
Proposed Action for Criminal Justice System Agencies

The actions of certain elements of the criminal justice system—the police, prosecutors, the judiciary, and parole boards—are guided not only by law but also by rules, regulations, and procedural codes. The following recommendations of this Task Force are proposals for change at this level.

Recommendations for Police

The police are often the first on the scene; it is to them, the first source of protection, that the victim first turns. They should be mindful that, in fulfilling their obligation to solve the crime and apprehend the criminal, they must also treat victims with the attention due them. The manner in which police officers treat a victim affects not only his immediate and long-term ability to deal with the event but also his willingness to assist in a prosecution. The foundation of all interactions between police and victims should be the knowledge that it is these citizens whom the officer has sworn to serve. These recommendations are meant to ensure better treatment of victims by police.

1. **Police departments should develop and implement training programs to ensure that police officers are:**
 - a. **Sensitive to the needs of victims; and**
 - b. **Informed, knowledgeable, and supportive of the existing local services and programs for victims.**
2. **Police departments should establish procedures for the prompt photographing and return of property to victims (with the prosecutor's approval).**
3. **Police departments should establish procedures to ensure that victims of violent crime are periodically informed of the status and closing of investigations.**
4. **Police officers should give a high priority to investigating witnesses' reports of threats or intimidation and should forward these reports to the prosecutor.**

Commentary

Police Recommendation 1:

Police departments should develop and implement training programs to ensure that police officers are:

- a. **Sensitive to the needs of victims; and**
 - b. **Informed, knowledgeable, and supportive of the existing local services and programs for victims.**
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The arresting officer was wonderful—he made all the difference in the world.—a victim

The Task Force wishes to note that many victims spoke very highly of the officers with whom they had contact. As a group, policemen were the most warmly praised of any professionals in the system. Unfortunately, however, some victims were treated in a manner that was insensitive, uncaring, and even hostile. Training can help eliminate this latter experience.

Victims' responses and needs vary, especially if the crime was violent. Some victims may suffer a severe reaction immediately following the criminal offense; others may experience a delayed reaction, hours or even days after the offense. In either case, the severity of the individual victim's reaction will be proportional to his sense of violation or loss. Police officers should understand what triggers crisis reactions in victims in order to assist them. Officers should know that a burglary victim might have a very severe reaction, although he never saw the perpetrator, while an armed robbery victim who was actually confronted by the assailant might have a lesser reaction.

Police officers generally see victims and their families immediately after the crime, when they are most in need of help. The officers' response to these persons often has a major effect on how swiftly and how well the victim recovers. Police officers who respond quickly after the report is made, who listen attentively, and who show concern for the victim's plight will greatly reassure the victim and help him overcome his sense of fear and helplessness.

But good intentions on the part of police officers are not sufficient to assist every crime victim properly. Police officers need special training in "psychological first aid"²³ to help minimize victims' stress. Victims may experience depression, dependence, anger, a feeling of loss of control, guilt, or uncontrollable fear, either alone or in combination, and the response by the police must be both appropriate and sensitive.

Police officers also need special training to help them deal with crime victims. Victims become very frustrated when officers are not sensitive to their special circumstances. Police officers should not show skepticism because a rape victim is not badly bruised and bleeding or a child did not immediately report a molestation. Officers should be taught that elderly persons with sensory impairments are not necessarily

After I managed to loosen the ropes with which I was tied up, I went to my neighbor's and immediately called for the police. They didn't arrive for more than an hour, and when they did arrive, they were very rude and insensitive. Despite my bruises and my excited condition, the first police officer who arrived, asked me "Lady, what makes you think you were raped?"—a victim

senile and that blind persons can successfully assist the prosecution in criminal cases. They must be taught that family members of homicide victims need very much to be consulted and kept informed during the investigation, regardless of their ability to provide direct information.

Police officers must also learn to cope with their own job-related stress, so that they can effectively interact with victims.²⁴ Police officers are exposed to human misery daily, and may become very frustrated by their inability to resolve it fully. In order to compensate, some officers tend to minimize the problems of crime victims. This method of coping may help the officer in the short term, but it does a profound disservice to victims and will ultimately make the officer a less effective investigator.

The individual officer cannot be expected to meet each victim's needs personally and immediately, but he can serve as the essential link between the victim and the services that are available. This capacity is particularly important because officers see most victims, not just those whose cases result in arrest and prosecution. Some departments have cooperated with local churches or other volunteer groups who are available on call for counseling, death notification, and victim referral. In some departments, the police chaplain has been the motivating force behind this cooperation.²⁵

Responsiveness to the needs of crime victims must be a departmental priority; as such, it should be an important part of every police officer's regular performance evaluation. A police department that rewards officers who assist crime victims either directly or through referral to a victim services program will greatly assist those who have been victimized. In addition, it can also help to reinforce the police officer's normal inclination to assist those victims who are in need of help.

Police Recommendation 2:

Police departments should establish procedures for the prompt photographing and return of property to victims, with prosecutor approval.

For too long we have viewed the victim as evidentiary baggage to be carried to court along with blood samples and latent fingerprints. It is about time that we as police begin to view crime victims as our clients, as the aggrieved party in need of representation, reparation, and recognition.—Chief Robert P. Owens

This is one experience that one does not plan for, is not prepared for, has no knowledge of who or where to turn.—a victim

My son's effects were never returned. My daughter wrote several letters, but to no avail. I presume they are lost to us forever. You can imagine how much the return of a gold chain my daughter had given him on his 17th birthday would have meant to her and how much the return of his wallet would have meant to me. The fact that no one was responsible for getting those items back to us hurt a great deal.—a victim's mother

Never once did local police direct me toward any means of assistance—no matter how loud I cried for help! I was even told it was none of my business when I asked the whereabouts of the defendants and the dates of the hearings. The defendants have "rights to privacy" according to my police department.—a victim

The victim's property belongs to the victim, not the system. Victims repeatedly tell of property ranging from family heirlooms to an invalid's television set being held for months or years while the case moves slowly through the courts; in some cases, property has been mislaid or lost. Victims should have their property restored to them at the earliest date possible without compromising the prosecution of the case.

