

When Victims Knead Victims

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The situation was not right and just about everybody knew it, but it represented “the system,” complete with its susceptibility to advantageous exploitation. Susceptible for everyone, especially the victims of crime who were the ones being exploited. Life is cruel and deliberate, in the belly of the Criminal Justice System (CJS), especially for victims when they become unwitting pawns in the shameful game of Trial Delay.

Keep in mind, by design the CJS affords criminal defendants only one of two possible choices: plead guilty to the crime(s) charged or not guilty and chance the outcome of a criminal trial. Of course, the incentive is on pleading guilty to receive only a fraction of the prison time that a judge or jury might impose in the event of a judicial finding of guilt. However, circumstances in the 1970's and 1980's worked a perverted change into the system, which ultimately led to providing defendants with a third less tolerable outcome.

This change refers to the accepted practice of criminal defense attorneys and prosecutors routinely requesting and judges routinely granting a continuance of virtually all types of courtroom proceedings. It soon became the norm for criminal trials and hearings to be repeatedly postponed and rescheduled often resulting in years of trial delay. In many cases a successful prosecution requires the victim-witnesses testimony so it did not take long for defendants to realize that the more often a trial was continued, the more likely it was that a victim-witness would finally fail to appear in court to testify. This could result in the dismissal of charges and the creation of a convenient means of avoiding prosecution. So now, instead of either pleading guilty or facing a jury, defendants could opt to stall until charges were dismissed.

Facilitating this tactic was the prosecutors' and judges' habit of securing continuances of their own as the excessive caseloads of the times precipitated frequent scheduling conflicts. It is important to keep in mind a defendant's stalling tactic only succeeds if his defense counsel agrees to request an excess of continuances; the prosecutor does not challenge these continuances; and the judge grants them all. While the motivations of prosecutors and judges to participate in this tactical balking game are unclear, what is certain is that defendants in the 1970's and 1980's were repeatedly granted continuances, which in the end worked to their advantage and to the disadvantage of their victims.

To understand the great injustice of this stalling tactic, you must consider the frustration, anguish, anxiety, and even fear, victim-witnesses

often experience and need to overcome in order to present themselves in a public courtroom to testify about the intimate details of their victimization. Then consider the crash of these emotions after being informed their cases have been postponed to accommodate someone else's schedule and they are callously instructed to brave yet another emotionally charged march to the courtroom door. Finally, consider the hardship of having to suffer this emotional roller coaster ride a half dozen times or more over a period of years as continuance after continuance is granted.

Combine this emotional pain with the great physical and financial hardships continuances impose upon victim-witnesses, as each scheduled court appearance requires these witnesses to arrive at the courthouse early in the morning so they can sit in a large, stuffy and uncomfortable prosecution-witnesses room - often overcrowded with prosecution witnesses of other cases - to wait for their turn to testify in court. Victims-witnesses who work must take the day off to appear in court and so additionally suffer the loss of a day's pay. Those who care for young children must provide for daycare or bear the burden of bringing the children with them to the courthouse. Meanwhile, the costs for transportation, food, beverages and any other incidental expenses resulting from this day in court are all borne by the witness.

A system that would allow the imposition of such cruelty upon the innocent victims of crime is ripe for reform, and the Victims' Rights Movement soon rose to bring about this needed reform - with a vengeance! Nationwide, victims' rights advocates and organizations have quickly proliferated to champion the cause of victims' rights in the arena of the CJS and to bring about swift and certain change.

Certainly, an aggressive Victims' Rights Movement was (and still is) needed to combat the many injustices suffered by victims caught in the CJS, but reform is an imperfect process and it can easily be manipulated to bring about more unfairness and harm than it was originally intended to remedy. This has certainly been the case with the passage of recent victims' rights legislation.

Most victims can vote, while most defendants cannot, and this fact has not escaped notice by politicians who have decided to politicize the Victims' Rights Movement and use it. Their goal is not to end the Delay game or right any other wrong in the CJS, but rather to instigate votes by pandering to voting-victims' uncontrollable urge to wreak vengeance upon the despised and politically powerless defendants. The result has been a nationwide glut

of victims' rights legislation that does nothing more than change the beneficiaries of the injustice within the CJS.

