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FORUM

THE CRIMINAL INJUSTICE SYSTEM: AN OVERVIEW OF THE OKLAHOMA VICTIMS' BILL OF RIGHTS

Michael C. Turpen*

During the early morning hours of July 8, 1978, a Muskogee woman was awakened by mysterious sounds in her home. Arising to investigate, she was confronted by three men, one of which pointed a pistol at her head and ordered her back into her bedroom. She was then bound, gagged, and repeatedly raped while one of the intruders sexually assaulted her eleven year old son who had been sleeping in an adjoining bedroom.

Concluding their criminal exploits, the three escaped with the victim's car and other property stolen from the house. Later that night in a separate incident, one of the three offenders shot and killed his common-law wife and was shortly thereafter fatally shot by her father. The other two offenders were apprehended, tried, and convicted, receiving sentences of 60 and 99 years in separate jury trials.¹ Both had been released just months before from the Oklahoma State Prison system, one on Christmas commutation without having served even half of the sentence for his fifth felony conviction.

After eventually freeing herself to call the police, the woman was taken to Muskogee General Hospital for a rape examination for which

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1. *State v. Horton*, No. CRF-78-245 (Muskogee County D. Ct. Dec. 12, 1978); *State v. Miller*, No. CRF-78-245 (Muskogee County D. Ct. Feb. 14, 1979).

she was later billed \$80. This expense marked only the beginning of her ordeal with the "criminal injustice system."² Recovering her car several days later, she was required to pay a towing and storage fee, as well as the cost of making new keys. Her problems were further compounded when her son attempted suicide two weeks after the crime occurred. Both victims have accrued more than \$3,000 in necessary counseling and rehabilitative services. Until the 1981 session of the Oklahoma Legislature, no compensatory relief existed for victims of this and similar incidents.

I. BACKGROUND FOR THE OKLAHOMA VICTIMS' RIGHTS MOVEMENT

One who spends significant time in the criminal justice system is constantly reminded of the distinct imbalance between the rights afforded the suspect and those of the victim. As Police Legal Advisor in Muskogee, Oklahoma, in 1974, I was particularly troubled by the arresting officer's ritualistic reading of the *Miranda* warning to the accused. It always seemed anomalous that the woman who had just been raped, the man who had just been mugged, or the couple who had just had their home burglarized, were not informed of their rights. The reason is painfully clear—there existed no court-mandated or statutorily guaranteed rights for victims of crime.

During my years in the "criminal injustice system," it has become obvious that we have stepped over the body of the victim to preoccupy ourselves with the rights of the suspect. The purpose of the Oklahoma District Attorneys Association³ in sponsoring the "Victims' Bill of Rights" legislation was to redress this imbalance while not infringing on the constitutional rights of the accused. Generally, the group sought to increase victim and witness participation in all phases of the criminal justice process, establish witness assistance services, protect witnesses from harassment, and compensate victims for expenses incurred from criminal attacks.

2. "Injustice" often reflects the victim's view of the current justice system. For instance, former Tulsa County District Attorney S.M. "Buddy" Fallis encountered a case with an eighty-two year old rape victim who faced the possibility of becoming a defendant in a small claims case because of her inability to pay for a rape examination at a Tulsa hospital.

3. Special thanks to Duchess Bartmess, Special Counsel to the Oklahoma Senate Legislative Council, and Robert McDonald, Executive Director of the District Attorney Training Coordination Council, for their assistance to the district attorneys in the preparation of all of the bills included in the "Victims' Bill of Rights" package.

II. LEGISLATIVE DRAFTING AND LOBBYING

Avoiding the tendency to reinvent the wheel, the Victims' Bill of Rights was the result of thorough research of existing victim reform statutes across the country. Combining the best from other state statutes with what were perceived to be the unique needs of Oklahoma, the Oklahoma District Attorneys Association composed, prepared, and submitted a package of seven different bills to the state legislature. The bills were sponsored by Muskogee State Representative Jim Barker and Muskogee State Senator John Luton. An effective statewide coalition of district attorneys, law enforcement officers, and citizens circulated petitions in support of the legislation. The petitions were forwarded to the Governor and all members of the Oklahoma Legislature. Governor George Nigh endorsed the victims' rights legislation in his 1981 State of the State Address. As the legislature convened in January of 1981, each of the bills was double-assigned to committees on the House side, and thereafter the legislative process began—amend, compromise, delete, compromise, modify, compromise, etc. When the dust settled in the legislative process, five of the seven bills were sent to the Governor for his signature.⁴ The experience was convincing proof that elected officials appreciated the overwhelming need to put some justice back into Oklahoma's "criminal injustice system."

