

GEORGE NICHOLSON\*

# The Roots of America's Crime Victims' Legal Rights Movement, 1975-2023,

A Personal Retrospective and Memoir

*“But justice, though due 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.”*

—Benjamin N. Cardozo

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\*George Nicholson began his legal career in 1966 in the Alameda County District Attorney's office, rising to senior trial deputy district attorney. He prosecuted all categories of crime, including baby murders and high-profile capital murders. After almost a decade as a county prosecutor, Nicholson was selected in 1976 by unanimous vote of the board of directors to become executive director of the California District Attorneys Association. He transformed the association from a moribund, two-employee staff into a major continuing legal education resource for prosecutors statewide, and an imposing professional and representational presence in the State Capital. From there, Attorney General George Deukmejian invited him to become a special assistant attorney general and serve on the attorney general's seven-member executive committee in the California Department of Justice. Nicholson retired in 2018 after 28 years as an associate justice on the California Court of Appeal, Third Appellate District. He authored almost 3,500 appellate opinions, more than 300 of which were published. He served nine times as a pro tempore associate justice on the California Supreme Court by assignments made by three successive Chief Justices, Malcolm Lucas, Ronald George, and Tani Cantil Sakauye. He was also appointed by Chief Justice Lucas as a member of the Commission on the Future of the California Courts, 1990-1993, <http://www.courts.ca.gov/documents/2020.pdf>; and later wrote, “A Vision of the Future of Appellate Practice and Process,” 2 *Journal of Appellate Practice and Process* 229 (2000), <https://lawrepository.ualr.edu/cgi/viewcontent.cgi?article=1132&context=appellatepracticeprocess>, and “A judicial role in calming our divided nation,” 21 *Journal of Appellate Practice and Process* 231 (2021), <https://journals.librarypublishing.arizona.edu/appellate/article/id/2937>.

## INTRODUCTION

The U.S. and all state constitutions grant rights to the accused in criminal prosecutions. But the California Constitution was the first to include a set of rights for the victims of the accused in those criminal prosecutions. What follows is the story of how that came to pass, its aftermath, and my personal journey in making it happen.

As a student at U.C. Hastings College of Law in the mid-1960s, the prose and analysis of Oliver Wendell Holmes, Jr. and Benjamin N. Cardozo affected me deeply, just as they have mesmerized lawyers and judges for generations. Some specific passages from their writings struck me in particular and laid the foundation for directing my attention to crime victims.

“Justice Holmes wrote that ‘[t]he life of the law has not been logic: it has been experience.’ Essentially, Holmes’s claim was that the law is not simply about rules and logic, applied neutrally to proven facts; if it were, then a computer program . . . would be much more effective in applying the law than humans. But in reality, the law is a living system continuously adapting to its environment, ultimately changing society and human experience. *Therefore, the law must adapt as those experiences change over time.* That phenomenon is the heart of the common law system that Holmes describes in his classic work *The Common Law*. . . .”<sup>1</sup> (Italics added.)

But the law was not adapting when it came to crime victims while making great changes in favor of the accused in the 1960s. Presidents, governors, state and federal legislators, city mayors, city councils, county boards of supervisors, and state and federal judges<sup>2</sup> had all failed to recognize the disparity, grief, and fear suffered by victims of crime and their families and did not know or often ignored the glaring truth exposed by Cardozo when he admonished, “*But justice, though due 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.”<sup>3</sup> (Italics added.)

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<sup>1</sup> Kenneth D. Chestek, *The Life of the Law Has Not Been Logic: It Has Been Story*, Faculty Articles, 36 (2013), [https://scholarship.law.uwo.edu/faculty\\_articles/36](https://scholarship.law.uwo.edu/faculty_articles/36); also see, William P. LaPiana, *Logic and Experience: The Origin of Modern American Legal Education* (1994). Doubtless, Holmes was an inspired and eloquent wordsmith, as another, related example, see, “A page of history is worth a volume of logic.” *New York Trust Co. v. Eisner* (1921) 256 U.S. 345, 349.

<sup>2</sup> References hereinafter to judges, the judiciary, or judicial organizations concern the institution and their education, training, and court-community outreach, and not individual judges and justices or their in-court decisions. Having been a trial judge and appellate justice for 31 years, I have the deepest respect and admiration for my colleagues, past and present. I merely herein encourage every jurist to be aware of and to do all they can to promote *Cardozian balance* in the administration of criminal justice. I got along with all my colleagues. The two most liberal justices on the Court of Appeal, Third Appellate District, where I served 28 years, Justices Coleman Blease and Richard Sims, asked their families to ask me to speak at their memorial services. Those requests were humbling and high honors, rooted in the collegiality of the Third Appellate District.

<sup>3</sup> *Snyder v. Massachusetts* (1934) 291 U.S. 97, 122.

Meanwhile, while I was a law student, lawlessness in our urban areas and its impact on innocent minorities could no longer be ignored in the 1960s. In Martin Luther King, Jr.'s, "Letter from Birmingham Jail," written five years before his tragic assassination in April 1968, he observed the injustice of rampant lawlessness in many of our major cities, and expounded, "We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly." Paraphrasing him: "The dark shadow of a deep disappointment [has] settled upon" all our nation's people, in all our cities and towns. It will remain there until the leaders in our major cities restore the rule of law, fully and faithfully; retake their streets, promptly and practically; and remember and aggressively enforce the statutory and constitutional rights of ignored and forgotten victims of crime and their families.<sup>4</sup>

During my 60 years in the law, it soon became apparent that Holmes, Cardozo, and Reverend King were right regarding the unrequited experiences of the forgotten victims of crime and their families who became involuntarily ensnared in the chaotic hustle and bustle of the investigation and prosecution of the accuseds who allegedly harmed them. Pondering such complex circumstances, I understood why victims of crime and their families are cyclically forgotten parties in the administration of criminal justice: They simply had no presence other than as witnesses in America's courtrooms; that is, they had no statutory or constitutional rights.<sup>5</sup>

Unfortunately, social, civic, judicial, and political leaders, law school deans and professors, especially, but also college and university deans and professors, often failed in the past, and too often still fail meaningfully to recognize those same facts. To this day they may be unaware of, or ignore their shared duties to teach *Cardozian balance* which is, morally, not limited to the accused alone. Moreover, until recent decades, there were few advocacy groups for victims of crime and their families. Previously, it was largely left

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<sup>4</sup> And see, Thomas Sowell, the Rose and Milton Friedman Senior Fellow on Public Policy at the Hoover Institution at Stanford University, who also addresses this tragic anomaly eloquently in his, "Mascots of the Anointed," at p. 57, *The Tom Sowell Reader* (2011), ["The 'New York Times' recently ran a front-page story dripping with sympathy for a multiple murderer who is now very old and who, on some days, 'cannot remember' why he is in prison. His victims, however, cannot remember anything on any days. . . . All sorts of heart-tugging stories are told about elderly inmates who are succumbing to various diseases and infirmities of age. There are, however, no stories at all about their victims, or their victims' widows or orphans, or how tough their lives have been."]

<sup>5</sup> Stanley Mosk, *Mask of Reform* (1978) 10 S. W. U. L. R. 885, 889-890; see *Ballard v. Superior Court* (1966) 64 C.2d 159; and *Bullen v. Superior Court* (1988) 204 C.A.3d 22; but see, *Cal. Const.*, art. I, § 28, subd. (c)(1) and *Cal. Penal Code*, § 679.026(b); *Survey of Select State Laws Governing Crime Victims' Right to Counsel*, National Crime Victim Law Institute (2023), <https://ncvli.org/wp-content/uploads/2023/08/Survey-of-Select-State-Laws-Governing-Victims-Right-to-Counsel-2023-1.pdf>. Also, few crime victims can afford counsel and they and their families have no right to government-funded counsel as do those accused of committing crimes against them under *Gideon v. Wainwright* (1963) 372 U.S. 335.

to America's peace officers and prosecutors to provide support while trying to fill the statutory and constitutional void. Today, once again, matters are getting steadily worse for crime victims in too many places in our nation. Too many people in positions of power seem to ignore crime victims and gravely endanger them by doing so.

The personal commentary, which follows, offers the story behind the establishment of statutory and constitutional rights for victims of crime and their families, born of their shared experiences as virtual cats-paws in the administration of criminal justice. It also traces the role of peace officers and prosecutors in helping victims of crime and their families to rise up peacefully and lawfully, together, to attempt to achieve *Cardozian balance* in the administration of criminal justice. Finally, it reinforces the moral necessity for victims' rights.

Elie Wiesel, who himself had survived Auschwitz and Buchenwald, made a poignant observation regarding victims upon visiting a Cambodian refugee camp years later: "I came here because nobody came when I was there. One thing that is worse for the victim than hunger, fear, torture, even humiliation, is the feeling of abandonment, that nobody cares, the feeling that you don't count." Given this observation and the need for *Cardozian balance*, who can possibly explain why so many of our civic and political leaders had forsaken their oaths of office and abandoned the good people of our inner-cities and elsewhere by leaving them to the terrors of rampant violence at the hands of remorseless criminals and killers?

## **HOW VICTIMS OF CRIME AND THEIR FAMILIES BEGAN TO TAKE CENTER STAGE**

"In the early 20th century, the American criminal justice system did not pay much credence to crime victims. The victims' role did not go beyond participating as witnesses in a hearing. ... [T]he American criminal justice system served lawyers, judges, and defendants, but treated victims with an 'institutionalized disinterest.'"<sup>6</sup>

Moreover, three quarters of the 20th century elapsed with very little or nothing in movies, television, or radio about the plight of victims of crime and their families. There was very little political, professional, or popular literature about them either. Some literature existed on limited government compensation for a small number of crime victims and their families, and on

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<sup>6</sup> "History Of Victims' Rights," Victim Services and Victims' Rights: Elevating Victims' Voices at a Critical Time, Best Practices Guide," at p. 4 (April 2021), Women Prosecutors Section, National District Attorneys Association, <https://ndaa.org/wp-content/uploads/WPS-Victim-Advocacy-Best-Practices-Guide-April-2021-FINAL.pdf>.

the short supply of public and private provision of “victim-witness services.”

In sum, despite the substantial changes in criminal law and procedure wrought by the Warren Court, very little civic, religious, academic, legal, judicial, or political thought was devoted to victims of crime or their families.<sup>7</sup>

Small practical progress came in 1965 when California became the first state in the nation to provide limited government compensation to specified victims of crime and their families. (Various forms of crime victim compensation now exist in all fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.)

However, in the early 1970s, Oakland, California, became one of three cities, each located in a separate state, to receive federal funding for private providers of rape crisis services. Simultaneously, the Alameda County District Attorney's Office became one of eight prosecutors' offices (each of which was located in a separate state) to receive federal funding for victim-witness services projects.<sup>8</sup>

And in the mid-1970s, James Rowland conceived of and cobbled a “Crime Victim Assistance Center” in the county probation department he headed in Fresno, then a small, central valley city 170 miles south of the State Capitol. His department thus became the first in California to establish such a center. Then in 1976, after Rowland invited Professor John P.J. Dussich, of California State University, Fresno, to speak during an educational event in Fresno focused on crime victims' services, Professor Dussich launched the National Organization for Victim Assistance (NOVA).

These efforts picked up steam in the late 1970s and early 1980s. Crime victims—especially parents of murdered children and other family members of murdered victims—began to rebel at their being forgotten and subjected to further anguish by forgiven crimes. They decided to become involved and engage in a committed search for *Cardozian balance* in the administration of criminal justice.<sup>9</sup>

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<sup>7</sup> Yale Kamisar, *The Warren Court and Criminal Justice: A Quarter-Century Retrospective* (1995) 31 *Tulsa Law Journal* 1, <https://repository.law.umich.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1275&context=articles>.

<sup>8</sup> For more on such projects, see O'Malley and Bosovich, *Victims' Rights in California: A Historical Perspective to Modern Day*, elsewhere in this issue of *California Legal History*.

<sup>9</sup> Edmund Burke is attributed commonly with saying, “All that is necessary for the triumph of evil is for enough good men to do nothing.” The statement is often quoted to this day, whomever may have first said it. While Burke's words are important as theory, William Blake said something no less profound, but, more practical. It applies in every circumstance, not just when some men and women may not do the right thing. Blake said, “Execution is the chariot of genius.” And, so it is! Nothing is ever done without someone doing it. Victims of crimes and a handful of their advocates applied the thoughts of both Burke and Blake beginning in the late 1970s and early 1980s. Crime victims, and especially parents of murdered children and other members of the families of murder victims, began to rebel at being forgotten and subjected to further anguish by forgiven crimes. They decided to become involved and to engage in a committed search for *Cardozian balance* in the administration of criminal justice.

Perhaps the most visible example of familial outrage stemmed from the murder of prominent actress and model Sharon Tate, along with the murder of five other people during the Charles Manson Family massacre in Los Angeles.<sup>10</sup>

Doris Tate, Sharon's mother, took the loss of her daughter extremely hard. But in time she became omnipresent throughout California as a determined parent of a murdered child, and as an eloquent crime victim advocate. She was an inspiring role model for other parents and families who lost a loved one to murder.

Another grieving mother, Marilyn Ettl, was also devastated by the killing of her son. Despite her grief, she actively campaigned for Senator George Deukmejian in his successful campaign to become attorney general in 1978. Senator Deukmejian asked her to appear in a television advertising spot. Ettl agreed, and the advertisement had a favorable, although tear-inducing impact.

Soon other grieving parents and members of other families became actively engaged, which also had a real impact. These included Harriet and Mike Salarno, and their daughter Nina Salarno, Candy Lightner, Collene and Gary Campbell, Connie and Howard Clery, Robert and Charlotte Hullinger, Mike Reynolds, Dr. Henry T. Nicholas, and countless others.

