, the United States Attorney's office (USAO) Drug Victim Specialist contacts and works with individuals and neighborhood organizations to gather information for Victim Impact Statements, which the USAO presents at the sentencing hearings of the convicted drug dealers. The USAO mails a special Neighborhood Drug Victim Impact Statement to residents in the drug dealer's neighborhood. The response from residents has been outstanding.

After sentencing, the USAO sends a Drug Sentencing Update to neighborhood residents to let them know how much time the defendant will be spending in federal prison. Before the Program, neighborhood residents lacked any voice and were often unaware of the sentencing of convicted drug dealers. Notifying the community of drug convictions and sentences demonstrates the effectiveness of law enforcement and encourages individuals to come forward with additional information because they know it can make a difference.

The following are comments made by victims who live in the neighborhoods of the drug dealers:

> *"Our family has been threatened with guns; we have had several altercations with people going to and coming from the drug houses in our neighborhood; we have had our house broken into. We have been told by 'druggies' that they were going to blow our house up. When asked why, it was because I glanced their way."*

> *"The children of our community, these are the ones who have been truly robbed. They have been robbed of their childhood. They have been robbed of their brothers and sisters. They have been robbed of their parents. They have been robbed of their quality of life and in some cases life itself."*

> *"We had 36 break-ins in one month because of their crack house down the street. We were afraid to go outside because the drug dealers would stand on the street and shoot up in the air just for fun."*

Although the Drug Victim Initiative was first implemented in the Eastern District of Wisconsin, it is very successful in other districts. For example, in the District of Alaska, the United States Attorney believes:

> *"The idea is to shatter the myth that drug dealing is a victimless crime. Residents who live near drug dealers say they've seen their neighborhoods grow dirtier and more dangerous. We decided, why not treat them like we treat other victims?"*

United States Attorney Bob Bundy, Anchorage, Alaska, *Anchorage Daily News*, Feb. 12, 1997.

In the District of Minnesota, former United States Attorney David Lillehaug had a similar opinion about the Drug Victim Initiative:

> *"Normally, victims have the right to speak, but because drug dealing has been considered a victimless crime, there has always been silence in the courtroom, except from the defendants, whose relatives ask for leniency. [The Drug Victim Initiative] is a way to give residents a voice."*

Minneapolis, Minnesota, March 7, 1997.

NEIGHBORHOOD VICTIM IMPACT STATEMENT

The USAO asks residents to tell the judge what impact drug dealing has had on their neighborhood. Questions they have asked residents include:

- ❑ **Physical Impact:** Due to drug dealing in your neighborhood, have you, or your neighbors, or anyone in your family been assaulted or hurt? Has anyone been robbed, mugged, or shot?
- ❑ **Emotional Impact:** Due to drug dealing, how has your neighborhood changed? Do you feel unsafe? How is the neighborhood different?
- ❑ **Financial Impact:** Has the drug dealing in your neighborhood caused you or your neighbors any financial loss? Has anything been stolen from your house, apartment, or business? Has an act of vandalism taken place, such as graffiti?

As a part of the Drug Victim Initiative, the USAO for the Eastern District of Wisconsin organized town hall meetings to educate people about drug prevention efforts and drug-related crime in their neighborhood. In one case, the defendant argued that a town hall meeting was used to prejudiced the community against him. The court, however, rejected this argument, and held that the Government was permitted to discuss drug prevention initiatives and drug-related crime with members of the community.

Conclusion

Both the Program and the Drug Victim Initiative have been helpful in the fight against drug-related crime in the community by giving residents the opportunity to play a key role in confronting drug problems. ❖

ABOUT THE AUTHOR

Faith T. Coburn is the Victim-Witness Coordinator for the United States Attorney's Office, Eastern District of Wisconsin. She helped establish the Model Federal Victim-Witness Program which provides direct services to victims and witnesses. She also contributed to the establishment of a statewide crisis response network. She co-chairs the Victim Bank Tellers Task Force, which offers programs and support to victims of financial institution robberies. She has a Masters Degree in Social Work from the University of Wisconsin-Milwaukee and is currently enrolled in the University's Urban Studies Doctoral Program. Before working at the United States Attorney's Office, she developed and coordinated the Crisis Response Unit for the Milwaukee County District Attorney's Office/Milwaukee Police Department. She has also worked as a psychotherapist in private practice, and at a shelter for battered women. ✠

Assisting Financial Crimes Victims

Debbie Deem, Victim-Witness Coordinator
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Central District of California

Both violent and financial crimes have a profound, but sometimes different, effect on their victims. An investment fraud victim, who was also the victim of two violent robberies, described to me the different impacts of physical and financial victimization.† In one robbery, the perpetrator pointed a gun at her face as she walked down a city street. In the second, she was robbed while alone in her home at night. In the financial crime, she was defrauded of her life savings. She explained that while the long term impact of both robberies was very serious, the stealing of her life savings was a more traumatic crime, with more devastating long term impact on her. This victim stated:

> *Those violent crimes were done by strangers. The investment fraud was committed by someone I trusted, a friend. It's more permanent, and affects not only myself, but my husband and my children. I will live with this for the rest of my life. I can never recover what has been stolen from my life savings, nor my trust for people. I have been given a life sentence. This was financial violence. He is a human predator.*

This victim is not alone. Victims of financial crimes represent the largest category of crime victims in cases prosecuted by the United States. Most violent crime cases involve small numbers of victims, while many financial fraud cases involve thousands of victims. Even the criminal statutes make a distinction between financial victims and violent crime victims. For example, under Federal Rule of Criminal Procedure 32(c)(3)(E), Sentence and Judgment, only victims of violent crimes and sexual abuse have a statutory right to allocute at the sentencing hearing.

Victims of financial crimes often report feeling a sense of betrayal, guilt, and shame, especially if they personally know the perpetrator(s). They may no longer trust their own judgment, and may be angry with the perpetrator, and themselves, for being so Afoolish.@ Victims may have bitter feelings toward family members or close friends who convinced them to invest, or convinced others to invest, and now feel an obligation and responsibility for their debts as well.

Fraud victims may isolate themselves from their families and others. For instance, a victim who requested all letters and documents regarding an investment fraud case be sent to his place of employment stated:

> *I did not tell my wife for a long time, in hopes that the allegations were false. When I told her we had lost the investment she was very upset not only for the loss, but that I kept a secret from her. This nearly ruined our marriage. I believe we exposed our children to an ugly side of us both. This really hurts me and I believe this event will have a long-term negative impact on them.*

Victim impact statements often document the devastating impact of financial crimes, including: stories of families who separated or divorced; families who firmly believe that the stress of the situation hastened or caused a loved one's death; betrayal; and worry over finances due to criminal fraud. Many victims report declaring bankruptcy, incurring severe tax penalties, and losing businesses, homes, or children's college funds. Others report losing family investments entrusted to them or losing pensions or retirement savings which they anticipated using to supplement their social security income. Some victims require assistance in looking for work to supplement their income after a devastating loss. Sometimes, retired or elderly victims must go back to work to survive a financial crime.

Often, elderly victims will be reluctant to admit their victimization out of fear and shame that family

† Victims' names have been withheld to protect their privacy. All victims referred to in this article have given permission to be quoted or summarized.

members will discover their situation. These elderly victims sometimes fear losing their independence, and do not want their families to intervene, assume financial control, or seek guardianship over their finances. The fear may prevent an elderly victim from requesting or seeking help, and may even prevent the elderly victim from reporting the crime.

Fraud victims report feeling discouraged by the judicial process and often feel that the sentences imposed are too low. An investment fraud victim told a judge at sentencing:

> *I don't really understand this justice system. If you gave me 3 years in prison for stealing $8 million dollars from 70 people, I'd take it. I'd take the $8 million and give up three years of my life. These low sentences do nothing to dissuade criminals from committing these kinds of crime.*

Many victims become frustrated when they learn that the defendant has money to pay his attorney or a court appointed receiver. Victims often think someone should hold the defendant's money in escrow until his conviction and then return it to the victims if the court orders restitution. Other victims do not want the offender sentenced to prison, and would prefer that the offender remain in the community so he or she can work, earn money, and pay restitution.

Despite this adversity, many financial crime victims are remarkably resilient. Fraud victims are often eager to participate in the criminal justice system by providing victim impact information, by allocuting, when permitted, at sentencing, and by attending hearings. Families of such victims often turn to each other for support. Some victims even become victim advocates, working to improve laws and services for fraud victims and to educate others about fraud schemes and the danger of being revictimized.

The White Collar Crime Pilot Program in the Northern District of California

Recently, the United States Attorney's Office (USAO) for the Northern District of California received a grant from the Office for Victims of Crime to structure innovative ways to help financial crime victims. As part of the project, the USAO hired an Asset Investigative Advocate, who works closely with case agents and prosecutors in cases where it appears that defendant(s) have substantial assets. The Asset Investigative Advocate works at locating the defendant's assets, thereby allowing prosecutors to "freeze and seize" assets and increasing the likelihood of victims receiving restitution.

Other efforts of the project include:

❏ Assistant United States Attorneys (AUSAs) should request federal investigators to provide them with each victims' name, address, phone number, and amount of known loss, before seeking an indictment. AUSAs should request that the investigators provide this information on a computer disk or other electronic format when there are large numbers of victims, and

❏ Production and distribution of a restitution brochure for victims which is adaptable for use in other districts.

This project, and others modeled after it, will make defendants accountable for their crimes and help victims get their money back.

When Will I Get My Money Back?

Fraud victims repeatedly ask, "When will I get my money back?" Often, there is no easy answer, but there are some things that victims need to know. For example, victims need to know that federal investigators attempt to find assets where possible, but, often, defendants deplete their assets before their arrest.

The AUSA or Victim-Witness Coordinator (VWC) should take an active role in telling fraud victims that they may be approached by other perpetrators who will attempt to convince them to invest money with them to 'make up' for what was stolen previously. VWCs should warn fraud victims of ways to avoid such revictimization. Finally, VWCs can prepare fraud victims for the possibility that full or immediate recovery of their losses through restitution may be unlikely, especially where there are high loss amounts and many victims. This can be devastating news to victims who may be relying on receiving restitution. VWCs may also want to give victims information on the

following topics to help them understand the post-sentencing, legal process:

❑ The role of the U.S. Clerk of Court in collecting and distributing restitution as it becomes available;

❑ How to report an address change so that the court and the Bureau of Prisons (BOP) can send restitution and BOP information to the appropriate address;

❑ The availability of an Abstract of Judgment if a victim wishes to enforce the restitution order against a defendant's assets;

❑ Who to contact if a victim learns of a material change in a convicted defendant's financial situation; and

❑ The role of the Financial Litigation Unit (FLU).

The Challenges of Cases with Large Numbers of Victims

Many fraud cases have very large numbers of victims. Consequently, prosecutors and VWCs may find that keeping hundreds or thousands of victims informed can be quite challenging. The following suggestions may help USAO personnel keep victims informed:

❑ **Hold a group or "town hall" meeting with victims.** This is most useful in cases where the victims are geographically near each other, allowing the prosecutor to address many victims simultaneously. Other speakers might include the VWC, investigative agents, and an IRS representative, who can answer commonly asked questions about the tax ramifications of fraud losses.

❑ **Encourage victims to take an active role in keeping each other informed.** Victims can establish "phone trees" or "e-mail trees" or newsletters to maintain contact with each other.

❑ **Use toll-free phone numbers, with outgoing voice mail messages.** Victims can call the toll-free number and receive information about the status of a case, court dates, and continuances.

❑ **Have the convicted defendant ordered to notify victims of the conviction**. 18 U.S.C. § 3555—Order of Notice to Victims permits the court to order a defendant convicted of fraud or other intentionally deceptive practice to provide victims with notice of and an explanation of the conviction. The Court may order the defendant to provide the notice by mail, advertising, or other appropriate means, and require that the defendant bear costs of up to $20,000 for the notification process. This works particularly well in mail fraud cases where the defendant is likely to have a data base with the victims' names and addresses.

❑ **The VWC may help victims notify creditors and employers about the crime and describe the victim's role in the prosecution of the case.** Many fraud victims experience financial difficulties and often ask the VWC for assistance in notifying their creditors of their loss, their resulting financial difficulties, and the possibility of restitution. Similarly, participating in the prosecution of a criminal case may cause the victim to be absent from work. At the request of the victim, the VWC can contact the victim's employer and explain the victim's role in the prosecution of the case.

Conclusion

VWCs and AUSAs can take an active role assisting fraud victims by using innovative techniques to identify victims and develop victim resources. Working together, AUSAs, VWCs, federal investigators, the Clerks of the Courts, U.S. Probation Officers, and Community Advocates and Services Providers can ensure that they have served the interests of justice for fraud victims and that they hold defendants accountable for their financial crimes. ❖

ABOUT THE AUTHOR

Debbie Deem has been the VWC for the Central District of California since May 1998. Before that, she held the same position in the Northern District of California for six years, where she was involved with the pilot program described in the article. She also has held positions working with crime victims since 1984, working for state victim assistance programs in California, New Mexico, and Alaska. In 1996 she received the Director's Award for her work with federal crime victims. She is a trainer at the National Victim Academy, and is involved in several additional training and advocacy projects for crime victims.✠

Resources for Fraud Victims

Notifying fraud victims of existing resources and places they can go for assistance often helps mitigate the effects of being victimized. Here is a descriptive list of some useful resources:

❑ **Consumer Credit Counseling Service** —This service has locations throughout the country and can be reached toll-free at 1-800-388-CCCS. It is used to help people organize their debts and avoid bankruptcy.

❑ **The National Fraud Information Center** assists victims in reporting telephone and computer-based fraud, and can be reached toll-free at 1-800-876-7060.

❑ **The Elder Care Locator** is a national, toll-free hotline which provides information on elder services of various kinds throughout the United States, and can be reached at 1-800-677-1116.

❑ **Identity Theft** provides information from the U.S. Postal Service. Victims can obtain handouts and information by contacting the Privacy Acts Clearinghouse at 619-298-3396, or by contacting their State's Attorney General Consumer Protection Division.

❑ **State and Federal regulatory agencies** may have recovery accounts, which fraud victims may access if they are entitled to restitution under a criminal or civil judgment. For instance, the Department of Real Estate in California has a recovery fund for people victimized by a licensed broker acting within the scope of his or her California real estate license. The United States Commodities Futures Trading Commission has a similar Commodities Reparation Fund, and information about this fund can be obtained by calling 202-418-5250.

❑ **The Internet** provides information about many resources for fraud victims and is a viable way of notifying victims in large scale cases. VWCs can help victims to use the Internet to obtain this information, and should include web addresses on resources in any brochures given to victims.

Working with Victims and Witnesses of Bank Robberies

Faith T. Coburn, Victim-Witness Coordinator
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Each year, there are approximately 7,500 robberies of financial institutions. The United States Attorneys' offices (USAOs) prosecute many of these cases. A 1995 survey, conducted by the United States Attorney's Office for the Eastern District of Wisconsin, showed that bank robberies are, in fact, the most common federally prosecuted violent crime.

As with any crime, when dealing with bank robbery cases, USAOs should focus on convicting the perpetrator and supporting the victims' recovery. Providing support for victims is necessary not only because it is the right thing to do, but because it is the law. In addition, supporting victims and witnesses will help them feel involved in the court process and will encourage them to cooperate fully with the criminal justice system.

In June 1995, to increase victim services in USAOs, the Office for Victims of Crime awarded a grant to the Eastern District of Wisconsin to establish a Model Federal Victim-Witness Program (the Program). Since then, the Eastern District of Wisconsin has been successful in implementing a model program, which significantly improved the USAO's service to victims. One of the Program's major accomplishments has been its response to bank robbery victims. The Program includes a Victim Teller Task Force, a Crisis Response Network, and a video titled *After the Robbery: Crisis to Resolution*.

Victim Teller Task Force

The Victim Teller Task Force (the Task Force) is comprised of key representatives from both the financial and law enforcement communities, including the USAO, the FBI, local law enforcement, Victim-Witness Coordinators, bank security directors, human resource managers, and victim tellers. The Task Force shares information about current bank robbery trends, and provides information, training, and support to financial institutions. At each quarterly meeting, task force members discuss and prepare material for financial institutions and law enforcement personnel about the effects of victimization after a bank robbery. They also prepare workshops for teller victims three times per year.

This multidisciplinary response to financial institution robberies creates open communication between the USAO, law enforcement, and bank security personnel. This is not only advantageous from a law enforcement perspective, but it also provides a forum for planning services for teller victims and witnesses.

Crisis Response Services

The Program also includes a district-wide crisis response network, which provides direct crisis response services whenever necessary. Research has demonstrated that a person who has experienced a traumatic incident is most receptive to receiving assistance within the first 48 hours after the crime. After that period, people rebuild their defenses, making it more difficult to reach them. After about a week, many victims want to move on and refuse outside intervention. Months later, these same people are likely to fall apart emotionally because they have not adequately dealt with the trauma of the incident. These same people are also likely to break down at a critical time, such as during trial while they are on the witness stand.

Crisis response refers to immediate, in person intervention shortly after a violent crime. The purpose of crisis response is to stabilize the individual emotionally and to offer support and information to help victims cope with the emotional trauma of victimization. The intervention emphasizes the normalcy of the victim's reactions to an abnormal situation. Examples of intervention include in person debriefings, support for the

victim immediately after the incident, information about the criminal justice process, providing information and referrals to help the victim, and providing an escort to line-ups and court proceedings.

The first encounter a crime victim has with representatives of law enforcement affects not only his or her immediate and long-term ability to deal emotionally with the event, but may also affect the witness's willingness to help with the prosecution. Reaching out to the victim during this critical stage helps to engage the victim in the criminal justice system immediately. The sooner a victim decides to help the prosecution, the stronger the victim's commitment may be to seeing the process through to its conclusion.