III. PROVISIONS OF THE OKLAHOMA VICTIMS' BILL OF RIGHTS

Victim Compensation Statute. One of the more significant segments of the legislation is a comprehensive victim compensation Statute.⁵ The Bill creates a fund⁶ to provide reimbursement to the innocent

4. A bill guaranteeing a victim's right to a speedy trial passed the House by a 97-0 vote, but was defeated in the Senate by a margin of 23 to 17. A bill expanding the Oklahoma Court of Criminal Appeals from three judges to nine was not voted out of committee. The legislature did, however, increase the number of support personnel for the court of criminal appeals. It is the author's opinion that this type of legislation must be pursued in the future.

5. Oklahoma Crime Victim Compensation Act, OKLA. STAT. ANN. tit. 21, §§ 142.1-.18 (West Supp. 1981-1982). For a complete analysis of this Legislation, see Comment, *The 1981 Oklahoma Crime Victim Compensation Act*, 17 TULSA L.J. 260 (1981).

6. OKLA. STAT. ANN. tit. 21, § 142.3(1), (11), (12) (West Supp. 1981-1982). For a full explanation of the losses for which compensation is available under this section, see Comment, *supra* note 5, at notes 151-59 and accompanying text. Oklahoma is the fourth state to create a victim compensation fund without using any taxpayer dollars. Although the success of this effort is unproven, the program is currently solvent. The greatest opposition to a good plan, however, is the unrealistic hope of a perfect one. Pursuant to the Statute, a Victim Compensation Administrator has been retained by the District Attorney Training Coordination Council and a Victims Compensation Board has been appointed by the Governor. The administrator is Charles W. Wood and the recently appointed Board includes one of the most active lobbyists, Richard Gusé, the

victims of violent crime for expenses incurred as a result of criminal attacks. It addresses four major areas of victims' needs: Loss of support, loss of wages, medical and rehabilitative services, and funeral and burial expenses. The Statute precludes recovery for pain and suffering⁷ and a collateral source provision prohibits recovery for any expenses recovered from other sources.⁸

The unique feature of the Oklahoma Bill is that it provides for the existence of a self-sustaining fund comprised of victim compensation assessments levied against convicted misdemeanants and felons.⁹ Although some states have included a minimum loss requirement and a financial need test in their legislation, the authors felt that eliminating these provisions in the Oklahoma Statute would provide more assistance to greater numbers of victimized persons.¹⁰ The draftsmen attempted to incorporate the positive components of the twenty-seven existing victim compensation programs, and to eliminate or modify the provisions of those statutes which had proved most impractical or unnecessary.

Victim-Witness Coordinator Statute. The Victim-Witness Coordinator Statute¹¹ places Oklahoma in the forefront of victim reform. The Bill makes Oklahoma only the third state to statutorily enumerate rights for victims and witnesses of crime. These include the following rights: To be notified that a court proceeding to which they have been subpoenaed will not take place as scheduled, saving the person an unnecessary trip to court; to receive protection from harm and threats arising out of their cooperation with law enforcement and prosecution efforts; to be informed of financial assistance and other social services available for witnesses or victims of crime, and how to apply for these programs; to be informed of the procedure to be followed to apply for and receive any witness fee to which they are entitled; to be provided, whenever possible, a waiting area during court proceedings not in close

father of one victim of the Camp Scott Girl Scout murder. The other Board members are Oklahoma City attorney Doyle Argo and Ela A. Hill.

7. OKLA. STAT. ANN. tit. 21, § 142.3 (9), (10) (West Supp. 1981-1982); see Comment *supra* note 5, at notes 160-67 and accompanying text. The Oklahoma Act also does not allow compensation for property losses. *Id.* notes 168-75 and accompanying text.

8. OKLA. STAT. ANN. tit. 21, § 142.10(B)(1) (West Supp. 1981-1982); see Comment, *supra* note 5, at notes 183-94 and accompanying text.

9. OKLA. STAT. ANN. tit. 21, § 142.18 (West Supp. 1981-1982).

10. For a discussion of the justifications offered for minimum loss provisions, see Comment, *supra* note 5, at notes 121-25 and accompanying text.