Police should cooperate with local prosecutors to develop procedures in which the prosecutor evaluates the evidentiary value of the property, notifies the defense, arranges inspection if necessary, then releases these items to their owners as expeditiously as possible (see Prosecutor Recommendation 6. Judicial responsibility is discussed in Judiciary Recommendation 9).

Departments must devise a system that will notify the victim or the victim's family when property has been recovered, where it is being held, when it can be reclaimed, and what documents must be presented when a claim is made. Before items are returned they should be photographed in a manner that clearly identifies the property and will allow substitution of the photograph for the item itself as an exhibit in court.

Police Recommendation 3:

Police departments should establish procedures to ensure that victims of violent crime are periodically informed of the status and closing of investigations.

A major complaint voiced by victims is that they never hear anything about the case after the initial report. Further, when they attempt to acquire information by contacting the police, they are not able to give the names or numbers required for the police to locate the appropriate file. Even when an investigation is closed without an arrest, the victim should be so informed. Victims will appreciate police candor even when the case is unresolved.

Every victim of violent crime should be provided with certain basic information shortly after the crime is reported, either by mail or other satisfactory process. They should be told the name and badge number or department serial number of the investigator in charge of the case and how to reach him, the case

number or other department data retrieval information, and when the case has been reassigned to a different investigator or branch within the department.

Many victims live in a state of fear, believing their assailant is still at large. When a suspect is apprehended, victims should be informed at the earliest possible time. This information can reduce their anxiety substantially. However, officers must take care not to compromise the reliability of a lineup or other investigatory phase by providing this information too soon; when in doubt, officers should consult with the prosecutor.

Police Recommendation 4:

Police officers should give a high priority to investigation of reports by witnesses of threats or intimidation and forward these reports to the prosecution.

Many victims and witnesses are threatened or intimidated by defendants and others. Fearing for themselves and their families, these citizens may move, begin to carry weapons, become prisoners in their homes, or decide not to follow through with the prosecution.

Although it may be difficult to ascertain who is responsible for these attempts at intimidation, officers must treat such threats and the citizens who are their targets with sensitivity and concern. It can be almost as frustrating for the officer as for the threatened person to realize the limitations inherent in this area. However, victims should not simply be told that nothing can be done; officers should respond to and investigate these reports.

In addition, some affirmative steps can be taken to protect those who are harassed and to give them the sense that the system is responsive to their problems (see also Prosecutors Recommendation 3). For example, traces or recordings can be arranged; the local precinct or beat supervisors can be alerted and the officers responsible for the victim's neighborhood can increase the frequency with which they patrol near the victim's home. Officers can inspect locks and instruct victims on how to improve their security measures. If victims decide to move, officers can ensure that they are not harassed or followed to their new

*I was forced to take some drastic steps to protect myself. At first I blockaded myself in my apartment and began to carry a pistol. Later I moved to another city, got an unlisted phone number, used a post office box rather than my new address, and continued to carry a weapon. Even though I had done all of this, I still lived in fear.—
a victim*

residences. In jurisdictions in which investigating officers make recommendations as to bail, these attempts at intimidation should be brought to the attention of the court.

A formal report should be made every time a citizen complains of intimidation, and the victim should be referred to a victim/witness service provider. The filing of a formal report is important; it encourages the victim to remain in contact with law enforcement, and it documents a pattern of intimidation that can be proved at trial. If prosecutors are to succeed in opposing motions for release or reduction of bond, or if reports of harassment are to be relied on in sentencing, each threatening contact must be reported by the victim and documented in a formal report.

Recommendations for Prosecutors

The primary obligation of prosecutors is to see that truth and justice are served. The power of the prosecutor and the court system as a whole derives from the people's willingness to entrust to them the administration of justice. Prosecutors should keep their primary obligation in mind as they make decisions. In doing so they undertake the serious responsibility of serving the interests and concerns of citizens victimized by crime. These recommendations are meant to help prosecutors in this effort.

1. Prosecutors should assume ultimate responsibility for informing victims of the status of a case from the time of the initial charging decision to determinations of parole.
 2. Prosecutors have an obligation to bring to the attention of the court the views of victims of violent crime on bail decisions, continuances, plea bargains, dismissals, sentencing, and restitution. They should establish procedures to ensure that such victims are given the opportunity to make their views on these matters known.
 3. Prosecutors should charge and pursue to the fullest extent of the law defendants who harass, threaten, injure, or otherwise attempt to intimidate or retaliate against victims or witnesses.
 4. Prosecutors should strongly discourage case continuances. When such delays are necessary, procedures should be established to ensure that cases are continued to dates agreeable to victims and witnesses, that those dates are secured in advance whenever possible, and that the reasons for the continuances are adequately explained.
 5. Prosecutors' offices should use a victim and witness on-call system.
 6. Prosecutors' offices should establish procedures to ensure the prompt return of victims' property, absent a need for the actual evidence in court.
 7. Prosecutors' offices should establish and maintain direct liaison with victim/witness units and other victim service agencies.
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8. Prosecutors must recognize the profound impact that crimes of sexual violence have on both child and adult victims and their families.

Commentary

Prosecutors Recommendation 1:

Prosecutors should assume ultimate responsibility for informing victims of the status of a case from the time of the initial charging decision to determinations of parole.

I didn't hear anything about the case for almost a year. Then all of a sudden they called me up at work and said, "come down to court right away, the trial is going to take place."—a victim

The victim, not the state, is directly aggrieved by violent crime, and has an unquestionably valid interest in the prosecution his complaint initiates. Once a case is charged, the prosecutor is informed of all court dates, plea bargains, and rulings on pre-trial motions. The prosecutor is also in the best position to explain to victims the legal significance of various motions and proceedings.

Prosecutors should keep victims informed about the status of the case from the initial decision to charge or to decline prosecution. The only time a victim should not be informed of an aspect of a case is when the sharing of such information might improperly influence the victim's testimony or expose him to unnecessary attack on cross-examination.