Crisis Response Specialists also can provide assistance to law enforcement to identify and gather information about victims. For example, because they often stay in contact with victims, Crisis Response Specialists may have current information about victims, such as addresses and telephone numbers that the victim may have changed in the aftermath of the crime. Crisis Response Specialists have the best insight to a victim's state of mind and attitude toward the criminal justice system. Crisis response programs help victims regain a sense of well being. Finally, a victim who is coping with victimization issues will likely be a better witness at trial.

Video: *After the Robbery: Crisis to Resolution*

In the fall of 1996, the Model Federal Victim Witness staff produced a video titled *After the Robbery: Crisis to Resolution*, designed to help bank robbery victims cope with the emotional trauma associated with victimization, and to inform victims about the criminal justice process. The video will also help managers, security personnel, and victims' families be supportive. Finally, the video may help train law enforcement officers, prosecutors, Victim Advocates, and other criminal justice personnel who work with robbery victims.

The Program staff created a video guidebook to accompany the video. The guidebook describes the benefits of crisis response and the mechanics of setting up a crisis response program. The guidebook also explains how to create a Victim Teller Task Force. Copies of the video and guidebook are available from the Office for Victims of Crime Resource Center by calling 1-800-627-6872. ❖

ABOUT THE AUTHOR

Faith T. Coburn is the Victim-Witness Coordinator for the United States Attorney's Office, Eastern District of Wisconsin. She helped establish the Model Federal Victim-Witness Program which provides direct services to victims and witnesses. She also helped establish a statewide crisis response network. She co-chairs the Victim Bank Tellers Task Force, which offers programs and support to victims of financial institution robberies. She has a Masters in Social Work from the University of Wisconsin-Milwaukee and currently is enrolled in the University's Urban Studies Doctoral Program. Before working at the United States Attorney's Office, she developed and coordinated the Crisis Response Unit for the Milwaukee County District Attorney's Office/Milwaukee Police Department. She has also worked as a psychotherapist in private practice, and at a shelter for battered women. ✠

Workshops for Victim Tellers

Workshops for bank employees and customers provide assistance and support to robbery victims. Assistant United States Attorney, detectives, bank robbery survivors, Victim-Witness Coordinators, and bank security managers usually conduct these workshops, whose topics include:

- ❑ Robbery impact on the victim and his or her family;
- ❑ How to get back in control;
- ❑ The role of law enforcement in the investigation;
- ❑ The criminal justice process; and
- ❑ Services available for victims.

The frequency of these workshops depends on the number of bank robberies and victims in each area. If you decide to hold similar workshops, consider using breakout groups to give each participant an opportunity to speak with other crime victims. Also, consider scheduling separate morning and afternoon workshops so that financial institutions can send their employees to different sessions without disrupting business.

Enforcement of the Federal Domestic Violence Laws

Margaret S. Groban, VAWA Specialist
Executive Office for United States Attorneys
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In 1994 the Congress of the United States, as part of the Crime Bill, enacted legislation empowering the Federal Government to participate in the fight against domestic violence. This legislation, called the Violence Against Women Act (VAWA), recognized that "violence against women is a crime with far-reaching, harmful consequences for families, children, and society." *Domestic and Sexual Violence Data Collection: A Report to Congress under the Violence Against Women Act*, 1 (NIJ Research Report 1996). To combat this violent crime problem, VAWA created federal domestic violence crimes for the Department of Justice to to prosecute. Consistent with this federal initiative, the Crime Bill also amended the Gun Control Act to include domestic violence-related crimes. The Congress reaffirmed its commitment to fight domestic violence crimes by the enactment, in the Fall of 1996, of additional federal domestic violence crimes in both VAWA and the Gun Control Act.

Historically, the Federal Government has lacked jurisdiction over many domestic violence crimes. These crimes, however, pose a serious problem in our communities. While domestic violence remains primarily a matter of state, local, and tribal jurisdiction, both VAWA and the Gun Control Act provide federal tools to prosecute domestic violence offenders in certain situations involving firearms or interstate activity.

This article discusses the offenses and statutes now available in both VAWA and the Gun Control Act to protect domestic violence victims. The State Congressional goal of these provisions is to "[treat] violence against women as a major law enforcement priority, [take] aim at the attitudes that nurture violence against women, and [provide] the help that survivors need." S. REP. No. 102-197, at 34-35 (1991). Through enforcement of these available laws,[†] the Department can and will help state and local jurisdictions to combat domestic violence.

The Violence Against Women Act

A. Interstate Travel to Commit Domestic Violence—18 U.S.C. § 2261

1. 18 U.S.C. § 2261(a)(1)

It is a federal crime for a person to travel interstate (or to leave or enter Indian country) with the intent to injure, harass, or intimidate that person's intimate partner when, during, or because of such travel, the defendant intentionally commits a violent crime and by that causes bodily injury. The law requires specific intent to commit domestic violence at the time of interstate travel. The term "intimate partner" includes a spouse, a former spouse, a past or present cohabitant (as long as the parties cohabitated as spouses), and parents of a child in common. The intimate partner definition does not include a girlfriend or boyfriend with whom the defendant has not resided unless protected by state law. There must be bodily injury for prosecution under this statute.

For example, in *United States v. Gluzman*, 953 F.Supp. 84 (S.D.N.Y. 1997), *aff'd*, 154 F.3d 49 (2d Cir. 1998), the defendant was convicted of traveling from New Jersey to New York with her co-defendant to murder her estranged husband. The defendant brought the ax and hatchet used to commit the murder with her from New Jersey to New York. Gluzman was convicted after a trial and

[†] The Federal Bureau of Investigation is the lead federal investigative agency for VAWA violations. The Bureau of Alcohol, Tobacco & Firearms is the lead federal investigative agency for Gun Control Act violations.

sentenced on April 30, 1997, to life without parole. The Second Circuit recently affirmed the conviction and upheld the constitutionality of § 2261. 154 F.3d 49 (2d Cir. 1998).

2. 18 U.S.C. § 2261(a)(2)

It is also a federal crime to cause an intimate partner to cross state lines (or leave or enter Indian country) by force, coercion, duress, or fraud during which, or because of which, there is bodily harm to the victim. This subsection does not require a showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress, or fraud. As in § 2261(a)(1), the defendant must intentionally commit a crime of violence during or because of the travel, and there must be bodily injury to the spouse or intimate partner.

In *United States v. Bailey*, 112 F.3d 758 (4th Cir. 1997), the defendant was convicted of kidnapping and interstate domestic violence. Bailey severely beat his wife in their West Virginia home. Despite her bleeding head, the defendant locked his wife in the trunk of his car and drove to Kentucky. Several days later he brought her to a hospital in Kentucky. Because of the delay in treatment, the victim is now in a permanent vegetative state. Bailey is serving a life sentence.

B. Interstate Stalking—18 U.S.C. § 2261A

On September 23, 1996, it became a federal crime to cross a state line with the intent to injure or harass another person, if during or because of such travel, the defendant places such a person in reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family. The law requires specific intent to violate this subsection at the time of interstate travel. "Immediate family" includes a spouse, parent, sibling, child, or any other person living in the same household and related by blood or marriage. It is also a federal crime to "stalk" within the special or maritime jurisdiction of the United States.

In *United States v. Stewart, Sr.*, the defendant was released from federal prison and began stalking his three sons and first wife. W.D. Tex., Indictment No. A97-CR-45-JN, 1997. The defendant had a lengthy history of domestic violence against these victims. The jury convicted the defendant on four separate stalking counts. At sentencing, the court departed upward from the sentencing guidelines and sentenced the defendant to 20 years' imprisonment—the maximum allowable sentence.

C. Interstate Travel to Violate an Order of Protection—18 U.S.C. § 2262

1. 18 U.S.C. § 2262(a)(1)

This law prohibits interstate travel (or travel into and out of Indian country) with intent to violate a valid protection order that forbids credible threats of violence, repeated harassment, or bodily injury. To establish a violation of this statute, the Government must show that a person had the specific intent to violate the protection order at the time of interstate travel and that a violation occurred. This statute does not require an intimate partner relationship nor does it require bodily injury. A state or other governmental body, however, may require this relationship before issuing a protection order.

In *United States v. Casciano*, 124 F.3d 106 (2d Cir. 1997), a Massachusetts Protection Order prohibited the defendant from stalking or harassing his former girlfriend. When the victim moved to New York, Casciano followed and continued to stalk her and harass her on the telephone. Casciano was convicted and sentenced to 37 months' imprisonment.

2. 18 U.S.C. § 2262(a)(2)

It is also a federal crime to cause a spouse or intimate partner to cross state lines (or to leave or enter Indian country) by force, coercion, duress, or fraud during which, or because of which, there is bodily harm to an intimate partner in violation of a valid protection order. This subsection does not require a showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress, or

fraud. This subsection, unlike corollary § 2262(a)(1), requires an intimate relationship between the parties and physical injury to the victim.

Before bringing a § 2262 prosecution, examine the protection order currently used in your jurisdiction. In Maine, for example, the Protection-from-Abuse Order did not conform to the language of § 2262, and made no provision for a judicial finding that the defendant posed a credible threat of violence, repeated harassment, or bodily injury. To correct this statutory deficiency, the United States Attorney's Office for the District of Maine, with the support of key members of the state legislature, proposed legislation that would bring the State into conformity with VAWA provisions.[†] The legislation received no opposition, and became law on September 19, 1997. May 30, 1997, H.P. 1264 L.P. 1791 (An Act to Bring States in Conformity with VAWA).

In *United States v. Romines*, --- F.3d ---, 1998 WL 110152 (4th Cir. 1998), the defendant traveled from Virginia to Tennessee, where his estranged wife lived, in violation of a Protection Order. He made death threats against his estranged wife and dragged her, and their two-year-old son, into a car. Officers captured him in Virginia after a high speed chase. The jury convicted the defendant and the court sentenced him to 151 months' imprisonment.

D. Penalties

Penalties for a violation of § 2261, 2261A, or 2262 hinge on the extent of the bodily injury to the victim. Terms of imprisonment range from five years to life in prison, depending on the seriousness of the bodily injury.

Firearm Offenses

A. Possession of Firearm While Subject to Order of Protection—18 U.S.C. § 922(g)(8)

Possession of a firearm[††] is illegal for a person who is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. The court may issue the protection order only if the defendant had actual notice and an opportunity to appear, and only after holding an evidentiary hearing. The protection order must include either a specific finding that the defendant represents a credible threat to the victim's physical safety or an explicit prohibition against the use of force that one would reasonably expect to cause injury.

B. Transfer of Firearm to Person Subject to Order of Protection—18 U.S.C. § 922(d)(8)

Transferring a firearm to a person subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or the child of an intimate partner is also illegal. A violation of § 922(d)(8) must be knowing. In these cases, proof of the supplier's knowledge may be difficult to establish, absent a fully operational central registry for protection orders.

C. Official Use Exemption—18 U.S.C. § 925

The restrictions of §§ 922(d)(8) and (g)(8) do not apply to firearms issued by governmental agencies to a law enforcement officer or military personnel while the officer or military personnel is on duty. Personal firearms do not fall within this exemption nor may these personnel possess officially issued firearms when off duty.

D. Possession of Firearm After Conviction of Misdemeanor Crime of Domestic Violence—18 U.S.C. § 922(g)(9)

On September 30, 1996, it became illegal to possess a firearm after conviction of a qualifying misdemeanor crime of domestic violence. This prohibition applies to persons convicted of such federal or state misdemeanors anytime, even if the conviction occurred before the new law's effective date. A qualifying misdemeanor domestic violence

[†] The legislation also brought the State into conformity with Section 922(g)(8) of the Gun Control Act.

[††] For all firearms offenses, possession of ammunition is also prohibited.

crime must have as an element the use or attempted use of physical force, or the threatened use of a deadly weapon. For example, a conviction for a misdemeanor violation of a protection order will not qualify, even if a violent act resulted in the violation, if the underlying statute does not require the use or attempted use of physical force or the threatened use of a deadly weapon.

In addition, the statute contains due process requirements regarding counsel and jury trials. The misdemeanor conviction will not qualify as a domestic violence conviction for purposes of § 922(g)(9) absent compliance with these requirements. Moreover, a person can possess a firearm if a court has expunged or set aside the conviction.

In *United States v. Smith*, 964 F. Supp. 286 (N.D. Iowa 1997), the defendant was previously convicted of assaulting the mother of his child in 1994. Following his conviction for a qualifying misdemeanor in 1996, the defendant was charged with possession of a .380 caliber pistol. The District Court found that the defendant's prior assault conviction qualified as a domestic violence misdemeanor under § 922(g)(9). The defendant pled guilty to the § 922(g)(9) charge and the court sentenced him to 51 months' imprisonment.

E. Transfer of Firearm to Person Convicted of a Misdemeanor Crime of Domestic Violence—18 U.S.C. § 922(d)(9)

Transferring a firearm to a person convicted of a misdemeanor crime of domestic violence is illegal. A violation of § 922(d)(9) must, however, be knowing. For prosecutors, the amendment of the Brady statement has helped with the knowledge requirement of § 922(d)(9), which now requires a purchaser of a firearm to reveal a conviction for a misdemeanor domestic violence crime.

F. Official Use Exemption—18 U.S.C. § 925

The official use exemption does not apply to §§ 922(d)(9) and 922(g)(9). This means that law enforcement officers or military personnel convicted of a qualifying domestic violence misdemeanor, cannot possess or receive firearms for any purpose, including the performance of official duties.

G. Penalties

The maximum term of imprisonment for a violation of §§ 922(d)(8), 922(g)(8), 922(d)(9), or 922(g)(9), is ten years.

Other Relevant Statutes

A. Full Faith and Credit to Orders of Protection—18 U.S.C. § 2265

This civil law provides that a civil or criminal domestic protection order issued by a state or tribal court shall be accorded full faith and credit by the court of another state or tribal court. This law applies to permanent, temporary, and ex parte protection orders that meet the statute's requirements. Moreover, validity of these protection orders depends on whether the defendant had reasonable notice and an opportunity to be heard. This law does not apply to mutual protection orders if (1) the original respondent did not file a cross or counter petition seeking a protection order, or (2) a cross or counter petition was filed, but the court did not make specific findings that each party was entitled to the order. Note, however, that USAOs are not authorized to enforce § 2265.

B. Amendment of the Brady Statement—18 U.S.C. § 922(s)

The Brady statement requirements were amended as of September 30, 1996, and now require firearm recipients to state that they have not been convicted in any court of a misdemeanor crime of domestic violence. The Brady statement, however, still does not require that the firearm recipient state whether he or she is currently subject to a valid protection order. Nonetheless, at the time of receipt of the firearm, the recipient will be required to fill out an ATF form certifying that he or she is not subject to a valid protection order.

C. Right of Victim to Speak at Bail Hearing—18 U.S.C. § 2263

The victim of a VAWA crime has the right to be heard at a bail hearing about the danger posed by the defendant.

D. Restitution—18 U.S.C. § 2264

Following conviction in a VAWA case, the court must order the defendant to reimburse the victim for the full amount of losses. These losses include costs for medical or psychological care, physical therapy, transportation, temporary housing, child care, lost income, attorney's fees, costs incurred in obtaining a civil protection order, and any other losses suffered by the victim because of the offense. In a conviction under The Gun Control Act, the Court may order restitution.

E. Self-Petitioning for Battered Immigrant Women and Children—8 U.S.C. § 1154

VAWA specifically provides that battered and abused spouses and children of citizens and lawful permanent residents may self-petition for independent legal residency. This statute prevents citizens or residents from using the residency process as a means to exert control over an alien spouse or child and allows victims to obtain legal status in the United States independent of their abusive husbands or parents.

Conclusion

The federal domestic violence statutes provide powerful weapons for United States Attorneys' offices nationwide to help state, local, and tribal law enforcement in their fight against domestic violence. Increased awareness of these federal laws will allow the Department to work with state, local, and tribal counterparts to reduce one of our nation's most serious crime problems.❖

ABOUT THE AUTHOR

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CHECKLIST OF FEDERAL DOMESTIC VIOLENCE STATUTES/OFFENSES

Domestic Violence Offenses

❑ Interstate travel to commit domestic violence—18 U.S.C. § 2261
❑ Interstate stalking—18 U.S.C. § 2261A
❑ Interstate travel to violate a Protection Order—18 U.S.C. § 2262

Firearms Offenses

❑ Possession of a firearm while subject to a Protection Order—18 U.S.C. § 922(g)(8)

❑ Transfer of a firearm to a person subject to a Protection Order—18 U.S.C. § 922(d)(8)

❑ Possession of a firearm after conviction of a misdemeanor crime of domestic violence—18 U.S.C. § 922(g)(9)

❑ Transfer of a firearm to a person convicted of a misdemeanor crime of domestic violence—18 U.S.C. § 922(d)(9)

❑ Official use exemption from firearms offenses (not applicable to §§ 922(d)(9) and 922(g)(9))—18 U.S.C. § 925(a)(1)

Other Relevant Statutes

❑ Full Faith and Credit—18 U.S.C. § 2265
❑ Brady statement—18 U.S.C. § 922(s)
❑ Right of a victim to be heard at bail hearing—18 U.S.C. § 2263
❑ Other victims' rights—42 U.S.C. § 10606(b)
❑ Restitution—18 U.S.C. § 2264
❑ Self-Petitioning for battered immigrant women and children—8 U.S.C. § 1154

Expert Testimony in Domestic Violence Prosecutions

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With the passage of the Violence Against Women Act (VAWA) in 1994, federal prosecutors face the same challenges encountered by their state and local counterparts in the prosecution of cases that involve domestic and intra-family violence. Among the more significant challenges is educating the lawyers, judges, and juries about the nature and dynamics of domestic violence, and why victims of that violence behave in unexpected ways. The answer can sometimes be found in an expert witness.

Why consider an expert witness?

Domestic violence is very different from general street violence, organized crime, or crime committed by a stranger. It has a unique and demonstrated dynamic caused by the blood or intimate connection between the victim and the defendant. Emotional, psychological, financial, familial, and societal factors can influence the way a victim acts following a violent incident, often causing seemingly counterintuitive behavior. An expert witness can aid in explaining the cycle of domestic violence[†] and dispell the idea that the crime could not have occurred because the victim did not act in a manner consistent with a true victim of a violent crime.