In 1990, Harriet Salerno founded Crime Victims United, which worked "to support and strengthen public safety, promote balance in the criminal justice system, and protect the rights of victims" by enhancing sentencing laws and creating more effective rehabilitation and re-entry programs.<sup>11</sup>

Similar organizations were also founded, funded, or headed by parents and other family members who lost someone to murder. Perhaps most notable is the National Organization of Parents of Murdered Children (POMC) for the families and friends of those who have died by violence.

POMC was founded by Robert and Charlotte Hullinger in Cincinnati, Ohio, in 1978, after the murder of their 19-year-old daughter, Lisa. Since then, many POMC chapters have been established throughout the nation.<sup>12</sup>

<sup>10</sup> Angela Serratore, *What You Need to Know About the Manson Family Murders*, Smithsonian Magazine (July 25, 2019), <https://www.smithsonianmag.com/history/manson-family-murders-what-need-to-know-180972655>.

<sup>11</sup> See <https://www.crimevictimsunited.com>.

<sup>12</sup> POMC chapters hold monthly meetings to provide support, advocacy, and court accompaniment. Many POMC chapters publish their own newsletters and have designed and implemented special programs to meet the needs of survivors in their area, at <https://pomc.org/chapters>. The Hullingers' story is inspiring. See <https://pomc.org> and <http://pomc.org/about-pomc/pomc-history>.

Candy Lightner founded Mothers Against Drunk Driving (MADD) in 1980, after one of her three daughters was killed by a drunk driver.<sup>13</sup>

One time while visiting the nation's capital in the mid-1980s, I was in one of the Senate Office Buildings when Candy Lightner entered. Pandemonium ensued as U.S. Senators, including the one I was visiting, crowded the halls, along with members of the public, all eager to shake Lightner's hand and have a photograph taken with her.

John Gillis was a Lieutenant on the Los Angeles Police Department. After the 1979 murder of his daughter, Louarna, Gillis became a founding member of Justice for Homicide Victims (JHV). Later, Gillis was nominated by President George W. Bush and confirmed by the U.S. Senate in September, 2001 as the National Director, Office for Victims of Crime, U. S. Department of Justice. Gillis later served four years as a member of the California State Bar Crime Victims and Corrections Committee, which has now, apparently, been disbanded.

One of the early members of the National Organization for Victim Assistance (NOVA), Marline A. Young, said of John Gillis that his "experiences captured the work of all these [victims of crime] groups." She quotes him as saying, "Quite frankly, Parents of Murdered Children saved my life . . . because it gave me an opportunity to talk about what had happened . . . So I attended their meetings. They started asking me questions about law enforcement and why cases were handled certain ways. And this was really helpful to me because then I found out I was providing help and information to others who were really hurting so much. So, it was a two-way street. From there a group of us decided that we wanted to start our own organization, so we started with Justice for Homicide Victims."<sup>14</sup>

For several years, I worked with many of these grieving Americans and their families,<sup>15</sup> most notably, as co-counsel for amici curiae, representing dozens of them in a case, *Brosnahan v. Brown*, heard by the California Supreme Court in 1982. (This case will be discussed in greater detail below.)

Prior to 1976, there was little, if any, civic, judicial, or political discussion or academic literature addressing the potential provision of statutory and

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<sup>13</sup> See <https://madd.org>.

<sup>14</sup> Marlene A. Young, *A History of the Victims Movement in the United States*, 131st International Senior Seminar Visiting Experts' Papers, at pp. 69, 73 (August 29-October 7, 2005), [https://www.unafei.or.jp/publications/pdf/RS\\_No70/No70\\_08VE\\_Young1.pdf](https://www.unafei.or.jp/publications/pdf/RS_No70/No70_08VE_Young1.pdf).

<sup>15</sup> Rod Blonien, then the executive director of the California Peace Officers Association, also worked with them. He and I worked closely on many legal projects, especially those related to fostering the legal rights of victims of crime and their families.

constitutional rights for victims of crime and their families. Indeed, California Supreme Court Justice Stanley Mosk correctly observed in 1978 that a search for the rights of victims of crime and their families in our state and federal constitutions would fail. He memorialized the legal and moral vacuum then extant when he declared only criminals have constitutional rights, not their victims.<sup>16</sup> I intended to change that in 1976 when I became executive director of the California District Attorneys Association.

Indeed, I was more than ready to do that after dealing with the suffering and grief of countless victims of crime and their families for most of the previous decade as a prosecutor. So, I began a multi-front effort to initiate interest in aiding the victims of crime and their families through every potentially helpful individual and institution in California and elsewhere in our nation.<sup>17</sup>

Besides public relations, advertising, and marketing, I made regular radio and television appearances, including national shows like the Merv Griffin Show. I wrote “core” articles on related subjects and “wrapped” them in opening and closing paragraphs pertinent to specific audiences, such as peace officers, probation officers, school administrators, teachers, lawyers, law deans and professors, judges, university deans and professors, and many others.

At least one major airline printed my article, “Forgotten Victims, Forgiven Crimes,” in its glossy, on-plane passenger magazine. With the advent of automated typewriters, I was able to write and send thousands of personal letters, all of which I signed by hand, to editors and journalists, state attorneys general, county prosecutors, public defenders, state and county school superintendents, teachers, and others, all over California and the nation.

At the time, most major newspapers, radio, and television stations in California had capitol news bureaus in Sacramento, but there were few seasoned and down-the-middle journalists from whom prosecutors and peace officers got a fair shake. In the late-1970s, I began writing, *pro bono publico*, a weekly politico-legal news column, often dealing with stories of the grief and suffering of victims of crime and their families, or analyses of appellate and supreme court decisions impacting their interests.

<sup>16</sup> Stanley Mosk, *Mask of Reform* (1978) 10 S.W. U. L. Rev. 885, 889-890 [“I must concede there is an element of accuracy to the oft-repeated contention that ‘criminals have all the rights.’ That is elementary constitutional law. One will look in vain among our Bill of Rights and among its counterpart in the state constitution for guarantees to victims, or to the public, or to any persons other than the accused. It must be remembered that our basic charters were designed to protect those whose liberty is endangered and to make certain that if they are to lose their freedom, it will occur only after they have received their due process.”].

<sup>17</sup> Later, while I worked for Attorney General Deukmejian, he asked me to organize and recruit experienced staff for a multi-media department and to plan and conduct a related program including print, audio, and visual resources to carry on similar work, as well as more general work statewide tackling a multiplicity of crime prevention projects and programs. Gale Cook, “Slick sales pitches for state’s top crimefighter,” *San Francisco Examiner*, at p. 1 (April 12, 1981).



I captioned the column as the *Capitol Connection*, which was distributed by the Capitol News Service and published every week in hundreds of newspapers, large and small. In this endeavor, I had assistance from one of our state's leading legal journalists, Carol Benfell, who worked with me at the time. She provided exemplary editorial assistance and candid criticism. She later left to join the *Los Angeles Daily Journal* where she served for a long while, before finishing up her career at the Santa Rosa Press Democrat.

After writing the column without fail for 94 weeks, I resigned because the editor of the news service printed a retraction of an article that I wrote, without talking to me first. I had written the article following publication of a grand jury report exposing a group that, among other things, put rattlesnakes in their enemies' mail boxes.

When I asked the editor to explain himself, he replied simply, "I was scared, not of libel, but of rattlesnakes in my mailbox." To me, this was an insufficient reason for a news service to suppress the truth, and to make matters worse, to apologize publicly for it. I told him that I was far more exposed to potential danger from the group than he. I also recalled to him several of the threats made on my life while I was a prosecutor. And while I had received protection from time to time, I never altered my devotion to my professional duties. Regardless of the personal risks, prosecutors and public officials of all categories, including judges, must perform their sworn duties fully and faithfully, without fear or favor. So, too, must publishers, editors, and journalists of all stripes, whether in print, radio, television, or, in the modern era, social media.

Before delving further into the evolution of California's crime victims' legal rights movement, it is crucial to reiterate that the crime victims' rights movement was not a singular phenomenon of the last quarter of the 20th century. Nor was it the idea or action of any single individual or organization.

Although California was technically the first state to provide victims with statutory and constitutional rights, thereby setting a precedent for the rest of the country and the world, the crime victims' legal rights movement arose from a cornucopia of ideas, creative and determined outreach, and hard work, by different individuals and many organizations, both public and private, in California and beyond. However, only in California were statutory and constitutional rights the laser-focused goal. I now turn to how that happened.

## PROSECUTORS BEGIN TO TAKE ACTION

California prosecutors have often been inspired by ancient history, including that of Greece, Rome, and earlier, but, most notably, by the history of freedom and liberty in England and America, including our Declaration of Independence, our U.S. Constitution, and the Bill of Rights. They have also been enabled by the state constitutional right of initiative, and engaged and energized by their real-world courtroom and field investigatory experiences with crime and violence. After witnessing the isolation, grief, and suffering of victims of crime and their families for so long, California prosecutors decided to identify potential legal solutions and to seek their enactment into law.

On all serious cases on which prosecutors work, they too, must live with the isolation, grief, and suffering of the victims of crime and their families, who are really twice victimized, first, by those actually committing the crimes against them, and second, by enduring the disruptions wrought by the often-intrusive investigations and ensuing prosecutions, replete with the duty to face and testify against the accused in court. Prosecutors, then and now, take to heart all the direct and indirect misery that crime and violence inflict on their constituents, victimized and “non-victimized.”

In the mid-1970s, prosecutors resolved to act creatively upon the sage advice of Leon Jaworski, former Watergate Prosecutor and former American Bar Association President. He played a key role in the initiation and conduct of the victims’ rights revolution in California and the nation. Jaworski encouraged prosecutors to take their message to the people whenever they find the administration of criminal justice to be in decline or failing, and when legal and political leaders are unresponsive and oblivious of their shared duty to provide adequate protection and assistance.<sup>18</sup>

Prosecutors thus worked tirelessly throughout California to bring the growing crime and violence problem out into the open and to educate and involve politicians of both parties at all levels and the public, especially victims of crime and their families, in coming up with solutions.

From 1977-1980, “California’s Forgotten Victims’ Week” was formally observed by the state, and additionally by scores of cities and counties throughout the state each April. As executive director of the California District Attorneys Association (CDAA) at the time, I conceived and organized those observances. This was after I personally sought and received formal

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<sup>18</sup> *Bold Leadership*, Prosecutor’s Brief, at p. 2, California District Attorneys Association (June 1977); earlier, Jaworski called upon judges to help too, “‘Bold Bench’ Leadership Needed in War on Crime, Judges Told,” *Los Angeles Daily Journal* (June 27, 1968).

support by letters, proclamations, and resolutions from most of the state's major and eager-to-learn political leaders of both parties, at all levels.

It was in 1975 that F. Emmett Kilpatrick, then district attorney of Philadelphia, planned and conducted the nation's first "Victims' Rights Week." I suspect I got the idea to organize these California observances from him, but do not recall for certain. Kilpatrick also published a handbook, "Victims are People," funded by the National District Attorneys Association and the U.S. Law Enforcement Assistance Administration.

In February 1977, the California Legislature adopted a formal resolution, "Relative to California's Forgotten Victims Week," which 96 bipartisan legislators joined to encourage Governor Jerry Brown, a Democrat, to proclaim April 25-29, 1977, as "California's Forgotten Victims Week" and declared their support for two simultaneous, week-long educational programs to be conducted by CDAA during that week in Sacramento and Los Angeles.

Legislators "solicited and expected" assistance from various state and federal law enforcement agencies and urged citizens of the state "to become aware of their responsibilities to restore effectiveness to the administration of justice and the need to improve the plight of victims of violent crime and their survivors." Signing the resolution on behalf of the 94 legislators were four Democrats, Senator James R. Mills, Chairman, Senate Rules Committee; Lieutenant Governor Mervyn Dymally, President of the Senate; Louis J. Papan, Chairman, Assembly Rules Committee; and Leo T. McCarthy, Speaker of the Assembly.

Governor Brown soon issued a formal proclamation in support of California's Forgotten Victims Week in 1977. These various precursors were widely reported in positive and compelling terms on scores of radio and television stations and in major newspapers throughout the state.

Poignantly and perhaps presciently, San Francisco Mayor George Moscone significantly advanced the cause in 1977. First, he issued a California Forgotten Victims Week proclamation on behalf of the City and County of San Francisco. Second, he held a joint press conference with prosecutors that year, but tragically, a year later, he and County Supervisor Harvey Milk were assassinated in City Hall.

Moscone's successor, Mayor Diane Feinstein, issued similar proclamations. (She eventually became a U.S. Senator from California, but was unable to serve out her fifth and final term when sadly, she passed away in September 2023, at the age of 90.)

Because the judiciary is vital to addressing the legal rights of crime victims and their families, I called California Chief Justice Rose Bird early in 1977 and invited her to keynote the main dinner held during the annual meeting of CDAA that summer in Newport Beach, California. The annual meeting is always the largest gathering of the CDAA board of directors, elected district attorneys, and their deputies. Chief Justice Bird agreed, appeared, and spoke.<sup>19</sup> A few years later, I also asked her to write a letter in connection with a special crime victims' issue of the *Pepperdine Law Review*, volume 11, issue 5, as will be discussed below.

For the Sacramento and Los Angeles educational programs held in April 1977 during the seminal California Forgotten Victims Week, I first sought and acquired a federal grant of roughly \$150,000. This enabled me to plan simultaneous, week-long crime victims' legal rights conferences, conducted in these two state hubs.

At both conferences, topics included: forgotten crime victims and their families; crime victims' rights in civil litigation; crime victim/witness assistance programs; deterrence and crime; crimes against the elderly; rape and other crimes against women and children; crime and rest homes; crime and its impact on minorities; repeat offenders and career criminals; crime and its impact on business; and crime and its impact on labor.

Distinguished faculty spoke on these topics in Sacramento one day, and again in Los Angeles the next day. While this may sound unwieldy, it worked smoothly and effectively across five days in each city, all the while garnering widespread and favorable media coverage throughout the state.