11. OKLA. STAT. ANN. tit. 19, § 215.15 (West Supp. 1981-1982).

proximity to defendants or families and friends of the defendants; to have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence; to be afforded appropriate services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances; and to provide the family members of all homicide victims with all of the above-mentioned services, whether or not they are witnesses in any criminal proceedings.¹²

Before the passage of this legislation, the plight of a victim or witness often was one of humiliation and degradation when they arrived at county courthouses across the state. They would find themselves "fish out of water" as they attempted to locate the courtroom where they were to appear. In many cases they would assume a seat in the hallway, only to be joined by the defendant who was inevitably out on bond. Because of the close proximity to the defendant or his relatives and friends, the victim was often overtly or covertly intimidated and humiliated. To add insult to injury, the victim is usually forced to miss work and may possibly even receive a parking ticket on his hastily-parked car.

Essentially, the function of the victim-witness coordinator is to act as an intermediary between the victim or witness and the criminal justice system: To provide a kind word, a cup of coffee, and, as much as possible, a nodding acquaintance with what a witness can expect during the sometimes traumatic courtroom experience. In general, the coordinator's responsibility is to make the victim or witness' contact with the system as bearable as possible. The Bill is an exciting, innovative piece of legislation that has created a network of victim-witness services across the state.

"Son of Sam" Statute. Oklahoma is now one of five states to statutorily prohibit a convicted offender from profiting from his criminal activity by authorizing a book, movie, or article about a crime for which he has been convicted.¹³ David Berkowitz, the infamous "Son of Sam" murderer, was reportedly advanced \$500,000 to author a book about the several murders he admittedly committed. The New York Legislature responded by passing the first statute of its kind, one that

12. *Id.* § 215.15a.

13. OKLA. STAT. ANN. tit. 22, § 17 (West Supp. 1981-1982).

provides for profits from such contracts to be placed in an escrow account for civil recovery by the victim or the victim's family.¹⁴ Constitutional challenges to the statute have been rejected by two appellate courts in New York.¹⁵

Victim-Witness Protection. The criminal justice system cannot exist without witnesses who are willing to appear and testify about what they saw or experienced. Recognizing this, Oklahoma legislators amended the statute concerning threatening and intimidating witnesses, providing imprisonment for not less than one nor more than ten years upon conviction.¹⁶ In enacting this portion of the victims' rights legislation, the legislature indicated its desire to protect the most important figure in the criminal justice process.

Victims' Right to be Informed. Before the enactment of the Victims' Bill of Rights, a victim or district attorney received no advance warning that a particular inmate was to be released from the custody of the Oklahoma State Prison system. Under the new law, the Department of Corrections must provide all district attorneys with advance notice of which convicted criminals are being paroled and when.¹⁷ This will enable district attorneys to inform a victim of what is happening in their case, for example: "The man that raped you is being released next Monday. We know he has only served four years of his twenty-year sentence, but we at least wanted to give you the courtesy of knowing you may see him across the aisle in your local store."

IV. FUTURE OF VICTIMS' RIGHTS

The progress exemplified by the enactment of the Victims' Bill of Rights legislation is significant, but represents only a step toward meaningful criminal justice reform. Although the Oklahoma crime

14. N.Y. EXEC. LAW § 632-a (McKinney Supp. 1981-1982).

15. *Barnett v. Wojtowicz*, 66 A.D.2d 604, 414 N.Y.S.2d 350 (1979); *Matter of Johnsen*, 103 Misc. 2d 823, 430 N.Y.S.2d 904 (1979). For an excellent study of the issues raised by "Son of Sam" statutes, see Comment, *Compensating the Victim from Proceeds of the Criminal's Story—The Constitutionality of the New York Approach*, 14 COLUM. J.L. & SOC. PROB. 93 (1978); Comment, *Criminals-Turned-Authors: Victims' Rights v. Freedom of Speech*, 54 IND. L.J. 443 (1979); Comment, *In Cold Type: Statutory Approaches to the Problem of the Offender as Author*, 71 J. CRIM. L. & CRIMINOLOGY 255 (1980).

16. OKLA. STAT. ANN. tit. 21, § 455 (West Supp. 1981-1982). Before it was amended the statute provided a penalty of not less than one nor more than three years in prison for preventing or dissuading a witness from testifying. OKLA. STAT. tit. 21, § 455 (Supp. 1980) (amended 1981).

17. OKLA. STAT. ANN. tit. 57, § 332.2 (West Supp. 1981-1982).

victim is no longer a lightweight on the scales of justice, we still have a system that many law abiding citizens do not respect and most criminals do not fear. There is too little certainty and finality in today's criminal justice "revolving door" process. Legislation is needed to ensure speedier trials and more efficient appellate review. Justice delayed is justice denied, for the victim as well as the defendant. After all, "[t]he people's safety is the highest law."¹⁸

18. J. BARTLETT, *FAMILIAR QUOTATIONS* 134 (15th ed. 1980) (anonymous source).