For example, an expert witness can explain:

❑ Why a victim would fail to break off a violent relationship with the defendant;

❑ Why a victim would fail to report previous violence to law enforcement authorities;

❑ Why a victim would resume her relationship with the abuser after ending the relationship one or more times;

❑ The fact that the victim failed to report immediately the alleged crime, minimized the extent of the violence, lied to others about the cause of her injuries, and failed to leave the defendant does not necessarily mean that these crimes did not, in fact, occur;

❑ Why a victim would continue to have telephone contact with or visit an incarcerated defendant;

❑ Why a victim would allow the defendant back into her home despite an order of protection designed to keep the defendant away from her;

❑ Why a victim would fight back against the defendant some times, but not others; and

❑ Why a victim might not refuse to have sex with a defendant after a beating.

Despite recent high-profile cases which have raised public awareness about the true nature of domestic violence, many jurors, judges, and lawyers still hold on to certain societal myths about the victims of domestic violence and why they stay in abusive relationships. These include the notion that battered women:

❑ Are masochistic and enjoy physical abuse;

❑ Have psychological disorders;

❑ Deserve to be beaten;

[†] The cycle of domestic violence, which is composed of three phases, was described by one court as follows: Phase one is the tension-building stage, where the abuser engages in mild physical abuse and verbal abuse, while the abused person, tense and afraid, attempts to placate and pacify the abuser so as to ward off more serious violence. During phase two, there is an acute battering incident, which occurs after the phase one tension between the abuser and the abused person becomes intolerable. Phase three is characterized by the extreme repentance of the abuser who will plead for forgiveness and promise to refrain from further violence. State v. Kelly, 97 N.J. 178, 193, 478 A.2d 364, 371 (1984).

❑ Can freely walk away from their abusers anytime; and

❑ Are generally poor, uneducated, and have no job skills.

An expert witness can be effective in addressing and exploding these myths. Many states recognize the admissibility of such evidence through case law[†] or by express statute.[††]

Research has shown that there is a connection between domestic violence and child abuse. Physical abuse is more likely to occur when children live with violent family members. An expert witness can explain how children who are victims of, or witnesses to, domestic violence are at a much higher risk of becoming domestic violence victims, or abusers, as adults. Expert testimony can also address an unfortunately common dilemma faced by domestic violence victims; that is, losing custody of children because the abuser threatens to take them away or report the victim as abusive or neglectful if the abuse is reported.

When should I use an expert witness?

Most prosecutors present an expert witness at trial to inform the jurors about matters with which the jurors are generally unfamiliar. Prosecutors should consider calling a domestic violence expert whenever the victim has maintained a relationship with the abuser or acted inconsistently and think creatively about using an expert witness in contexts other than trial.

An expert witness can help educate the prosecutor during the investigation and preparation of the case. Often, an expert familiar with a domestic violence victim's life can explain what appear to be the victim's inconsistent statements about the alleged abuse or her behavior. An expert can help the prosecutor identify factors which make a particular victim vulnerable to reabuse or a particular defendant likely to reabuse. The prosecutor can then use this information to argue for specific conditions of release or, if warranted, detention.

An expert witness can also help educate the law enforcement officers working the case. For example, law enforcement officers focusing on the facts of a particular assault may not recognize that evidence of emotional abuse, psychological abuse, child abuse and neglect, isolation of the victim, and abuse of pets can all be very relevant and probative evidence.

Judges can learn from expert witnesses. Prosecutors should consider using an expert not simply during the trial, but also when holding bond or bond review hearings. Judicial officers inclined to release a defendant because the victim appears in court and says that she wants him released,[†††] might be otherwise persuaded of the true danger to the victim based upon an expert's opinion that a person in the victim's position is at great risk for reabuse by the defendant. Expert testimony about the typical reactions of victims of family violence might also be useful in a hearing to decide the admissibility of other crimes evidence.

Where do I find a domestic violence expert?

Unlike many forensic experts whose expertise relies largely upon sophisticated education and training, domestic violence experts often gain their expertise by working with victims of domestic

[†] See, e.g., Arcoren v. United States, 929 F.2d 1235 (8th Cir. 1991); State v. Bednarz, 179 Wis.2d 460, 507 N.W.2d 168 (Wis. App. 1994); State v. Cababag, 9 Haw. App. 496, 850 P.2d 716 (Ct. App. 1993); State v. Borelli, 227 Conn. 153, 629 A.2d 1105 (Conn. 1993); State v. Battista, 31 Conn. App. 497, 626 A.2d 769, cert. denied, 227 Conn. 907, 632 A.2d 696 (1993); Thompson v. State, 416 S.E.2d 755 (Ga. App. 1992); State v. Frost, 242 N.J. Super. 601, 577 A.2d 1282, cert. denied, 127 N.J. 321, 604 A.2d 596 (1990); State v. Ciskie, 751 P.2d 1165 (Wash. 1988).

[††] See, e.g., California (Cal. Evid. Code § 1107(a)), Louisiana (La. Code Evid. Ann. Art. 404 (A)(2)), Maryland (Md. Cts. & Jud. Pro. Code Ann. § 10-916 (1991)), Massachusetts (Mass. Gen. Laws An. ch. 233, sec. 23E (West 1994)), Missouri (Mo. Ann. Stat. Sec. 563.033 (Vernon 1991)), Nevada (Nev. Rev. Stat.§ 48.061 (1993)), Ohio (Ohio Rev. Code Ann. § 2901.06, 2945.392 (Anderson 1990)), Oklahoma (Okl. Stat. Ann. Tit. 22 § 40.7 (West 1992)), Texas (Tex. Penal Code Ann. § 19.06 (West 1992)), and Wyoming (Wyo. Stat. § 6-1-203 (1993)). Each of these state statutes provides for the use of expert testimony about battering and its effects in criminal cases in which self-defense has been raised.

[†††] See 18 U.S.C. 2263 ("In any proceeding pursuant to section 3142 for the purpose of determining whether a defendant charged [with violating 18 U.S.C. Sections 2261 or 2262] shall be released pending trial, or for the purpose of determining conditions of such release, the alleged victim *shall* be given an opportunity to be heard regarding the danger posed by the defendant.") (emphasis added).

violence. Coupled with formal education and training, domestic violence victim advocates can be very compelling experts. These talented and dedicated individuals can be found at state or local battered women's shelter organizations, victim services providers, or state agencies designed to help domestic violence victims. Experts might also be found at colleges and universities, many of which have domestic violence advocacy programs or clinics. The Department's Violence Against Women Office can also help prosecutors locate an expert witness.

In choosing an expert witness, the prosecutor should consider the type of case and whether there are certain case-specific issues that an expert witness will need to address. For example, it is common for an abuser to use a victim's immigration status for controlling her and preventing her from reporting the abuse to the authorities. An expert witness in domestic violence who has experience with the immigrant community can explain to the jury why immigration status can be such a powerful weapon to a batterer. Such an expert might be found at a legal clinic designed to help the non-English speaking or immigrant community.

How do I use a domestic violence expert witness?

As with all expert witnesses, the court must recognize domestic violence experts as meeting a certain level of expertise before the jury may consider their opinions. Prosecutors should make sure that the credentials—whether academic or clinical—are clearly set before the jury. Because the expert will be speaking about matters that, for many jurors, are counterintuitive, it is important that the jurors believe the witness is well-qualified. Prosecutors should think carefully about case strategy before stipulating to an expert witness's qualifications.

Generally, prosecutors can ask domestic violence experts about the cycle and dynamics of domestic violence and some common behaviors of domestic violence victims. If the expert has sufficient training and experience, he or she might discuss the common myths surrounding victims of domestic violence and their behavior. Some jurisdictions permit experts to discuss the concepts of Battered Women's Syndrome and Post-Traumatic Stress Disorder. Prosecutors should ask the expert what he or she feels is important to say to the average layperson about domestic violence in the particular case. There are many excellent examples of examinations of expert witnesses, and prosecutors should obtain copies of the transcripts to use as a starting point to develop their own examination.

During the preparation of the case, prosecutors must decide whether to use the expert to discuss domestic violence generally or to have the expert interview and possibly evaluate the victim. Usually, prosecutors will prefer to have the expert generally discuss relationships marked by domestic violence and the typical behavior of the parties. This enables the Government to fit its facts into the established cycle and dynamic of violence without the need for an actual evaluation of the victim by the Government or defense.

A domestic violence expert can also help address common defenses. For example:

- ❑ It is common for victims of domestic violence to recant their allegations. At trial, abusers will claim that the victim initially lied to the police and is now telling the truth about what happened. Where the Government proceeds without the victim's testimony, or with the victim testifying for the abuser, an expert witness can explain the common causes of recantation and why this victim may have recanted their testimony.

- ❑ In a case where the defendant claims that he was acting in self-defense, an expert witness can explain to the jury why a victim might retaliate or fight back against the batterer sometimes, but not in others. An expert can also explain why a victim might feel the need to resort to a weapon to protect herself during an assault by an unarmed abuser.

- ❑ Where a victim comes under attack for lying about the origin of her injuries, an expert can tell the jury that this is a common pattern among such victims, thereby lessening the damage caused by the apparent inconsistencies.

- ❑ In cases involving kidnapping or sexual assault, when the victim submits to the demands of the abuser with little actual physical force, an expert can explain that victims of domestic violence take

such threats seriously where there is a history of such threats being carried out.

❑ Abusers often argue to the jury that if a victim was actually experiencing such violence she would leave the relationship, and that the allegations are the result of jealousy or anger. An expert can explain to the jury that victims are most at risk for abuse when they attempt to leave the relationship, and that victims commonly make multiple attempts to leave before they are ultimately successful.

Where can I find additional information about domestic violence?

Prosecutors should contact the Violence Against Women Office at 202-616-8894 for more information about VAWA, domestic violence, and sexual assault. Each district also has a VAWA point of contact who has information and resources about the prosecution of domestic violence and related VAWA cases. Prosecutors should contact their VAWA representative for advice about the use of expert witnesses and sample examinations. Also, feel free to contact AUSA Robert J. Spagnoletti, at 202-514-0496 for sample transcripts. ❖

ABOUT THE AUTHOR

Robert J. Spagnoletti is Chief of the Domestic Violence Unit at the United States Attorney's Office for the District of Columbia, a position he has held since December of 1995. He represents the United States Attorney's Office on the District of Columbia's Domestic Violence Coordinating Council and the District of Columbia Mayor's Commission on Violence Against Women. He is a member of the American Professional Society on the Abuse of Children. In 1997 the District of Columbia Bar Association named him the Young Lawyer of the Year. In January 1998 Georgetown University Law Center appointed him as an Adjunct Professor of Law. He graduated from Lafayette College in Easton, Pennsylvania, in 1984, and from Georgetown University Law Center in 1987. ✠

Name Changes and Related Options for Domestic Violence Victims

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Many domestic violence victims[†] feel that changing their identity is the only way they will be safe from further harm by their abuser. Changing one's identity can be fraught with legal issues, and Assistant United States Attorneys (AUSAs) and Victim-Witness Coordinators (VWCs) must remain mindful that they cannot give legal advice to victims or provide any assistance to victims who intend to act unlawfully to hide from an abuser. When domestic violence victims seek to change their identity to hide from an abuser, we should encourage them to seek assistance from a private attorney or other legal service provider, or from a domestic violence advocate or other social service provider. This article will discuss some options available to domestic violence victims and will highlight some issues AUSAs and VWCs should be aware of, in cases where a victim intends to hide from an abuser.

"Why doesn't the victim just leave?"

Unfortunately, leaving is often not as simple as it sounds. Think of the last time you had to move. Think of all the things you had to do in preparation for the move: find a place to live that was affordable, sell your current home or break a lease, arrange for the movers, pay the movers, notify creditors, arrange for the installation of utilities in your new location, change your phone number, etc. Moving can be an overwhelming process. Combine that ordeal with the terror of trying to hide from someone who has beaten and threatened to kill you. This is what domestic violence victims endure and why Ajust leaving@ is not that easy.

In addition, moving away from the abuser may not be enough, because most abusers do not give up. They often try to maintain their power and control over the victim. In fact, many abusers go to great lengths to track the victim and regain their control.

An abuser's ability to find his victim, even after the victim has moved, reinforces the victim's fear that the abuser is omnipotent, and that his past threats of AI will find you no matter what@ or "there is no place where you can hide from me@ were true. Some abusers may not be as powerful as the victim believes they are. Instead, they may be skilled at using information they already have, such as the victim's name and social security number, to track the victim. For example, one abuser called the telephone company and claimed that he was court-ordered to pay the victim's telephone bill. He convinced the telephone company to forward the victim's bill to him, then he used the information in the bill to find the victim. Another abuser contacted the Medicaid office and used the victim's social security number to obtain the victim's medical records. The records included the victim's new address, and the abuser found the victim at her Ahidden@ location. Another abuser ruined his victim's credit by charging the limit on her cards before she disappeared. He then found her in another state by claiming to be a creditor.

Abusers also use their children's social security numbers and school records to obtain information about the victim. Abusers can even use court records and court proceedings to obtain information about the victim's whereabouts. For example, the abuser can enforce joint custody or visitation orders. Sometimes, the victim has full custody of the children, and the defendant expresses no interest in seeing or having custody of the children until the victim decides to leave. The abuser may decide to sue for full custody to prevent the victim from leaving. The victim may find herself caught in a

[†] Domestic violence is not a gender specific crime, but because most victims of domestic violence are female, this article uses the pronoun Ashe@ when referring to victims. Additionally, this article focuses on victims of domestic violence, but the strategies and options discussed could also be used by fearful victims of other types of crime.

constant stream of time consuming, expensive, and emotionally draining legal battles with the abuser. These factors can, singularly or in combination, keep victims from relocating.

If Relocating is Not Enough, Are There Any Other Options Available?

Victims may wish to consider changing their own name and social security number, and the names and social security numbers of their children. The name change should be done before the social security number change so that an abuser cannot use the victim's new social security number to connect the victim with her former name. A victim can change her name in two ways: a common law change or a judicial name change.

Changing the Name of a Victim and her Children

Under the common law, a person may change her name by adopting the new name and holding herself out to the world under that new name. One can achieve this through simple usage or habit.

A judicial name change is another vehicle for adults and children. State laws govern name changes and may differ widely. For example, Article 6 of the New York Civil Rights Law addresses name changes. In New York, any person may petition for a name change in writing, specifically stating the grounds for the application. Among other things, the petitioner must state whether she has been convicted of a crime, if she has ever been declared bankrupt, or if she has any liens or judgments against her. If so, she must give details. Generally, the court must ensure that there is no fraud, evasion, or interference with the rights of others associated with a petition. *See* N.Y. Civ. Rights Law §§ 60-65 (McKinney 1997).

State law may have a provision for a sealed name change and a waiver of publication notice for a victim of domestic violence. For example, New York offers victims the opportunity to waive the publication of the name change and the records of the name change sealed by the court. *See* N.Y. Civ. Rights Law § 64(a) (McKinney 1997). An Order of Protection, a letter from a domestic violence shelter, medical records and photographs following a beating, police reports, a letter from a District Attorney or United States Attorney, a letter from a Victim-Witness Advocate, and copies of any official court documents, such as trial transcripts or a divorce decree, may help the court recognize the danger to the applicant upon publication.

Obtaining a name change for a child is difficult because the court must notify the other parent of the change. In some states, grounds for a sealed child name change include a domestic violence abuser using a child to find a child's mother. Many states have established laws making domestic violence a serious factor in custody decisions.

AUSAs and VWCs should be aware that victims who have children with their abuser and are seeking to hide from the abuser run the risk of interfering with the abuser's rights to custody or visitation. In these instances, AUSAs and VWCs must be careful not to provide legal advice to victims, and should suggest that the victim seek legal advice from a private attorney or legal services provider.

Obtaining a New Social Security Number

The Social Security Administration handles Social Security number changes. The Social Security Number, Policy and General Procedures manual (the Manual), Section 00205.45 (1997) governs requests for a new social security number based on alleged harassment, abuse, or life endangerment. To obtain a copy of the Manual, contact any Social Security office. According to Section 00205.45, an individual may request a new social security number by showing that:

❑ The abuser is misusing (or has misused) the social security number to pursue the petitioner or otherwise cause the individual harm; **and**

❑ The individual is being harassed, abused or endangered, i.e., there is a present danger or threat; **or**

❑ If no current or prior misuse of the social security number is documented, the applicant can reasonably presume that the abuser will do anything, including misusing the applicant's social security number, to locate him or her.

Section 00205.001B of the Manual defines misuse of an individual's social security number as the "criminal or harmful intent to use another person's social security number to cause harm to that individual." Misuse includes "using the social security number to track the individual through employment records, driver's license records, health insurance, or any process which uses the social security number as an identifier." *Id.*

Applicants requesting a new social security number under Section 00205.001B must submit third-party documentation supporting social security number misuse or harassment, abuse, or endangerment by the abuser. The applicant must thoroughly state the reasons for requesting a new social security number. The applicant's statement without any third-party corroborating documentation is not sufficient to warrant the assignment of a new social security number. Section 00205.45H of the Manual contains a list of the acceptable third-party documentation, which is essentially the same documentation used for a sealed name change, i.e., Orders of Protection, police reports, a letter from the District Attorney, etc. New social security numbers are not automatically assigned because of a recommendation from an attorney, the police, or a physician. The applicant must provide other documentation. The evidence must clearly state why the applicant believes she is currently at risk.

Section 00205.45C of the Manual recognizes that all family members living in the same household are probably affected if it is shown that either the parent or children is being harassed, abused, or endangered. Thus, if one family member meets the requirements for a new social security number, the court will probably approve requests for other household members. The victim must meet two additional requirements before she may change her childrens' social security numbers:

- ❑ The victim must prove that she has sole, legal custody of the children, and
- ❑ The victim must submit a signed statement verifying that she will honor any visitation rights the other parent has. This may be a problem if she is trying to hide from her abuser.

