

**THE AMERICAN SYSTEM OF CRIMINAL JUSTICE
A PLACE FOR THE VICTIM?**

On March 14, 1987, Susan Green, age 25, was found dead in her apartment in Somerset County, New Jersey. She had been sexually assaulted and brutally stabbed.

Two days later a co-worker, John Reed, told his roommate, Fran Varga, that he had found Susan dead in her apartment. Varga called the police and she and Reed agreed to meet the police at the crime scene and then at the County Prosecutor's Office. Varga telephoned an attorney who sent an associate to the Prosecutor's Office to inquire about representing either Reed, Varga or both of them.

During the questioning of Reed, the investigators followed the guidelines set forth by the United States Supreme Court in 1986 in the case of Moran v. Burbine. In that case the Court held that the police are not obligated to inform a suspect of the presence of a lawyer at the police station if he waives his right to see a lawyer and does not request to speak to one.

Having been given the standard Miranda rights by the investigators, Reed was specifically advised of his right to legal counsel. He waived this right on three separate occasions; he did not ask to speak to an attorney and confessed to the crime. He was not informed, prior to the confession, of the presence of the attorney. Furthermore, the attorney was not permitted to speak with Reed during the interrogation.

Reed was indicted for murder and aggravated sexual assault and the prosecutor sought the death penalty. At the trial, Reed was convicted of knowing murder and aggravated criminal sexual contact. A hearing on the imposition of the death penalty was held before the same jury.

The victim's family, both privately and publicly, requested that the Prosecutor refrain from seeking the death penalty. Their pleas were not based upon any opposition to the death penalty. As the victim's mother stated, "We knew that the Supreme Court would

overturn the death penalty and we did not think that we could emotionally and physically survive another trial."

The testimony of the coroner revealed that Susan had been stabbed fifty-three times and sustained a fractured skull.

At the conclusion of the death penalty hearing, the court instructed the jury in accordance with the applicable law. The jury found that the State had not met its burden and, Reed was spared the death penalty. The Court then sentenced him to life in prison without parole eligibility for thirty (30) years.

In 1991 the Appellate Division overturned the murder conviction on the basis that the jury was not given the opportunity to find Reed guilty of passion/provocation manslaughter instead of murder. The Court, however, rejected the Defendant's contention that his right against self-incrimination had been violated, and therefore, his confession was deemed admissible. Reed petitioned for certification to the New Jersey Supreme Court asserting that the police violated his right against self-incrimination, thereby rendering his confession inadmissible.

On July 23, 1993 the New Jersey Supreme Court reversed the murder conviction and ruled that Reed's confession was inadmissible because his common law right against self-incrimination had been violated. Justice Robert L. Clifford, the lone dissenter, argued that since the defendant did not ask for an attorney, the investigators had no duty to inform him of the presence of one at the police station.

The prosecutor has indicated that he will retry Reed. Without the use of the confession a conviction will be difficult.

In reviewing the New Jersey Supreme Court's decision in State v. Reed, there is clearly strong support in legal theory for the decision of the Court.

Dave and Debbie Green do not understand the legal theories behind the New Jersey Supreme Court's decision in State v. Reed. They do not understand how a jury could conclude that, after stabbing their daughter fifty-three times, Reed did not intend to kill

her. And they do not understand why, in over six years, they have been denied "justice" in the death of their daughter.

Dave and Debbie Green do understand, however, what is real to them. They once had four living children and now they have only one. They have lost two sons to illness and their only daughter to murder. They also understand that while the law, as applied to all, must have definable limits, their pain, their anguish and their extreme loneliness have no bounds.

The retrial of Reed is scheduled for early 1994. In a few months it will be the seven year anniversary of Debbie's death. She would have been thirty-two years old. Her mother speaks of constant nightmares about the upcoming trial indicating that, "I must be there for my daughter, but I expect no justice."

The director of a nationally known grief and counseling program noted:

"For parents who have lost a child, the grief cycle sometimes lasts five or six years, and when there's the extra anguish of murder, it can be much, much longer. Each parent lives in his own personal hell, reliving the death a thousand times, a million times."

There is perhaps no greater nor more disturbing evil than the senseless infliction of crime upon its victims. It is an evil which invades and irrevocably alters the innocence and beauty of the every day experiences, which are so often taken for granted. No longer can a discussion about crime be limited to those individuals who have been accused or convicted of violating the criminal laws. Crime is also about the often forgotten victims and their survivors.

Many individuals prefer to limit their discussions of crime to those forums where the true feeling of the painful impact of crime can at best, be observed from a distance. But crime does not take place in the classroom, or within the conference room or the private rooms of the media executives whose decisions impact upon the content of what we see, read and hear. It takes place on the streets and in people's homes, without reason and

without explanation. And when it does, it sweeps away not only the present, but also the past and future of its victims. As a victim of incest recently stated:

“He robbed me of my childhood. I have so much difficulty functioning as an adult because I have no past as a child to draw upon for strength.”