The prosecutor's duty to keep a victim of violent crime advised extends from the charging decision through sentencing and any subsequent parole hearings. The advisement of parole hearing dates is particularly important. Often victims do not realize that parole is even available to their assailant. When they are aware, they are often most interested in the outcome of parole hearings not only because of their desire for the service of a just sentence but also because of their legitimate fear of revictimization once the defendant is released.

Better treatment of victims should be a high priority for prosecutors. Ensuring that victims of violent crimes are advised of the progress of their case is only a beginning in the recognition of this responsibility.

Finally, my case was assigned to another district attorney who spent a great deal of time explaining to me what was happening in the case. Just being informed of all the facts reduced my anxiety greatly.—a victim

Prosecutors Recommendation 2:

Prosecutors have an obligation to bring to the attention of the court the views of victims of violent crimes on bail decisions, continuances, plea bargains, dismissals, sentencing, and restitution. They should establish procedures to ensure that such victims are given the opportunity to make their views on these matters known.

Prosecutors must champion the public interest while respecting the rights of the accused. They must also serve victims by ensuring that they will not be victimized again, either by the criminal or the system that was designed to protect the innocent. Ordinarily, victims are unaware of how the system operates; they do not understand its complex processes and are troubled by their apparent exclusion from participation in the adjudication of a case that so directly affects them. Not only must the system be explained to them, but they must also be allowed to convey the information that they possess to those making the decisions that will determine the outcome of the case. The prosecutor not only has direct victim contact, but he is also in the best position to see that the victim is accorded a proper role in the criminal justice system.

Prosecutors are often unaware, at the time of the bail hearing, that threats of reprisal have been made to victims, either because the police did not obtain this information or because the threats were made after the investigation was completed. It is difficult for a judge to evaluate the danger that a defendant presents to the community if the judge hears only from the defendant's counsel, who will present him in the best possible light, and from a prosecutor who does not know of the basis for the victim's fear. Also, it is not uncommon for a suspect to tell the victim of his intention to flee should he be released. The person best able to inform the court of statements that may have been made by the defendant and the threat he poses is often the person he victimized.

As is discussed elsewhere (see Prosecutors Recommendation 4 and Judiciary Recommendation 4), continuances impose a substantial hardship on victims and often undermine the prosecution's case. Postponements should be opposed whenever possible. If a continuance is granted, the prosecutor should inform the court of any conflicts with the victim's schedule.

Victims responded that they wanted to be included, consulted, and informed, regardless of their usefulness to the prosecution, regardless of whether their case was plea bargained, dismissed, or brought to trial.—Deborah Kelly

With the court process there is no guarantee of a light at the end of a tunnel. Life plans are put on hold indefinitely and the victim merely treads water.—Gail Pisarcik

What others see as an inconvenience is for the victim an endless nightmare.—a victim

Prosecutors should consult with every victim of violent crime, explaining how the plea bargaining system operates, what negotiating posture the prosecution has adopted, and why that posture was chosen. Prosecutors should always take into account the victim's views before reaching a final decision. Although lawyers and judges rely on plea bargaining as a tool of calendar management, victims legitimately view the resolution of and sentencing in a case as an evaluation of the harm done to them.

Whenever the prosecutor considers the dismissal of a case involving violent crime, the victim should be consulted in advance and told the reasons for the prosecutor's decision.

Two lives—the defendant's and the victim's—are profoundly affected by a criminal sentence. The court cannot make an informed decision on a just punishment if it hears from only one side. Justice demands that victims be allowed to inform the court in writing and in person of the nature of the crime and the full effect that it has had on them and their families. Prosecutors have a responsibility to ensure that victims of violent crime are informed of the pre-sentencing report process, that victims have the opportunity to have their views reflected in those reports, and that victims have the opportunity to appear and be heard at the time of sentencing.

Restitution should be ordered in every case in which the victim has suffered monetary loss (see Judiciary Recommendation 7). Prosecutors should inform victims of the availability of restitution as a sentencing option for the court, assist victims in outlining their financial losses to the compilers of the pre-sentence report, and ensure that the court is made aware of the victim's losses so that a restitution order is accurate and inclusive. Prosecutors should consider the issue of restitution for the victim in charging and plea bargaining decisions, which may affect the amount of restitution the court can order.

Prosecutors Recommendation 3:

Prosecutors should charge and pursue to the fullest extent of the law defendants who harass, threaten, injure, or otherwise attempt to intimidate or retaliate against victims or witnesses.

Victims and witnesses are threatened or harassed far more frequently than prosecutors are aware (see also Police Recommendation 4).²⁶ This activity continues the process of victimization and confirms one of the victim's worst fears, that the system cannot protect him; he may feel that the only way to escape reprisal is to refuse to testify. The Task Force recognizes that it may often be difficult to file charges of witness intimidation. There may be no identifiable perpetrator for the anonymous call in the night or for seemingly random violence and vandalism directed at a victim or witness. But when a suspect is identified, prosecutors must charge and prosecute vigorously. Harassment and intimidation strike at the very heart of the truth-finding process. By failing to prosecute, dismissing cases or not requesting that terms for intimidation be served consecutively, prosecutors, perhaps inadvertently, convey many messages. Criminals may perceive that intimidation is worth a try—it may succeed, and there is no risk of further punishment. In addition, victims and witnesses may perceive that they are on their own, that they will not be protected by the system that already asks so much of them.

After the assault, I spent only one night in the residence we had shared for most of our 48 years of married life. I was persuaded to move when my youngest daughter answered the phone and was advised by the caller to withdraw the charges.—a victim

Prosecutors Recommendation 4:

Prosecutors should strongly discourage case continuances. When such delays are necessary, procedures should be established to ensure that cases are continued to dates agreeable to victims and witnesses, that those dates are secured in advance whenever possible, and that the reasons for the continuances are adequately explained.

Continuances in criminal proceedings can by their very nature prolong and intensify the initial victimization. The effect on victims' schedules, obligations, and lives can be both bewildering and profound. Continuances are used to good advantage by the defense; they can result in the ultimate unavailability of some witnesses and the fading memory of others.