Because these requirements are legally significant, victims should seek outside legal assistance to resolve outstanding issues such as custody, visitation, and parental rights.

The Manual does not say whether social security number changes can be sealed. Section RM 00205.010C of the Manual, however, states that social security numbers are not cross-referenced in cases involving harassment, abuse, or life endangerment. This means that once a new social security number is issued, all access to the old social security number is denied.

Drawbacks to Name and Social Security Number Changes

The domestic violence victim who decides to change her and her children's names and social security numbers is essentially entering her own witness protection program. She will experience problems similar to those a protected witness experiences, without the benefit of financial support. AUSAs and VWCs should be aware of the following additional issues victims face if they decide to change their identity to flee an abuser.

The Abusive Parent's Right to Custody and Visitation and his Parental Rights

A name change by a victim-parent does not alter the abusive-parent's visitation and custody rights. Before obtaining a name change, a victim-parent should attempt to resolve issues concerning custody and visitation rights. Failure to do so may lead to violations of the law by the victim-parent, and even arrest and prosecution. Victims should seek legal assistance or assistance from domestic violence service providers to resolve these issues.

The Children

A victim who relocates and changes the identities of her children may encounter difficulties enrolling the children in school. For example, the victim must submit documentation, such as birth certificates, school records, and immunization records, when she enrolls the children in a new school. This is problematic because the birth

certificates will reflect the childrens' new names and social security numbers, but all the other records will contain the old names and social security numbers. Thus, using these records can compromise the victim's safety and that of her children.

Child Support

Victims who undergo an identity change and move are usually making a choice to forgo child support from the abuser. This is an important decision that greatly impacts each child, the victim's financial situation, and her ability to provide for her children.

Orders of Protection

Orders of Protection are valid for a short time, and most expire before the abuser has served his term of imprisonment. Applying for a new protection order may compromise a victim's new identity or give away her new address. One solution is to have the court include conditions of release in the abuser's sentence that are similar to conditions contained in an Order of Protection. These conditions, however, will only be useful during court supervision.

Loss of Identity/Past

Victims who go into hiding or change their identity often cut off all contacts with people that the abuser may use to find the victim. This usually means giving up contact with friends, family, babysitters, etc., and can be very traumatic. Although the Social Security Administration recommends destroying all records with the victim's old name and social security number on it, this may present problems in the future. For example, if the abuser can find the victim and assaults, abducts, or kills her, the lack of paperwork connecting the abuser with the victim may hinder the investigation and prevent the police from learning of the abuser's past relationship with the victim.

Financial Concerns

The victim may need to start a new career without the benefit of a resume, references, or licenses since these things will link her to her old identity. She may also lose retirement, pension, health care, dental, tenure, vacation, and sick pay benefits by starting a new career (an employer may not offer those benefits to new employees). Likewise, the victim may also lose child support and access to inexpensive and reliable child care from family members. A new identity also results in a Ablank@ credit history, thereby making it harder for the victim to obtain credit. These factors increase the financial burden on the victim who goes into hiding.

Disabled Victims or Disabled Children

After assuming a new identity, victims may have to re-apply for Medicaid or other types of disability benefits for themselves or their children. This process could mean long delays which could be very traumatic if the victim or child needs medication or other services immediately.

What if the Victim is a Federal Employee?

Even if an employee's agency is willing to transfer her to a new district, other employees may recognize her. Victims who resign from Government jobs, may risk losing a thrift savings plan, a retirement plan, years in Government service, the ability to undergo background checks for future Government jobs, and salary grades (especially if she has served many years).

What if the Perpetrator is a Federal Employee or Law Enforcement Officer?

An abuser who is a federal employee or law enforcement officer may have access to information and records that other abusers do not have. He may also have friends or colleagues who can help him in locating the victim after her relocation and identity change. The federal employee perpetrator may know the intricacies of the Government and the law, thereby making him more knowledgeable, and providing him with

more assistance than the average abuser. He may also use his position and authority to obtain information from other outside agencies.

Other Problems

If the victim has the U.S. Postal Service forward her mail, there is an increased likelihood that her abuser can trace her to her new home. Organizations that use an individual's social security number such as the IRS, banks, and Department of Motor Vehicles, must be contacted separately regarding the name and social security change. Thus, each could be a source of an information leak about the victim's new identity and location. Inevitably, the victim may forget some important detail which may be the one thing that leads her abuser back to her.

Services Offered to Federal Victims

AUSAs and VWCs should do their part to ensure that victims cannot be tracked through any federal victim service. The Government should give victims the name and phone number of the VWC in the districts to which the victim is considering relocating. Then, if the victim has undertaken her name and identity change lawfully, the VWC in the new district can help victims with referrals for services in the new area. It also helps if the VWC from the original district briefs the VWC in the new district about the victim's situation to ensure that the victim receives the appropriate service referrals.

Conclusion

In the last six months, I have received telephone calls from many domestic violence victims, all of whom have moved at least once to get away from and all of whom were found by their abuser. Obviously, relocation alone is not enough. Some victims must become someone else to survive. Although they may provide an added degree of protection, name changes and social security number changes are not a complete solution to domestic violence victims' protection.

For further information on this topic, contact Sharon Knope at 716-551-4811, extension 828, or E-mail at ANYW01(sknope). ❖

ABOUT THE AUTHOR

Sharon M. Knope is the Victim-Witness Coordinator for the United States Attorney's Office in the Western District of New York. She focuses much of her attention on domestic violence and child abuse victims and witnesses. She has coordinated seminars on domestic violence and child abuse, and has made presentations on protection for domestic violence victims. She is an active member of the Advisory Council of the New York State Crime Victim's Board, the Western New York Coalition for Crime Victims, the Lockport Domestic Violence Intervention Project, the Niagara County Child Abuse Intervention Project, and is a member of two working groups in Washington, D.C. before working in the United States Attorney's Office, she was a paralegal for the Department of Justice Antitrust Division in Washington, D.C. ✠

Working with Traumatized Victims

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Victimization is a devastating experience which affects many areas of the victim's life. Even minor offenses can have deeply traumatic or life-altering impacts. Victimization often results in traumatic stress and, sometimes, even Post Traumatic Stress Disorders (PTSD). Crimes which cause victimization often impact not only property and physical well-being, but fundamental assumptions on which life is built, such as the victim's sense of safety, control, and wholeness. Sometimes, a victim's family does not fully comprehend the extent of the crime's impact on the victim. Thus, when the family does not respond to the victimization the way the victim expects, a victim may feel isolated from the people to whom he or she is closest. Also, the victim may relive the crime while sleeping and have frightening, unsettling dreams. A victim may experience unpredictable mood swings or even doubt his or her sanity. In the end, the sense of loss may be so profound, and the grief so all-encompassing, that the victim's life may never be the same.

It is common for the emotional and psychological consequences of the crime to be delayed. While this delayed impact may not affect reporting to the police, the victim may participate during the prosecution in a way that is less effective. A victim in this situation will present difficult challenges to Assistant United States Attorneys (AUSAs), Victim-Witness Coordinators (VWCs), and Victim Advocates (VAs).

Why does the victim seem hostile? I'm one of the good guys!

Crime victims experience a wide array of emotions when dealing with their vulnerability and helplessness. One of these emotions may be an intense fear. This fear, which may abate with time, is often associated with people or events surrounding the crime. For example, a stranger, specific location, time of day, or particular odor which the victim associates with the crime, may trigger the fear. Anger is another significant part of the victimization experience. Victims may be angry with the defendant for committing the crime, themselves for "letting" the victimization occur, the "system" which is not working to their expectations, and friends who are refusing to listen or are blaming the victim. A prosecutor may be the most convenient target for this anger and frustration since he or she is often the victim's strongest tie to the criminal justice system.

As a representative of the criminal justice system, AUSAs may become the focus for all of the frustration the victim feels with a system that seems insensitive to their feelings and needs. Crime represents a profound disrespect for the victim as a person. When friends and family members or caregivers fail to respect the needs of victims, they have perpetuated the disrespect. When the legal system ignores victims, it has compounded the disrespect. The criminal justice system reduces the impact of crime to a few words or letters. An "AWIK" may stand for "assault with intent to kill," but the meaning of that crime to an individual victim may take volumes to express. AUSAs must recognize the importance and impact of the crime to the victim and treat victims with respect and sensitivity. Sometimes it can be as simple as saying, "I'm really sorry this happened to you. It must be terrible to go through such an experience."

Why does the victim seem unreliable?

Victims may avoid witness conferences, court proceedings—anything that reminds them of the crime. There are many reasons why victims may avoid contact with the criminal justice system. Judith Lewis Herman wrote in her book, *Trauma and Recovery*, "[I]f you set out to design a system for provoking intrusive post-traumatic symptoms, one could not do better than a court of law."†

† Judith Lewis Herman, MD, *Trauma and Recovery: The aftermath of violence—from domestic abuse to political terror*, p. 133, New York, NY: Basic Books (1992).

Traumatic experiences become part of one's memory and conditioning. Talking to police and prosecutors often means reliving the crime—a painful, but not necessarily bad process. The more victims can talk about the crime and its impact, the more control they begin to regain.

Embarrassment and shame may prevent victims from participating in the criminal justice process. Some victims feel ashamed about being a victim. Fraud victims may be embarrassed or ashamed about being "duped." Male victims may feel they should have been able to protect themselves. Victims feel isolated and cut off from others who have not shared the experience. Reassuring victims they are not alone, and that many people share their experience, may help alleviate some embarrassment.

Many victims, particularly young people, go through a period of denying the reality of the crime or its impact, and may suppress memories of it. It is natural for victims to want to avoid any situation or stimulus that brings back painful memories and feelings. Victims may unconsciously avoid or "forget" appointments for witness conferences and other key events. Do not take it personally. It may help to say to the victim, "I know it is hard for you to come here and talk about this, but it is really important and I appreciate your courage. Is there anything we can do that will make this easier for you?"

Why did the victim lie or withhold information about the crime? Doesn't he know it hurts his credibility?

There is no such thing as a perfect victim. Many victims were not as careful as they should have been; no person can guard against every vulnerability. Victims may withhold some details from police and prosecutors because they are embarrassed or afraid of being blamed. Victims are often concerned about whether they will be believed and taken seriously. AUSAs need to create an environment of trust and acceptance that will enable the victim to be completely open about the circumstances of the crime. It will help victims if, early in the process, the AUSA explains that they are not expected to be perfect and that being completely honest—even about mistakes and embarrassing details—is better.

What if the victim continues to be extremely upset and unable to cope?

Some victims cope better than others with the effects of victimization. Several factors affect a victim's response to the crime: (1) stressful events that occurred before the crime, and how well or poorly the victim coped; (2) the violence or violation associated with the crime; and (3) the types of support and helping resources available to the victim.

Many victims experience unrelated, multiple victimizations during their lifetimes. Individuals who are first victimized as children are particularly at risk for repeat victimization. Criminal victimization has a cumulative effect, and may make it extremely difficult for victims to recover. These individuals are prone to developing PTSD. If the impact is severe enough, the victim probably cannot participate in the case and testify in court. PTSD is a diagnosable condition and must be treated by a mental health professional.

Contact with the criminal justice system may be the only opportunity some victims have to receive information about the mental health impact of crime and help in accessing treatment. It is critical to refer the severely impacted victim to a VA, or to encourage the victim to find assistance through a local community mental health program or counseling service.

Because of traumatic stress, some victims may not exhibit behavior that most people would expect from someone who experienced a particular type of crime. In fact, some victims of violent crime show no emotion at all or to appear numb. If the victim's response becomes an issue at trial, it may be necessary to have an experienced mental health clinician or VA testify about "normal" reactions of individuals to violent crime.

What does this victim want from me?

Victims have critical needs. They need to feel safe emotionally and physically. They need to be able to tell their story and express their grief, anger, and frustration. They need to have their feelings and losses validated, sometimes through restitution. Victims want AUSAs to do their primary job and prosecute the case; but victims do not want to be

ignored and left standing outside the criminal justice system. Victims need to be empowered which, to most victims, means information. They want prosecutors to let them know what is happening with their case. They need to know what to expect from the process. They want their voices to be heard—especially at sentencing. Remember, the crime happened to the victim and the victim is the one who must bear the scars, pay the price, and live with the memories.

What should I say or not say to victims?

Many of us find it difficult to listen to people who are suffering. We may feel we have enough problems to handle already, or we may be afraid of making a situation worse by saying the wrong thing. While VWCs and VAs are available to listen to victims and refer them for professional counseling, there are times when AUSAs will need victims to talk about the crime and their reactions. During a victim interview, try to ensure privacy and avoid facing the victim from behind your desk. Make sure your facial expressions and posture are appropriate and show interest. Let victims know crying is okay. Avoid offering advice or talking about your own experiences. Avoid saying, "I know how you feel." Do not say anything which minimizes what the victim feels, such as "You're lucky. It could have been worse." Avoid making comments that are critical of the person and the way they are coping, such as "You need to get on with your life." Express your empathy by saying, "I'm sorry" or "How did that make you feel?" Other helpful responses include: "Feeling the way you do is understandable" and "Things may never be the same, but they can get better."

Conclusion

A victim who presents special challenges will need more help and time than a busy AUSA can provide. AUSAs should enlist the help of a VWC or VA to provide assistance with notification, referrals, and emotional support. The VWC or VA can monitor the well-being of the victim while the case is pending, and keep the AUSA informed of potential problems. The AUSA and the VWC or VA are most effective when they work as a team to ensure the victim's participation and well-being.

Dr. Brian Ogawa directed a victim assistance program in a prosecutor's office for 13 years. He emphasized that victims have a primary evidentiary value by stating:

> Victims are not simply evidence. But if a prosecutor treats victims as she or he handles any critical piece of evidence, namely protecting the chain of custody, preserving the integrity of the evidence and presenting the evidence in the most persuasive manner, then victims will naturally receive the respect they justifiably deserve.

Brian Ogawa, *Victims as Primary Evidence: The Significance of the Victim in Winning a Case*. MAADVOCATE, Winter 1998, pp. 18-19.

Attorney General Janet Reno frequently states her standard for the treatment of victims of crime: "Department of Justice employees should treat every victim the way we would want our mothers, our brothers, or our children to be treated if they become victims of crime. It is a good standard to follow and it works." ❖

ABOUT THE AUTHOR

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A Victim's Voice

Susan Urbach
Oklahoma City Bombing

I wear many labels, but one label that I find myself surprised to wear is "crime victim." I got that label because, one beautiful April morning, not unlike thousands of others, I went to work. My office, in downtown Oklahoma City, had an expansive view of the Alfred P. Murrah Federal Building, and on April 19, 1995, in a matter of seconds, my life changed. My office window exploded into my back and a concrete wall blew over and buried me. They hospitalized me and the wounds to my body required nearly four feet of stitching. My losses were not, however, limited to bodily damage; seven of my associates died in the building and others I knew were seriously injured. My church was heavily damaged; the Credit Union where I banked was destroyed and half its employees were killed; the YMCA I frequented was also destroyed; even my car was damaged. The events of April 19, 1995, touched every significant aspect of my life.

Because of the bombing, I received telephone calls and assistance from employees of the United States Attorney's office (USAO) for the Western District of Oklahoma and the Department of Justice. I welcomed these callers into my life not only because of the way they treated me, but also because of their role in my road to justice. I do not tell you these things for pity; rather, I use this article to give you some insight into my experience as a crime victim and survivor.

My journey as a crime victim has not been easy. It has, however, been extremely helpful. While I am greatly relieved that the trials and sentencings are over, I have absolutely no regret about participating in the trial process. Throughout the process, the Department of Justice accomplished many ground-breaking milestones with the Oklahoma City bombing victims. While I cannot speak for every crime victim, I hope that my remarks will prove helpful to those Department of Justice employees who work with victims of other crimes.

My Initial Mind Set

After the bombing and during a presentation I gave to new Assistant United States Attorneys (AUSAs), an AUSA asked me what I thought of the USAO before the bombing. Before the bombing my answer would have been "Who?" Before the bombing I was completely unfamiliar with the USAO. Sure, I might have recognized a prominent case handled by the USAO and I was acquainted with a woman who was an employee of that office, but I did not know of its function and role in the legal system.

Since I am neither a criminal nor an attorney, knowledge about the USAO is not something I keep in the forefront of my mind. Prosecutors should not assume that crime victims are familiar with the role of the USAO. The prosecution team for our case took many steps to make certain that the victims understood the function of the USAO and its role in helping victims.

For example, within a few weeks of the bombing, I received a package from the USAO containing information about victim assistance groups and compensation funds. The package also contained a document asking if I wanted the USAO to keep me informed about the progress of the case. I must admit, initially my expectations of this promise were very low. Nonetheless, I accepted the offer.

Shortly after that, I received telephone calls and additional correspondence from the Victim-Witness Unit. In fact, I was shocked one day when I received a message on my answering machine from someone with the USAO's Victim-Witness Unit who was simply calling to see if she could do anything to help me. By doing anything at all, they exceeded my low expectations. The prosecution team on the Oklahoma City bombing case consistently carried through with everything they said they would do. For that, I have a great deal of respect.

My Familiarity with the Law

As lawyers and prosecutors, you are familiar with the civil and criminal laws, unlike the ordinary citizen. My biggest brush with the law was a speeding ticket I received years ago; so what I did not know about the law was frightening to me. What the USAO did to ease my fears about the law and the legal process was phenomenal—they kept the communication lines between law enforcement and crime victims open. Unfortunately, all federal prosecutors do not share this attitude. I have learned that for many federal prosecutors, crime is "faceless." It is "The Government" versus "So and So." I believe crime has many faces, and I encourage you, the next time you handle a case with victims, to ask yourself how many victims will you see face to face, one on one, excluding those who you have used as witnesses to help you win a conviction?

