

Trial
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Protecting the Vulnerable

*84 CIVIL JUSTICE FOR CRIME VICTIMS

James Ferguson [\[FNa1\]](#)

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Every year over 30 million Americans are victims of crime. [\[FN1\]](#) Each has a potential tort claim arising out of his or her victimization, and the number of crime victims who pursue civil cases is increasing. [\[FN2\]](#) As this number grows, there is a greater need for qualified trial lawyers willing to take on the important work of representing crime victims in civil suits.

Many lawyers may not think of crime victims as a discrete client population with unique motivations and needs. In fact, civil attorneys who regularly represent crime victims find that regardless of the type of crime, many victims turn to the civil justice system for similar reasons. Furthermore, once they decide to pursue lawsuits, they come to the table with unique needs. Effective representation of these clients requires an appreciation of their motivations and needs and an understanding of the resources that exist to assist them.

Society has definite concepts of what it means to "do justice" when a crime has been committed. Most of these concepts focus on the perpetrator of the crime. Over the centuries, society has produced mechanisms for obtaining justice, including grand juries, criminal trials, pre-sentencing investigations, probation, and incarceration. Society's thinking is not nearly as developed when it comes to the question of what it means to do justice for crime victims. There are few standard mechanisms (particularly within the criminal justice system) that are designed to help them obtain justice.

One path to justice is the civil justice system. Many victims turn to it in search of what they did not find in the criminal justice system. For example, the offender may not have been held accountable because no criminal charges were brought. Or, if the criminal case was tried, the prosecution may not have been able to prove its case beyond a reasonable doubt.

The killing of Amadou Diallo in New York City was such a case. Police shot Diallo 41 times as he pulled out his wallet--the officers said they thought he was reaching for a gun--in the vestibule of his apartment building. The criminal trial resulted in the officers' acquittals, leaving Diallo's family with nothing they could call justice. The family has filed a wrongful death suit, which may provide them with the accountability they say they did not find in the criminal justice system. [\[FN3\]](#)

Even criminal convictions and guilty pleas often do not provide victims with a complete sense of justice. A criminal case is a process instituted by, and brought in the name of, the state. It is a process over which a victim has little control. For example, a prosecutor

might seek a victim's input in evaluating a proposed plea agreement, but the prosecutor has the final say in all plea bargaining.

A civil case, on the other hand, affords victims greater control. A case cannot be settled without the victim's consent. A civil case is brought in the victim's name, and if it is successful, the perpetrator is held accountable directly to the victim rather than to the state. For example, Cyndi Roise was seriously injured as a result of domestic violence. She sued her abuser for battery and was awarded substantial damages. [\[FN4\]](#) A civil trial allows a jury of the victim's peers to hear the victim's story and to acknowledge that the victim was wronged.

In a civil case, a crime victim can also hold third parties responsible when their negligent (but not criminal) conduct ^{*85} caused conditions that allowed a crime to occur. For example, unknown assailants shot and paralyzed Amando Sanchez in the lobby of an apartment building owned by the New York City Housing Authority. Many crimes had occurred in the project, and the lock on the front door of the building where the crime took place had been broken for several weeks before the attack. Sanchez sued the housing authority, alleging negligent security. A verdict for Sanchez was upheld on appeal. [\[FN5\]](#) Other examples of third parties who may be found liable include tavern owners who serve too many drinks to drunken patrons who later cause serious car crashes [\[FN6\]](#) and employers who are negligent in their hiring and supervising of employees who later intentionally harm others. [\[FN7\]](#)

Financial support

Crime turns many victims' lives upside down and can destroy their financial resources. Most directly, it can involve theft or destruction of property. Just as deeply felt in the financial sense are crimes that incapacitate or kill the victim, destroying a family's wage-earning capacity. One of crime victims' many needs is money to start rebuilding their lives. Unfortunately, often several years pass before even the most meritorious civil suit might result in a payment to them.