Prosecutors can be as irresponsible as any other participant in the system in seeking continuances for their own convenience without considering the effect these delays have on the victimized. Victims must be allowed to put their experience behind them as soon as possible. They also should not be required to incur

Each time after a continuance, I would sink back down in the hole. I spent two years not knowing what was going to happen to me.—a victim

the cost and inconvenience of arranging for child care, taking time off from work, and missing vacations and breaking appointments only to discover that the case will not be heard.

Prosecutors should vigorously oppose continuances except when they are necessary for the accomplishment of legitimate investigatory procedures or to accommodate the scheduling needs of victims. (See also Judiciary Recommendation 4 and The Bar Recommendation 1). Whenever possible it should be determined in advance if a continuance is to be granted and the victim should be informed.

Prosecutors Recommendation 5:

Prosecutors' offices should use an on-call system for victims and witnesses.

I worked second shift and this meant I had to go to court all day from morning to afternoon, then go from court to work all evening. I could not afford to lose the time from work. It was like working two jobs, and was very difficult for me and my family.—a victim

Prosecutors and courts should cooperate in implementing an effective on-call and notification system (see also Judiciary Recommendation 2). It is seldom excusable or necessary for witnesses to appear, ready to cooperate, only to be told to leave and return another day. By allowing victims and witnesses to fulfill their regular obligations while on call, the system can minimize inconvenience, wage loss, and other hardships. In addition, such a system can save revenues and increase the efficiency of government services by reducing witness fees and police officer overtime pay, while increasing the time officers spend at other duties.

Prosecutors Recommendation 6:

Prosecutors' offices should establish procedures to ensure the prompt return of victims' property, absent a need for the actual evidence in court.

When a criminal takes their property, victims should not have to battle the justice system to get it back or wait for months or years for its return (see also Police Recommendation 2 and Judiciary Recommendation 9). Naturally there will be some items that will have particular evidentiary significance, whether seized from the defendant or taken from the victim or crime scene, because of their character or condition. These must be retained for admission at trial. Other items, however, can be presented to the jury just as effec-

tively by photograph. If the chain of custody is not an issue, such items can be kept and used by victims while the case proceeds, rather than being kept in a police or court clerk's property room. Early return is also cost effective, relieving government of the expense of storage.

Prosecutors must of course weigh evidentiary considerations and allow the defense an opportunity to view and examine victims' property. In taking these steps, the prosecutor should recognize his responsibility to release property as expeditiously as possible, to take the initiative in doing so, and to establish the procedures necessary to bring about the expeditious restoration of property to its lawful owner.

Prosecutors Recommendation 7:

Prosecutors' offices should establish and maintain direct liaison with victim/witness units and other victim service agencies.

Victims cannot rely on services they know nothing about. Prosecutors must make themselves aware of the victim/witness services that are available and ensure that victims are informed of them. The prosecutor should extend this information because he is a public servant; in addition, the prosecution will profit from the better cooperation of a victim who feels he has been protected and assisted. The prosecutor should consider offering training to area victim service providers on the workings of the criminal justice system. He should also consider inviting people outside the criminal justice system who work directly with crime victims to discuss victims' needs and their perceptions of how the prosecutor is or is not meeting these needs with his staff.

Prosecutors Recommendation 8:

Prosecutors must recognize the profound impact that crimes of sexual violence have on both child and adult victims and their families.

In recent years some prosecutors have improved greatly in the manner in which they treat sexual assault victims (see also Judiciary Recommendation 10). Unfortunately, however, substantial progress remains to be made. Myths, superstitions, and prejudices are

I kept trying to get my property back, the property that they had for court evidence. But no one could tell me where it was. I was sent to warehouses, government offices, and made phone call after phone call before I finally got back some of the things the authorities had all along.—a victim

*I feel that we all tolerate sexual abuse of children as long as we accept a criminal justice system that victimizes children instead of making changes to help the child who must endure this ordeal.—
Lorna Bernhard*

*The problems began when the prosecutors said that any child under the age of seven could not qualify as a witness. They refused to sit down and speak to my daughter about the facts of the case. The detectives who interviewed her thought that she could qualify as a witness at trial and do an excellent job.—
a victim*

being eradicated much too slowly. Sexual assault victims must be treated with the same respect and compassion due anyone victimized by crime. Further, the emotional dimension of their victimization requires that they be treated with particular care. Practices that reflect distrust of these victims, such as polygraph testing of rape victims or the implementation of separate charging procedures in the evaluation of their cases, must stop. In terms of case disposition, plea bargaining, and sentence recommendations, the prosecutor's attitude must reflect a concern for the violent nature of any sexual assault and the danger posed by anyone who would engage in such conduct.

Many prosecutors fail to treat child molestation cases with the seriousness they deserve. The profound trauma inflicted on young victims and the after effects that may mar them for life are simply immeasurable. Those who impose this activity on children are dangerous and will continue to be so. Witnesses who are experienced in this field have informed the Task Force that those who engage in sex with children do so by choice, not as the uncontrollable by-product of some disease. Because their conduct is purposeful and there is little motivation for change, treatment is usually unsuccessful. The most recent data suggest that this conduct will continue throughout the molester's life and will escalate as he ages.²⁷

These individuals represent a continuing threat to children. Prosecutors should be taking the lead in making them accountable for their conduct. Yet molesters have a better chance than most criminals of escaping detection and successful prosecution. Children often fail to report these occurrences to their parents because of the attacker's threats, because they are embarrassed, or because they fear their parents will be angry. If their parents are told, they may elect not to inform authorities because they are embarrassed, confused, wish to deny the problem, or think they should protect their children from the effects of involvement in the criminal justice system.

When prosecutors do get such cases, they may be hesitant to charge or anxious to plea bargain because these cases are often difficult to try. The prosecutor will often seize on parental reticence as an excuse not to proceed with the case instead of working with the

parents to determine what course is best for the child and for the protection of future victims.