Real Prosecutors, Real Victims

Although I do not wish the experience of being a crime victim on anyone, the experience would be invaluable for prosecutors because it would allow them to understand the incredible feeling of loss of control. While I imagine that most prosecutors have not been crime victims, I am sure all of you have been to the doctor. Patients want and have a right to receive competent medical care. They also respect doctors who use a good bedside manner while administering that care. Logically, a physician who truly cares about his or her patients can help the patient understand the disease and treatment course. This principle has similar application in the mind of a crime victim, and it illustrates the importance of making sure the victim(s) feel comfortable.

In the Oklahoma City bombing, Timothy McVeigh and Terry Nichols did not deliberately set out to hurt me. I was simply an object that did not matter to them. This fact is important in the mind of a crime victim because whether they directed the crime at you or you were just part of something larger and more indiscriminate, they have treated you as an object. This is dehumanizing.

Let me illustrate this point for you. During our case, the victims had several opportunities to meet with the entire prosecution team. Originally, we learned that the Department literally "pulled" prosecutors on our case from various places because of their specific expertises. As a group, we certainly hoped that the Department was putting its best people on the job. We were, however, sensitive to the fact that the Department was supplementing or replacing locally known folks with outsiders. In fact, several of us resented the Department's actions because we had a feeling of "carpetbagging"—that our folks were not good enough or that non-local attorneys were volunteering merely because of the potential publicity. They assuaged our initial feelings of resentment when each member of the prosecution team told us about themselves and their area(s) of expertise.

As a victim, this helped a great deal because it gave me confidence in the people handling the case. These efforts by the Department gave faces to all sides of the case—the prosecutors were now real to me and, more importantly, I know I was real to the prosecutors.

Over the course of both trials, some non-local attorneys became "one of us" in the eyes of the victims. We became known to each other and were not just objects. Over time, we recognized that the non-local attorneys and staff made great sacrifices by being away from home and family. I think they truly committed themselves to the case.

The Flow of Information

One of the most helpful things the USAO did for the victims was to keep information about the case flowing to us. From the onset of the case, I received information from AUSA K. Lynn Anderson and Victim-Witness Coordinator Dahlia Lehman and her staff. These people were absolutely incredible for their respective roles in facilitating the flow of information between the USAO and the victims.

To a crime victim, information is a key ingredient in the healing process. In our case, the defense attorneys appeared to use the media to try to bolster their case. For example, every time the defense hauled boxes and boxes of motions and documents to the courthouse, or held up signs for the cameras, these events ended up in the newspapers or on the television. Naturally, we, as victims, wondered why the prosecutors did not respond. Significantly, the prosecution team took the time to explain to us the ethical and legal

constraints placed upon them by our criminal justice system. Based on this explanation, I learned that the hoopla of the initial news story and the meaning of the judge's rulings on the pretrial motions were vastly different from the impression given by the media—the juiciest bit was simply the initial filing, not whether the judge upheld the motion.

Our fears generated by media reports were also calmed by the continued flow of information between the USAO and the victims. For example, each time the defense filed a new motion, AUSA Anderson gave us facts about the kind of motion, what the defense alleged, the nature of the Government's response, the judge's ruling, and its implications. To my knowledge, this was the first time the Department assigned an AUSA to a Victim-Witness Unit for that specific purpose. AUSA Anderson also maintained a daily presence in Denver and was available to each new wave of 24 victims who came to observe the trial every week. Each day, AUSA Anderson held a debriefing to answer our questions about general courtroom practices, strategies, and techniques. Additionally, through closed circuit television sessions, the presiding judge answered our legal and procedural questions. Each communication increased my confidence in the USAO, the prosecution team, and the system as a whole.

Another key to the communication process in our case was the great care and concern taken by the Victim-Witness Unit in planning for the trial. Often during the case, the Unit had to break new ground when handling victim-witness matters. This, in part, was due to the sheer number of victims and survivors and the change of venue from Oklahoma to Colorado. It was very important to me that the Victim-Witness staff asked for our thoughts every step of the way. While the number of victims prevented the chance of total agreement on certain issues, we knew the USAO would consider our opinions. In short, the Victim-Witness staff did an outstanding job of both teaching us about the criminal process and addressing our questions and fears.

Response to Changes in the Law and Victim-Motions

The prosecution team had to respond to changes in the law and motions filed by survivors and members of victims' families. Because we were kept informed about these changes and motions, I realized that there is a natural tension between victims' rights advocates and prosecuting attorneys. To address this tension, I think it is important to create a feeling of "us"—the prosecutors and the victims—as part of the same team. Because victims' rights activists are usually thorough, it is important to use authority with valid legal reasoning when communicating with them. Otherwise, attempts at communications may backfire. Furthermore, if you are a non-local attorney and are still perceived as an outsider by the victims, you have an additional burden. When there is an "us" feeling, frank discussions can take place which, in turn, means there is a greater likelihood of agreement or modification on victims' rights issues.

Final Thoughts

As I mentioned earlier, attending both trials was incredibly helpful to me. I could see firsthand the witnesses, evidence, and legal maneuvering. No media forum can give an accurate soundbite or article about a full day in court. I think you would find that nearly every person who attended all or part of either trial found the experience helpful in coping with their experience as a crime victim.

Having carefully watched the Government's attorneys in action in the courtroom, I have teased that I would like to write a letter to the parents of each prosecution team member to tell them how proud they should be of their sons and daughters. Since the bombing, I have also visited the Department of Justice's website and have read some of Attorney General Reno's speeches. From time to time she uses a phrase that bears witness to my feelings as a victim—"prosecutors should have tough minds and tender hearts."

I want you to have tender hearts. Please care about me. You are my advocate. No one but you can speak for me in the courtroom. In your hands I place all my hopes and fears, and for me, Lady Justice wears your face. I want you to be the best, the sharpest, and the most knowledgeable. You are not just "the Government's attorney;" you are my attorney too. While I have heard defense counsel

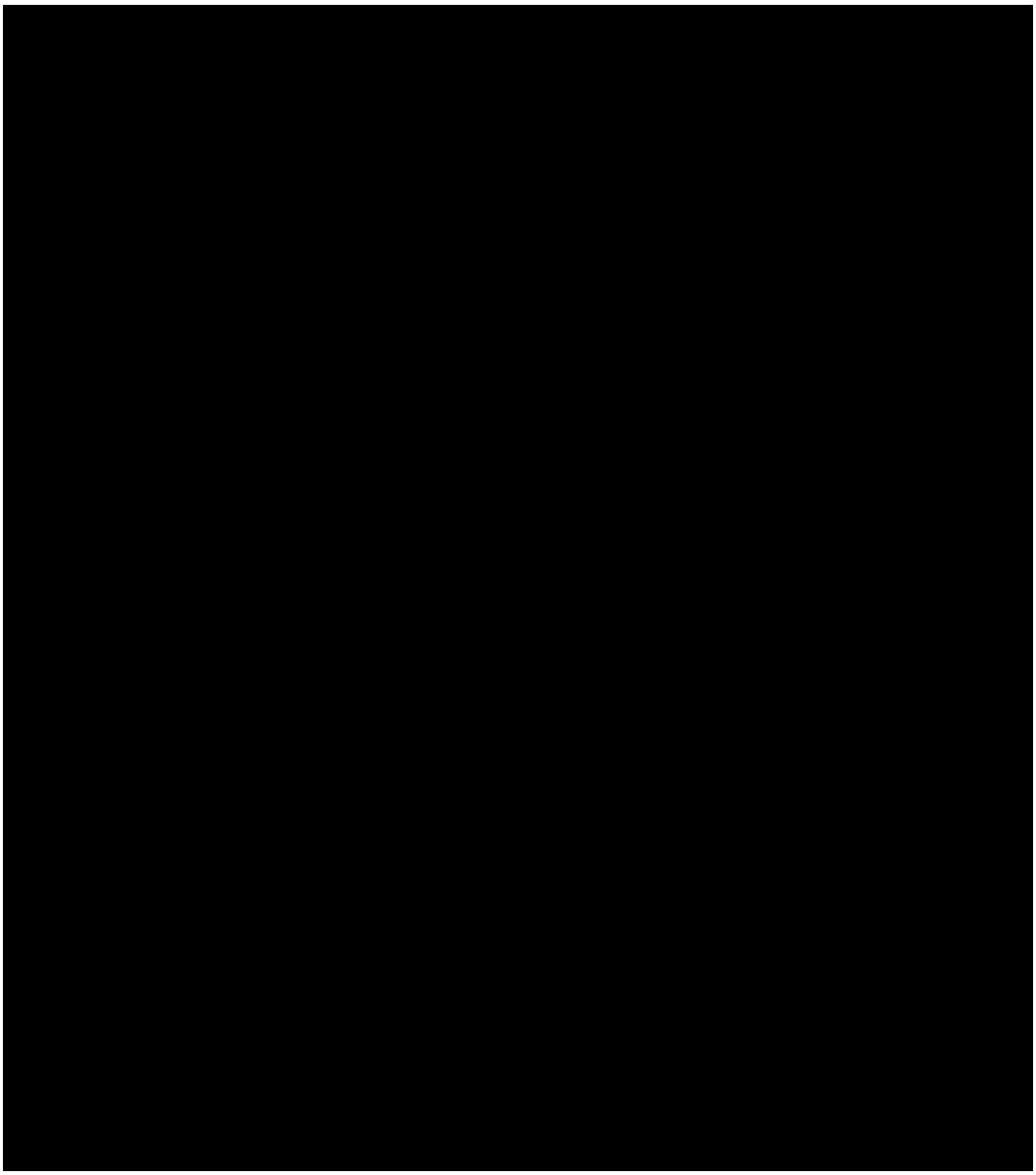
sneer at you and call you "gummit lawyers," I am proud to have had the opportunity to watch you.

There is no such thing as a one-size-fits-all crime victim. They come in all shapes, sizes, frames of reference, experiences, and mind sets. There are three things that I encourage you to keep in mind when working with victims: (1) care about us, (2) keep us informed, and (3) create an "us" feeling. If you do these things, the results will benefit you because just as you are my advocate in the courtroom I am your advocate before the public. I will tell anybody willing to listen how proud I am of the men and women connected with the USAO and the Department of Justice. In this day, you need that in the press, before legislative bodies, and on the streets. Anti-Government sentiments exist in part because those served are not speaking out for you. Today, when someone asks me about what I think about the USAO or Department of Justice, I have much to say, and it is no longer, "Who?" ❖

ABOUT THE AUTHOR

Susan Urbach is the Regional Director of the Oklahoma Small Business Development Center with the University of Central Oklahoma, a position she has held since 1988. She has worked with thousands of established small business owners in the central Oklahoma region. She received her certification as an Economic Development Finance Profession in 1990 from the National Development Council, and she has degrees in Music from Oklahoma City University. She is listed in Who's Who in Finance and Industry, and is a current member of the Oklahoma City and Edmond Chambers of Commerce. She is an old house buff, and for relaxation and stress relief she does restoration projects on her 1925 home. ✠

"Covered Up." Photo of fenceline around the grounds of the leveled Alfred P. Murrah Federal Building. Photo taken in 1996 by David Allen and reprinted with his permission.



"Their Journey's Just Begun." Poem left on fence by 6th grader Patrick Hampton of Blanchard, Oklahoma. Mr. Hampton's poem was adapted from the poem written by Ellen Brenneman. Photo taken in 1997 by David Allen and reprinted with his permission.

David Allen is a resident of Oklahoma City. For more than 22 years, Mr. Allen has been a freelance photographer. Since April 1995 he has recorded events, damaged buildings, and people related to the Oklahoma City bombing. The *Bulletin* thanks Mr. Allen for providing the photographs for this issue.

Work-Related Stress in a U.S. Attorney's Office: Observations and Suggestions

Mary P. Tyler, Ph.D.
United States Office of Personnel Management

Professionals in United States Attorneys' offices (USAOs) work on a daily basis with victims and witnesses who are struggling with the effects of traumatic stress, such as nightmares, intrusive thoughts, irritability, emotional numbing, or depression. USAO staff members understand that these reactions are normal, given what their clients have been through, and strive to respond to signs of stress in an appropriate, helpful way. Though attorneys, paralegals, administrative staff, and Victim Advocates play different roles, all contribute in their own way to their clients' recovery from trauma. Treating clients with respect and concern, providing them with resources, information, and options, and guiding them through a stressful system are just a few of the everyday office activities that can support an individual's recovery from traumatic stress.

While mindful of the needs of others, USAO staff members, like others in highly stressful professions, may be less likely to reflect on stress in their own professional lives. Current behavioral science research suggests, however, that professionals who work with traumatized clients need to be proactive in managing their own responses to stress. Dr. Charles Figley, a noted authority on traumatic stress, coined the term "secondary traumatic stress" to describe the stress responses that professionals can experience after working intensely with traumatized people. The professional may begin experiencing much the same stress symptoms as the clients, such as irritability, intrusive thoughts, nightmares, emotional numbing, or withdrawing from friends and family. According to Figley, the professionals have nightmares about their clients rather than about themselves.

Besides exposure to trauma, other sources of stress can also take their toll. Burnout, a slow erosion of energy and enthusiasm, comes from a combination of overwork, personal involvement with the job, and lack of control over key issues. Dr. Herbert J. Freudenberger, a noted psychologist, developed the concept of burnout, which has been studied and applied worldwide. The work life of USAO staffers contains potential causes of burnout and secondary traumatic stress. Workloads are heavy and failure to maintain high standards can have serious consequences. Most staffers are deeply committed to their professional work. Teamwork is essential to success; yet, key team members are, by necessity, drawn from external organizations with their own demands, stresses, and priorities which, in turn, may interfere with team effectiveness.

In my research and professional service with people in high stress professions, such as emergency medical professionals, law enforcement officers, and accident investigators, I have found that they tend to be highly dedicated to their work and derive great personal satisfaction from a job well done. The stresses of the job may seem negligible compared to the rewards of serving the public or solving important problems. The effects of stress, however, may build up slowly over time, and the "straw that breaks the camel's back" may be something that seems trivial when viewed objectively. I also choose high stress work and thrive on it, and I know that my usual discomfort with bureaucratic procedures turns into flaming intolerance when I am working with an especially painful or dangerous situation.

Individuals in the same office, and social scientists studying the same people, often disagree on what the "real" problem may be. Is it the content of the work—tragic experiences, gruesome

evidence, death, danger, and other very painful aspects of life—or is it a combination of other factors such as working conditions, leadership style, or office climate? I would argue that none of us is always completely aware of what is bothering us when we are working under severe multiple stressors. An occasional self-assessment of work stress can be helpful for anybody. Listening to others' experiences of stress can alert us to issues we were not aware we were bothered by, and we can often learn from the coping strategies others have developed.

Observations in a USAO

When I began researching this article, I did not want to limit myself to the published literature, since I was not able to find studies that have specifically addressed work-related stress in a USAO or in a state or local prosecutor's office. While I did not have the resources for an extensive empirical study, I wanted at least to get a sense of what the territory was like. One USAO allowed me to conduct a limited field study, spending time in their facility and observing their staff at work. Twelve employees, from several different professions, volunteered to talk with me at some length about workplace stress. I also spoke with others more briefly and informally.

Though these volunteers represent a wide range of professions and experience, I am sure they are not a completely representative sample of an entire USAO staff. As a whole, they were people who liked their jobs and saw job related stress as a meaningful challenge. They felt that helping a psychologist better understand job stress was a task worth some of their professional time. People who were having difficulty coping with the stress, people who did not see stress as a meaningful issue, or people who were generally skeptical of the behavioral sciences, were less likely to participate.

Though the volunteer respondents were not completely representative, I discovered that they had a great deal of wisdom to share. Their analysis of both problems and solutions, based on their own analytical skills and their practical experience, echoed what I have read in the writings of the field's top experts. Their comments, however, were even more meaningful because they reflected the realities of a unique job setting. Therefore, I will use their voices as much as possible, referring the reader to Charles Figley's excellent edited book, *Compassion Fatigue*, for a more scholarly analysis of the same issues.

Sources of Stress

Stressors were not hard to find. As I approached the USAO building, I found reminders of crime, danger, suffering, and death. A young woman with a badly bruised face was sitting outside. Inside, receptionists sat behind bullet proof glass. Police officers and security guards were everywhere. In tidy but sterile waiting rooms for witnesses, stunned looking young adults half-listened to a television program while small children tried to amuse themselves.

When I asked about work-related stress, the nature of the work was often mentioned. Sometimes, employees found reactions to the job intruding into their thoughts, dreams, or personal lives. Consider these comments:

I thought I could never be surprised; I've worked in many areas. I'm still constantly surprised about the inhumanness of the crimes that come in. Abominable crimes. It's hard. (Victim Advocate)

We analyze horrifying photos, go to autopsies, and deal with witnesses struggling to survive in a violent country. (Attorney)

When I first came here, I used to go home and cry. (Secretary)

To me the city reflects what I've had to do in the office. I'll go to a new restaurant and the address will remind me of crimes committed on that street. (Attorney)

The other night I had a dream about a case. I thought,"Get that out of my head!" That's a sign it's getting to you." (Victim Advocate)

The workload

In discussions of stress, the heavy, fast-paced, highly demanding workload was a nearly universal

theme. Stress from the workload interacted with stress from the serious nature of

the work. Not getting to everything in time could have tragic consequences. For example:

> *I've never seen a workload like this. (Victim Advocate)*
>
> *It's stressful when more than one attorney is in trial and they all want something right then. (Secretary)*
>
> *See all those piles of folders? I have a major fear that somebody in the to-do pile will get seriously hurt. I don't feel in control of the paperwork or the cases. (Victim Advocate)*

Several employees described the dilemmas associated with working long hours and on weekends. While they might feel less "behind" and out of control, they had missed needed recreation, rest, and time with significant others.

When teamwork fails

Most of the respondents described their offices as well-managed and enjoying a high level of staff cooperation. However, several employees said their most painful experiences involved a breakdown in teamwork. Sometimes these experiences were old, but the emotions were still strong.