Violent crime devastates one out of every four families in this state and throughout this country. Each minute, three persons are physically injured due to crime, thirty-three individuals become crime victims and \$25,000.00 in property is stolen or destroyed during criminal activity. One murder occurs every twenty-one minutes in this country and every five minutes one individual will be raped. These statistics become even more devastating when we realize that a substantial number of all serious crimes, such as rape, are never reported to the police. Estimates obtained from the National Crime Survey suggest that less than fifty percent all violent crimes are ever reported.

Bonnie Garland was a bright, loving, twenty year old student at Yale with her entire future ahead of her. When she was savagely and brutally murdered by Richard Herrin, a fellow student, her parents were forced to face the reality of how individuals in our society too often forget the victim and the victim's survivors. As the local social, academic and religious circles rallied around the admitted killer, they pushed aside and finally negated, the existence of this young woman who was the victim. Her value became a casualty in the legal and social process which transformed the murderer into the victim. Commenting on this case, Dr. Willard Gaylin, an expert in the area of human behavior and crime stated:

The killing of Bonnie Garland was not just the theft of a young girl's birthright, not just an unbearable pain inflicted on her family and friends; it was an assault on the social order that makes human life possible. The killing of Bonnie Garland, first by Richard Herrin and then again by a legal and cultural process, which seemed to forget that she had ever existed, endangers us all. In our compassion for the criminal, we must remain vigilant in defense of social good, for the sake of those innocent living and yet unborn.

Too often, a criticism of the treatment of crime victims is limited to what takes place in the courts. We often criticize the judges for their lack of justice. This criticism is often inaccurate because by the time the accused is brought to trial, the criminal justice process is very nearly half over. And since it is almost half over for the accused, it likewise, is almost half over for the victim; because they started together.

Immediately upon the commission of the criminal act, the rights of the actor are elevated to a status of constitutional recognition and protection. And it is mandatory that along each step of the way, the accused shall be afforded all of these rights, by all of the participants, without the slightest exception.

Where within our concept of what we call the criminal justice system, does the victim belong? Does the victim have a place, and if so, whose obligation is it to secure this place? Perhaps, if we understand the following passage from Dr. Gaylin's description of the plight of Bonnie Garland's survivors, then we might understand that there is a reality and a truth in the criminal justice system which must be acknowledged:

"Or mechanisms of identification and empathy are central to our concepts of what is good and what is right. From the day of the killing, (the accused) attracted a host of concerned and compassionate defenders. When one person kills another, there is immediate revulsion at the nature of the crime. But in a time so short as to seem indecent to the members of the personal family, the dead person ceases to exist as an identifiable figure. To those individuals in the community of good will and empathy, warmth and compassion, only one of the key actors in the drama remains with whom to commiserate--and that is always the criminal. The dead person ceases to be a part of everyday reality, ceases to exist. She is only a figure in a historic event. We inevitably turn away from the past, toward the ongoing reality. And the ongoing reality is the criminal; trapped, anxious, now helpless, isolated, often badgered and bewildered. He usurps the compassion that is justly his victim's due. He will steal his victim's moral constituency along with her life.

Many of the individuals in this state who have been labeled as crime victim advocates have themselves been victims of crimes. Most of them, however, have already been through the criminal justice system. It is too late for them to correct the indignities

and harsh realities of their own personal experiences; however, it is not too late to help the many others who will be thrust innocently and blindly into the process. When you have been a victim of a crime you understand what it is like for someone else to be a victim.

After the Assembly Judiciary Committee released ACR 85, the concurrent resolution which ultimately became the Crime Victims' Constitutional Amendment (Article I, Par. 22), the New Jersey Law Journal editorialized, in October of 1990:

"It is difficult for a prosecutor to make the judgments necessary to protect the public place with a victim's claue at his elbow."

"Revenge by the victim or his family was once the victim's right, but since medieval times, crime has offended against the king's peace, and has been pursued and punished by the dispassionate judgment of the law, not the outraged honor of the tribe."

Those who advocate the rights of crime victims do so out of a sense of understanding and compassion. To suggest for one moment that anyone who calls for a constitutional amendment or any other law to support the rights of crime victims, does so out of revenge or such other similar motive is to approach the issue from an unenlightened standpoint, and perhaps, a too firmly implanted root of prejudice. As stated by Kenneth Eikenberry, Attorney General of the State of Washington and Member of President Reagan's 1982 Task Force on the Victims of Crimes:

"I thought my life's experiences had prepared me for the effect of testimony by the dozens of victims of crime willing to come before the Presidential Task Force on Victims of Crime and relive their tragedy so that others might learn from it. Not true, I was shocked! Perhaps the most important lesson I learned from my Task Force experience is that a discussion of victims' rights should not occur until the discussants have first shared the experience of crime victims."