Prosecutors must take the time to explain the court process to children and to prepare them for it. In these cases, continuances should be kept to the absolute minimum because the delay is particularly difficult for children and because delay weakens the prosecution's case as young memories fade.

It is essential that prosecutors urge in plea bargaining or in post-conviction sentence hearings that these offenders be sequestered from the public. Treatment can always be tried, but it should, rarely if ever, be the sole remedy.

A 19-year-old molested my daughter in a day-care center. He had a prior conviction for similar behavior. The prosecutor asked for 8 years in prison. The judge gave him 90 days, saying he might be harassed in custody.—a victim

Recommendations for the Judiciary

The ultimate responsibility for how the system operates rests with judges, who must reconfirm their dedication to be fair to both sides of a criminal prosecution. If they fail to do this, they do not serve the public from whom their authority is derived. In passing judgment, from initial bail hearing to the imposition of a sentence that properly reflects the seriousness of the offense, to appellate review of convictions and sentences, each jurist must act with the goal of equal justice clearly in mind. These recommendations are meant to help keep that goal clear.

1. It should be mandatory that judges at both the trial and appellate level participate in a training program addressing the needs and legal interests of crime victims.
 2. Judges should allow victims and witnesses to be on call for court proceedings.
 3. Judges or their court administrators should establish separate waiting rooms for prosecution and defense witnesses.
 4. When ruling on requests for continuances, judges should give the same weight to the interests of victims and witnesses as that given to the interests of defendants. Further, judges should explain the basis for such rulings on the record.
 5. Judges should bear their share of responsibility for reducing court congestion by ensuring that all participants fully and responsibly utilize court time.
 6. Judges should allow for, and give appropriate weight to, input at sentencing from victims of violent crime.
 7. Judges should order restitution to the victim in all cases in which the victim has suffered financial loss, unless they state compelling reasons for a contrary ruling on the record.
 8. Judges should allow the victim and a member of the victim's family to attend the trial, even if identified as witnesses, absent a compelling need to the contrary.
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9. Judges should give substantial weight to the victim's interest in speedy return of property before trial in ruling on the admissibility of photographs of that property.
10. Judges should recognize the profound impact that sexual molestation of children has on victims and their families and treat it as a crime that should result in punishment, with treatment available when appropriate.

Commentary

Judiciary Recommendation 1:

It should be mandatory that judges at both the trial and appellate level participate in a training program addressing the needs and legal interests of crime victims.

The courtroom is the focal point of the entire criminal justice system. The work of police, prosecutors, and defense attorneys is all in preparation for the presentation of the case in court. Most trials are conducted with consideration given to any appeal that may ensue. The judge who presides over a court becomes not only the final arbiter of each evidentiary and procedural issue, but he also establishes the tone, the pace, and the very nature of the proceedings. Particularly for the victim, the judge is the personification of justice. The victim may have been badly treated by police, doctors, lawyers, even neighbors and co-workers, but he expects that finally the judge will accord him just treatment.

Often judges are not prepared to meet this expectation. Those who come to the bench from a civil practice, or even those who have been advocates for one side or the other in the criminal justice system, may lack the experience and insight required to understand the victim's view. On a broader level, a judge is no longer an advocate, yet his previous experience may result in a natural inclination to approach the issues from a particular perspective. Justice requires an informed impartiality. Fair evaluation of courtroom arguments requires that the judge have some insight into the human experience those arguments address.

Judges must take a stronger hand in controlling their calendars. They must be as concerned with inconveniences to victims and witnesses as they are with inconveniences to attorneys. Too often the system appears to operate for the benefit of the court and attorneys.—Judge Marilyn Hall Patel

*The Judicial College should develop a course of instruction, to be incorporated into the course designed for new and experienced judges, which focuses on victims of crime.—
Judge Reggie Walton*

We found that our on-call program saved enough in wages alone in one year to have easily paid for five victim/witness units in this city. The time spent by a police officer sitting in the corridors of the Hall of Justice, before we had our victim/witness on-call program, was worth something like \$300,000 in overtime pay alone; today that figure in overtime pay is \$25,000.—Susan McDaniels

To this end, judges from the magistrate to appellate and Supreme Court levels should be required to undergo a program of training before they assume the bench. To avoid a tendency to become insular in their thinking, judges should receive periodic training during their tenure.

Justice requires extraordinary vigilance lest it become too removed from those who depend on the equity of its processes. A practical course of instruction during which judges ride along with police, see victims at the scene, view local line-up procedures, inspect interview facilities and jail and prison conditions, and take courses that address the particular needs and legal interests of victims will enable judges to attain more closely the level of justice to which they aspire.

Judiciary Recommendation 2:

Judges should allow victims and witnesses to be on call for court proceedings.

To avoid an occasional brief delay in court proceedings, many judges require all victims and witnesses to be present before they will begin litigation. This requirement is both unnecessary and burdensome. All witnesses need not attend the entire proceeding; they need appear only when their testimony is called for. It is certainly unfair and inefficient to have them all assemble, only to be told that the case will be continued, or to sit and wait for hours or days while a jury is selected and pre-trial legal issues are resolved. In this era of instant communication and rapid transit, it is more equitable, more efficient, and less burdensome to allow victims and witnesses to remain at their jobs or in their homes until the actual need for their participation is reasonably imminent. Judges and prosecutors should cooperate in determining the need for victims' and witnesses' presence in court (see Prosecutors Recommendation 5). An additional benefit derived is the savings in payment of witness fees and the cost of police overtime.

Judiciary Recommendation 3:

Judges or their court administrators should establish separate waiting rooms for prosecution and defense witnesses.

There is a natural antipathy between the victim and the defendant, his family, and friends. The victim may be fearful; he was brutalized during the crime, often was threatened afterward, and now must stand alone and identify the person who committed the offense. This requirement is difficult enough in the relative protection of the courtroom. Victims and witnesses should not be required to sit and wait with the defendant and his supporters. At the very least, this is an awkward and disturbing human encounter; at the worst, it becomes the breeding ground for threats, intimidation and violence.