> *Back then, most people had no knowledge of our services. We weren't even seen as professionals. We were "baby sitting the kids." We had to fight for our own professional integrity as well as for the clients. It was very stressful to feel unsupported and have to support others. (Victim Advocate)*
>
> *It's stressful when a judge calls and you can't find an attorney. We're running around with a judge on the phone. (Secretary)*
>
> *You can give input to a certain extent. You suggest and that's it. What you say may fall on deaf ears. That's pretty hard. (Secretary)*

Coping Strategies: Individual Self-Selection

These jobs are not for everyone; those who were comfortable in them were people who enjoyed challenges and believed in the importance of their work.

> *This is not just a job; I don't think anybody who views it that way is going to last at all. (Victim Advocate)*
>
> *I love direct interactions with these people. I get a lot out of that. It's really rewarding now that I know the legal aspects and what we can do. There's a ton of variety. The cases are different and never boring, which is nice. (Victim Advocate)*
>
> *I love it here. I feel like we really make a difference. We do save lives; I have to look at it in that context. (Victim Advocate)*
>
> *You learn a lot here. You grow on a daily basis because there's always something new to learn. (Secretary)*

Prioritizing

Several respondents reported effective strategies for prioritizing their work. Though they might never "catch up," they could feel satisfied that they had at least completed the most important tasks.

> *You need to prioritize at the beginning of the day and re-prioritize as it goes on. You need to be flexible, able to quickly change hats, go from Plan A to Plan B. (Victim Advocate)*
>
> *I gave up trying to get it all done three years ago. It's always going to be there. I approach my job like a triage nurse. I do what I need to do, and do it well. (Victim Advocate)*
>
> *The attorneys realize that if there is just one secretary we have to set priorities and say, "This can wait." (Secretary)*

Taking breaks

Whether a ten minute respite, a different kind of work assignment, or a long vacation, employees reported that taking breaks helped them cope with the stress more effectively.

I take breaks, just get away from the desk for fifteen minutes. I'll go visit co-workers, lighten up the load a little, and then I regroup and get started. (Secretary)

I love to teach. That rejuvenates me. It's something I can give back to people professionally. (Victim Advocate)

What I do is take as many vacations as I can. Quarterly, whether they are long or short, and at least two long ones a year. (Victim Advocate)

We do other work like serving on task forces, doing community education. That's positive for my mental health; the variety keeps me interested. (Victim Advocate)

A positive personal life

Whatever marital status or life stage, respondents stressed the importance of positive relationships and interests outside the work arena.

It helps me deal with stress to have a very nice life outside of here. Dealing with all this helps me see how great my life is. I have pets, and I'm close to nature. Small things like really looking at trees and flowers and blades of grass. Spending time with family and friends, hearing music. (Victim Advocate)

I exercise. I don't spend a lot of time with colleagues outside the office. I do enjoy them, but I like to have a life that doesn't remind me of this. (Attorney).

I have a four year old at home. That's good; it keeps me honest. (Victim Advocate)

I go to the gym. Not because I'm stressed out, but I feel better when I do. I try to enjoy my personal life, and keep work in its rightful place. Sometimes it flows over. (Victim Advocate)

Turning to spiritual resources

For some, it was important to turn to a source of meaning outside themselves. This might involve religious practices, or it might involve reflecting on values that transcend the everyday stresses of the job.

I pray a lot! (Secretary)

I think I serve a higher purpose. I could be doing something a heck of a lot easier. (Victim Advocate)

It makes you feel good that you're helping a family - getting that bad guy off the streets so he won't hurt anybody else. (Secretary)

You have to understand what crisis is all about - there's something on the other side of crisis and grief. You have to hold that in your vision and work with the person to get to that place, rather than be overwhelmed with where they are now. (Victim Advocate)

We have a mentorship program in a school; a lot of attorneys participate. A lot of the men in the office have "little brothers" from the school. It gives us a positive interest in the community, instead of always dealing with the dark side. (Attorney)

Talking it over

Talking over difficult situations seemed helpful to many respondents. There was general agreement that this kind of talk should be shared with colleagues, not with family or friends. There seemed to be differences among professional groups in what they might discuss. Attorneys seemed less likely than other professionals to go into the emotional aspects of a situation, but they could nevertheless give one another support by discussing technical aspects of a case.

We talk to each other, have our own little support group. (Victim Advocate)

We've lost witnesses who were killed. It's not that the feelings weren't there, but we didn't sit down and have a session about it. You don't get into it. (Attorney)

Like a policeman, I can't take things home. I used to talk to my family, but I realized I was stressing

everybody else out. It's better if you do it with people in the field. (Victim Advocate)

I can't talk to my friends about this. (Victim Advocate)

We talk among ourselves. (Secretary)

Organizational Coping Strategies

Having a supportive, well-managed work organization emerged as tremendously important. Supervisors contributed by showing respect for employees and involving them in decisions that affected their work. Good organization of the office not only reduced unnecessary stress, it also conveyed to employees a sense that management cared.

I like my job. Because the unit is new, I got to set it up to suit me. The chief said, "What do you suggest we do?" I can go to him if something isn't flowing right and make suggestions. He listens. (Secretary)

Our new chief of the section is more interested in us, wants to know how to make things better. It makes you feel better, that you're important. He includes us in staff meetings, everything. The deputy chief comes out and asks us how we feel about things. It may not all get resolved, but they do ask our input. We have a good chief; he's fair. (Secretary)

We try to attend to basic things like the supply closet. We tried to organize it to support the staff. They have enough stress when they are in trial without having to hunt for a tablet. (Supervisory Attorney)

Large case loads have been brought down with new staff and a focus on case management. We don't let things languish . . . Languishing cases are a cause of stress. (Supervisory Attorney)

Training is helpful. We have excellent opportunities. (Victim Advocate)

Supportive peer groups

Peer groups also emerged as powerful sources of support. Being able to work as a team, supporting each other practically and emotionally, left employees feeling stronger in the face of adversity.

We help each other out. If one of us is out, we work their box while they're sick. That's how we cope with stress—we work together. If one of us has a problem, we talk it out. (Secretary)

I wouldn't want to work in another section. We work together better than any other secretaries. (Secretary)

Sometimes on Friday afternoon we'll get together with soft drinks and snacks at the end of the day. A time to wind down together. (Attorney)

If we're laughing and joking about something outside the caseload, it helps everybody. (Secretary)

Employee Assistance Program

One potential institutional resource that received little mention was the Employee Assistance Program (EAP). Most respondents had a vague memory of having heard of it or received phone numbers for it at some point, but it was a very distant image.

In my experience, an effective, proactive EAP can be extremely helpful in high-stress organizations. EAP staff can provide management consultation, specialized training classes on working with the bereaved or coping with job stress, information on community resources, and confidential guidance and referral for employees experiencing stress in any area of life. Too often, unfortunately, EAP services are perceived too narrowly and seen as a resource only for individuals in some kind of personal distress. If an EAP is to be used properly, its staff needs to reach out to the employee population it serves, take the initiative in building relationships with leaders, and help employees understand how the EAP can support them in key work domains.

Summary

USAO staff members are dedicated people who thrive on challenges. Because they focus on the needs of others more than their own, they can find it helpful occasionally to stop and reflect on their own sources of stress and coping mechanisms. Interviews with volunteer employees revealed a rewarding but stressful work life, and many organizational and personal strategies for preventing and coping with stress. At an individual level, a good fit between the person and the job, taking breaks, maintaining a positive personal life, turning to spiritual resources, and talking things over emerged as effective strategies. At an organizational level, the importance of effective leadership and management, and of supportive peer groups emerged as key issues. While good leadership and positive teamwork are important in any job, their role in high-stress settings seems especially crucial. The EAP seems to be a potentially helpful, but an infrequently used, source of support. Perhaps a more assertive outreach to USAO staff members might help the EAP become more involved in the life of the organization. ❖

References

C.R. Figley, (Ed.), *Compassion Fatigue*, Bristol, PA: Brunner/Mazel (1995).

H.J. Freudenberger, Staff burnout, *in* 30 JOURNAL OF SOCIAL ISSUES 159, 159-65 (1974).

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A Cooperative Response to Juvenile Sex Offenders in Indian Country

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Office of Tribal Justice

United States Attorneys (USAs), Bureau of Indian Affairs (BIA) investigators, and FBI agents report significant increases in the number of sex offenses by juveniles in Indian country. Under concurrent federal and tribal jurisdiction, tribal courts may be the first contact a juvenile offender has with the justice system. There are more than 240 tribal courts in Indian country that resolve reservation-based conflicts and disputes. These courts impose sanctions and penalties on offenders consistent with tribal culture and tradition. Attorney General Janet Reno has emphasized that "[w]hile the Federal Government has a significant responsibility for law enforcement in much of Indian country, tribal justice systems are ultimately the most appropriate institutions for maintaining order in tribal communities."[†]

Tribal courts throughout Indian country adjudicate the vast majority of misdemeanor offenses committed in Indian country. Unfortunately, they suffer from severe underfunding and face a lack of meaningful sentencing options due to their limited resources and relative geographic distance from services and treatment. In recent years, tribal courts have adjudicated increasingly numerous and complex caseloads, including a broad range of juvenile delinquency and crime.[††]

The Department's policy has been to support tribal courts as institutions of self-government and encourage their development, while recognizing that adjudication through tribal courts may not always be appropriate for sex offenders or desirable to the tribal community. Indian tribes are statutorily limited to a one-year sentence per offense by the Indian Civil Rights Act, 25 U.S.C. § 1301, and frequently lack access to a range of meaningful treatment options due to a lack of resources.

Some tribes perceive sex offenses, especially when the victim is a minor, to be more appropriate for federal prosecution. Accordingly, tribal codes do not always contain provisions regarding the full array of juvenile and adult sex offenses. Also, because most of the Indian country is under federal Major Crimes jurisdiction,[†††] Indian juveniles constitute most juvenile offenders in contact with the federal criminal system. Of roughly 250 juveniles in the custody of the Bureau of Prisons (BOP), 66 percent are Native American. As of March 1998, 29 percent of the Indian juveniles in BOP's custody are sex offenders.[††††] Because of the unique federal responsibility for law enforcement in Indian country, the Department of Justice must try to intervene effectively when juveniles commit sexual crimes. Because many juvenile offenders are

[†] Janet Reno, "A Federal Commitment to Tribal Justice Systems," 79 Judicature 113 (1995).

[††] For example, last year the Oglala Sioux tribal courts on the Pine Ridge reservation adjudicated more than 2400 cases involving juveniles. While most juvenile offenses involved instances of public intoxication and disorderly conduct, more than 150 of these cases were assaults and batteries.

[†††] See 18 U.S.C. § 1153 (pertaining to murder, manslaughter, kidnapping, maiming, a variety of sexual offenses, incest, assault with intent to commit murder, assault with a dangerous weapon, aggravated assault, arson, burglary, and robbery when committed by a Native American). Under Public Law 280, enacted in 1953, several states (including Alaska, Oregon, Nebraska, Minnesota, and Wisconsin) possess jurisdiction over major crimes in Indian country, rather than the United States. 18 U.S.C. § 1162.

[††††] Of the juveniles in Bureau of Prison's custody, approximately 96 percent are male.

victims of childhood physical or sexual abuse,[†] intervention with the offenders frequently includes addressing the issues related to their own victimization. This helps prevent future criminal conduct and protect the safety of victims within the tribal community.

Innovative Programs

Several districts are implementing innovative, cooperative programs to address the problem of juvenile sex offenders in Indian country. These programs address victim interests in a culturally appropriate way. By taking advantage of flexibility and the ability to impose post-release supervision through federal probation programs, prosecutors, probation officers, and therapists are cooperating to treat Indian juveniles appropriately.[††] Two innovative programs in Indian country are highlighted below.

District of Montana

In the District of Montana, Crow tribal member and therapist Michelle Stewart and United States Probation Officer Carlos Jones are part of a multi-disciplinary team that works to manage sex offenders in a community-based manner. Michelle Stewart serves as the therapist for the community-based sex offender treatment programs. Carlos Jones manages a probation caseload comprised exclusively of both adult and juvenile sex offenders. These programs serve the Crow, Ft. Peck, and Northern Cheyenne Reservations in Montana. The therapy program includes bimonthly individual therapy sessions or weekly family sessions with weekly group sessions. As therapy progresses, the therapist works with the offender to engage in a victim clarification-restitution meeting (when the victim is willing). This presents an opportunity for the offender to confront his abusive behavior, and try to mitigate harm to his relationships with the victim and community. Because many victims are related to the offenders and reside in insular, rural communities, the victim-offender confrontation meetings may require certain controls, including the involvement of the therapist and probation officer. Since the inception of Montana's juvenile offender treatment program in 1996, they have dropped few juveniles from the program, and to Michelle Stewart's knowledge, they discontinued none of them because of repeat sex offenses. The results of this program are promising.

One of the greatest challenges to supervising offenders and keeping them engaged in therapy is often the long distances between the offenders and the programs. To address this, in Montana, the United States Probation Office has employed a Crow tribal member to act as an assistant probation officer on the Crow and Northern Cheyenne reservations. Having a federal probation officer on the reservation has provided a constant, familiar presence, which has been especially helpful in the management of offenders at a high risk for recidivism. The probation assistant can make frequent, unscheduled visits to the offenders to bridge the gaps of distance and culture between the offender and the federal probation officer.

District of South Dakota

United States Probation Officer Jay Shillingstad describes how the District of South Dakota handles its juvenile sex offenders. Like many other jurisdictions, they have placed most of the federally prosecuted juvenile sex offenders on probation. This allows the court to impose post-release supervision and access facilities, according to the needs of each offender. Juveniles who reach their eighteenth birthday while under federal supervision may be eligible for placement in half-way houses for adults with specialized sex offender treatment programs. Shillingstad attends the sex offender group therapy meeting once a month, to incorporate the probation officer into the treatment process and to reinforce his supervisory role. Shillingstad attributes the progress in South

[†] See Barbara Kelley, Terence Thornberry, Carolyn Smith, "*In the Wake of Childhood Maltreatment*," Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice (August 1997).

[††] Because of a gap in statutory authority, courts cannot impose supervised release of juveniles after confinement. See 18 U.S.C. § 5037. Juveniles sentenced to BOP custody, therefore, are released into the very environment that may have facilitated the criminal behavior in the first place, without any post-release supervision. As a condition of probation, however, juveniles may be placed on post-release supervision.

Dakota's treatment of juvenile sex offenders to the unprecedented commitment and cooperation of those who bear responsibility for the treatment and supervision of juvenile sex offenders.

Also, in South Dakota, United States Attorney Karen Schreier and the Yankton Sioux Tribe are working toward greater government-to-government cooperation in the adjudication of juvenile sex offenders. Initially placed on federal pre-trial diversion, juveniles from the Yankton Sioux Reservation must plead guilty in tribal court and participate in sex offender treatment as a condition of their probation. United States Attorney Schreier and her staff have worked with United States Probation Chief Jack Saylor and representatives of the Yankton Sioux Tribe to create a probation officer position for a tribal member to serve as a liaison for sex offenders. The tribal probation officer coordinates and communicates with the federal probation officer, and benefits from both training and instruction in the supervision of sex offenders. This cooperative approach allows effective supervision of the juvenile offenders across jurisdictions, develops the tribe's probation resources and expertise, and provides an important link for United States Probation into the tribal community.

Victims in Indian Country

Sex offender intervention and supervision can mitigate the risk of recidivism and protect victims and the public. Like many other sex offense victims, Indian country victims of juvenile sex offenders require services, restitution, and treatment sensitive to their experience and culture. Geographic and cultural obstacles, and chronic lack of available resources, limit a victim's ability to access services. The fact that most sexual abuse victims are young means that they will require extra care and attention. Generally, victims are not entitled to notice and information about the proceedings because of the juvenile offender's right to confidentiality.[†] Federal victims of juvenile offenders are only entitled to information about the final disposition of the case, except where the juvenile has been waived to adult status and convicted.[††]

Effective programs for crime victims in Indian country involve cooperation between the Federal Government and the tribe, while incorporating appropriate respect of traditional tribal ritual and customs related to restitution and rehabilitation. Sharon Vandever is a Victim Advocate for the USAO in the District of New Mexico and a member of the Navajo Nation. Vandever helps victims navigate the judicial process and find the services they need. Recognizing the unique attributes of her service community, Vandever coordinates with community and culturally based services, such as those provided by Navajo traditional counselor, Sterling Manuelito of the Navajo Nation Child Safe House Advocacy Program. Manuelito works with the victims in a cultural and religious context that is appropriate to their age, beliefs, background, and familiarity with Native creation stories. Manuelito counsels victims and their families to use prescribed traditional healing ceremonies with conventional counseling and therapy.

Sex Offender Registration and Notification Laws

The increase in juvenile sex offenses, or at least reported juvenile sex offenses, coincides with the current legislative movement to improve sex offender management through registration and notification. The publicity surrounding violent sex offenses by released sex offenders has generated broad support for federal and state legislative registration and notification enactments. To date, 49 states have a sex offender registration statute, while 30 of those states also require some form of community notification.
Proponents assert that registration and notification protects public safety by deterring offenders from committing new offenses, allowing citizens to take precautionary measures, and heightening the

[†] 18 U.S.C. § 5038 (a) ("Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons").

[††] The notable exception to the usual confidentiality of juvenile records occurs when the juvenile is judicially waived to adult status and convicted of a serious offense, in which case, the Federal Government and many states relax the usual restrictions on confidentiality. See 18 U.S.C. § 5038 (d) and (f).

prospects for reporting of suspicious conduct by the public or law enforcement.

The Jacob Wetterling Act, and its statutory descendants, establish federal guidelines for sex offender registration and notification to be set up by each state as a condition for Byrne Formula Grant funding through the Department of Justice. Federal notification procedures will eventually be linked to the registration and notification processes established by each state, thereby creating an increasingly complex statutory scheme. From there, the challenge will be to incorporate sex offender information contained in tribal justice systems databases.