I asked Governor Jerry Brown to address opening day in Sacramento. Although he declined, after a very successful first day, he called me and asked to speak the next day. Not having an open slot for him, I planned a luncheon for the next day, enlisting the aid of John Price, the local district attorney; Duane Lowe, the local sheriff; and Glen Craig, the commissioner of the California Highway Patrol. They all attended, and arranged for their respective leadership teams and members of their supporting communities to attend, including victims of crime.

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<sup>19</sup> *Chief Justice Bird Highlights Annual Conference Activities*, Prosecutor's Brief, at p. 38, California District Attorneys Association (July 1977). The cover of this issue was a reproduction of a painting I asked an artist to provide for the occasion. I later gave the original painting to Chief Justice Bird. That artist was an elderly man who had been victimized for almost a year, along with his wife of more than a half century, by a young extortionist and residential burglar. The artist and his wife could not afford to bring their older home up to code, sell it, and move to a safer neighborhood. When the old couple could no longer pay the extortionist, he broke into their home, took everything of value, and trashed the place. The case against the young extortionist and residential burglar was my final jury trial as a prosecutor. He was convicted and sent to prison. The elderly artist was commissioned to do several other art works for prosecutorial education programs and projects.

On that second day, the governor walked across the street from the State Capitol to the Sacramento Convention Center and spoke to the luncheon gathering of several hundred attendees. He garnered banner headlines statewide, and obviously, so did the very first California's Forgotten Victims Week.

For a comprehensive cover story featuring a dramatic photograph of Governor Brown, see "New Consciousness Brings Hope for Victims of Violent Crimes, California Leads National Effort to Restore Justice," *Prosecutors Brief*, California District Attorneys Association (May 1977), pp. 2-6.

Significantly, I have not heard of anything scholarly done for crime victims and their families on this scale by any state since then. If you carefully read CDAAs' "New Consciousness" article referenced above or this article, you will be shocked by California's densely *bipartisan* crime victims' advocacy and leadership, 1975-1982, when compared with the dearth of such advocacy today.

### **BRINGING A FORMER DEMOCRATIC PRESIDENT, ATTORNEY GENERAL, AND TWO GOVERNORS INTO THE MOVEMENT**

I also obtained support for the seminal "California Forgotten Victims Week" from President Jimmy Carter and Attorney General Griffin Bell, as well as the governors of many states when I began my crime victims' legal advocacy in the mid-1970s. Three letters of support made a difference: one from U.S. Attorney General Bell, on behalf of President Jimmy Carter and himself, and one each from Governors Hugh Carey of New York and Jerry Brown of California.

By way of background, I had written all state governors asking them to emulate California's crime victims' legal rights leadership. Many governors replied, both Democrat and Republican, with plaudits in addition to those from Governors Carey and Brown. After all, the matter was neither partisan nor controversial. No one accused anyone of weaponizing crime, or utilizing it as a wedge issue, as is the case so often today. Crime and violence, as well as legal rights for victims of crime and their families, were discussed rationally.

U.S. Attorney General Bell personally wrote me on April 27, 1977:

"On behalf of the President, please accept my best wishes for the success of 'California's Forgotten Victims Week' program. Its sponsors are to be commended for seeking responsible ways to improve justice and safety. There can be little justice if people cannot live in safety. It has been a long time since large numbers of our citizens felt safe or, in fact, were. Crime is

often felt most cruelly by the poor and elderly—those least able to protect themselves. The Federal government is now developing a program for the national delivery of justice. It is a difficult task. But I am heartened to see California officials are taking the lead to help their own citizens. I hope other states will also redouble their efforts.”

New York Governor Carey also personally wrote to me on March 31, 1977:

“For too long the innocent victim of violent crime has been the forgotten person in the Criminal Justice System. I commend both the California District Attorneys Association and the political leadership of the State of California in spotlighting this important problem by California’s Forgotten Victims Week.”

California Governor Brown had also personally written me earlier that same year:

“In today’s society, the plight of crime victims and their families is too often overlooked. Therefore, I join with you in recognizing the week of April 25 through 29 as California’s Forgotten Victims Week. The effects of crime touch the lives of all Californians; accordingly, we must each realize our responsibility to support the administration of justice.”

Today, political leaders, whether progressive, liberal, conservative, Democrat or Republican, must hear and heed the haunting echoes of the words of President Carter, Attorney General Bell, Governor Carey, and Governor Brown, and empathize with and help calm the trembling cries of anguish shared every day by millions of parents of murdered children and by other victims of crime and violence and their families, which cries continue to reverberate across the face of America.

## **THE MOVEMENT SPAWNS BIPARTISAN SUPPORT FOR CALIFORNIA CRIME VICTIMS AND THEIR FAMILIES**

U.S. Senator Alan Cranston, a Democrat, declared, in part:

“Mr. President, this week, California, under the leadership of the California District Attorneys Association, will give special attention to the victims of violent crime—our forgotten victims. ‘California’s Forgotten Victims Week,’ April 25-29, has been proclaimed by Governor Jerry Brown pursuant to a joint resolution of the State legislature. The purpose is to educate and motivate the public and the government to respond to the plight of the victims and witnesses of crimes and to seek improvement in the criminal justice system. I applaud this effort and commend Assemblyman Alister

McAlister who took the lead in introducing the resolution in the Assembly. The resolution was co-sponsored by 96 legislators and had the support of many State officials and agencies. The victims of crime are society's forgotten victims. We daily deplore crime, yet for unfathomable reasons, society turns its back on the innocent victims. The treatment of victims of crime is a national shame."

U.S Senator S. I. Hayakawa, a Republican, declared, in part:

"Mr. President, in bringing this week to the attention of our fellow colleagues, I, too, wish to endorse the principles and ideals of California's Forgotten Victims Week. The people of my state do well to remind us that a victim's plight is all too often overlooked and forgotten in the administration of justice. Much has been said in these chambers about the rights of criminals to a fair trial. How often do we hear about the rights of their victims? We must remember the innocent victims and their families who suffer in silence through long and demanding court proceedings knowing, in most cases, their lives will never be the same. I applaud the efforts of my constituents to devote their time and attention this week to forgotten victims."

In a statement heard on more than forty major radio stations all over California, Senator Hayakawa also expanded on his Senate speech and commended the California District Attorneys Association for its leadership in creating and implementing California's Forgotten Victims Week.

Lieutenant Governor Mervyn Dymally, a Democrat, Attorney General Evelle Young, a Republican, and Secretary of State March Fong Eu, a Democrat, provided similar support.

Many grand juries throughout the state also adopted their own resolutions of support. Likewise, the County Supervisors Association of California, plus the County Boards of Supervisors of numerous counties, adopted resolutions of support, including, the counties of Los Angeles, Sonoma, Sacramento, Mendocino, Alameda, Contra Costa, Santa Clara, Fresno, Kern, Santa Barbara, Riverside, San Bernardino, Orange, San Diego, San Francisco, and others.

Similar resolutions of support came from the League of California Cities, and the mayors of Los Angeles, Santa Rosa, Sacramento, Ukiah, Oakland, Berkeley, Fremont, Concord, Hayward, Fresno, Bakersfield, Santa Barbara, Long Beach, San Diego, San Francisco, among others.

The California Federation of Labor, AFL-CIO, by executive secretary treasurer John F. Henning, and the California Chamber of Commerce, by the president Walter Baird, also formally lent their support.

Very moving support came from a petition signed by 88 members of the American Association of Retired Persons. Still more support was received from the California Office of Aging and the California Commission on the Status of Women.

Several bar associations throughout California also lent their support. More and more bar associations across the nation then lent support for aiding and assisting the victims of crime and their families. In fact, at the time, the American Bar Association had a very active Committee on Victims and Witnesses, chaired by Los Angeles Municipal Court Judge Eric Younger, who was also an active participant in the week-long California Forgotten Victims Week program, a truly bipartisan and multi-racial event. Terry Hatter, a Democrat, and aide to Los Angeles Mayor Tom Bradley, a Democrat, was active with the event. Hatter was appointed to the Los Angeles County Superior Court almost contemporaneously with his California Forgotten Victims Week speech, seeking to improve governmental perspectives on victims of crime and their families.

## PROTECTING RAPE VICTIMS

Not long after I became the executive director for the CDAA, I sent a draft bill to Assemblyman Alister McAlister, a Democrat. It concerned something that had troubled me from the very first rape case that I prosecuted, namely, the burden of involuntary psychiatric examinations imposed on rape victims by *Ballard v. Superior Court* (1966) 64 Cal.2d 159 and its progeny.

There were other, difficult historical burdens lingering in those days as well. For example, “[s]kepticism about sexual violence seems to be written into Western society, and certainly into Western jurisprudence. Lord Matthew Hale, a 17th-century judge in England, captured this sentiment when he instructed jurors to consider carefully the allegations of the victim before them. A rape charge ‘is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused,’ he advised, adding that the woman’s testimony should be examined ‘with caution.’”<sup>20</sup>

By the authority of *Ballard*, a criminal defense attorney in a rape case could move the trial court to order the rape victim, and eventually, the child victim in a sexual abuse case, to submit to an involuntary psychiatric examination, essentially, to arm the defense with a powerful means for cross-examination.

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<sup>20</sup> Barbara Bradley Hagerty, *American Law Does Not Take Rape Seriously*, The Atlantic (January 28, 2020), <https://www.theatlantic.com/ideas/archive/2020/01/american-law-rape/605620>.



Assemblyman McAlister initially introduced CDAA's bill to curb *Ballard*, along with three co-authors, Assemblyman Dave Stirling, a Republican, and state Senators Robert Presley, a Democrat, and Jim Nielsen, a Republican.<sup>21</sup>

As the battle over *Ballard* continued, the text of the original *Ballard* bill was reintroduced repeatedly.<sup>22</sup> Eventually, after considerable difficulty, CDAA's original draft of the bill became law, California Penal Code section 1112, to preclude *Ballard* Motions. But it became law only after considerable legislative squabbling among the various legislative authors to make his or her bill the lead bill.

Eventually, a duplicate bill introduced by State Senator Diane Watson, a Democrat, became the lead bill, to which everyone else signed on as co-authors or supporters. The bill passed both legislative houses, was signed by the governor, and became law, thus abrogating *Ballard v. Superior Court*.

### **AN ALMOST MORTALLY WOUNDED PRESIDENT OPENS THE DOOR**

Immediately after his election in November 1980, President-elect Ronald Reagan formed a special transition team, the Advisory Committee on Victims. Frank Carrington of the Virginia Bar was Chairman. I was also a member.

Carrington was tireless. He worked closely with Edwin Meese and Herb Ellingwood as coordinator of the President-elect's committees on Law Enforcement and on Administration of Justice. (Meese, Ellingwood, and I were former members of the Alameda County District Attorney's Office.) Meese and Ellingwood requested all three committees to submit their final reports as soon as possible.

We flew into Washington, D.C., and Carrington circulated a preliminary draft report of the Advisory Committee on Victims during a meeting there in November 1980 – within weeks of the new President's election. We promptly offered our suggestions and criticisms. We met once again in Washington, D.C. shortly after the first of the new year to discuss the final report. Carrington submitted it immediately to Meese and Ellingwood, who then forwarded it to the President-elect's policy and transition staff.

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<sup>21</sup> *Bill Would Curb Psychiatric Tests in Sex Trials*, Los Angeles Daily Journal (February 2, 1979), page 1, section I; the bipartisan quartet of legislators initially carried this and several other law enforcement bills as a team of co-authors and became known derisively in the news media as the "Gang of Four."

<sup>22</sup> George Deukmejian, *The Statutory Rape of Justice in California*, Los Angeles Herald Examiner (January 15, 1980) p. A19.

Our work contributed significantly to important presidential crime victims' rights initiatives, which were successfully pursued during President Reagan's two-term administration.<sup>23</sup>

Shortly after the first of the year of his administration in 1981, I asked President Reagan to proclaim the first National Victims' Rights Week. On March 21, the President assigned Ellingwood, by then a Deputy Counsel to the President, the task of preparing an appropriate proclamation.

Nine days later, on March 30, 1981, while leaving the Washington Hilton Hotel after delivering a speech, the President was shot. In that single instant, and just three weeks before the first National Victims' Rights Week could be observed, our nation's leading crime victims' advocate became our nation's leading (and most visible) crime victim.

The President was close to death, but eventually stabilized in the emergency room after he arrived at George Washington University Hospital. The medical team, led by Dr. Joseph Giordano, operated immediately and saved his life. The team was stunned to learn the bullet they found near the President's heart was an unexploded "Devastator" slug.

White House Press Secretary, James Brady, was not so fortunate. The "Devastator" slug that hit him exploded upon impact as designed, wounding him grievously, leading eventually to his premature death some years later.

While the President was still in the hospital, Ellingwood completed his work on the proclamation and the President approved and signed Proclamation 4831 – "Victims Rights Week, 1981" — on April 8, 1981, just eight days after being shot. President Reagan was able to leave the hospital in two weeks, return to work in the Oval Office in a month, and heal completely in six to eight weeks, with no long-term effects.

The proclamation reads in operative part, "Now, Therefore, I, Ronald Reagan, President of the United States of America, do hereby proclaim the week beginning April 19, 1981, as Victims' Rights Week." Since then, National Victims' Rights Week has been observed annually, and now approaches its 50th, or golden anniversary.

Proclamation 4831 contains five paragraphs in total, and begins with this one: "For too long, the victims of crime have been the forgotten persons of our criminal justice system. Rarely do we give victims the help they need

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<sup>23</sup> "The fact is that without President Ronald Reagan, the progress on this issue would be minute compared to what it is today." *President Ronald Reagan's Impact on Victims' Rights*, State Attorney Phil Archer, 18th Judicial Circuit, State of Florida, <https://sa18.org/page/victim-rights.html>.

or the attention they deserve. Yet the protection of our citizens—to guard them from becoming victims—is the primary purpose of our penal laws. Thus, each new victim personally represents an instance in which our system has failed to prevent crime. Lack of concern for victims compounds that failure.”<sup>24</sup>

Just after the President signed the Proclamation, Ellingwood called me and quietly said, “You owe us an arm and a leg on this one,” and sent me an original copy, signed by the President himself.