Judiciary Recommendation 4:

When ruling on requests for continuances, judges should give the same weight to the interests of victims and witnesses as that given to the interests of defendants. Further, judges should explain the basis for such rulings on the record.

Parties seek continuances for a variety of reasons. Some are justified, many are not. It is the responsibility of the judge to ensure that criminal cases are resolved as expeditiously as possible because victims are profoundly affected by case delays. The defendant has a right to a speedy trial, not only because he may be incarcerated while it is pending, but also because of the hardship inherent in having criminal charges unresolved. Victims likewise are burdened by irresolution and the realization that they will be called upon to relieve their victimization when the case is finally tried. The healing process cannot truly begin until the case can be put behind them. This is especially so for children and victims of sexual assault or any other case involving violence.

In recognition of these factors, continuances should be granted sparingly and only for good cause. Lawyers must be required to conduct their practices efficiently, and courts must employ sound calendar management procedures. Judges must be aware that lawyers on both sides try to manipulate the continuance system for their own ends, ends that serve neither the victim nor the interests of justice (see also Prosecutors Recommendation 4 and the Bar Recommendation 1). Only the court can ensure that such improper manipulation is avoided. Because this Task Force recognizes

We had to sit outside the courtroom, where there was only one chair, sometimes in the presence of the man who was charged with doing this and his family. There was no separate place for victims and witnesses.—a victim

People have to realize that emotional scabs are constantly being scraped off as you appear time after time in court.—a victim

Judges should take responsibility for explaining to the victims the reasons for the continuance. I suggest that where a judge is required to explain those reasons to a waiting victim the reasons will often appear less persuasive.—Judge Marilyn Hall Patel

the importance of this issue and the manner in which it so severely affects victims, and because we recognize the inherent human tendency to postpone matters, often for insufficient reason, we urge that the reasons for any granted continuance and the identification of the party requesting it be clearly stated on the record.

Judiciary Recommendation 5:

Judges should bear their share of responsibility for reducing court congestion by ensuring that all participants fully and responsibly utilize court time.

Then we were told that the trial must be rescheduled for August because the judge could not hear a 5-day trial and still keep an important speaking engagement.—a victim

Criminal cases may take a long time to try. Some of this delay cannot be avoided; the fair determination of truth cannot be rushed. However, judges must set an appropriate pace and require that participants keep to it. Proceedings must start on time, and court hours must be effectively used. Both witnesses and advocates have had experience with courts that do not convene until midmorning or that recess in midafternoon. Occasionally such measures are necessary to coordinate schedules or to allow the informed argument of legal issues. But such practices cannot be allowed to become the norm to accommodate judges' personal schedules. Judges must begin their days on time and expect those who appear before them to arrive promptly and to be prepared.

Judiciary Recommendation 6:

Judges should allow for, and give appropriate weight to, input at sentencing from victims of violent crime.

Balancing competing interests and equities in deciding a sentence can require a Solomon-like wisdom—and even Solomon heard from both sides.—a victim

The imposition of a criminal penalty may be the most difficult kind of decision a judge is called on to make. In addition to affecting the defendant, the sentence is a barometer of the seriousness with which the criminal conduct is viewed. It is also a statement of social disapprobation, a warning to those tempted to emulate the offender's actions, and a step that must be taken for the protection of society. Finally, it is a statement of societal concern to the victim for what he has endured.

Victims, no less than defendants, are entitled to their day in court. Victims, no less than defendants, are entitled to have their views considered. A judge

cannot evaluate the seriousness of a defendant's conduct without knowing how the crime has burdened the victim. A judge cannot reach an informed determination of the danger posed by a defendant without hearing from the person he has victimized (see Executive and Legislative Recommendation 10, which would require the filing of victim impact statements).

Victims of violent crime should be allowed to provide information at two levels. One, the victim should be permitted to inform the person preparing the presentence report of the circumstances and consequences of the crime. Any recommendation on sentencing that does not consider such information is simply one-sided and inadequate. Two, every victim must be allowed to speak at the time of sentencing. The victim, no less than the defendant, comes to court seeking justice. When the court hears, as it may, from the defendant, his lawyer, his family and friends, his minister, and others, simple fairness dictates that the person who has borne the brunt of the defendant's crime be allowed to speak.

The idea that the victim should speak at sentencing has been met with resistance. That opposition and the force with which it has been projected by judges and lawyers is one measure of their lack of concern for victims. It is also an indication of how much is wrong with the sentencing system.

The Task Force has found that in seeking to defend what is, in the final analysis, the indefensible view that victims have no right to participate in the sentencing of their victimizers, lawyers and judges often rely on two primary arguments. First, they assert that victim participation will take too much time—but from the charging process through the trial and the entire post-sentence process, tremendous amounts of time and effort are expended to safeguard the rights of the defendant. The pre-sentence report process is almost exclusively aimed at evaluating each nuance of the defendant's background and current position. Defendants speak and are spoken for often at great length, before sentence is imposed. It is outrageous that the system should contend it is too busy to hear from the victim.

Others may speculate about the defendant's potential for violence; it is the victim who looked down the barrel of the gun, or felt his blows, or knew how seri-

I personally feel that it is a miscarriage of justice to sentence a defendant who has been convicted of committing a crime against another person without first hearing from the victim and taking into account the effects the crime has had on the victim's life.—Judge Reggie Walton

ous were the threats of death that the defendant conveyed. Friends or relatives may speak of the defendant's newfound remorse; it is the victim who can tell of the defendant's response to his pleas to be spared, to be hurt no further. It is the victim who knows how the defendant said he would avoid capture or dupe the judge if he were caught. The defendant comes to court to convince the judge he is loved and supported by family and friends. What of the family and friends of the murder victim, who was no less loved and supported, no less needed, and who is no less dead at the defendant's hand?

The victim was there when the crime was committed; at the very least, he and his family have had to rebuild their lives in its aftermath. A few minutes to help the court understand the personal effect of the defendant's lawlessness seems little to ask. The impact of the crime on the victim's physical, financial, and psychological well-being must be explained.