While the scheme established by the Jacob Wetterling Act and similar provisions[†] aims to consolidate information regarding sex offenders, there are some significant omissions in the statutory scheme. Currently, juveniles are not included in most community notification and registration requirements unless convicted as adults. This raises some questions regarding the treatment of victims of juvenile sex offenders. Also, while state and federal records will eventually be combined, and notification coordinated, tribal justice systems will not necessarily be integrated into these expanding networks. Although the Jacob Wetterling Act implementation guidelines, issued by the Department,[††] encourage states to include information from tribal justice systems, there is no mandate for states to do so.

The existing BOP notification policy for release has currently dictated federal procedures for notification of violent criminals, with the systems established by each state. BOP will provide notification to the state government and then to the law enforcement agency of the local jurisdiction in which the offender will be living. Some tribes are concerned about whether "local" jurisdictions will be interpreted to include tribal police, and whether notified counties will pass on relevant information to tribal police. Ideally, both tribes and local jurisdictions will recognize the benefits of information sharing related to the release and registration of sex offenders.

In response to concerns raised by members of a multi-disciplinary team (MDT) for child abuse cases, federal prosecutors in Wisconsin have worked with the Menominee Tribe to establish a tribal notification system. The tribal legislature is currently considering the enactment of a draft notification ordinance, modeled after a similar ordinance developed by the Colville Tribe in Washington. As the national network of notification systems continues to expand, it will be important to consider how individual tribal systems of registration and notification will integrate with other tribal schemes and those established by states. Recognizing this, Attorney General Janet Reno emphasized in her testimony before the Senate Indian Affairs Committee on June 3, 1998, the need to encourage the inclusion of tribes in the ever-expanding network of information-sharing systems and criminal justice databases.

Conclusion

The existence and accessibility of culturally-appropriate therapy, counseling, and treatment is not assured for victims or perpetrators in Indian country. On an individual district basis, however, partnerships between the USAO, probation, and tribal justice systems prove that there are opportunities for cooperative and effective intervention with sex offenders. These opportunities can incorporate tribal culture and the needs of victims. As a long-term objective, the Department of Justice should aim to enable tribal justice systems to intervene effectively with juvenile offenders to prevent future harm. With strong, adequately funded tribal justice institutions, and an array of treatment options, federal intervention could be reserved for only the most serious offenses. ❖

[†] See 42 U.S.C. § 14072 (Pam Lynchner Sexual Offender Tracking and Identification Act (1996)).

[††] 62 Fed. Reg. 39009-03 (July 21, 1997).

ABOUT THE AUTHOR

Soo C. Song is a Deputy Director in the Office of Tribal Justice. Since joining the Department in 1995, she has served as Counsel in the Office of Policy Development, focusing on tribal courts and civil justice reform. She has worked for the Yankton Sioux Tribe in Marty, South Dakota, and is a graduate of Yale University and George Washington Law School. *The author thanks Julie Callahan, an intern for the Office of Tribal Justice and second-year student at the Georgetown Law Center for her assistance in writing this article. The author also thanks Karen Schreier, Tracy Toulou, Anne Schmidt, Carlos Jones, Jay Shillingstad, Michelle Stewart, Sharon Vandever, and Sterling Manuelito.* ✠

BUREAU OF PRISONS CONTRACT FACILITIES

Assistant United States Attorneys and federal judges frequently contact the Office of Tribal Justice with questions about the availability of culturally-based programs for Indian juvenile sex offenders through the BOP. Below is a list of some entities with which BOP has current contracts to provide some form of sex offender programming. The BOP is actively seeking additional contracts and has indicated its willingness to contract with additional facilities able to serve Indian country. For more information on current contract facilities or suggestions for potential contract sites, please contact your local BOP Community Corrections Manager, Jim Beck, or Annesley Schmidt in the Community Corrections Branch of the Bureau of Prisons, at 202-307-3171.

Lake Region Law Enforcement Center, Devils Lake, ND: secure facility with sex offender treatment programming; sweat lodge.

Southwest Multi-County Correctional Center, Dickinson, ND: sex offender treatment program; sweat lodge.

Ethan Allen School, Wales, WI: separate cottage or living unit for sex offender treatment.

North Dakota Youth Correctional Center, Mandan, ND: sex offender program.

Our Home Adolescent Sexual Adjustment Program, Huron, SD: exclusively sex offender treatment.

Northwest New Mexico Regional Juvenile Detention Center, Gallup, NM: secure facility; sex offender therapy.

New Beginnings Treatment Center, Tucson, AZ: sex offender treatment.

Inter-Mountain Youth, Santa Fe, NM: sex offender treatment.

The Federal Bureau of Prisons' Victim-Witness Notification Program

John D. Chreno
Correctional Programs Branch Administrator
Bureau of Prisons

The Victim Witness Protection Act of 1982 (VWPA) sets forth procedures to be followed when responding to the needs of crime victims and witnesses. It also requires all law enforcement agencies to advise victims and witnesses of significant procedural developments in their cases. In April 1984, in response to this directive, the Bureau of Prisons (BOP) implemented the Victim and Witness Notification Program (VWP). This program establishes procedures for responding to a victim's or witness's request for notification regarding the release of an inmate or any other release-related activity.

The BOP is committed to protecting victims' and witnesses' rights. BOP does this by treating them with compassion and respect, keeping them informed, and keeping them involved in the federal correctional process. Although many parts of the criminal justice system share responsibility for providing services to crime victims and witnesses, the correctional community has a unique role in this process. The BOP addresses these needs through the VWP and through a staff assistance program for employees and their families who themselves may be witnesses to, or victims of, violence.

The VWP is managed by the Correctional Programs Branch of the Correctional Programs Division in the Washington, D.C., Central Office, whose Victim-Witness Staff serves as a liaison to the Department of Justice, other law enforcement agencies, and the public. The Office's primary function is to implement national policy and serve as a resource for more than 120 field locations. The BOP currently monitors 3,650 VWP inmates and, in fiscal year 1997, provided notifications to approximately 15,500 victims and witnesses.

Victims' Services Offered by the Bureau of Prisons

The BOP strives to remain responsive to all crime victims and witnesses. It currently accepts referrals from United States Attorneys' offices (USAOs), the military, and the U.S. Parole Commission. In response to the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105-33), the BOP assists crime victims in the District of Columbia by establishing victim notification procedures for cases handled by the District of Columbia Superior Court. The BOP has also taken steps to expand its notification procedures to include notifying victims about individuals who are serving concurrent federal and state sentences, and who are currently incarcerated within State Departments of Correction. The BOP consistently works to foster a partnership between field staff, regional offices, other agencies, and the community, to better inform federal crime victims about the BOP's programs, operations, and missions.

Law enforcement agencies or Victim-Witness Coordinators advise victims of the VWP program. If a victim elects to participate in the program, the VWC forwards the victim's information to the BOP Central Office. After that, the BOP notifies the warden of the institution where the inmate is confined that the victim has applied to the VWP. It is then the warden's responsibility to notify the victim of his or her acceptance into the program.

The warden is responsible for providing the victim with information about the inmate's: present location, parole eligibility and date of the parole hearing (if applicable), death, escape, furlough, halfway house transfer, and eventual release date. The victim or witness is also provided with the name of the institution's VWP Coordinator and given a toll-free number, which Central Office

Victim-Witness staff members having crisis intervention skills operate. The toll-free number enables victims and witnesses to contact the BOP with questions or concerns regarding the program or their case. When necessary, some notifications are made by telephone, such as in the rare event of an escape. The notification program continues until the inmate is released from BOP custody or the victim or witness no longer desires to be notified.
The BOP has published a Victim and Witness Notification pamphlet, which is forwarded to each victim and witness during the initial notification process. It has been distributed to all correctional institutions, USAOs, and other federal agencies. The pamphlet is also available electronically via the BOP's Web site. The pamphlet outlines general correctional procedures and describes the BOP's Mission and the VWP. It is designed to be helpful to victims and witnesses of crime, and contains the toll-free VWP number for the victim's easy reference. The pamphlet also contains the BOP's Inmate Locator telephone number, which enables victims and witnesses to learn the location and status of any confined inmate.

Inmate Financial Responsibility Program

To help in the collection of fines and restitution ordered by the court, the BOP operates an Inmate Financial Responsibility Program (IFRP) with the Administrative Office of the United States Court and the Executive Office for United States Attorneys. All inmates with fines, special assessments, or restitution are required to develop a financial plan to meet these obligations. These obligations may include court costs, judgements in favor of United States, debts owed the Federal Government, and other court-ordered obligations. Some inmates have the resources to meet their obligations at the time of commitment to custody, while other inmates meet their obligations gradually, by contributing money earned from prison work assignments. IFRP participation is tied to eligibility for prison privileges and programs, such as housing and work assignments, community correctional center placement, furloughs, and other opportunities. IFRP participation may also affect an inmate's custody level change. Each sentenced inmate who is physically and mentally able is assigned to an institutional or industrial work program. Institution staff help in developing an inmate's IFRP plan, but the inmate is responsible for making all payments, either from earnings within the institution, or from outside resources. Through this program, the BOP collects millions of dollars from inmate wages and applies the money to the inmates' assessments and fines. The money goes into the Crime Victims Fund, which provides financial support for victim assistance programs.

Conclusion

The BOP is grateful for the excellent cooperation received from other components of the criminal justice system, including law enforcement and court officials. The BOP strives to improve its services and invites comments. Members of USAO staffs are welcome to visit a BOP facility. For additional information, please contact the BOP Office of Public Affairs at 202-307-3198 or access the Bureau's web site at http://www.bop.gov. ❖

ABOUT THE AUTHOR

John D. Chreno is the Correctional Programs Branch Administrator for the Federal Bureau of Prisons. He also oversees national policy development, congressional correspondence, witness security, and treaty transfer programs. He recently attended the 1998 National Victim Assistance Academy. During his 26 year career at the Bureau of Prisons, he has taught penology at the University of Minnesota and Indiana State University. Previously, he served as Associate Warden, Federal Prison Camp, Duluth, Minnesota, and received his Masters Degree from Valpariaiso University. ✠

United States Attorneys' Offices and Executive Office for United States Attorneys

Resignations/Appointments

District of Arizona

On November 23, 1998, José de Jesus Rivera was sworn in as the Presidentially-appointed United States Attorney for the District of Arizona.

Central District of California

On December 21, 1998, Alejandro Mayorkas was sworn in as the Attorney General-appointed United States Attorney for the Central District of California.

District of Colorado

On November 30, 1998, Linda A. McMahan was sworn in as the Attorney General-appointed United States Attorney for the District of Colorado.

District of Deleware

On September 25, 1998, Richard Andrews was sworn in as the Attorney General-appointed United States Attorney for the District of Delaware.

District of Rhode Island

On November 12, 1998, Margaret E. Curran was sworn in as the Presidentially-appointed United States Attorney for the District of Rhode Island.

AGAC Subcommittee Restructuring

The Attorney General's Advisory Committee has restructured several subcommittees to better address those issues on its agenda. Specifically, the following changes have been made:

- ❑ The Public Corruption Subcommittee has been rolled into the White Collar Crime Subcommittee, chaired by United States Attorney (USA) Faith Hotchberg (NJ). USA Chuck Wilson (M/FL) will serve as chair of Public Corruption group.

- ❑ The International and Intelligence Subcommittee has been rolled into the Investigation and Intelligence Subcommittee, formerly the Investigative Agency Subcommittee. USA Mary Jo White (S/NY) will serve as chair.

- ❑ The Ethics in Government Subcommittee has been created to address *Brady*, *Giglio*, Rule 4.2, Hyde, and similar issues. This subcommittee will be chaired by USA Lynne Battaglia (MD) and vice chaired by USA Steve Hill (W/MO).

Also, the following new chairs and vice chairs have been appointed:

- ❑ USA John Kelly (NM) will chair the Border and Immigration Law Enforcement Subcommittee. USA Steve Rapp (N/IO) will serve as the vice chair for Interior Enforcement. USA Charles Tetzlaff (VT) will serve as the vice chair for the Northern Border.

- ❑ USA Paul Warner (UT) will chair the Domestic and International Terrorism Subcommittee.

- ❑ USA Janice McKenzie Cole (E/NC) will chair the Juvenile Justice Subcommittee.

- ❑ USA Sherry Matteucci (MT) will chair the Native American Issues Subcommittee. The vice chair will be USA Kate Pflaumer (W/VA).

- ❑ USA Saul Green (E/MI) will chair the Organized Crime/ Violent Crime/ Violence Against Women Subcommittee.

This restructuring should enable the AGAC subcommittees to run more efficiently. ❖

Director's Awards

Below is a complete list of the 1998 Director's Awards presented on October 30, 1998, by EOUSA Director Donna A. Bucella at the awards ceremony in Washington, D.C.

Superior Performance in Affirmative Civil Enforcement

Anne-Christine Massullo
John H. Hemann
Northern District of California

Appreciation Award for Contributions that Enhance the Mission of the Executive Office for United States Attorneys and the United States Attorneys' Offices

Debra J. Cleary
Executive Office for United States Attorneys

F. Page Newton (Posthumous)
Executive Office for United States Attorneys

Christine L. Sciarrino
District of Connecticut

Karen A. Spaight
Executive Office for United States Attorneys

Effie D. Ellis
Southern District of Georgia

Thomas W. Haggerty
District of New Jersey

James Mark Fleshman
Southern District of West Virginia

Special Recognition Award

Matthew S. Healey
Joseph M. Lobue
United States Marshal Service

James Akagi
Drug Enforcement Administration

Frances Fragos Townsend
Office of Intelligence Policy and Review

Mary Troland
Office of International Affairs
Nominated by: Southern District of New York

Superior Performance in Asset Forfeiture

Joseph M. Ferguson
Northern District of Illinois

Superior Performance as an Assistant United States Attorney

Michael V. Rasmussen
James Dennis Ingram
Northern District of Alabama

Clarence Daniel Stripling
George C. Vena
Eastern District of Arkansas

David N. Blackorby
Western District of Arkansas

Janet K. Martin
District of Arizona

Frederick A. Battista, Jr.
Thomas P. Hannis
Joseph C. Welty
District of Arizona

Monica L. Miller
Central District of California

William W. Carter
Central District of California

Fernando Aenlle-Rocha
Barbara A. Masterson
Central District of California

Jennifer T. Lum
Central District of California

Marcus M. Kerner
Central District of California

Maurice M. Suh
Central District of California

Wayne R. Gross
Central District of California

Julie Werner-Simon
Central District of California

Jonathan B. Conklin
Carl M. Faller, Jr.
Eastern District of California

Gail Killefer
Northern District of California

William P. Schaefer
Northern District of California

Derek Anthony West
Northern District of California

Phillip L.B. Halpern
Melanie K. Pierson
Southern District of California

Timothy D. Coughlin
Southern District of California

P. Kevin Carwile
Teresa A. Howie
Anthony Asuncion
Barbara Valliere
District of Columbia

Joseph B. Valder
District of Columbia

Jennifer E. Levy
Criminal Division
Terrorism and Violent Crime Section
for Support in Litigation

Judith Kozlowski
District of Columbia

James R. Klindt
Middle District of Florida

Richard D. Gregorie
Jennifer Prior
Southern District of Florida

Michael J. Mullaney
Southern District of Florida

Russell R. Killinger III
Southern District of Florida

Neal James Stephens
Robert K. Senior
Southern District of Florida

Rolando Garcia
Southern District of Florida

Mary V. King
Randy A. Hummel
Southern District of Florida

Howard Dargan
J. Stephen Carlton
Southern District of Florida

Robert Nance Nicholson
Southern District of Florida

Kathryn M. Aldridge
Carlton R. Bourne, Jr.
Southern District of Georgia

Richard H. Goolsby, Jr.
Southern District of Georgia

John N. Glang III
District of Guam

Marshall H. Silverberg
District of Hawaii

Rafael M. Gonzalez, Jr.
James Michael Buckley
District of Idaho

Patrick J. Chesley
Rodger Alan Heaton

Gregory M. Gilmore
Timothy A. Bass
Central District of Illinois

Jack Donatelli
Northern District of Illinois

Stuart D. Fullerton
Mark S. Prosperi
Northern District of Illinois

Mark S. Hersh
Northern District of Illinois

Thomas E. Leggans
Southern District of Illinois

Alexander T. Taft, Jr.
Western District of Kentucky

Jeanne M. Kempthorne
Stephen P. Heymann
Allison D. Burroughs
District of Massachusetts

Geoffrey E. Hobart
District of Massachusetts

Andrew G. Levchuk
District of Massachusetts

Deborah Ann Johnston
District of Maryland

Richard W. Murphy
District of Maine

Richard G. Convertino
David E. Morris
Keith E. Corbett
Eastern District of Michigan

Judd R. Spray
Mark V. Courtade
Western District of Michigan

Michael W. Ward
District of Minnesota

Paul S. Becker
Western District of Missouri

James Tucker
Peter H. Barrett
John M. Dowdy, Jr.
Richard T. Starrett
Southern District of Mississippi

Mark W. Rufolo
Leslie Faye Schwartz
District of New Jersey

Michael A. Chagares
District of New Jersey

Vincent Grady O'Malley
District of New Jersey

Leslie Cornfeld Urfirer
Sanford M. Cohen
Eastern District of New York
and **Louis E. De Baca**
Civil Rights Division
for Support in Litigation

John F. Caruso
Stephen D. Kelly
James A. Walden
Eastern District of New York

Charles P. Kelly
Eastern District of New York

Lisa J. Klem
Andrew J. Frisch
Benton J. Campbell
Eastern District of New York

Stephen D. Kelly
Catherine I. Harries Friesen
Eastern District of New York

Samuel W. Buell
Michelle J. DeLong
Eastern District of New York

Stanley J. Okula, Jr.
Thomas A. Arena
Michael L. Tabak
Southern District of New York

Paul A. Engelmayer
Southern District of New York

Nancy G. Milburn
Southern District of New York

Evan T. Barr

Andrea L. Labov
Southern District of New York

Katherine M. Choo
Bruce G. Ohr
Lewis J. Liman
Southern District of New York

Teresa A. Pesce
Jeremy H. Temkin
Southern District of New York

Hector Gonzalez
Vernon S. Broderick
Southern District of New York

Daniel S. Alter
Southern District of New York

John Seigel
Northern District of Ohio

Lance A. Caldwell
District of Oregon

Robert A. Zauzmer
Eastern District of Pennsylvania

Faithe Moore Taylor
Nelson S.T. Thayer, Jr.
Eastern District of Pennsylvania

Robert E. Goldman
David L. Hall
Eastern District of Pennsylvania

Richard W. Goldberg
Judy L. Goldstein Smith
Eastern District of Pennsylvania

Bruce D. Brandler
Middle District of Pennsylvania

Sonia I. Torres
District of Puerto Rico

Ira Belkin
District of Rhode Island

Ted L. McBride
District of South Dakota

Danny R. Smith
Eastern District of Tennessee

Traci L. Kenner
Eastern District of Texas

Michael E. Savage
James Andrew Williams
Eastern District of Texas

Charles W. Wendlandt
Southern District of Texas
Richard C. Smith
Southern District of Texas

James R. Buchanan
Southern District of Texas

Craig A. Gargotta
Western District of Texas

Fernando Groene
Eastern District of Virginia

David J. Novak
Stephen W. Miller
Andrew G. McBride
Eastern District of Virginia

Donald R. Wolthuis
Western District of Virginia

Thomas O. Rice
Joseph H. Harrington
Stephanie Joyce Lister
Eastern District of Washington

Susan M. Harrison
Western District of Washington

Stephen A. Ingraham
Eastern District of Wisconsin

David E. Jones
Western District of Wisconsin

David E. Godwin
Robert H. McWilliams, Jr.

