

8-15-1984

Victims' Perceptions of Criminal Justice

Deborah P. Kelly

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/plr>



Part of the [Criminal Law Commons](#)

Recommended Citation

Deborah P. Kelly *Victims' Perceptions of Criminal Justice*, 11 Pepp. L. Rev. 5 (1984)
Available at: <http://digitalcommons.pepperdine.edu/plr/vol11/iss5/4>

This Symposium is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized administrator of Pepperdine Digital Commons. For more information, please contact Kevin.Miller3@pepperdine.edu.

Victims' Perceptions of Criminal Justice

DEBORAH P. KELLY, PH.D.*

This article considers the criminal justice system from the crime victim's perspective. Victims are the people behind crime statistics. They are the individuals who suffer the injuries inflicted by criminals and who reveal the existence of crime when they report it. Victims are the key to apprehending criminals and the justification for the state's subsequent prosecution, yet they are often the people we know least about.

Volumes have been written on the rights of defendants. The role of prosecutors has been studied and the decisions of judges are reported in casebook after casebook. Much has been written on discretion and attrition in the judicial process, yet we seldom consider how these decisions affect the injured party. We know comparatively little about how crime victims view the judicial process, though their cooperation is central to its operation.

Once a victim reports a crime to the police, the state—police, prosecutors, and judges—takes over. What actually happened to the victim frequently seems to matter only insofar as it guides law enforcement officials in determining how much attention to give the complaint and how to classify the offense. For the most part, victims' opinions are rarely solicited; personal costs incurred by the victim are considered irrelevant. Instead, what was once a private matter now becomes the business of strangers to be handled mainly as they see fit.

The working assumption of the criminal justice system is that, despite this transfer of interest, victims will come forward and cooperate, because although the state brings the case, without the victim's cooperation, there may be no case. Such cooperation is not always forthcoming. A national study of prosecutorial decision-making concluded that witness problems were the primary

* B.A., University of Vermont, 1974; M.A., 1977, Ph.D., Johns Hopkins University, 1982. Assistant Professor, Department of Government, American University.

reason why violent crimes were dismissed.¹ However, subsequent research found that prosecutors often misjudged the victim in trying to anticipate the victim's behavior and strength as a witness. Cannavale, in his study of witness cooperation, concluded that many prosecutors labeled as "uncooperative" witnesses who only lacked information about when to show up and what to do.²

These findings suggested that victims were not necessarily uncooperative; more often they were confused. Such confusion is understandable. Consider the judicial process from the victim's perspective: Victims are introduced to a system grounded on the legal fiction that victims are not the injured party. Victims soon learn they have no standing in court, no right to counsel, no control over the prosecution of their case, and no voice in its disposition. In an attempt to alleviate these problems, programs have been developed to educate witnesses as to their role in the criminal justice process, reduce their confusion, and thereby minimize the prosecutors' problems with witness noncooperation.³ The theory was that if the state helped victims, victims would in turn help the police to apprehend and the prosecutors to convict offenders.

To the extent that victim/witness programs have been analyzed, they generally have been evaluated from an administrative perspective. For example, studies have considered whether new programs reduced unnecessary police appearances and waiting time, produced more cooperative witnesses, decreased case dismissals, and increased conviction rates.⁴ This research perspective, while important in identifying what the courts need from victims, neglects an equally important inquiry; what do victims want from the justice system?

This paper will address that question and also explain why victims' needs should be considered. The comments in this paper are based on a study in which over 100 personal interviews were conducted with felony crime victims in metropolitan Washington, D.C.⁵ In the course of these interviews, respondents were asked

1. Institute for Law and Social Research, *Expanding the Perspective of Crime Data: Performance Implications for Policymakers* (Washington, D.C. 1977); Brian Forst, *Arrest Convictability as a Measure of Police Performance*, paper presented at American Society of Criminology (November 1981).

2. F. CANNAVALE, *WITNESS COOPERATION*, INSTITUTE FOR LAW AND SOCIAL RESEARCH (1975).

3. See *VICTIM RIGHTS AND SERVICES: A LEGISLATIVE DIRECTORY 1984* (Washington, D.C.: The National Organization for Victim Assistance 1984).