### **MOVING THE BALL FORWARD WITH THE CRIME VICTIMS HANDBOOK AND CALIFORNIA CRIME WATCH**

At about the same time that I received an original copy of the President’s proclamation, the President sent a letter to the California Attorney General’s Office. I was, by then, a special assistant attorney general, and among my multiple duties was the creation of a sophisticated multi-media production unit referenced in footnote 17, ante. I reproduced the President’s letter on the first page of *And Justice for All, The Crime Victims Handbook*, which I was already compiling and editing at the direction of Attorney General Deukmejian. The *Handbook* contained information about the criminal justice system and how it might be utilized to help victims of crime and their families.

In his letter to the California Attorney General’s Office, President Reagan wrote: “For most of the past thirty years, the administration of criminal justice has been unreasonably tilted in favor of criminals and against their innocent victims. This tragic era can fairly be described as a period when victims were forgotten and crimes ignored.

“We hope that things are now beginning to change for the better.”

Unfortunately, things would get worse before they got better. Even so, the *Handbook* came off the presses poignantly, with President Reagan’s letter on page 1, all while he was convalescing from the assassination attempt on his life, and long before the shocking news of his near-death experience stopped mesmerizing the nation.

Inspired by President Reagan’s touching and timely message, the *Handbook* gained visibility and bolstered our sustained and ubiquitous advocacy for victims of crime and their families, that had begun in 1977. The *Handbook* also

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<sup>24</sup> The entire proclamation may be read here, <https://www.presidency.ucsb.edu/documents/proclamation-4831-victims-rights-week-1981>.

contained an introduction by Attorney General Deukmejian himself in which he observed, “There is a new emphasis on the right of the innocent public to be free from crime, particularly violent crime, and the special obligation a free and just society owes to you, as a past, present, and potential victim.”

The *Handbook* also contained a foreword by the prominent chairs of three large, statewide advisory commissions appointed by Deukmejian, including District Attorney William D. Curtis, Monterey County, and chair of the Citizens’ Advisory Commission on Victims of Crime; Presiding Justice Carl West Anderson, California Court of Appeal, First Appellate District, chair of the Judicial Advisory Commission on Victims of Crime; and talented artists Paul Conrad of the Los Angeles Times and Jim Kirwan of San Francisco, co-chairs of the Artists’ Advisory Commission on Victims of Crime.

In their foreword, these distinguished co-chairs explained, “The Crime Victims Handbook is intended to provide you—California’s crime victims and witnesses—with information regarding your roles in the administration of justice and to advise you of your rights and the state and local services available to you.”<sup>25</sup>

The Attorney General’s Office published and distributed copies of the *Handbook* to 50,000 judges, lawyers, prosecutors, peace officers, defense attorneys, and law professors; to political, civic, academic, and religious leaders; and to journalists throughout California. Many of these leaders reproduced and distributed copies to citizens in their disparate domains.

As suggested in President Reagan’s opening paragraph in his Proclamation that “each new victim personally represents an instance in which our system has failed to prevent crime,” Deukmejian believed it best to work diligently at reducing the numbers of potential crime victims *before* they and their families had to face the loss of life or property caused by crime and violence and actually needed legal rights and remedies. To do that, he recognized the necessity of instituting a number of public policies providing for effective and aggressive law enforcement, prosecution, corrections, and crime prevention programs.<sup>26</sup>

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<sup>25</sup> No one could have anticipated that a looming voter initiative, Proposition 8, the Victims’ Bill of Rights of 1982, was already being drafted and would become law by June of the following year, providing significant legal rights for crime victims.

<sup>26</sup> No victims’ legal rights program or crime prevention program, no matter how well conceived, will be successful without adequate funding and staffing. Likewise, no prosecutor’s office, public defender’s office, alternative defense counsel’s office, or law enforcement agency can be successful if starved of adequate funding and staffing. Public safety, crime victims’ legal rights, and accused defendants’ due process rights suffer when those charged with protecting them are inadequately funded and staffed. That is where mayors, city councils, and boards of supervisors come in. They must provide for adequate funding and staffing for all the criminal justice entities just referenced. Public safety, including criminal prosecutions, are matters of *state* law, and *local* officials should not be telling peace officers and prosecutors how or when to do their jobs or place limits not in state law on them.

Wisely recognizing that crime prevention in the first instance may reduce the burden on law enforcement agencies, prosecution and defense bars, and corrections agencies, Deukmejian directed me to prepare and conduct proactively, within the California Department of Justice, a statewide crime prevention program which reached into every city and county in the state. Labelled, "California Crime Watch," it was organized in cooperation with the U.S. Department of Justice, a new federal crime prevention initiative, the National Advertising Council, and more than 350 city police chiefs, sheriffs, and prosecutors from all 58 California counties, and state and local corrections officials and agencies throughout the state.

As a major part of the "California Crime Watch" program, Deukmejian directed me to address how we might anticipate and prevent a broad range of crimes; to identify best practices for doing so; and to prepare and distribute prototypical educational print materials in camera-ready formats for high-speed, high-volume reproduction by police chiefs, sheriffs, prosecutors, and corrections officials, which they could distribute locally, under their own imprimaturs.

We produced short, high quality, prototypical radio and television public service announcements (PSAs) addressing "California Crime Watch," each PSA dealing with preventing a different crime, and featuring the attorney general. The PSAs were used by prosecutors, sheriffs, and police chiefs, who added their own messages and tag lines, and distributed the finished products to local radio and television stations. Those local distributions led to countless news media interviews that focused on crime prevention by the attorney general, prosecutors, and law enforcement officials throughout the California.

All the foregoing comprised major elements in Deukmejian's "Plan to Restore Public Safety" in the 1980s. However, he did not want this program to be, or appear to be, a political or publicity stunt, but to be an institutionalized, systematic, and sustained professional and public collaboration conceived substantively to prevent crime and violence across the board in every law enforcement and prosecution jurisdiction in California for the benefit of all its citizens.

In February 1980, the California Legislature issued a formal resolution, "Relative to California Crime Watch." Following several "whereas" clauses stating their reasoning, 90 bipartisan legislators joining the resolution, declared, "the Members hereby take this opportunity to endorse and support California Crime Watch and the Attorney General's Plan to Restore Public Safety in the 1980s." Signing the resolution for all 90 legislators were three Democrats and one Republican. These were Senator James R. Mills,

Chairman, Senate Rules Committee; Lieutenant Governor Mike Curb, President of the Senate (the lone Republican); Louis J. Papan, Chairman, Assembly Rules Committee; and Leo T. McCarthy, Speaker of the Assembly.<sup>27</sup>

Deukmejian viewed California Crime Watch as a vast, integrated, and proactive collaboration, energized by the goal of anticipating and preventing crime everywhere in California, especially in our state's inner-cities and in schools, parks, and playgrounds. Its intent was to spare vast numbers of innocent citizens everywhere in California, especially children, from the fear and the reality of crime and violence.

As noted above, Deukmejian required us to work closely with California's prosecutors, sheriffs, and police chiefs. His goals included improved public safety and legally enforceable statutory and constitutional rights for victims of crime and their families. He always sought *Cardozian balance* in the administration of criminal justice, as well as effective crime prevention, and not "gotcha" politics. He was a justice-seeking leader, not a political games player.<sup>28</sup>

A few words about George Deukmejian are in order at this point. He was a state senator, an attorney general, and governor. He was a visionary, and ground-breaking leader. He was a humble man, loving husband, and devoted father, who loved California and all its people. He believed, "There but for the grace of God, my family might be harmed by crime." Consequently, he labored diligently to protect everyone's families in our huge state.

Deukmejian was also a kind, civil, and decent man who wished only to serve all our state's people honorably, ethically, and effectively. To him, good government was truly the best politics. And to him, preserving and protecting the Constitution and the rule of law were indispensable. He was a role model to everyone who knew or worked for him, whatever their personal politics, philosophies, or jurisprudences. And he was my dear friend.

## **FROM PRESIDENTIAL LEADERSHIP EMERGES A NATIONAL TASK FORCE SUPPORTING VICTIMS OF CRIME**

Well-recovered from his near assassination in 1981, President Reagan established by executive order his Task Force on Victims of Crime during the second annual National Victims' Rights Week in April 1982. At the President's direction and under future Attorney General Edwin Meese's

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<sup>27</sup> Assemblywoman Maxine Waters and Senator John Garamendi, both Democrats and current members of the U.S. Congress, were also among the legislators joining in this resolution.

<sup>28</sup> As did we all, Deukmejian believed deeply in the eternal verity, "But justice, though due 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." (*Snyder v. Massachusetts* (1934) 291 U.S. 97, 122.)

attentive eye, Lois Haight Herrington, an assistant attorney general, chaired the Task Force. Frank Carrington was also a member. And future justices, Carol Corrigan and William R. McGuiness, were members of the staff.

The Task Force published its *Final Report* in December 1982.<sup>29</sup> It contained important and still relevant recommendations for state and federal governmental action, as well as recommendations for federal and state executive and legislative action, and for police, prosecutors, judges, parole boards, hospitals, the ministry, the Bar, schools, mental health agencies, and the private sector.<sup>30</sup>

As a matter of historical interest, Herrington, Corrigan, and McGuiness, like Meese and I, were all former members of the Alameda County District Attorney's Office. Edwin Meese was, at the time, Presidential Counsellor, with Cabinet level status. He later became our nation's 75th Attorney General, and later still, he received the Presidential Medal of Freedom.

Lois Haight Herrington, using her maiden name of Haight, later served as a trial judge in California. The California Judicial Council named her *Jurist of the Year* in 2002. Although she could have sat on the state Supreme Court had she wished, she preferred to work in the juvenile court of the Contra Costa County Superior Court. She did so until her retirement from the bench in 2019.

Carol Corrigan moved through the court system and presently serves as an associate justice on the California Supreme Court.

Before his retirement in 2017, William R. McGuiness served as presiding judge of the Alameda County Superior Court, and subsequently, as administrative presiding justice of the California Court of Appeal, First Appellate District.

As directed by the President and overseen by Meese, Herrington soon helped form and lead the Office of Victim Assistance (OVA) in the U.S. Department of Justice. It is a large, continuing, and important entity. But it is no substitute for the proactive, vocal, and personal support delivered at least once annually by our nation's Presidents and Attorneys General.

As did Presidents Carter, Reagan, and Bush and Attorneys General Bell, William French Smith, Meese, and their early successors, our nation's presidents and attorneys general must continue to speak out regularly and persuasively to encourage and inspire state governors, state attorneys

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<sup>29</sup> <https://www.ojp.gov/pdffiles1/ovc/87299.pdf>.

<sup>30</sup> Also see, Peggy M. Tobolowsky, *Victim Participation in the Criminal Justice Process: Fifteen Years After the President's Task Force on Victims of Crime*, (1999) 25 New England Journal on Criminal and Civil Confinement 21.

general, mayors, city councils, and county boards of supervisors in all 50 states to become substantive and activist crime victims' legal rights advocates. Leadership on this crucial matter is not delegable. And it does not diminish their duties or that of the administration of criminal justice to insure there is a *Cardozian balance*, so that both victims of crime and their families, and the criminal accuseds and their families, receive their full and fair due process in court.

Inspired by the President's Task Force on Victims of Crime, Governor George Deukmejian established the California State Task Force on Victims' Rights in 1988. Its resulting *Final Report* contains recommendations similar to those contained in the Final Report, President's Task Force on Victims of Crime, from six years earlier.

## **CALIFORNIA CRIME VICTIMS' BILL OF RIGHTS OF 1982 BECOMES A REALITY**

After five years of sustained efforts dealing with crime prevention and holding annual forgotten victims' weeks, as well as related political and public education initiatives, California prosecutors finally achieved an indelible leadership role in the crime victims' legal rights movement when they took their message directly to the voters. And California voters responded positively by adopting the statutory and constitutional initiative, Proposition 8, the Victims' Bill of Rights of 1982.

However, qualifying a voter initiative to achieve them was not easy. Paul Gann and I were statewide co-chairs of the committee seeking to qualify it. California is a big place, and we had to gather roughly a half million validly registered voters' signatures to make the cut. We received considerable help from state Senator Bill Richardson, a Republican, and Wayne Johnson, director of the senator's computer mailing house, Computer Caging, one of the first, if not the first, in the nation.

At a particularly low point, we got an immense boost from San Diego Mayor Pete Wilson, a Republican, and Supervisor Quentin Kopp, a Democrat, Board of Supervisors of the City and County of San Francisco. They made a joint contribution of \$50,000, and toured the state in shirt sleeves, collecting voter signatures in Sacramento, San Francisco, Los Angeles, and San Diego, during the initiative qualification process. By the deadline to qualify, we had collected 665,000 signatures. We made the cut.



For use during the final push for votes, I prepared thick binders containing carefully prepared, tabulated materials explaining and supporting in detail the elements of Proposition 8, the Victims' Bill of Rights. I duplicated and delivered a binder to scores of candidates who were on the primary election ballot that year, whether incumbent or not, and whether in a contested primary election or not. In other words, every receptive candidate whom I could reach received a copy of the binder with a cover letter encouraging public support and advocacy for voter adoption of Proposition 8 in their respective jurisdictions.

Whether or not they were on the ballot in June 1982, California's 58 elected district attorneys and 58 elected sheriffs (of whatever party because these offices are non-partisan) also received binders. And most of those who received the binders helped in both large and small ways.

With all that, as with qualification for the ballot, final voter adoption was not easy or certain.