Northern District of West Virginia

Superior Achievement in Furthering Equal Employment Opportunity

United States Attorney's office
Eastern District of Louisiana

Executive Achievement Award

Kenneth Stone McHargh
Northern District of Ohio

Paul J. Brysh
Western District of Pennsylvania

Ruth Harris Yeager
Eastern District of Texas

Patrick M. Flatley
Northern District of West Virginia

Superior Performance in Financial Litigation

Joel Robert Nathan
Northern District of Illinois

Superior Performance in Law Enforcement Coordination

Rick Lyle Easter
District of Kansas

Michael J. Brown
District of Oregon

Superior Performance in a Litigative Support Role

Marcella M. Serrano Gomez
Southern District of California

Felicia R. People
District of Columbia

Dennis P. Keane
Southern District of Florida

Lola Grant
Northern District of Georgia

Carol M. Swiney

Central District of Illinois

Sharon E. Getty
Northern District of Illinois

Dawn M. Pokrywki
Gina M. Vitrano
Eastern District of Michigan

Paulette H. Womack
Southern District of Mississippi

Joseph E. Doherty
Southern District of New York

Dorothea King
Southern District of New York

Brian D. Stokan
Western District of Pennsylvania

Cynthia M. St. John
Eastern District of Tennessee

Nellie J. Smith
Eastern District of Texas

Bertilla J. Eudy
Western District of Texas

Gina Marie Humphrey
Eastern District of Virginia

Amy L. Mayther
Eastern District of Washington

Alice H. Green
Western District of Wisconsin

Rosemary L. Herron
Fawn E. Thomas
William R. Schlich, Jr.
Sharon L. Urbanek
Maria C. Zumpetta
Northern District of West Virginia

Superior Performance in a Managerial or Supervisory Role

Morris A. Egre
Southern District of California

Nita Stormes
Southern District of California
Kenneth R. Buck
District of Colorado

Helen C. Grill
Southern District of Florida

Wendy A. Jacobus
Southern District of Florida

Brian A. Jackson
Middle District of Louisiana

Kevin E. McCarthy
District of New Jersey

Mary Ellen Shank Kilbane
Northern District of Ohio

Mary Gordon Baker
District of South Carolina

Outstanding Contributions in Law Enforcement

John H. Schultz
Arizona State Game and Fish
Nominated by: District of Arizona

Jeff Alan Rovelli
Jon S. Hosney
David Glenn Dillon
Special Agents
Federal Bureau of Investigation

Luis Rosa
Detective
Connecticut State Police
Nominated by: District of Connecticut

Peter R. Wubbenhorst
James L. Ramey
Special Agents
Federal Bureau of Investigation
Nominated by: Middle District of Florida

Joseph E. Evans
Special Agent

Drug Enforcement Administration

Steven J. Kling
Scott Wiegmann
Special Agents
Federal Bureau of Investigation
Nominated by: Southern District of Florida

Mark Minelli
Special Agent
Drug Enforcement Administration
Linda Cianelli
Internal Revenue Service
Nominated by: Southern District of Florida

MSI Task Force
Illinois State Police
Steven G. Nash
Special Agent
Federal Bureau of Investigation
Patrick Calhoun
Special Agent
Internal Revenue Service
Nominated by: Central District of Illinois

Austin G. Burke
Special Agent
Drug Enforcement Administration
Nominated by: Southern District of Florida

Gregory J. Keller
Special Agent
Federal Bureau of Investigation
Nominated by: Eastern District of Michigan

Timothy Reed
Special Agent
Department of Interior
Nominated by: Western District of Michigan

Kathy Kaminski
James McGann
Special Agents
Bureau of Alcohol, Tobacco, and Firearms
Nominated by: District of Minnesota

Billy Ralat
Detective
New York City Police Department
Nominated by: Southern District of New York

T.C. Smith
Lieutenant

Buffalo Police Department
Frank Christiano
Special Agent
Bureau of Alcohol, Tobacco, and Firearms
Police Officers of Buffalo Police Department, Precinct #12
Nominated by: Western District of New York

George Jay Webb
Dale J. Webb
Donald B. Sherman
Special Agents
William W. Rudolph
Financial Analyst
Federal Bureau of Investigation
Nominated by: Eastern District of Texas

James L. Harcum, Jr.
Special Agent
Federal Bureau of Investigation
Nominated by: Middle District of Tennessee

Superior Performance as a Special Assistant United States Attorney

Gilbert E. Teal II
Lt. Commander
United States Coast Guard
Juneau, Alaska
Nominated by: District of Alaska

Jonathan Sims
Assistant District Attorney
Queens County, New York
Nominated by: Eastern District of New York

Thomas Kapp
Assistant District Attorney
Bronx County District Attorney's Office
Nominated by: Southern District of New York

John B. Kantor
Special Investigator
NYC Department of Investigation
Nominated by: Southern District of New York

Daniel J. Konieczka, Jr.
Thomas F. Merrick
Assistant District Attorneys
Allegheny County Pennsylvania
Nominated by: Western District of Pennsylvania

Andrew E. Lauterback
General Attorney
Environmental Protection Agency
Nominated by: District of Rhode Island

Howard E. Rose
Trial Attorney
Immigration and Naturalization Service
Nominated by: Southern District of Texas

Superior Performance in Victim-Witness Assistance

Theresa E. Williamson
Northern District of Ohio

Office of Legal Education

Publications & *USABook* Corner

New Evidence Manual

The OLE Publications Staff recently published a *Courtroom Evidence Manual*, which was distributed to Assistant United States Attorneys nationwide. ❖

The Resource Manuals in the New USAM

Readers of the new *United States Attorneys' Manual* (*USAM*) will find many references to "Resource Manuals" in the text. For example, the first paragraph of *USAM* 9-11.151 reads:

> It is the policy of the Department of Justice to advise a grand jury witness of his or her rights if such witness is a "target" or "subject" of a grand jury investigation. See the Criminal Resource Manual at 160 for a sample target letter.

If you are interested in looking at the sample target letter, you will need to know what the "Criminal Resource Manual" is, and how to find it. The short answer is that the Criminal Resource Manual is the Resource Manual associated with Title 9, and that it is located at the end of the USABook edition of Title 9. The balance of this article explains why we have Resource Manuals, with tips on how to access and use them.

The USAM Revision Project. The United States Department of Justice has for many years published the *USAM* as its main policy manual. The *USAM* started as a smaller publication, and has grown over the years. Periodically, when it grows to be too large, it has been revised and made smaller (for example, in the 1970s, it had grown to 11 volumes before being revised).

There are good reasons to periodically revise the *USAM*. First, it is impractical to require employees to learn, follow, or even look up official policy when it is spread over many volumes. Second, much of the old *USAM* was made up of material that was not, in a strict sense, *policy*, but more in the nature of admonitions and useful information inserted in the *USAM* over the years. Since the *USAM* is a public document, AUSAs have found themselves challenged in court over their compliance with *USAM* provisions that were never intended to be policy. Consequently, the logical starting point in any serious revision of the *USAM* is to try to get the Manual down to a reasonable size by identifying and deleting non-policy material.

With the help of attorneys from all of the Divisions and Components, the 1997 edition of the *USAM* was pared down to a single volume. This was done by identifying non-policy material in the old *USAM*, and deleting it. We knew, from talking with persons familiar with prior *USAM* revisions, that a lot of this material would be missed by users of the Manual. It was therefore determined that, instead of disposing of this material, that useful non-policy material would be preserved and published separately as “Resource Manuals” associated with the various Titles—the "Civil Resource Manual" goes with Title 4, the "Tax Resource Manual" with Title 6, and so on. To make these Resource Manuals more useful, this material has been supplemented with additional research material and forms solicited from many sources in the DOJ. There are many thousands of pages of material in these Resource Manuals, and they grow and change as we receive new material. For example, the Criminal Resource Manual now includes the Department's approved sample brief in opposition to *Singleton* motions.

Accessing the Resource Manuals. The Resource Manuals have not been officially published in a hard copy format. They can, however, be easily accessed using the USABook program.

> ❑ Every time a Resource Manual is cited in the USABook edition of the *USAM*, a number appears in reverse video next to the citation. Press that number on your keyboard, and the cited article from the Resource Manual instantly appears on your screen.
>
> ❑ Alternatively, since each Resource Manual is at the end of each Title of the *USAM*, you can go directly to the Resource Manual using the Table of Contents feature in USABook. For example, from the opening screen of USABook, you can select the *USAM*, and then select Title 9. This will bring up a list of all of the chapters of Title 9. From there, you can either press the <F3> key to go directly to the Resource Manual, or manually page down past the last chapter (chapter 139).
>
> ❑ By default, searches of the *USAM* will also include searches of the associated Resource Manuals. If your search terms appear in the

Resource Manual, the articles will appear during your search.

Printing articles from the Resource Manuals. As with all USABook documents, when a Resource Manual document appears on the screen, you can tag it by pressing the <F2> key. When you exit USABook, all of the articles you have tagged are converted to USABook format, and stored in a file called USABOOK.TXT in your default WordPerfect directory.

In addition, WordPerfect files containing the text of the Resource Manuals have been distributed to office systems managers on the USABook update CD ROM. Contact your systems manager if you wish to have copies of these files. NOTE: These files contain many thousands of pages of material, so you may wish to view the material and be selective about what you print.

These concepts are further explained in the "USABook Five Minute Tutorial," which you can obtain from your systems manager, or by e-mail at aexnac01!ehagen. Also, on line assistance in using the USABook program is available by calling (803) 544-5156.

OLE Annual Course Schedule

The annual schedule for OLE courses has been distributed to USAOs, DOJ division contacts, and executive branch agency training contacts. The schedule also appears on the OLE Homepage (http://www. usdoj.gov/usao/eousa/ole.html). On page 83, you will find a list of the courses for January and February 1999. OLE will continue to e-mail specific course announcements and nomination forms to USAOs and DOJ Divisions. Nomination forms for executive branch agencies are available in the course schedule, on the Internet, and attached as **Appendix A**.

Nomination forms must be received by OLE at least 60 days prior to the commencement of each course. Notice of acceptance or non-selection will be mailed six weeks prior to the course to the address typed in the address box on the nomination form. ❖

Videotape Lending Library

A list of videotapes offered through OLE and instructions for obtaining them are attached as **Appendix B**.

OFFICE OF LEGAL EDUCATION CONTACT INFORMATION

The Office of Legal Education (OLE) has finalized its transition from Washington, D.C., to the National Advocacy Center (NAC) in Columbia, South Carolina. Below you will find contact information for the OLE staff.

NATIONAL ADVOCACY CENTER

1620 Pendleton Street
Columbia, SC 29201-3836

Telephone: (803) 544-5100
Facsimile: (803) 544-5110

Director . . . . . Michael W. Bailie
Deputy Director . . . . . Vacant
Assistant Director (AGAI-Criminal) . . . . . Carolyn Adams, AUSA
Assistant Director (AGAI-Criminal) . . . . . Carol Johnson, AUSA
Assistant Director (Professional Development) . . . . . Kelly Shackleford, AUSA
Assistant Director (AGAI-Civil and Appellate) . . . . . Patricia Kerwin, AUSA
Assistant Director (AGAI-Civil) . . . . . Marialyn Barnard, AUSA
Assistant Director (AGAI-Asset Forfeiture and Financial Litigation) . . . . . Pam Moine, AUSA
Assistant Director (LEI-Agency Attorneys) . . . . . Magda Lovinsky, AUSA
Assistant Director (LEI-Paralegal and Support) . . . . . Nancy McWhorter
Assistant Director (Publications) . . . . . David Nissman, AUSA
Assistant Director (Publications-*USABook*) . . . . . Ed Hagen
Assistant Director (Publications-*USABulletin*) . . . . . Jennifer Bolen, AUSA

OLE Courses

Modifications or cancellations may occur to the courses at any time due to instructor availability, number of students nominated, changes in priorities, etc. Students will be promptly notified whenever modifications or cancellations occur. NAC is the National Advocacy Center in Columbia, South Carolina.

Date	Course	Location
	January 1999	
12	Ethics for Litigators **Videotape**	Cleveland, OH
12-14	Affirmative Civil Enforcement (ACE) Issues	NAC
12-14	Affirmative Civil Enforcement (ACE) for Agency Counsel	NAC
12-14	Affirmative Civil Enforcement (ACE) for Auditors and Investigators	NAC
13-14	Trying Cases to Win: Advanced Course and Trying the Civil Case **Videotape**	Portland, OR
13-14	Art of Advocacy: Selecting and Persuading the Jury **Videotape**	Washington, DC
20-22	Discovery Skills	NAC
20-22	Asset Forfeiture - Advanced	NAC
20-22	Attorney Supervisors	NAC
25-29	Criminal Trial Advocacy - Advanced	NAC
26-28	Evidence for Litigators	NAC
26-29	Civil Pretrial Practice - Advanced	NAC
	February 1999	
1-10	Criminal Trial Advocacy	NAC
2-4	Citizenship USA (DOJ Employees Only)	NAC
2-5	White Collar Crime for AUSAs and Agents (DOJ Employees Only)	NAC
3	Discovery Techniques **Videotape**	Portland, OR
3	Effective Discovery Techniques **Videotape**	Portland, OR
8-12	Civil Paralegal	NAC
9-12	Civil Federal Practice	NAC
10	Trying Cases to Win: Evidence at Trial I & II **Videotape**	Cleveland, OH
10-11	Training the Advocate: The Pretrial Stage **Videotape**	Washington, DC
16-19	USAO Management (DOJ Employees Only)	NAC
17-19	Freedom of Information Act for Attorneys and Access Professionals/Privacy Act	NAC
22-26	Appellate Advocacy	NAC
22-26	Criminal Paralegal	NAC
23-26	Computer Crimes	NAC
24-26	Asset Forfeiture - 5th Circuit Component (DOJ Employees Only)	New Orleans, LA

Career Opportunities

The U.S. Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. It is the policy of the Department to achieve a drug-free workplace, and the person selected will be required to pass a drug test to screen for illegal drug use. Employment is also contingent upon the satisfactory completion of a background investigation adjudicated by the Department of Justice. This and selected other legal position announcements can be found on the Internet at: http://www.usdoj.gov/careers/oapm

Experienced Attorneys/GS-13 to GS-15
U.S. Department of Justice
Criminal Division, Fraud Section

The Criminal Division, U.S. Department of Justice, is seeking experienced attorneys to fill two openings in the Fraud Section based in Washington, D.C. This section, the largest of the Criminal Division, directs and coordinates the federal effort against fraud and white-collar crime. The Fraud Section focuses on complex frauds that involve: multi-district and international activities; financial institutions; the insurance industry; government programs and procurement procedures, including health care providers, defense procurement fraud and Housing and Urban Development fraud; the securities and commodities exchanges; and multi-district schemes that involve consumer victimization, such as telemarketing.

Applicants must possess a J.D. degree, be duly licensed and authorized to practice as an attorney under the laws of a State, territory, or the District of Columbia and have at least two years of post-J.D. legal experience. Applicants should have a strong academic background as well as excellent research and writing skills. Criminal trial experience is strongly preferred. Demonstrated interest in white collar crime issues generally and health care issues specifically are highly desirable. The positions require frequent travel. To apply please submit a resume and/or OF-612 (Optional Application for Federal Employment), a legal writing sample (not to exceed 10 pages), official law school transcript, and current performance appraisal (if applicable) to:

Donald Foster
Deputy Chief, Fraud Section
Criminal Division
U.S. Department of Justice
1400 New York Avenue, Room 4124
Washington, D.C. 20530

No telephone calls please. **The positions are open until filled.** Current salary and years of experience will determine the appropriate salary level. The possible range is GS-13 ($55,969 to $72,758) to GS-15 ($77,798 to $101,142). ❖

UPCOMING PUBLICATIONS

Below you will find the current *Bulletin* publication schedule. Please contact us with your ideas and suggestions for future *Bulletin* issues. Please send all comments regarding the *Bulletin*, and any articles, stories, or other significant issues and events to AEXNAC(JBOLEN). If you are interested in writing an article for an upcoming *Bulletin* issue, contact Jennifer Bolen at (803) 544-5155, to obtain a copy of the guidelines for article submissions and publication deadlines.

January 1999	***Bulletin* Index**
February 1999	**Money Laundering**
April 1999	**Environmental Crimes**
June 1999	**Bankruptcy Fraud**
August 1999	**ADR and Related Matters**