The second argument is that participation by victims at sentencing will place improper pressure on judges. The duty of a judge is to dispense justice, and the passing of judgment is a difficult task. The difficulty of the task should not be relieved, however, by discharging it unfairly. Hearing from the defendant and his family and looking into the faces of his children while passing sentence is not easy, but no one could responsibly suggest that the defendant be denied his right to be heard or suffer a sentence imposed in secret in order to spare the judge. The victim, no less than the defendant, has a real and personal interest in seeing the imposition of a just penalty. The goal of victim participation is not to pressure justice, but to aid in its attainment. The judge cannot take a balanced view if his information is acquired from only one side. The prosecutor can begin to present the other side, but he was not personally affected by the crime or its aftermath, and may not be fully aware of the price the victim has paid. It is as unfair to require that the victim depend solely on the intercession of the prosecutor as it would be to require that the defendant rely solely on his counsel.

In putting the man who robbed me on probation, the judge said he had suffered enough by being tried and losing his job. I was put through the system, too. I lost my job. The big difference between us is he chose to rob me; I didn't choose to be a victim.—a victim

Judiciary Recommendation 7:

Judges should order restitution to the victim in all cases in which the victim has suffered financial loss,

unless they state compelling reasons for a contrary ruling on the record.

Crime exacts a tremendous economic cost. In the vast majority of cases it is the victim, not the offender, who eventually shoulders this burden. This is unjust. The concept of personal accountability for the consequences of one's conduct, and the allied notion that the person who causes the damage should bear the cost, are at the heart of civil law. It should be no less true in criminal law.

It is simply unfair that victims should have to liquidate their assets, mortgage their homes, or sacrifice their health or education or that of their children while the offender escapes responsibility for the financial hardship he has imposed. It is unjust that a victim should have to sell his car to pay bills while the offender drives to his probation appointments. The victim may be placed in a financial crisis that will last a lifetime. If one of the two must go into debt, the offender should do so.

In addition, the court should accept responsibility for enforcing its restitution orders. Courts should require meaningful progress reports on whether the defendant is meeting his obligations. If the offender misses payments, this fact should be brought to the attention of the court in a timely fashion. A court should rarely find itself confronting a situation in which the probation of an offender who is delinquent in his restitution payments is about to expire. Probation or parole should seldom be terminated until the restitution obligation has been met.

A restitution order should be imposed in every case in which a financial loss is suffered, whether or not the defendant is incarcerated. Neither victims nor courts should be forced to choose between restraining a violent and dangerous offender or making the victim economically whole. If payment cannot begin before the offender's release, such delay is still preferable to no payment at all. Many offenders receive financial benefits while in custody; some states allow prisoners to be paid wages for work while serving a sentence, and others are considering adopting such a policy.²⁸ In the rare instances in which restitution is

I think if the criminals who do these things are caught they should have to pay for the damage they do, even if it takes them years. My family and I will be trying to recover from this for the rest of our lives.—a victim

The man who murdered my husband is in prison, thankfully. We as taxpayers are paying for his room, board, and medical and psychiatric help. My husband was my only means of support. I'm now destitute, very ill, and have no financial means. Meanwhile, the murderer has 600 acres of valuable property. Why should the man who ruined my life be able to keep and return in a few years to that, while I have nothing?—a victim

I was not allowed to watch the trial because the defense attorney subpoenaed me as a witness. There was no real reason for me to be subpoenaed other than to keep me out of the trial. His intentions were also made apparent by the fact that he gave me the subpoena even though he had never interviewed me and would not have known what I might have said if he called me to testify. As was expected, I never was called to testify by the defense at the trial.— a victim

not ordered, judges should state clearly and specifically, on the record, the reasons why they did not so order.

Judiciary Recommendation 8:

Judges should allow the victim and a member of the victim's family to attend the trial, even if identified as witnesses, absent a compelling need to the contrary.

Judges are responsible for maintaining the integrity of the truth-finding process. One way this has been done is by excluding witnesses from the courtroom so that their testimony could not be influenced by their observations. However, this procedure can be abused by advocates and can impose an improper hardship on victims and their relatives. Time and again, we heard from victims or their families that they were unreasonably excluded from the trial at which responsibility for their victimization was assigned. This is especially difficult for the families of murder victims and for witnesses who are denied the supportive presence of parents or spouses during their testimony.

The crime is often one of the most significant events in the lives of victims and their families. They, no less than the defendant, have a legitimate interest in the fair adjudication of the case, and should therefore, as an exception to the general rule providing for the exclusion of witnesses, be permitted to be present for the entire trial.

Testifying can be a harrowing experience, especially for children, those subjected to violent or terrifying ordeals, or those whose loved ones have been murdered. These witnesses often need the support provided by the presence of a family member or loved one, but these persons are often excluded if the defense has designated them as witnesses. Sometimes those designations are legitimate; on other occasions they are only made to confuse or disturb the opposition. We suggest that the fairest balance between the need to support both witnesses and defendants and the need to prevent the undue influence of testimony lies in allowing a designated individual to be present regardless of his status as a witness. If this individual does finally testify, his presence throughout the trial is a valid subject for comment by the opposition and may be a subject that the court addresses during jury instructions.

Judiciary Recommendation 9:

Judges should give substantial weight to the victim's interest in speedy return of property before trial in ruling on the admissibility of photographs of that property.

We have recommended elsewhere (see Police Recommendation 2 and Prosecutors Recommendation 6) that, whenever possible, property should be photographed and returned to victims expeditiously. This can happen only if courts will allow the substitution of photographs, properly identified through testimony, for the television sets, silver services, and other items that would otherwise be withheld from victims until the case is tried and the appellate process completed. There will be instances in which the property itself must be admitted because of its character, condition, or questions about the chain of custody; however, in many cases the admission of a photograph is just as satisfactory as the admission of the actual object. In fact, not only is the victim well served by return of his property, but the system is also spared the cost of its storage.

Judiciary Recommendation 10:

Judges should recognize the profound impact that sexual molestation of children has on victims and their families and treat it as a crime that should result in punishment, with treatment available when appropriate.