Indeed, before the election, Proposition 8, was challenged in court in order to deny Californians a vote. Fortunately, the California Supreme Court declined to strike it from the ballot in *Brosnahan v. Eu* (1982) 31 Cal.3d 1.

And after Proposition 8 was approved by voters during the primary election, it was challenged once again in court, but the California Supreme Court upheld it in *Brosnahan v. Brown* (1982) 32 Cal.3d 236.

In that connection, I co-authored two amici curiae briefs in *Brosnahan v. Brown*. In one of those briefs, we represented more than 150 prosecutors, sheriffs, police chiefs, mayors, city council members, county board of supervisor members, and others. In the other brief, we represented two dozen sets of parents of murdered children. Several called me at home after the case was won to say in varying ways, "Thank you for giving my family a public voice for the very first time." Most of those who called did so in tears.

The campaigning for Proposition 8 was also arduous. One event while campaigning for Proposition 8 deserves particular mention. Just as Paul Gann and I were leaving the eighth floor of the Bonaventure Hotel in downtown Los Angeles to catch a flight to Sacramento, the power went out, the elevators stopped working, *and* Gann began having chest pains. Alarmed, I asked Gann to allow me to carry his suitcase as we traveled down the stairs. But Gann emphatically declined. So, we each carried our own suitcases down eight flights of stairs, caught a cab, and just made it to the Los Angeles International Airport (LAX). Our plane was full, including several legislators.

By then, Gann was already feeling significantly worse. Even so, he walked up and down the plane's aisle, showing a color photo of a handsome little boy of about 10 to everyone as he told the story behind how he received it.

It seems that the night before, he had spoken before a large crowd in Orange County. As everyone was filing out after he spoke, he spotted a single, sad woman in the back sitting quietly. He walked up to her. She showed him the photo of the young boy, her son, and asked Gann to help her. He asked how. She replied that she hoped that he would try to prevent what had happened to her son from happening to other little boys. She explained that he had been molested and murdered by a convicted sex molester of children, who had been paroled by an administrative error shortly before her son was killed. As Gann traversed the plane's aisle, he had everyone in tears, even the legislators. He was a spellbinding story teller. But as we approached Sacramento, Gann's chest pains worsened. Not long after landing, he was rushed to Kaiser Hospital where he had major heart surgery involving multiple bypasses. While in the hospital, he received a blood transfusion which infected him with AIDS.<sup>31</sup>

## THE ACTUAL ENACTMENT OF PROPOSITION 8

The voters' approval of Proposition 8 – and the California Supreme Court's rejection of the after-election challenge to its validity – finally gave the public enforceable statutory and constitutional rights to balance those of the accused. Among them were rights to public safety bail, truth-in-evidence, restitution, and to appear and speak at sentencing, probation revocation, and parole proceedings, adult and juvenile.<sup>32</sup> They also included the nation's first constitutional right to safe schools for students, faculty, and staff.

Proposition 8 also encompassed public safety law restorations and sentence enhancements, particularly for residential burglary. In fact, residential burglary was a special focus because it is such a brazen, heartless, and

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<sup>31</sup> Gann and I remained close friends until his demise. In 1984, he and I stood together in the State Capitol near the center of a 1984 photograph of California's Presidential Electors. We then cast our electoral votes for President Reagan. Three years later, with my family, Gann, and his wife, Nell, in the courtroom's jury box, I was first sworn in as a trial judge in 1987. When Gann died at age 77 in 1989, Nell selected three eulogists for his State Funeral: Governor George Deukmejian, U.S. Senator Pete Wilson, and me. His memorial service was held in the Capital Christian Center in Sacramento. Gann was buried at Mount Vernon Memorial Park, Fair Oaks, Sacramento County. Among other things, Gann helped many thousands of elderly people retain their homes when he teamed up with Howard Jarvis in 1978 to seek and achieve voter adoption of Proposition 13, the Jarvis-Gann property tax limitation initiative, which, among other things, prevented property taxes from being increased astronomically each year. Sixty-five percent of voters supported Proposition 13. Four years later, Gann came back to help prosecutors achieve voter adoption of Proposition 8, the Victims' Bill of Rights. He was a tireless humanitarian, a truly remarkable man.

<sup>32</sup> To learn of all the rights included in this measure, see the *Voter Information Guide for the 1982 Primary Election*, at pp. 32-35, 54-56, [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1917&context=ca\\_ballot\\_props](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1917&context=ca_ballot_props).

deliberate invasion of the privacy and inner sanctum of an individual or family, which can leave them scarred psychologically and sometimes physically, for life.<sup>33</sup>

And thus, statutory and constitutional rights for crime victims were born in California. This major transformation of the law happened when it did because until the mid-1970s, most politicians in California state government had forgotten their innocent constituents and were failing to protect them from the fear and reality of crime and violence that was sorely disrupting their lives and liberties, particularly in urban areas. Those governmental officials had also forgotten the basic fundamentals on which our country was founded, fundamentals such as those found in the Declaration of Independence:

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”<sup>34</sup>

Of course, we never suggested the abolition of our state government. Instead, we suggested altering it to make it more perfect by our exercise of

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<sup>33</sup> “Feelings Often Experienced by Burglary Victims,” Crime Victim Assistance Division, Attorney General’s Office, State of Iowa, [https://www.iowaattorneygeneral.gov/media/documents/Burglary\\_Brochure\\_32015\\_010B5DE4AEC\\_CA92AE5F156F0.pdf](https://www.iowaattorneygeneral.gov/media/documents/Burglary_Brochure_32015_010B5DE4AEC_CA92AE5F156F0.pdf); PT Staff, *Beating the Burglary Blues, Focuses on the psychological aftermath of a burglary. Victims’ lack of a feeling of security and inviolability; Psychiatrist Billie Corder’s interviews with burglary victims; Rape metaphor; Impact on children*, Psychology Today, published May 1, 1996, last reviewed on June 9, 2016, <https://www.psychologytoday.com/us/articles/199605/beatng-the-burglary-blues>; “The Trauma of Victimization,” National Center for Victims of Crime, <https://www.fredericksburgva.gov/DocumentCenter/View/9552/Responding-to-Traumatic-Situations?bidId=>, [“The trauma of victimization is a direct reaction to the aftermath of crime. Crime victims suffer a tremendous amount of physical and psychological trauma. The primary injuries victims suffer can be grouped into three distinct categories: physical, financial and emotional. When victims do not receive the appropriate support and intervention in the aftermath of the crime, they suffer ‘secondary’ injuries.”]; Kevin M. O’Brien, *Introduction to Special Section: Advancing mental health services and research for victims of crime* (April 2010) 23 Traumatic Stress, at p. 179, Issue 2, <https://onlinelibrary.wiley.com/toc/15736598/2010/23/2>, and bibliography; Rochelle F. Hanson, Genelle K. Sawyer, Angela M. Begle, and Grace S. Hubel, *The Impact of Crime Victimization on Quality of Life* (April 2010) 23 Traumatic Stress, at p. 189, Issue 2, <https://onlinelibrary.wiley.com/doi/10.1002/jts.20508>; and, *Initiatives for Improving the Mental Health of Traumatized Crime Victims*, Office of Victims of Crime, U.S. Department of Justice, [https://www.ncjrs.gov/ovc\\_archives/factsheets/mentalhe.htm](https://www.ncjrs.gov/ovc_archives/factsheets/mentalhe.htm); the 1982 President’s Task Force on Victims of Crime also challenged the mental health community to lead the way in developing and providing treatment programs for victims and their families and to develop training for mental health practitioners that gives them the understanding and skills to treat crime victims, sensitively and effectively.]

<sup>34</sup> Timothy Sandefur fosters an understanding of the Declaration in his book, *The Conscience of the Constitution: The Declaration of Independence and the Right to Liberty* (2015).

venerable constitutional means.<sup>35</sup>

Accordingly, since California government had failed to act on an important matter – in this case, failing actively and effectively to protect the public from crime and violence and failing empathetically to looking after those who were victimized by crime and violence – the people had the right of initiative to add remedial constitutional provisions and to adopt new, remedial statutes or revise old ones.<sup>36</sup>

## PROPOSITION 8 INCLUDED A CONSTITUTIONAL RIGHT TO SAFE SCHOOLS

A constitutional right to safe schools for all our children was a priority for us, and we achieved it in Proposition 8. Indeed, I included the pertinent provision, “Right to Safe Schools,” Cal. Const., Art. I, § 28, subd. (c), in Proposition 8. The provision has since been expanded (and renumbered) to include all schools, colleges, and universities, whether public or private, as a result of Proposition 9, the Victims’ Bill of Rights of 2008 (“Marsy’s Law”), as Cal. Const., article I, § 28, subds. (a)(7) and (f)(1).<sup>37</sup>

Kimberly Sawyer, a law student at the time, provided a sound discussion of the original (and narrower) constitutional right to safe schools contained in Proposition 8 in her student comment, “The Right to Safe Schools: A Newly Recognized Inalienable Right,” 14 *Pacific Law Journal* 1309 (1983). Although we never met or discussed the matter, Sawyer nicely captured the spirit and intent of the provision. She later became a research attorney with the California Court of Appeal, Fifth Appellate District, where she served with distinction for many years.<sup>38</sup>

Professor Jackson Toby, a former director of a criminology research center at Rutgers University, collaborated with me on several campus safety programs

<sup>35</sup> For the statements of the proponents and opponents of Proposition 8, and the full text of the initiative, see the *Voter Information Guide for 1982 Primary Election*, at pp. 32-35, 54-56, [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1917&context=ca\\_ballot\\_props](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1917&context=ca_ballot_props).

<sup>36</sup> California Constitution, article II, section 8.

<sup>37</sup> George Nicholson, *Campus Crime and Violence, and the Right to Safe Schools*, Defense Comment, Association of Defense Counsel of Northern California (Summer 2018), pp. 5-8 [tracing the 40-year history of safe schools’ leadership in California and elsewhere in the nation, including fostering the spread nationally of the inalienable constitutional right to safe schools].

<sup>38</sup> For more, see generally George Nicholson, Frank Carrington, and James A. Rapp, *Campus Safety: A Legal Imperative* (1986) 30 Education Law Reporter 11 ; James A. Rapp, Frank Carrington, and George Nicholson, *School Crime and Violence: Victims’ Rights*, Pepperdine University Press (1986), second edition (1992), with a preface by state Supreme Court Justices, Stanley Mosk (California) and Melvyn Tanenbaum (New York); and see George Nicholson and Jeff Hogge, *Retooling Criminal Justice: Forging Workable Governance from Dispersed Powers*, The National Conference on Legal Information Issues: Selected Essays, at p. 223, American Association of Law Libraries (1996), especially, *Educational Institutions*, pp. 241-243.]

in Washington, D.C. and elsewhere and wrote several important and still relevant commentaries.<sup>39</sup>

Indisputably, the campus safety problem continues. Columbine may have been the nation's saddest and most infamous example until more recently. While I was the chair of the Juvenile Justice Subcommittee of the Federalist Society's Working Group on Criminal Law and Procedure, I helped plan and conduct a panel discussion, "Did the Law Cause Columbine?" It was held in Washington, D.C., at the National Press Club and was telecast live, nationwide, in August 1999, on C-SPAN.<sup>40</sup>

In December that same year, McGeorge Law Professor J. Clark Kelso and I testified during legislative hearings in Sacramento on the topic, "Helping to Make Schools Safer, Improve Legal Literacy, and Promote Civic Participation Through Public Education."

California's right to safe schools also spawned more scrutiny on the problem. The Federal Clery Act, which became law because of the humanity, vision, and leadership of Frank Carrington, requires colleges and universities participating in federal financial aid programs to compile and disclose annually information about crime and violence on and near their campuses. Duties to warn are also part of this statutory and regulatory scheme. Most colleges and universities participate to some extent. Compliance is monitored and enforced by the United States Department of Education.<sup>41</sup>

While founding director and chief counsel of the National School Safety Center, a partnership of the U.S. Departments of Justice and Education and

<sup>39</sup> *The Politics of School Violence*, pp. 34-56, no. 116 (Summer, 1994); *Getting Serious about School Discipline*, pp. 68-83, no. 133 (Fall, 1998); and *Medicalizing Temptation*, pp. 64-78, no. 130 (Winter, 1998); all three articles were in *The Public Interest*. Professor Toby begins the latter article this way, "When one of the characters in Oscar Wilde's play, *Lady Windemere's Fan*, says, 'I couldn't help it. I can resist everything except temptation,' the playwright was kidding. He was implying, slyly, that those who fail to resist temptation prefer what they perceive as pleasant to what is moral."

<sup>40</sup> Several distinguished scholars were panelists, including James A. Rapp of the Illinois Bar and editor-in-chief of *Education Law*, a seven-volume treatise; Troy Eid, chief counsel to Colorado Governor Bill Owens; Professor William Kilpatrick, Department of Education, Boston College, and author of the best-selling book, *Why Johnny Can't Tell Right from Wrong: And What We Can Do About It*; and Chief Judge J. Harvie Wilkinson, United States Court of Appeals, Fourth Circuit; among others, including Ann Beeson, a top representative of the National American Civil Liberties Union. Watch, [https://www.youtube.com/watch?v=87a\\_t8bXNx8](https://www.youtube.com/watch?v=87a_t8bXNx8), or read, <http://www.fed-soc.org/publications/detail/did-the-law-cause-columbine>.