This typically slow-moving course of a civil case, coupled with the fact that many do not approach a lawyer until the trauma caused by the criminal act has begun to lessen, means that for most crime victims the civil justice system is not a means for meeting immediate financial obligations. Although a civil case may provide some security down the road, lawyers representing crime victims should be aware of alternative sources that can provide more immediate financial support.

State crime-victim compensation programs. Every state and the District of Columbia has a program designed to enable victims to recover some of the financial losses suffered as a result of crime. [\[FN8\]](#) Civil attorneys may want to help clients pursue compensation claims--statutory attorney fees are available in most states. At a minimum, attorneys should know enough about their state program to provide victims general information about it and to advise them where to make a claim.

Most compensation programs are available only to victims of violent crime. A direct victim who was physically harmed is usually eligible to present a claim, and most states also allow claims by secondary victims, like Good Samaritans and dependents of homicide victims. Although apprehension or conviction of a criminal is not required before compensation can be awarded, the victim usually must cooperate with authorities investigating the crime to be eligible for compensation.

In some states, the claimant must show financial need before a claim will be allowed. Also, almost all compensation programs will cover an expense only if it is not covered by some other source, like health insurance or workers' compensation.

Compensation programs typically cover expenses like medical bills, lost wages, and funeral costs. Victims must be prepared to prove their losses by providing documentation, including hospital bills, employment and financial records, and insurance statements. (These are the same documents the attorney will be collecting in the process of developing the civil case.) Some programs also allow recovery for services like job rehabilitation programs.

Almost all states limit the overall compensation a victim can receive and usually also limit awards for a particular type of loss, such as medical expenses. For most states, the maximum allowable total payment ranges between \$10,000 and \$25,000. The average per-victim compensation nationwide is about \$2,000. [\[FN9\]](#) These numbers make clear that for seriously injured crime victims, compensation programs are no substitute for the substantial recovery possible in a civil suit.

A few states have higher compensation limits. For example, in New York, the program has no maximum amount for medical expenses. [\[FN10\]](#) In Washington, there is a \$150,000 limit for medical costs, and even *86 that can be waived in special circumstances. [\[FN11\]](#) But for crime victims in most states, compensation programs are a temporary remedy that may pay some bills until a larger recovery is secured.

These programs have other drawbacks. The most glaring is that they do not provide benefits to victims of nonviolent crimes. In addition, although many programs will cover some mental health counseling, most cap this expense (often at about \$2,000), so many cannot get the counseling they need. Most compensation programs award benefits only if the crime was promptly reported to the authorities--usually within 72 hours. (Many states have exceptions to this deadline for child victims, domestic violence victims, and other victims with special circumstances.)

Most programs also have short limitations periods for filing a claim. In many states, the period is one year from the date of the crime, and in a few states, like Indiana and Maryland, the deadline is just 180 days. [\[FN12\]](#) Finally, if a settlement or award is obtained in a civil suit, the compensation program may place a lien for the amount of any compensation already awarded.

Court-ordered restitution. Criminal courts in every state can order perpetrators to pay restitution. In many states, the court is required to order the offender to pay restitution unless the court can specify a good--or, in some states, compelling--reason for not doing so.

Restitution can be paid to the direct victims of a crime and usually to family members who survive homicide victims. The expenses restitution can cover are similar to those compensation programs can cover: medical and counseling expenses, lost wages, funeral expenses, and other out-of-pocket costs. There is one notable difference: Restitution orders can cover lost or damaged personal property, while compensation programs almost always cannot.

Despite what might seem to be an effective system for forcing perpetrators to reimburse victims, restitution orders are not entered in many criminal cases, and when they are, restitution is often difficult to collect. Trial attorneys representing crime victims in civil cases should at least have a working knowledge of the local restitution system so they can

advise clients about their right to restitution and perhaps work with the client to see that orders are paid.

Victims should be informed about restitution early in the criminal justice process by staff in the system, including prosecutors, probation officers, and victim witness coordinators. If a victim has not been informed, the attorney representing him or her should advise the client to make further inquiries to the prosecutor or victim witness coordinators because in many states a restitution award will not be made unless the victim has requested it.