4. See, e.g., A. LITTLE, *COMMISSION ON VICTIM WITNESS ASSISTANCE: FINAL EVALUATION REPORT* (Washington, D.C. 1977).

5. For further explanation of methodology and findings see Kelly, *Delivering Legal Services for Victims: An Evaluation and Prescription*, 8 *JUST. SYS. J.* (Spring 1984 forthcoming).

about their contacts with and attitudes toward police, medical, and court personnel. Additionally, respondents were asked to evaluate special services such as victim compensation programs, crisis centers, and victim/witness units.

Victims' needs can be divided into two general categories: (1) relief from the administrative inconvenience of going to court, and (2) more participation in the judicial process. This article will initially review victims' administrative problems and then will address victims' requests for more systemic reforms to increase their status in the criminal justice process.

ADMINISTRATIVE INCONVENIENCE

Studies which have focused almost exclusively on administrative inconvenience have created the impression that victims are primarily troubled by the administrative run-around—especially the loss of time (delay, waiting, postponements) and monetary concerns (missed pay, transportation, babysitting).⁶ Although these problems occur, such studies mask more fundamental problems victims experience with law enforcement. Indeed the purpose and design of such studies frequently predetermines their results. Their purpose is often to better manage witnesses and promote their cooperation. Their design is to ask victims specific questions such as: "Did you have trouble with transportation, parking, or finding the court building?" As victims are usually not asked more substantive questions about their role in the judicial process, it is logical that their responses are limited to issues of court-related inconvenience.

Programs which have been developed to compensate victims for crime costs and minimize their court-related inconvenience are available in varying degrees throughout the country.⁷ In spite of these extensive services, however, many victim's concerns remain unanswered:

1. Services are frequently provided to those select witnesses the state needs to make its case. As most cases are dismissed or plea bargained, many victims never benefit from such programs because they are not needed to testify or provide further evi-

6. UNITED STATES DEPT OF COM., BUREAU OF THE CENSUS, THE MILWAUKEE CRIME FOLLOW-UP SURVEY, FINAL SURVEY REPORT (1976).

7. See VICTIMS RIGHTS AND SERVICES, *supra* note 3, for complete list of available services and legislative activity in this area.

dence. As one woman stated: "After I identified the guy at lineup I never heard from anyone again. They got what they needed and dumped me." Other victims were excluded when their complaints were dropped in plea negotiations.

2. Services may be provided which are relatively unimportant to victims, while other more important needs are overlooked. For example, although many victims experience problems with transportation, babysitting, and parking, most do not judge these problems as serious.⁸ Their wishes for greater participation are rarely addressed in these programs.

3. Some victim/witness assistance programs exist in name only. Frequently they enable prosecutors to *manage* rather than *assist* victims. In one jurisdiction in the Washington, D.C. area, for example, the victim/witness unit primarily serves bench warrants and tracks down key witnesses who leave the court's jurisdiction.

Although it is clearly important that services have been developed to remedy these problems, other critical concerns remain overlooked. Existing services address administrative difficulties associated with the court and the crime but rarely affect the more fundamental issue of expanding the role of victims in the judicial process.

STRUCTURAL REFORM

Above all, victims want their personal interests recognized by the judicial system. They are surprised to learn how little their opinions matter and how rarely their interests are considered. They soon find that, as Gilbert Geis observed: "Their role is like an expectant father in the delivery room—necessary for things to have gotten underway in the past but at the moment rather superfluous and mildly bothersome."⁹

Victims' comments clearly indicate that they deeply resent being excluded from deliberations. To illustrate, when 100 rape victims were asked how they would improve police and court procedures, most wanted increased participation and status in the judicial system. Though victims are legally irrelevant to the state, their proposals reflect that the case is extremely relevant to them.

Victims' evaluations of the police were strongly related to how much information police provided on the case, how frequently victims were contacted, and how considerate police were of their feelings. In all cases the rule was, the more involved victims per-

8. See Kelly, *supra* note 5, for analysis of victims' court-related problems.

9. Geis, *Victims of Crimes of Violence*, VIOLENCE AND CRIMINAL JUSTICE 63 (D. Chappell & J. Monahan, eds. 1975).

ceived themselves to be, the more satisfied they were with police services.