<sup>41</sup> For more on the *Clery Act*, see The Clery Center, <https://www.clerycenter.org/the-clery-act>; and again, see George Nicholson, *Campus Crime and Violence, and the Right to Safe Schools*, Defense Comment, Association of Defense Counsel (Summer 2018), at p. 7. Congress enacted the Clery Act in 1990, 15 years elapsed before a dreamer, former Texas prosecutor and trial judge, Ted Poe, was elected to Congress. Soon, Congressman Poe and Congresswoman Katherine Harris of Florida, both Republicans, worked with Congressman Ted Costa of California, a Democrat, to co-found the Congressional Victims' Rights Caucus in 2005. The Caucus seems to have changed its name recently to the Congressional Crime Survivors and Justice Caucus. By whatever name, it is hoped that those who serve on the caucus will collaborate and work immediately and diligently to give wings to something Congressman Costa declared at the caucus' founding, "Protecting victims of crime should be a top priority for legislatures at all levels of government."

Pepperdine University, I attended a White House conference held in Cabinet Room in 1985. The gathering dealt with providing safe schools everywhere in America. The meeting was attended by President Reagan, Vice President George H.W. Bush, Attorney General Edwin Meese, III, and Secretary of Education William Bennett, along with law enforcement and education leaders from several states, including California. The President and other national leaders were very attentive to what the gathered school safety experts had to say. The President, the Attorney General, and the Secretary of Education were already helping the National School Safety Center immensely in a variety of ways.

## THE PROGENITORS OF THE CRIME VICTIMS' LEGAL RIGHTS MOVEMENT

This narrative regarding the adoption of Proposition 8 (1982) and subsequently, Proposition 9 (2008), would not be complete without a discussion of the 1975 writings of Frank Carrington of the Virginia Bar, Mayor Tom Bradley of Los Angeles, and Fresno State Emeritus Professor John Dussich. Each man supplied a compelling literary vision and moral impetus to spark the idea of crime victims' legal rights and for using a voter initiative to formally institutionalize those rights.

Frank Carrington's seminal contribution was a provocative book, *The Victim* (1975). It was followed the same year by Mayor Bradley in his similar article, *The Forgotten Victim* (1975) 3 *Crime Prevention Review*, California Department of Justice, at page 1. Carrington's book and Mayor Bradley's article are classics of this creative legal era. Carrington soon wrote another book, *Neither Cruel Nor Unusual* (1978), with related material in Chapter Four, "Criminals' Rights v. Victims' Rights," at page 73.

Carrington's legacy also includes a vibrant, ongoing institution, the National Crime Victim Bar Association (NCVBA).<sup>42</sup> It is associated with the National Center for Victims of Crime (NCVC).<sup>43</sup> On NCVBA's internet homepage, it declares, "We are the nation's first professional association of attorneys and expert witnesses dedicated to helping victims seek justice through the civil system. The NCVBA continues the pioneering work of Frank Carrington and is a testament to the NCVC's long-standing commitment to civil justice for victims."

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<sup>42</sup> See <https://victimbar.org>.

<sup>43</sup> See <https://victimsofcrime.org>.

Before his untimely death in a residential fire, Frank Carrington became a legend. He was honored by President George H.W. Bush as one of the nation's leading crime victims' advocates during a Rose Garden ceremony at the White House.<sup>44</sup>

Frank and I were close friends to the day of his death. He was quiet, poised, humble, and scholarly. He radiated the wit, charm, manners, and grace of a fictional Southern gentleman, but he was real. And he was kind and respectful to everyone he met. He epitomized civility in the law and out. We collaborated in common cause for years. It is painful to ponder the immense, additional vision, inspiration, and practical impact that he might have provided to our nation and to our people, had he not died so young.

Mayor Tom Bradley, a Democrat and former peace officer, was one of the first elected politicians to become interested in the victims of crime and their families. As noted, he, too, was responsible for writings in support of the victims of crime. Others of both major political parties soon followed Mayor Bradley's example, but only after insistent encouragement by California prosecutors.

Notwithstanding the importance of Carrington's and Bradley's seminal writings, they, too, had important antecedents. In the early 1970s, as already noted, James Rowland conceived and cobbled the "Crime Victim Assistance Center" in the county probation department that he headed in Fresno, California. His department became the first in California to establish such a center. Rowland also created the concept of a victim impact statement. Congressman Jim Costa, a Democrat, honored Rowland's creation, declaring, "In 1976 James Rowland created the first victim impact statement to provide the judiciary with an objective inventory of victim injuries and losses at sentencing. The victim impact statement has brought not only nationwide but worldwide recognition that crime victims need additional assistance. This happened through James Rowland's resolve and fierce determination to provide appropriate and comprehensive services to Fresno County crime victims."<sup>45</sup>

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<sup>44</sup> See tributes at 23 Pacific Law Journal, no. 3 (1992), from President Bush, former President Reagan, U.S. Attorney General William Barr, former U.S. Attorney General Edwin Meese III, California Governor Pete Wilson, California Attorney General Dan Lungren, and California Chief Justice Ronald M. George, Washington Attorney General Ken Eikenberry, Dr. Dean Kilpatrick, director, Crime Victims Research and Treatment Center, Medical University of South Carolina, Dan Eddy, executive director, National Association of Crime Victim Compensation Boards, Eric Smith, president, Victims Assistance Legal Organization (Valor), and from me, along with others, <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1855&context=mlr>.

<sup>45</sup> *In Honor of James Rowland And The Designation Of The James Rowland Assistance Center In Fresno*, Congressional Record (Bound Edition), Volume 153 (2007), Part 20, October 24, 2007, <https://www.govinfo.gov/content/pkg/CRECB-2007-pt20/html/CRECB-2007-pt20-Pg28285-3.htm>.

Professor John Dussich was another progenitor of the movement. While working for the governor of Florida, he presented his first paper on the origins of crime victim advocacy during the First International Symposium on Victimology held in Israel in 1973. Three years later, Rowland called him out of the blue and asked him to attend and speak during a special conference on crime victims at the Marina Hotel in Fresno. As earlier noted, while there, Dussich launched the National Organization on Victims Assistance (NOVA). Three years later, he became the founding secretary general of the World Society of Victimology when it was formed in Germany. Indeed, Dussich played key roles in virtually every new and novel crime victim-witness services initiative, nationally and internationally. At 85, he is still at it. He co-authored a huge, new book, *C7, Realities and Challenges*, to be published in 2024. I have an advance copy and note that the book has major sections on crime victims' rights, remedies, and resources.

California's prosecutors then did the heavy lifting based on the work begun by Carrington, Bradley, Rowland, and Dussich, at times relying on or collaborating with the four men, as well as others doing similar work.<sup>46</sup> For an additional perspective regarding how Proposition 8 came to be enacted, please see Paul Gann, "Justice for the Accuser: Proposition 8, the Victims' Bill of Rights," *Benchmark*, at page 69, Vol. IV, No. 1 (Winter 1988).<sup>47</sup>

## THE RESPONSE TO THE ADOPTION OF CONSTITUTIONAL RIGHTS FOR CRIME VICTIMS

California's status as the first state to adopt constitutional rights for victims of crime and their families was in some respects inevitable during an era that tolerated serious crime: "The victim's absence from criminal processes

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<sup>46</sup> See George Nicholson, Tom Condit & Stuart Greenbaum, editors, *Forgotten Victims: An Advocate's Anthology*, California District Attorneys Association (1977); Tom Condit and George Nicholson, *The Ultimate Human Right: Governmental Protection from Crime and Violence* (January, 1977) 52 Los Angeles Bar Journal, at p. 14 number 7; Andrew Willing, *Protection by Law Enforcement: The Emerging Constitutional Right* (1982) 35 Rutgers Law Review 1, 22-54; Frank Carrington and George Nicholson, *The Victims' Rights Movement: An Idea Whose Time Has Come* (1984) 11 Pepperdine Law Review 1; Frank Carrington and George Nicholson, *The Victims' Rights Movement: An Idea Whose Time Has Come - Five Years Later: The Maturing of An Idea* (1989) 17 Pepperdine Law Review 1. A year after Carrington's untimely death in a residential fire, a memorial issue was published in volume 23, issue 3, of the Pacific Law Journal and in it appeared, George Nicholson, *Victims' Rights, Remedies, and Resources: A Maturing Presence in American Jurisprudence* (1992) 23 Pacific Law Journal 815. See also J. Clark Kelso and Briggette Bass, *The Victims' Bill of Rights: Where Did It Come From and How Much Did It Do?* (1992) 23 Pacific Law Journal 843; Williamson L. Evers, *Victim's Rights, Restitution and Retribution*, (January 1, 1996) Policy Briefing, Independent Institute, <https://www.independent.org/publications/article.asp?id=9243>; and Adam Walinsky, *The Crisis in Public Order* (July 1995) Atlantic Monthly, at page 39, <https://www.theatlantic.com/magazine/archive/1995/07/the-crisis-of-public-order/305006>; (Adam Walinsky was a trusted aide and confidant of U.S. Attorney General Robert Kennedy.)

<sup>47</sup> For further background regarding Paul Gann, see, Robert Fairbanks, a former Los Angeles Times journalist, former California Assemblyman Alister McAlister, and Frank Carrington, Esq., *Paul Gann, Citizen Politician*, (Winter 1988) *Benchmark*, at page 67, Vol. IV, No. 1.



conflicted with ‘a public sense of justice keen enough that it [ ] found voice in a nationwide ‘victims’ rights movement.’”<sup>48</sup>

Although largely out of the general public eye today, Proposition 8, the Victims’ Bill of Rights of 1982, remains alive and growing in impact, after being re-adopted and expanded a quarter century later in Proposition 9, the Victims’ Bill of Rights of 2008, also known as Marsy’s Law, as will be noted in the next section.

Anticipating an effective role for the civil justice system to play in defending the rights of the victims of crime and their families, Frank Carrington and James A. Rapp co-authored a huge, loose-leaf treatise, *Victims’ Rights: Law and Litigation*, published in 1989. In its preface, the co-authors declared, “This publication is a practical guide for attorneys interested in this rapidly developing and distinct area of the law. Victims of crime or violence, often dissatisfied or disillusioned with the results of the criminal justice system, have been bypassing their primary actions against perpetrators and asserting their rights of action against third parties. The tort of ‘victimization,’ whereby a negligent third party enables a perpetrator to victimize or fails to prevent the victimization, is a synthesis of a variety of well-recognized legal principles. Victims’ claims under these principles are now more common and more successful than ever before.”

But while many sought to further defend the rights of victims, there were also formidable critics of Proposition 8, both pre- and post-election. Among them were powerful and prominent lawyers, including, most notably, Ephraim Margolin, a former president of the National Association of Criminal Defense Lawyers, a member of the State Bar of California’s “Trial Lawyers Hall of Fame,” and recipient of many other honors. He was described by a respected federal law journal, as “one of this country’s pre-eminent criminal defense lawyers.” Others included Anthony Murray, then president of the State Bar of California, who had served three years earlier as chair of the State Bar’s Criminal Law Section, and was the recipient of many honors; and Jim Brosnahan, a prominent criminal defense lawyer, a member the State Bar of California’s “Trial Lawyers Hall of Fame,” a “Trial Lawyer of the Year” named by the American Board of Trial Advocates, and the recipient of many other honors. Brosnahan was described by one journalist as, “The man who hates injustice.”<sup>49</sup>

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<sup>48</sup> Paul G. Cassell and Margaret Garvin, *Protecting Crime Victims in State Constitutions: The Example of the New Marsy’s Law for Florida*, (2020) 110 J. Crim. L. & Criminology 99, 103, 104, fn. 21 [constitutional rights for crime victims “began in California”].

<sup>49</sup> At 89, Brosnahan is akin to Ol’ Man River; he just keeps rolling along. See his new book, *Justice at Trial: Courtroom Battles and Groundbreaking Cases* (2023).

There were other critics, too, but, perhaps, none so distinguished or determined as these three venerable gentlemen. Brosnahan was very energetic and creative. With Margolin, he was involved with both of the state high court cases, *Brosnahan v. Eu* and *Brosnahan v. Brown*. Almost four decades later, Brosnahan wrote of his lingering perspectives.<sup>50</sup>

Like Brosnahan, California prosecutors hate injustice, although they come at it with a very different focus based on their specific duty imposed upon them by the law, both statutory and constitutional. Prosecutors believed deeply that the time had come for millions of victims of crime and their families of all races, creeds, and colors, to have statutory and constitutional rights and a place in the administration of criminal justice. Prosecutors felt it was their duty and job to help establish and enforce those legal rights in the spirit of *Cardozian balance*, and they did their best to do that job.

Conversely, Brosnahan and his colleagues felt it was their duty and job to protect the accused. And they did their best to do that job. California's determined prosecutors and Brosnahan, along with his distinguished criminal defense colleagues, deserve immense credit for doing their best in a professional way, both in court and in the electoral arena, in the 1970s, the 1980s, and ever since.

Nevertheless, whatever institutional criticisms may have been made of California's prosecutors and their crime victims' leadership and mission, assertions that it would have been "better to have gone through the legislature" were meritless, as we fully and faithfully tried to do so. But the People reserved to themselves the right to initiative when the legislature was not responsive, as was the case here.

And I submit that we achieved a broadly significant, enduring, and exemplary public good for the benefit of millions of innocent citizens. Further, we did so without undermining the rights of criminal accuseds. Our seminal work has had an enduring shelf life that continues to broaden in scope and to serve the public good, not only in California, but in many other states, as well as nationally. In short, California's traditional prosecutors became role models for restoring *Cardozian balance* in the administration of criminal justice and inspired prosecutors and state attorneys general everywhere in America to follow their lead.

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<sup>50</sup> Jim Brosnahan, *Brosnahan v. Eu: How California Law Turned in 1982 to Face Crime Victims at Defendants' Expense* (Spring/Summer 2018) Newsletter, at page 23, California Supreme Court Historical Society, <https://www.cschs.org/wp-content/uploads/2018/06/2018-Newsletter-Spring-Brosnahan.pdf>.