As soon as possible after the crime, victims should begin compiling documents to prove their losses. As with state compensation claims, the attorney may want to help the client obtain documents like medical bills because the documents needed to prove a restitution claim are the same ones needed to develop the damages portion of a civil case.

Attorneys may have more than just an advisory role in restitution claims. For example, they may want to take part in collection efforts. In many states, victims can use the same tools available to collect civil judgments to collect restitution orders.

Also, probation officers in many jurisdictions are responsible either for directly collecting restitution payments or for overseeing payments to the court. Attorneys may want to contact perpetrators' probation officers for their clients to encourage prompt and regular collection of restitution payments.

Guidance and emotional support

For many victims, the criminal case is proceeding when the victim first contacts a civil lawyer. At that point, many victims are still dealing with physical and emotional trauma from the crime. Trial lawyers should be aware of victim service providers who can help clients through the criminal justice process and also help them begin to cope with the trauma they experienced.

Victim service providers are either system-based or community-based. Both types play an important role.

System-based service providers. Victim service professionals based in the criminal justice system are usually employed in prosecutors' offices, although they may also work in police departments, courts, or probation offices. Civil attorneys will normally not need to refer clients to system-based providers because victims will have already been introduced to these professionals by a police officer, prosecutor, or other individual involved in the initial stages of the criminal case.

Plaintiff attorneys who represent victims should be knowledgeable about local system-based programs to advise clients about what to expect from these programs and how best to avail themselves of their services. To learn about these programs, attorneys should call the prosecutor's office to ask what programs exist and then call the programs to ascertain what services they provide.

System-based victim service providers are intended to serve as the victim's entry point into the criminal justice process. Ideally, the provider will explain to victims what their rights are and what they can expect from events like preliminary hearings, grand jury proceedings, and trials. The provider may also accompany victims to interviews with attorneys and to trials and other courtroom proceedings. The provider should offer information about victim compensation programs, restitution, and other available victim resources.

These programs have shortcomings, most of which are the result of inadequate funding.

Some jurisdictions do not even have a program and many that do have one that is so small it cannot address the needs of individual victims. For example, most system-based programs serve only victims of violent crime. None provides the counseling that so many crime victims need. Because of these inadequacies, plaintiff lawyers should refer clients to community-based programs--like domestic violence shelters or homicide survivors' support groups -- that may be able to address a broader spectrum of victims' needs. Community-based providers. There are two types of community-based agencies. Some focus efforts on specific categories of victimization, such as domestic violence, sexual assault, or drunk driving. Other assist victims of any type of crime. The former are much more common. However, *88 regardless of the type of agency, community-based providers usually present a broader array of services than system-based providers. Many community-based service providers offer counseling to help crime victims deal with the trauma caused by the crime. Plaintiff attorneys should educate themselves about local nonprofit, community-based agencies to know whether help is available for the client's particular type of victimization.

Many community-based providers offer services unique to the types of victimization on which they focus. For example, domestic violence agencies often offer legal services, including help in obtaining protective orders. Other providers may offer assistance finding employment or help in navigating social services programs.

Attorneys should establish relationships with local victim service providers. As with system-based providers, the prosecutor's office is a good place to start for lawyers who want to find out about local community-based programs. In addition, the National Center for Victims of Crime maintains a database of over 4,000 service providers nationwide.

[\[FN13\]](#)

Relationships between attorneys and service providers will benefit both victims and attorneys. When providers aware of the civil justice option encounter a victim with a potential civil case, they are likely to refer that victim to an attorney whom the provider has dealt with and whom the provider is confident is sensitive to victims' issues.