In particular, consider the recent collection of legislations sponsored by various victims' rights organizations which allows the victims of crime to give crime-impact testimony prior to sentencing and during parole hearings. These laws are specifically designed to afford victims of crime a say in these matters. In fact, in my state of Pennsylvania, victims' rights advocates and organizations have gone so far as to gain victims the right to give their approval or disapproval to allowing convicts entry into any work-release or halfway house programs which operation WITHIN the prison system.

While at first blush, allowing victims of crime to bare testimony about their particular losses before a tribunal charged with determining the proper degree and scope of retribution might seem appropriate and fair, a closer, more dispassionate, examination of this practice will reveal its potential for great harm. Not intangible, spiritual or moral harm, based on subjective notions of right and wrong, but real harm being suffered by the CJS, innocent citizens and the victims themselves.

To better understand the substance of this harm requires, first, the honest acknowledgment of the obvious, that is, whenever a victim is allowed to influence the duration and nature of punishment a convicted defendant might receive, a system of "revenge" is being introduced. Any system which measures the fairness of punishment by using a scale of the anger and hurt of injured victims can be considered no fairer than a system which allows criminals to determine their own punishment.

Realistically, if the outcome of a victim's revenge were borne only by the offender, then perhaps such an injustice could be tolerated if not overlooked. But this is not the case here. Weighting the degree and nature of punishment to the testimony of the victim, regarding victim-impact, renders a criminal justice system arbitrary because it needlessly relies on the whim of a victim's emotions, temperament, standing in the community, wealth, race, appearance, demeanor, ability to verbalize and willingness to testify, to make important determinations. For example, a defendant who is sentenced after the court receives victim-impact testimony from an emotional victim is likely to receive a harsher sentence than a similarly situated defendant whose victim has chosen not to give such testimony. Or how about racial differences? Are there any doubts that victim-impact testimony from a white victim will result in a longer sentence than victim-impact testimony from a black victim, especially if the offender is black?

How about wealth or notoriety? Would victim-impact testimony from a rich and/or famous victim not result in a harsher sentence than in a similar case where victim - impact testimony comes from a poor and common victim?

As demonstrated, allowing a victim's victim-impact testimony to guide the severity of punishment is, in reality, encouraging disparate treatment of offenders. This, in turn, makes room for the evils of bias and prejudice to afflict the CJS. In addition, corruption, bribery and intimidation becomes more tempting as offenders or other interested parties discover a benefit to influencing the content or availability of victim-impact testimony. This kind of arbitrariness, disparate treatment and corruptibility undermines confidence and respect for our system of justice and engenders more anger, hostility and lawlessness than it can ever hope to deter.

But the most compelling argument against institutionalizing the practice of encouraging and enabling "revenge" through the use of victim-impact testimony is that it puts victims at risk of harm. Placing the victim in open and direct opposition to the criminal at every stage of prosecution, sentencing and incarceration, increases the likelihood of intimidation and violence against victims and their family, as offenders are given more reasons to respond to revenge in kind. If criminals know that living victims can perpetually extend the amount of time they will spend in custody, what reason is there to keep any victims alive?

Long ago it was painfully learned by those who were apparently much wiser than us that it is in the best interests of society to keep offenders and victims as non-confrontational as possible. To this end, our system of justice is based on the principle that it is the state that prosecutes and sentences criminals, not the victim. Politicians and CJS reformers perform a great disservice when they choose to forget this and encourage citizens to abandon the long honoured principles of blind and evenhanded justice.

If victims' rights organizations wish to enhance the nature and duration of criminal punishment, then let them campaign for changes in sentencing laws that will apply to ALL defendants at ALL times. If they want to change the laws/rules governing parole eligibility, then let those changes apply to everyone ALWAYS. And if they truly want to deter crime and properly serve victims and citizenry alike, then they must be prepared to resist the practice of seeking "revenge" even when it appears so well deserved and easy to impose: The evil of seeking revenge is always greatest in those who are aware of this evil.