Research has played an important role in the rethinking of public policies about crime victims. Much of that research has been sponsored by the National Institute of Justice. A substantial amount of research has provided prosecutors, legislators and the courts with much information on the effects of crime on victims, on the success of various

programs to help victims recover psychologically and financially, and on ways of helping victims through the criminal justice process.

Research in 1975 focused on victims' experiences both with crime and with the criminal justice system. The findings had significant impact on the thinking of criminal justice planners and the development of programs for victims and witnesses.

Researchers at Marquette University interviewed 3,000 victims and witnesses from cases active in Milwaukee County's court system and 1,600 persons identified as victims of serious personal crimes by a previous National Crime Survey. They concluded that the most frequent problem expressed by victims was the emotional suffering they incurred, while time and income loss posed the greatest difficulties for victims involved in the court process. The fear and emotional distress experienced by victims often extended as well to the victims' families and friends.

The study produced a substantial number of policy recommendations to improve the treatment of victims and witnesses in the courts. Many have since been widely adopted.

The Milwaukee study introduced the term "secondary victimization" to characterize the emotional distress experienced by the family and friends of crime victims.

In 1982 a research team from the New York Victim Services Agency, pursuing the theme of secondary victimization, questioned 240 New York City victims of robbery, nonsexual assault, and burglary. They asked about problems and needs stemming from the crime and about organizations and individuals to whom victims turned for assistance.

While few victims had sought assistance from organizations, virtually all had received help from friends, neighbors, or relatives. The help ranged from listening while victims "ventilated", to aiding in apprehending the criminal, to lending money, to helping with personal errands for the victims.

The New York researchers then contacted supporters named by the victims and interviewed them about their feelings in helping the victims. Most supporters reported being pleased to help, but many said that their own fears about crime had been increased

because of the victim's experience. They felt that, to a certain degree, they were secondary victims of the crime, as the anxiety and distress of the victim had spilled over onto them. Most supporters experienced a greater sense of vulnerability to crime which had not left them.

The study showed that the effects of crime hit hardest among the poor. Psychological distress and the crime-related problems were more common among the less affluent and less educated, and these differences persisted at least up to four months after the crime. Similarly, poorer, less educated supporters were more likely than affluent supporters to report that providing assistance had placed a burden on them.

Psychological reactions of victims were examined in depth under a 1984 NIJ study funded in response to a Victims Task Force recommendation. Researchers at the Medical University of South Carolina interviewed female victims of sexual assault, robbery and aggravated assault, and home burglary, identified through a random victimization study.

Psychological adjustment of victims was measured against that of a sample of non-victims. Details were gathered about current psychological status, previous mental health history, treatment history, and about the crime itself. This research provided the first reliable information about the proportion of victims in various crime categories who experience serious adjustment problems. Results indicated that victims of sexual assault suffer more adverse psychological problems than victims of robbery and burglary.

In the 1970's and early 1980's, the criminal justice community began to realize that victims play a key role in the ability of the police and courts to bring criminals to justice. For many years studies have continued to show that the victim is crucial in helping police apprehend criminals. Research by the Rand Corporation in 1975 reported that information supplied by the victim to the first police officer responding to a crime is more important than any follow up investigative work.

Victims are more likely to report a crime if they think they will be treated fairly by the police the prosecutors and the courts. Likewise, many victims, especially victims of

sexual assault, have concluded that the emotional anguish and indignities suffered in the criminal justice system were so great that, if victimized again, they would not report the crime.

In a murder trial three years ago, in the Superior Court of this State, the parents of the murder victim sat alone during jury deliberations. They sat on a park bench near the Courthouse because the County Prosecutor's Office had never provided any other place for them to sit. The jury deliberations lasted for several days and each day the parents feared that if the weather became inclement, there would be no place for them to sit and wait. They had not spoken with the Prosecutor in over a year, and had been informed of court proceedings by various members of the media, not the Prosecutor's staff. While the Victim Witness Coordinator had been present during a trial, she had not spoken to them in weeks. The parents had originally become aware of the date set for the beginning of the trial when the victim's father received a form subpoena in the mail.

The victim's family had been treated without fairness, compassion and respect during the trial proceedings and throughout many months which preceded the trial. The conduct of the Prosecutor and his staff was so reprehensible that the Attorney General' Office sent the State Victim and Witness Coordinator to the trial to assist the family. This family was truly victimized twice.

A true and meaningful recognition of the rights of crime victims is not unreasonable nor radical. It is a function of understanding, compassion and empathy. It is about a better sense of fairness and justice. And as stated by Supreme Court Justice Benjamin N. Cardozo:

"Justice, though due to the accused, is due the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."

Richard D. Pompelio