Resources for attorneys

A variety of other resources are available to help attorneys represent crime victims in civil suits. Many state trial lawyer organizations have special practice sections that focus on crime victim litigation. Similarly, a number of ATLA litigation groups cover areas of law that may involve crime victims. These include groups focusing on child sex abuse, domestic violence, inadequate security, liquor liability, and nursing home abuse. These groups offer an excellent means of sharing pleadings, favorable case law, and other resources with attorneys working on similar cases. [\[FN14\]](#)

The National Crime Victim Bar Association is a nationwide organization of trial attorneys and other professionals who represent and work with victims pursuing civil suits. [\[FN15\]](#) The association is dedicated to increasing the quality and quantity of legal representation available to victims. Victims who call the association looking for attorneys to represent them in civil cases are referred to association members in the victim's local area.

The association offers other resources, including an Internet-accessible database of over 11,000 summaries of civil cases arising out of criminal acts and publications that summarize current case law and analyze issues related to crime victim litigation. The

association's quarterly magazine, *89 Victim Advocate, contains a regular feature addressing the special needs of crime victims as civil litigants. The ATLA Board of Governors recently endorsed the National Crime Victim Bar Association, and ATLA members who join it receive a \$50 discount on membership fees. Part of ATLA's mission is to "champion the cause of those who deserve redress for injury to person or property." It is hard to imagine a client population more deserving of redress than crime victims. To provide effective representation, trial attorneys should strive to educate themselves about crime victims' unique needs and about the resources that exist for meeting those needs.

[\[FN1\]](#). James Ferguson is the director of the National Crime Victim Bar Association in Arlington, Virginia.

[\[FN1\]](#). CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS, U.S. DEPT OF JUSTICE, CRIMINAL VICTIMIZATION 1998: CHANGES 1997-98 WITH TRENDS 1993-98 (1999).

[\[FN2\]](#). The National Crime Victim Bar Association monitors published opinions from civil suits arising out of criminal acts. The National Center for Victims of Crime, a nonprofit organization that founded the bar association, estimates that these suits have increased about 200 percent since 1991. See Elaine McArdle, New Bar Association for Lawyers Who Represent Crime Victims, LAW. WKLY. USA, May 3, 1999, §B.

[\[FN3\]](#). B.J. Palermo, Diallo Family Looks for Its Second Act, NAT'L L.J., Mar. 3, 2000, at A1; Laura Italiano, Team Diallo Confident on Civil Lawsuit, N.Y. POST, Mar. 12, 2000, at 14.

[\[FN4\]](#). [Roise v. Kurtz](#), 587 N.W.2d 573 (N.D. 1998).

[\[FN5\]](#). [Sanchez v. New York City Hous. Auth.](#), 682 N.Y.S.2d 103 (App. Div. 1998).

[\[FN6\]](#). See, e.g., [Cusenbary v. Mortensen](#), 987 P.2d 351 (Mont. 1999).

[\[FN7\]](#). See, e.g., [Hutchison v. Luddy](#), 742 A.2d 1052 (Pa. 1999).

[\[FN8\]](#). See generally NATIONAL ASS'N OF CRIME VICTIM COMPENSATION BDS., U.S. DEPT OF JUSTICE, PROGRAM DIRECTORY (1999) (visited Apr. 26, 2000) <http://www.ojp.usdoj.gov/ovc/help/progdir.htm>.

[\[FN9\]](#). OFFICE FOR VICTIMS OF CRIME, U.S. DEPT OF JUSTICE, CRIME VICTIM FUND SUMMARY (1998).

[\[FN10\]](#). [N.Y. EXEC. LAW §631 \(McKinney 2000\)](#).

[\[FN11\]](#). [WASH. REV. CODE §7.68.085 \(1999\)](#).

[\[FN12\]](#). [IND. CODE §5-2-6.1-16 \(b\) \(2000\)](#); [MD. ANN. CODE art. 27 §820 \(b\) \(1999\)](#). Under both statutes, however, an extension of up to two years may be granted for good cause shown.

[\[FN13\]](#). For more information, call (800) FYL-CALL.

[\[FN14\]](#). Call (202) 965-3510, ext. 306, to find out more about ATLA's litigation groups.

[\[FN15\]](#). For more information, call (703) 276-0960 or go to [http:// www.victimbar.org](http://www.victimbar.org).
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