Perhaps no crime is more misunderstood and less adequately treated by the criminal justice system than the sexual molestation of children (see also Prosecutor Recommendation 8). Everyone who confronts these cases finds them difficult. There is almost a need to find that the conduct is the result of mistake, misinterpretation, or psychological aberration. Yet denial only exacerbates a problem that has reached almost epidemic proportions in this country.²⁹ Thousands of innocent children every year pay the price for this denial.

Children who are victimized in this way, even if they are not physically injured, may be harmed severely, perhaps more severely than any other victim. The effects on them and on their families are profound. Yet the sentences imposed for this conduct are

*You can't say pedophilia is an illness any more than you can say bank robbery is an illness. Treatment has been used as an escape from responsibility.—
Roland Summit,
Ph. D.*

*The man who
molested my little girl
shattered our lives.
She may never truly
recover. He only
served 10 days in the
county jail.—a
victim's mother*

generally inappropriate and are significantly lower than terms imposed for adult rape.³⁰ It is appalling to read of a judge who says a 5-year old was sexually promiscuous.³¹ It is unconscionable that someone who molested a child in a day-care center was sentenced to a month or two in the county jail.

The best psychiatric findings indicate that these defendants are responsible for their conduct, and that treatment in this area is rarely successful.³² Those who engage in sex with children do so because they choose to, and they will continue to make that choice as long as they are free to do so with impunity. Those who prey on children must be sequestered from them. They may be incarcerated in hospitals, treatment centers, or prisons; but wherever they are held, they must not be released until they have served a sentence that is commensurate with the harm they have inflicted.

Recommendations for Parole Boards

Parole boards should be abolished. They operate in secret and without accountability; they release the dangerous, who prey upon the innocent. (See also Executive and Legislative recommendations 6 and 7.) Post-release supervision is both inadequate and tremendously costly. Until such time as this system is replaced, the recommendations below may help correct the more dangerous abuses.

- 1. Parole boards should notify victims of crime and their families in advance of parole hearings, if names and addresses have been previously provided by these individuals.**
- 2. Parole boards should allow victims of crime, their families, or their representatives to attend parole hearings and make known the effect of the offender's crime on them.**
- 3. Parole boards should take whatever steps are necessary to ensure that parolees charged with a crime while on parole are immediately returned to custody and kept there until the case is adjudicated.**
- 4. Parole boards should not apply the exclusionary rule to parole revocation hearings.**

Commentary

Parole Board Recommendations 1 and 2:

(1) Parole boards should notify victims of crime and their families in advance of parole hearings, if names and addresses have been previously provided by these individuals; (2) Parole boards should allow victims of crime, their families, or their representatives to attend parole hearings and make known the effect of the offender's crime on them.

The essence of responsibility is accountability. Many parole board abuses stem from the fact that their decisions are arrived at behind closed doors. Parole deci-

I also feel that I should be allowed at the parole hearings or be allowed to send a representative. I think it would be very difficult for me to attend them; but I feel that it should be my right to have the option.—a victim

The local parole board has resisted our legitimate attempts to voice our position at initial parole hearings involving dangerous and repeat offenders. Undoubtedly, if the parole board were more concerned with the plight of crime victims, the streets would be safer and the need for witness protection would be reduced.—Stanley S. Harris, United States Attorney

sions in recent years seem to be based on the supposition that only the prisoner is affected. Nothing could be more erroneous. Although a prisoner's behavior while incarcerated should be considered in parole decisions, the nature of his conduct while at large is vital. No one knows better than the victim how dangerous and ruthless the candidate was before he was subjected to the scrutiny of the parole board.

Society has taken on itself the responsibility for protecting the innocent and punishing the guilty. This responsibility must be fairly discharged. Victims have a legitimate interest in seeing not only that their attackers are appropriately punished but also that they are not released prematurely to harm others.

If a prisoner is to be released, victims should be notified in advance. The victim may have been threatened during or after the crime, or may be seen by the prisoner as the one responsible for the prisoner's incarceration. Victims' fear of retaliation is deep and real. They should be allowed to take precautions or at the very least prepare themselves mentally for the release of their victimizers.

Parole Board Recommendation 3:

Parole boards should take whatever steps are necessary to ensure that parolees charged with a crime while on parole are immediately returned to custody and kept there until the case is adjudicated.

The release of a prisoner on parole involves a judgment by the releasing authority that the convict does not pose a criminal threat and that he has knowingly agreed to abide by the law. The parolee's commission of a new crime requires that responsible action be taken by the parole board to restore the safety of the community. Although the legal presumption of innocence still applies, the rearrest of the prisoner, followed by a judicial finding of probable cause, should raise grave doubts about the wisdom of allowing the parolee to remain in the community. It should always be borne in mind that a new victim has paid the price for the parolee's release. Paroled prisoners who are rearrested should be held in custody until culpability for the new crime is resolved at either a trial or parole revocation hearing.

Parole Board Recommendation 4:

Parole boards should not apply the exclusionary rule to parole revocation hearings.

We have already discussed elsewhere in this report our complete dissatisfaction with the exclusionary rule and have recommended that it be abolished (see Executive and Legislative Recommendation 7). Until that is accomplished, however, the exclusionary rule should not be used by any parole boards in parole revocation hearings.

Parole boards that have adopted the exclusionary rule refuse to consider clear violations of parole simply because of a police officer's mistake. These parole boards have taken this position in spite of numerous court decisions that have made it clear that the exclusionary rule is not legally required in parole hearings.³³ Their use of the exclusionary rule is therefore a matter of choice and not a legal requirement.

Our recommendation was reached by balancing competing interests: the innocent victim's need for protection and the interests of a person who has been convicted of an offense, imprisoned, and granted the privilege of early conditional release, which he has clearly violated. The strength of our conclusion is apparent. Parole boards have an obligation to protect the community. They can no longer in good conscience grant early release to a parolee and then close their eyes to obvious violations of the parole privilege. To do otherwise shows flagrant disregard of the needs of victims and the community.

Accordingly, parole boards must consider revocation of parole when the facts show clearly that parole has been violated.