My dear old friend, Carol Corrigan, once wrote, “The first, best, and most effective shield against injustice for an individual accused, or society in general [including the victims of crime and their families], must be found not in the persons of defense counsel, trial judge, or appellate jurist, but in the integrity of the prosecutor. Some readers may view this concept with skepticism. Yet this notion lies at the heart of our criminal justice system and is the foundation from which any prosecutor’s authority flows.”<sup>51</sup>

Still, only when every prosecutor in America, acting with integrity, humility, and devotion, fully and faithfully honors their statutory and constitutional duties will Justice Corrigan’s admonition once again be universally true. Hopefully and prayerfully, all our nation’s civic and political leaders will emulate them.

To illustrate to the public and the State Bar, especially those on the defense side, including the three distinguished gentlemen just mentioned, the importance and benefit of victims’ rights, we tried to enlist the support of everyone we could. As but one example, Carrington and I planned and “sold” the idea of a special issue on crime victims’ rights to the editors of the Pepperdine Law Review, volume 11, number 5 (1984). To demonstrate “bridge-building” and the increasing scope and breadth of the then nascent crime victims’ movement, I called the following leaders and asked them for letters of support to publish at the outset of this special issue: President Wallace D. Riley, American Bar Association; Director James K. Stewart, National Institute of Justice, U.S. Department of Justice; Assistant Attorney General Lois Haight Herrington, U.S. Department of Justice; Secretary of Education T.H. Bell, U.S. Department of Education; Administrator Alfred S. Regnery, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice; California Chief Justice Rose Elizabeth Bird; California Governor George Deukmejian; President Dale E. Hanst, California State Bar; California Attorney General John K. Van de Kamp, and California Superintendent of Public Instruction Bill Honig.

Everyone whom I invited agreed to my request.

In addition to these letters, to further demonstrate the need for and benefit of adopting a set of rights for crime victims, the special issue contained our lead article,<sup>52</sup> plus articles by Assistant Professor Deborah P. Kelly,

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<sup>51</sup> Carol Corrigan, *On Prosecutorial Ethics* (1986) 13 Hastings Constitutional Law Quarterly 537.

<sup>52</sup> Frank Carrington and George Nicholson, *The Victims’ Rights Movement: An Idea Whose Time Has Come*, (1984) 11 Pepperdine Law Review 1; to access the entire issue, go to <https://digitalcommons.pepperdine.edu/plr/vol11/iss5>.

Department of Government, American University, on “Victims Perceptions of Criminal Justice;” Paul S. Hudson, New York State Crime Victims Board, on “The Crime Victim and the Criminal Justice System: Time for Change;” Associate Professor Richard L. Aynes, School of Law, University of Akron, on “Constitutional Considerations: Government Responsibility and the Right Not to be a Victim;” and Professor Josephine Gittler, College of Law, University of Iowa, on “Expanding the Role of the Victim in a Criminal Action.”

## JUDGES EVERYWHERE IN AMERICA TAKE NOTE

Once victims’ rights became enshrined in law, the judiciary necessarily had to educate itself in order to comply with its obligation to enforce these new rights. Thus, two years after Proposition 8 was adopted by voters in 1982, the National Judicial College convened a “National Conference of the Judiciary on the Rights of Victims of Crime” at its campus. Conferees included two judges from each of the 50 states. After they did their collaborative work, the gathered judges adopted and published a *Statement of Recommended Judicial Practices*. The National Conference was funded by the National Institute of Justice and the American Bar Association.<sup>53</sup>

The *Statement of Recommended Judicial Practices* “has far-reaching implications for our criminal justice system, springing as it does from a meeting that history may well recognize as a turning point in American jurisprudence. Recognizing the need for change, judges have accepted their necessary leadership role in meeting the crucial needs of the victims of crime. Participants in the National Conference of the Judiciary on the Rights of Victims of Crime not only have established these precepts for ensuring those rights, they are setting an example in their own courtrooms by testing these recommendations and encouraging their colleagues to do the same. The National Institute of Justice is proud to have co-sponsored this historic conference and pledges its continuing effort to promote and help refine the conference recommendations. . . .”<sup>54</sup>

Significantly, the thesis for the Conference and its *Statement of Recommended Judicial Practices* was taken expressly from the earlier final report of the President’s Task Force Report on Victims of Crime: “The courtroom is the focal point of the entire criminal justice system. The judge who presides over

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<sup>53</sup> Earlier, Frank Carrington and I visited Dean V. Robert Payant of the National Judicial College, at his invitation, to help ponder and plan the judicial conference.

<sup>54</sup> Preface by James K. Stewart, Director, National Institute of Justice.

a court becomes not only the final arbiter of each evidentiary and procedural issue, but he also establishes the tone, the pace, and the very nature of the proceedings. Particularly for the victim, the judge is the personification of justice."<sup>55</sup>

And a special issue of the *Judges' Journal*, published by the Judicial [Administration] Division of the American Bar Association, told "the conference story - from the perspective of the victims, the organizations which are their advocates, and from the judicial conferees who adopted The Statement of Recommended Judicial Practices for victims."<sup>56</sup>

### **ESTABLISHING A CRIME VICTIMS LEGAL RESOURCE CENTER TO SUPPORT CRIME VICTIMS**

After Proposition 8 was adopted by voters in 1982, I visited with McGeorge Law School Dean Gordon Schaber to encourage him to establish a statewide crime victims' resource center at his law school. He agreed and encouraged me to do what I could to help him.

Accordingly, I spoke with Governor Deukmejian and asked for his help. He issued a supportive proclamation. Then I sought support from the Legislature. And it adopted a supportive resolution joined by 98 bipartisan legislators. Signing the resolution were four Democrats, Senator David Roberti, Chairman of the Senate Rules Committee; Lieutenant Governor Leo T. McCarthy, President of the Senate; Louis J. Papan, Chairman of the Assembly Rules Committee; and Willie Lewis Brown, Jr., Speaker of the Assembly.

Thereafter, Dean Schaber, Associate Dean Glenn Fait, and I worked with the Governor and the Legislature to acquire a stable and enduring statutory source of substantial funding for a Crime Victims' Legal Resource Center at McGeorge School of Law.<sup>57</sup>

The new center would offer a new, statewide crime victims' information and advice telephone hotline, aptly named 1-800-VICTIMS (842-8467). But first I had to acquire the legal, possessory, and operational rights to utilize that number. Accordingly, I placed a call to that number and discovered that Xerox owned and utilized it, but only for interoffice communications

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<sup>55</sup> Inside front cover, Statement of Recommended Judicial Practices.

<sup>56</sup> Special Issue on *Victims of Crime, Giving Them Their Day in Court* (Spring 1984) 23 *The Judges' Journal*, no. 2. Lois Haight Herrington authored one of the articles in that special issue.

<sup>57</sup> California Penal Code, section 13897, has provided for annual funding for the center ever since.

nationally. Somehow, I miraculously reached the President/CEO of Xerox at the time, and asked him for use of the number. He and Xerox not only donated the number, but he paid for its first two years of statewide operation by McGeorge!

According to the Center's current website, McGeorge students, under attorney supervision, as well as Center staff, provide information and referrals statewide to victims of crime, their families, victim service providers, and victim advocates. Callers receive information on such matters as victims' compensation, victims' rights in the justice system, restitution, civil suits, the right to speak at sentencing and parole board hearings, as well as information on specific rights of victims of domestic violence, elder abuse, child abuse, and abuse against disabled.

McGeorge's Crime Victims Legal Resource Center and its 1-800-VICTIMS hotline continue to operate to this day, more than 40 years later. They have aided and advised hundreds of thousands, perhaps even millions of victims of crimes, their families, victim service providers, and victim advocates, throughout California.<sup>58</sup>

## MARSY'S LAW AND ITS OFFSPRING

The next major step in Proposition 8's life came a quarter century later when California voters approved Proposition 9, The Victims' Bill of Rights of 2008, or Marsy's Law, which incorporated and extended the provisions of the original Proposition 8. The contents of Marsy's Law are digitally accessible and include various statutory and constitutional reforms of criminal law and procedure, all focused directly on victims of crime and their families.<sup>59</sup> Examples of direct victims' rights are those that mandate safe schools, colleges, and universities; restitution; and the opportunity to appear and speak during sentencing and parole hearings. Examples of indirect rights are those that mandate public safety bail and truth in evidence in criminal proceedings.

As with Proposition 8 in 1982, crime victims were among those helping to achieve voter adoption of Proposition 9 in 2008. The latter was initiated and largely underwritten by Dr. Henry T. Nicholas III, the brother of Marsy, who was a victim of an unlawful homicide.

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<sup>58</sup> For more, go to, <http://www.1800victims.org>; and see, Edwin Villmoare and Jeanne Benvenuti, *California Victims of Crime Handbook, Guide to Legal Rights and Benefits for California Crime Victims* (1988), with a forward by Governor George Deukmejian. I wrote one of the chapters in the book.

<sup>59</sup> For statements of the proponents and opponents of Marsy's Law, and the full text of the initiative, see the *Voter Information Guide for 2008 Final Election*, at pp. 58-63, 65-69, [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2265&context=ca\\_ballot\\_props](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2265&context=ca_ballot_props); Uniquely, State Senator Jim Nielsen played important roles with both Proposition 8 and Proposition 9.

“If any good can come of something this horrible—the loss of my sister and the losses of other families of crime victims—it is that these violent acts served as a catalyst for change,” Dr. Nicholas said. “Marsy’s Law will provide for a more compassionate justice system for crime victims in California and make that a constitutional guarantee. Now the momentum can be put behind a U.S. Constitutional Amendment so that the rights of all crime victims, anywhere in America, can be protected.”<sup>60</sup>

The California Department of Justice provides digital access to a *Marsy’s Card*, in English and 20 other languages, to provide information on most of the rights now enjoyed in California and web links to additional resources, including the McGeorge Victims of Crime Resource Center.<sup>61</sup>

Marsy’s Law or a reasonable facsimile thereof, has been adopted, in whole or in part, in 36 states with perhaps others on the way.<sup>62</sup> From no statutory and constitutional rights in 1982 when California voters first adopted Proposition 9’s predecessor, Proposition 8, now more than three dozen states and their citizens are legally protected in varying ways in the administration of criminal justice.

Although voters in Pennsylvania also approved a Marsy’s Law amendment to its state Constitution in November 2019, the Pennsylvania Supreme Court enjoined certification of the result in December 2021 on the ground it was unconstitutional because it had too many subjects, an argument that had been rejected by the California Supreme Court in *Brosnahan v. Brown*, almost 40 years earlier.

In addition to Marsy’s Law, there were other positive crime victims’ rights and criminal justice initiatives too numerous to mention here that were adopted by California voters between 1982 and 2008.<sup>63</sup>

<sup>60</sup> Dr. Henry T. Nicholas III, Marsy’s brother, Founder and Chairman of Marsy’s Law for All, [https://www.marsyslaw.us/marsys\\_story](https://www.marsyslaw.us/marsys_story).

<sup>61</sup> [https://oag.ca.gov/sites/all/files/agweb/pdfs/victimservices/marsy\\_pocket\\_en\\_res.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/victimservices/marsy_pocket_en_res.pdf); The National Victims’ Constitutional Amendment Passage (NVCAP) provides digital access to a *Crime Victims’ Rights Miranda Card*, *Victims’ Rights Handbook*, *Victims’ Rights Brochure Kit*, *Frequently Asked Questions (FAQ) Kit*, and *Promising Practices in the Compliance and Enforcement of Victims’ Rights Kit*, and digital access to a *Creating a Victims’ Rights Public Education Strategy Guidebook and Talking Points Kit*, primarily for victim service providers, and organizations and agencies that assist victims of crime, <https://www.nvcap.org/vrep/vrep.html>.

<sup>62</sup> NVCAP, <https://www.nvcap.org/states/stvars.html>; Jason Moon, *How One Group Is Pushing Victims’ Rights Laws Across The Country*, NPR (March 29, 2018), <https://www.npr.org/2018/03/29/597684647/how-one-group-is-seeding-victims-rights-laws-across-the-country>.

<sup>63</sup> See, e.g., Proposition 115, “The Crime Victims Justice Reform Act of 1990,” and for a complete listing of all the statutory and constitutional rights contained in it, see the statements of proponents and opponents, and its full text in the Voter Information Guide for 1990 Primary Election, at pp. 32-35, 65-69, [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2058&context=ca\\_ballot\\_props](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2058&context=ca_ballot_props), and *Raven v. Deukmejian* (1990) 52 Cal.3d 336, upholding it for the most part. For an analysis of the relevant legal terrain a little more than a decade later, see Paul Pfingst, Gregory Thompson, and Kathleen M. Lewis, “*The Genie’s Out of the Jar*”: *The Development of Criminal Justice Policy in California* (2002) 33 *McGeorge Law Review* 717. And for more, two decades later yet, see Todd Spitzer and Greg Totten, *Did Brown v. Plata Unleash a More Dangerous Genie?* elsewhere in this issue of *California Legal History*.

## PROPOSITIONS 8 AND 9 AND PUBLIC SAFETY BAIL: AN ENDLESS JURIDICAL CONUNDRUM WITH PUBLIC SAFETY IMPLICATIONS

Another controversial, but an unavoidable, subject matter in the context of victims' rights is bail pending trial. It, too, was part of Proposition 8 in 1982 and Proposition 9 in 2008.

Bail hearings, or more aptly, pretrial release hearings, as such proceedings must increasingly be labelled, present this crucial and timely question, "Wither pre-trial detention in an age of metastasizing crime and violence?" While the virtually ubiquitous life and death nature of this question is of increasing concern to the public, owing partially to the widespread weakening of the traditional bail system in California and elsewhere, it is hardly novel.

The general subject matter has been debated and litigated *ad nauseum* for decades. Responding to the debate, I personally inserted a public safety bail constitutional provision into Proposition 8, the Victims' Bill of Rights. Accordingly, when voters adopted the initiative in June 1982, California Constitution, article I, section 28, subdivision (e), they provided for public safety to be *the primary consideration* when judges decide whether to release an accused on bail. In the same election, Proposition 4 also addressed the issue of bail, but as its sole issue and in a weaker form. Since it was also adopted, its passage presented the question of what to do when two initiative provisions conflict.