Victims want the police to provide information on the status of their assailant. They want to be called when the defendant is arrested and told whether he is in jail, released on bail, or roaming the neighborhood. Victims want this information—*regardless* of their utility to the case. Additionally, they want police officers to support, not second-guess, their behavior. Victims objected when, for example, police commented, "That's what you get for living in the city" or "You should have known better than to go out alone." Victims urged police to focus on the offender's behavior, not the victim's; to investigate the crime, not the victim's judgment in dating the offender, leaving a window open, or jogging at night.

Victims also want more recognition from the legal system. Specifically, they want to be informed of deliberations, included in case developments, and offered an opportunity to participate in determining what happens to their assailant.

Victims also want better legal representation of their interests. Statistical analysis revealed that victims judged prosecutors in part as a client views private counsel—the better the perceived representation, the more favorable the evaluation. This evaluation was not primarily based on the disposition of the case. Rather, the more frequently victims heard from the prosecutor and were consulted about the case, the more satisfied they were with prosecutors' services. However, many felt that they were excluded, their case was not well prepared, and no continuity in personnel was provided which required them to repeat their story to a series of new prosecutors.

Postponements were particularly difficult to tolerate. Studies show that witnesses' opinions of the court deteriorate as the number of postponements increases.¹⁰ Sixty percent of the victims interviewed had their court date postponed at least once. Delay in court hinders the victim's recovery. As one woman stated: "Your life is on hold until it's over." Victims believed continuances were granted with little consideration for their feelings. Additionally, decisions on case dispositions and sentencing were

10. M. Knudten, R. Knudten & A. Meade, *Will Anybody be Left to Testify? Disenchantment with the Criminal Justice System*, *THE NEW AND THE OLD CRIMINOLOGY* 207-22 (E. Flynn & J. Conrad, eds. 1978).

usually made regardless of victims' interests. It is these imbalances that victims seek to correct.

Why Listen to Victims?

There are at least four major reasons to correct the present judicial imbalance and institutionalize victims' roles in the criminal process.

1. Victim/witness satisfaction with the judicial process is essential to its operation. The court systems are often held in low esteem by those who participate in it. Contrary to other institutions, the more contact witnesses have with the courts, the lower their evaluation.¹¹ These negative evaluations may have long-term effects. Once witnesses experience delay, intimidation, or financial loss, they may be reluctant to participate in the court system again. As an editorial in the *San Francisco Examiner* noted: "It is unreasonable and self-defeating to expect that citizens, no matter how dedicated, will automatically keep subjecting themselves to personal loss and inconvenience in the name of justice."¹²

Negative assessments may be contagious. As the National Advisory Commission observed: Witness problems "contribute to an undercurrent of popular dissatisfaction that is undermining the public's respect for the American court system."¹³ As with any consumer complaint, when one person has a bad experience—whether it is with a restaurant or a movie—the story spreads. Others avoid the same restaurant or skip the movie. The same holds true for the court system. The lack of enthusiasm displayed by most citizens upon receiving a notice for jury duty, and the creative reasons offered for being excused from service, are common examples of the citizenry's reluctance to participate in the court system.

Victims' satisfaction is particularly important. Studies have shown that an estimated 87 percent of reported crime comes to police attention through victims' reports.¹⁴ Furthermore, research on the criminal investigation process shows that victims generally

11. YANKEVICH, SKELLY & WRIGHT, *THE PUBLIC IMAGE OF THE COURTS: HIGHLIGHTS OF A NATIONAL SURVEY OF THE GENERAL PUBLIC* (Williamsburg, Va.: National Center for State Courts 1978).

12. *Quoted in* F. CANNAVALE, *WITNESS COOPERATION*, *supra* note 2, at 16.

13. NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, *TASK FORCE REPORT ON COURTS 1-2* (1973).

14. Hawkins, *Who Called the Cops?: Decisions to Report Criminal Victimization*, 7 L. & SOC'Y REV. 427, 441 (1973) (citing Black, *Production of Crime Rates*, 35 AM. SOCIOLOGICAL REV. 733, 736 (1970)).

provide police with information critical to solving the case.¹⁵ In short, the criminal justice system depends on victims; if they decide the inconvenience of participating is too great, more crimes will be committed with impunity.

2. Presently the criminal justice system only exacerbates the loss of control victims experience. Even if, for example, their transportation and parking is paid for, victims must still regain control over what once were their orderly lives. When victims are included and informed only at the state's whim, this loss of control is compounded. Information is an important first step toward re-establishing control, but it is not enough. It is critical that at some point in the judicial process victims be given an opportunity to speak up, whether at a pretrial conference, plea negotiation, or sentencing. Establishing the victims' right to participate would help reduce their sense of disorder and demonstrate a new found respect for their rights.

3. Attorneys frequently object to increased victim participation because they assume such involvement is synonymous with harsher penalties, retribution, obstruction, and delay. There is no evidence to support these assumptions; the evidence that exists suggests the contrary. In Florida, for example, pretrial settlement conferences which included victims, police officers, prosecutors, defense attorneys, and judges in deliberations found that cases were disposed of more quickly. Victims did not demand that prosecutors "throw the book" at offenders, but rather, usually agreed with recommendations. Victims frequently turned down invitations to participate, but those police officers and victims who attended pretrial conferences felt more positive toward the courts as a result.¹⁶ Similarly, a study of jurisdictions with victim-impact laws found that, with one exception (Ohio), sentences did not increase.¹⁷ This may suggest that the victims' primary concern is how they are treated, not what punishment the defendant incurs.

4. Due process may be extended to victims without compromising defendants' rights. Currently, experimental programs exist that require the judicial process to recognize victims. Four-

15. See generally P. GREENWOOD, J. CHAIKEN & J. PETERSILLA, *THE CRIMINAL INVESTIGATION PROCESS* (1977).

16. Heinz & Kerstetter, *Pretrial Settlement Conference: Evaluation of a Reform in Plea Bargaining*, 13 L. & Soc'y REV. 349 (1979).

17. New York State Crime Victims Board, *A Quick Assessment and Evaluation of Victim Impact Statement Law* (unpublished study, May 1983).

teen states have recently approved Victims' Bills of Rights, which vary in scope but generally formalize victims' rights to information, due process, participation, and notice. Such legislation will benefit both victims and potential victims. It is a public statement that the courts' concerns extend beyond administration, budget, and defendants' rights.

Victim-impact statements also provide opportunities for victim participation. Some fourteen states, as well as the federal courts, now have statutes which allow victims' viewpoints to be considered at sentencing. Additionally, the President's Task Force on Victims of Crime called for a constitutional amendment to guarantee "a victim's right to be present and heard at all critical stages of judicial proceedings."¹⁸ Most recently the National Judicial College and the American Bar Association adopted guidelines to increase victims' participation in the judicial process.¹⁹

Today, many victims' concerns are receiving attention. However, to truly address victims' needs, the criminal justice system must not limit reforms to "courtesies and conveniences." The judicial system must respond to victims' major objection—the criminal justice system's indifference to their personal opinions and interests. Not only do we owe it to victims to provide opportunities, services, and procedures which correct this, but on an administrative level, we depend on victims to help in crime control. It is only fair that victims' rights be taken more seriously. Victims do not ask to conduct or sing solo; they merely ask that their voices be allowed to join the chorus.

In sum, analysis both refutes the idea that the victims' sole concern is retribution and underscores that to do something *for* victims is not the same as doing something *to* defendants. Victims' status and satisfaction with the judicial process may be improved by instituting reforms which expand their involvement and recognize that crime involves more than the state and the defendant.

18. See THE PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME: FINAL REPORT 114-15 (Washington, D.C., Dec. 1982).

19. See VICTIMS COMMITTEE, CRIMINAL JUSTICE SECTION, ABA GUIDELINES FOR FAIR TREATMENT OF VICTIMS AND WITNESSES IN THE CRIMINAL JUSTICE SYSTEM (Washington, D.C. 1983).