Judge Julius A. Leetham of the Los Angeles Superior Court provided the answer in his commentary, "... And the Defendant Will be Admitted to Bail," Beverly Hills Bar Journal, at p. 176, Vol. 18, No. 3 (Summer 1984). But that legal analysis is largely immaterial because many initiatives now address that very possibility in their text, and because almost a quarter century later, Proposition 9 was adopted by voters in 2008. It also contained constitutional mandates related to public safety bail.

Unfortunately, when the California Supreme Court unanimously decided *In re Humphrey* (2021) 11 Cal. 5th 135, it did not have the occasion to fully consider the new provisions in article I, section 28, subdivisions (b)(3), and (f)(3) of the California Constitution,<sup>64</sup> although to some extent it referenced and cited them in various places in the opinion.

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<sup>64</sup> *In re Humphrey*, 11 Cal.5th 135, at p. 155, fn. 7.



In any event, it is important to note that the public safety bail provisions that Proposition 9 inserted into the state Constitution include this unambiguous language: “Public safety *and the safety of the victim* shall be the *primary* considerations.”<sup>65</sup> (Italics added.) As judges consider how this constitutional mandate should be interpreted and applied, they will surely recognize in the real world of today, in too many places in America, especially our inner-cities, the fear and reality of crime and violence (even “minor” crimes and “victimless” crimes, which often lead to violence) deprive ordinary law-abiding citizens of their right to life and liberty. Parents and grandparents should not be compelled to submit to the urgent necessity of placing their children and grandchildren in bathtubs for protection from stray bullets during neighborhood drive-by gang shootings or of hiding from brazen swarms of “gang-banging shoplifters,” while they are shopping for Christmas gifts.

Unfortunately, constitutional bail mandates seem to be taking a complicated aura of late. For instance, “release pending trial proceedings” appear to be on their way to becoming mini-trials, rather than hearings, increasingly requiring witnesses, testimony under oath, and evidence. As these mini-trials on bail grow more complex, they may disrupt yet incomplete law enforcement investigations immediately after the arrests.

Empirical evidence, particularly from our nation’s major cities, including San Francisco and Los Angeles, suggests that it is risky when releasing repeatedly violent criminals to rely on the hazy proposition that releasing arrestees “under appropriate nonfinancial conditions” — “such as electronic monitoring, regular check-ins with a pretrial case manager, community housing or shelter, and drug and alcohol treatment” — are sufficient.

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<sup>65</sup> Proposition 9’s constitutional bail provisions read as follows in article I, section 28, subdivision (b): “In order to preserve and protect a victim’s rights to justice and due process, a victim shall be entitled to the following rights: (1) . . . , (2) . . . , (3) To have the safety of the victim and the victim’s family considered in fixing the amount of bail and release conditions for the defendant.” Further, section 28, subdivision (f) provides: “In addition to the enumerated rights provided in subdivision (b) that are personally enforceable by victims as provided in subdivision (c), victims of crime have additional rights that are shared with all of the People of the State of California. These collectively held rights include, but are not limited to, the following: (1) . . . , (2) . . . , (3) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, *the safety of the victim*, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. *Public safety and the safety of the victim shall be the primary considerations.* (Italics added.) [¶] A person may be released on his or her own recognizance in the court’s discretion, *subject to the same factors considered in setting bail.* [¶] Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.” (Italics added.)

Indeed, documented evidence of that risk is provided by the Yolo County District Attorney's Office and in a study conducted in the aftermath of Covid shutdown-induced "zero bail" policies.<sup>66</sup>

Despite the existing constitutional mandate that public safety *and* the *safety of the victim* shall be the *primary* considerations in bail proceedings, and the other statutory and constitutional mandates designed to protect the victims of crime, their families, and the public, we are well advised to consider anew and carefully U.S. Supreme Court Justice Robert H. Jackson's dissent in *Terminiello* in the face of the current trends toward drastically weakening bail procedures and the increasing use of *decarceration*: "Has our administration of criminal justice gone too far toward accepting the doctrine that civil liberty means the removal of all reasonable and practical restraints from arrested criminals, misdemeanants and felons, and that all local, related attempts to maintain order are impairments of the liberty of the arrestees, many of whom are repeatedly violent? Our choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if our system of justice does not temper its increasingly doctrinaire logic in this matter with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact."<sup>67</sup>

## THE UNITED STATES CONSTITUTION AND THE RIGHTS OF VICTIMS OF CRIME AND THEIR FAMILIES.

Do victims of crime and their families have any federal rights?

Yes, they do, but they are purely statutory rights, which are subject to change by Congress and the president. More importantly, some of those rights require federal funding, which is will-o'-the-wisp at best.

The Victims of Crime Act (VOCA), which was passed by Congress in 1984 and amended in 1988, established the Office for Victims of Crime (OVC) and created the Crime Victims Fund. The latter provides funds to states for victim assistance and compensation programs that offer support and services to those affected by violent crimes.<sup>68</sup>

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<sup>66</sup> See *Zero Bail Case Study – Zero Bail Policies Increased Crime in Every Category*, Yolo County District Attorney's Office (February 14, 2023), <https://yoloda.org/zero-bail-case-study-zero-bail-policies-increased-crime-in-every-category>; and the study itself, *Yolo County Emergency Bail Analysis* (August 5, 2022), <https://yoloda.org/wp-content/uploads/2023/02/Emergency-Bail-Analysis.pdf>; Kristine Parks, "LA reinstates controversial zero bail policy as judge rules holding those who can't pay is unconstitutional. A recent study found violent crime tripled in one California county as a result of a no bail policy," Fox News (May 26, 2023), <https://www.foxnews.com/media/l-a-reinstates-controversial-zero-bail-policy-judge-rules-holding-those-cant-pay-unconstitutional>.

<sup>67</sup> *Terminiello v. Chicago* (1949) 337 U.S. 1, 37; and see Justice Arthur Goldberg in his majority opinion in *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 160 ["[W]hile the Constitution protects against invasions of individual rights, it is not a suicide pact."]

<sup>68</sup> <https://ovc.ojp.gov/program/victims-crime-act-voca-administrators/laws-policies>.

“VOCA uses non-taxpayer money from the Crime Victims Fund for programs that serve victims of crime. These funds are generated by fines paid by federal criminals to support services for over six million victims of all types of crimes annually through 6,462 direct service organizations, such as domestic violence shelters, rape crisis centers, and child abuse treatment programs. Sustained VOCA funds are needed to respond to the dangerous lack of available services for victims.”<sup>69</sup>

In response to the question, “What Federal Rights Do Crime Victims Have?,” “[t]wo federal statutes describe the federal Government’s responsibilities to crime victims. The Victims’ Rights and Restitution Act [of 1990] (VRRRA) (34 U.S.C. § 20141) describes the services the federal Government is required to provide to victims of federal crime. The Crime Victims’ Rights Act (CVRA) [of 2004] (18 U.S.C. § 3771) sets forth the rights that a person has as a crime victim. For purposes of these rights and services, victims are defined in specific ways in the law.”<sup>70</sup>

Should there be an amendment to the U.S. Constitution guaranteeing legal rights for victims of crime and their families? For many years, proposals have been introduced, primarily in the U.S. Senate. But they have always failed.

Washington State Attorney General Ken Eichenberry sat on the President’s Task Force on Victims of Crime in 1982. He suggested the idea of amending the U.S. Constitution by adding rights for victims of crime and their families. It was a stunning suggestion at the time. But, no more. Some prominent Democrats and Republicans, including President William Jefferson Clinton, have agreed through the years that there should be such an amendment. On June 25, 1996, President Clinton spoke on the subject during a special ceremony held at the White House. He was joined by U.S. Senators John Kyle of Arizona, a Republican, Diane Feinstein of California, a Democrat, and James Exon of Nebraska, a Democrat, along with several members of Congress, all Democrats,

The President declared in part:

“When someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in. Participation in all forms of government is the essence of democracy. Victims should be guaranteed the right to participate in proceedings related to crimes committed against them. People accused of crimes have explicit constitutional rights. Ordinary citizens

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<sup>69</sup> <https://nncedv.org/content/victims-of-crime-act>.

<sup>70</sup> <https://www.justice.gov/enrd/rights-victims>; also visit the Nation Crime Victim Law Institute (NCVI), <https://ncvli.org>.

have a constitutional right to participate in criminal trials by serving on a jury. The press has a constitutional right to attend trials. All of this is as it should be. It is only the victims of crime who have no constitutional right to participate, and that is not the way it should be. Having carefully studied all the alternatives, I am now convinced that the only way to fully safeguard the rights of victims in America is to amend our Constitution and guarantee these basic rights: to be told about public court proceedings and to attend them; to make a statement to the court about bail, about sentencing, about accepting a plea if the victim is present; to be told about parole hearings to attend and to speak; notice when the defendant or convict escapes or is released; restitution from the defendant; reasonable protection from the defendant; and notice of these rights. If you have ever been a victim of a violent crime—it probably wouldn't even occur to you that these rights could be denied if you've never been a victim. But actually, it happens time and time again. It happens in spite of the fact that the victims' rights movement in America has been an active force for about 20 years now.

“... ”

“Two hundred twenty years ago, our Founding Fathers were concerned, justifiably, that Government never, never trample on the rights of people just because they are accused of a crime. Today, it's time for us to make sure that while we continue to protect the rights of the accused, Government does not trample on the rights of the victims.”<sup>71</sup>

## A OPTIMISTIC POSTSCRIPT

Almost 50 years have elapsed since the mid-1970's when the crime victims' legal rights movement was first seeded in California, inspired by four heroic men, lawyer Frank Carrington, Mayor Tom Bradley, Chief Probation Officer Jim Rowland, and Professor John Dussich.

Those early years of legal creativity fostered both introspection and pursuit of *Cardozian balance* in the law at all levels of the administration of criminal justice. This was the case across California, and eventually, the nation, with immense credit due to the bipartisan leadership of President Reagan

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<sup>71</sup> President William Jefferson Clinton, Remarks at Announcement of Victims' Rights Constitutional Amendment (June 25, 1996). For both the audio/video and transcript, see <https://millercenter.org/the-presidency/presidential-speeches/june-25-1996-victims-rights-announcement>; On April 16, 2002, President George W. Bush echoed President Clinton at the U.S. Department of Justice, Washington, D.C., <https://georgewbush-whitehouse.archives.gov/news/releases/2002/04/20020416-1.html>; see generally, “History of Law: The Evolution of Victims' Rights,” including, “Federal Constitutional Amendment” and “State Constitutional Amendments,” [https://www.ncjrs.gov/ovc\\_archives/nvaa/supp/c-ch4.htm](https://www.ncjrs.gov/ovc_archives/nvaa/supp/c-ch4.htm); and Paul G. Cassell, *Barbarians at the Gates, A Reply to Critics of the Victims' Rights Movement*, 1999 *Utah L. Rev.* 479, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/utahlr1999&div=20&id=&page=>

and Governors Deukmejian, Wilson, and Brown. Governor Gray Davis, a Democrat, also helped on several occasions in the early days, particularly while he was a state assemblyman. Indispensable were the “Gang of Four,” Assemblymen McAlister and Stirling, and Senators Presley and Nielsen; Rod Blonien (my dear friend and colleague for decades); California’s elected district attorneys, their assistants and deputies; the California District Attorneys Association; the bipartisan leadership of police chiefs and sheriffs; and virtually all of California’s law enforcement associations.

Notwithstanding the efforts of so many former bipartisan civic leaders and politicians, especially prosecutors and peace officers, inspired and aided by the victims of crime and their families, much has since evolved in political and social thought and in the administration of criminal justice. Unfortunately, some of those changes have purported to transform criminals into victims, while the actual victims of crime and their families are once again abandoned and forgotten as human beings. The leaders of our nation and our 50 states must be reminded of Elie Wiesel’s sobering observation, “One thing that is worse for the victim than hunger, fear, torture, even humiliation, is the feeling of abandonment, that nobody cares, the feeling that you don’t count.”

Accordingly, in 2023, and especially in 2024, a presidential election year, more than ever, civic and political leaders, whether progressive, liberal, conservative, Democrat, or Republican, must act imaginatively,<sup>72</sup> creatively

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<sup>72</sup> John W. Cooley opens with a lengthy chapter on “The Thinking Function” in his *Appellate Advocacy Manual, A Design and Decision-making Approach*. He suggests imagination is indispensable for lawyers and for judges, and I would add political leaders. Cooley seems to use Justice Frankfurter’s letter to an inquisitive 12-year-old boy suggesting what to study to prepare to enter law school as a guide in his section headings which suggests we, in our profession, are artists, poets, essayists, even dreamers, and the like, at different times and in different circumstances. And so it is. Lincoln was all those things. This is not to suggest technical and legal skills and knowledge of statutory and constitutional law are not indispensable to the practice of law, to judging, or to politics. I only suggest that while we work diligently toward perfection in technical and legal skills and knowledge, we may be falling behind if we do not utilize our imagination to tantalize ourselves with, “did I consider,” “perhaps,” “maybe,” “what if,” and, “why not,” throughout our professional lives. Einstein suggested, “Imagination is more important than knowledge; knowledge is limited, but imagination encircles the world. To see with one’s own eyes, to feel and judge without succumbing to the suggestive power of the fashion of the day, to be able to express what one has seen and felt in a trim sentence or even a cunningly wrought word, is that not glorious? When I examine myself and my methods of thought, I come close to the conclusion that the gift of imagination has meant more to me than my talent for absorbing absolute knowledge. There is no doubt that a single creative thought has the power to change the world.” Walt Disney also knew that, although he was, some might say, a mere cartoonist and movie maker. Even so, he called himself and those with whom he worked, “imagineers.” They engaged in “imagineering.” The term imagineering, a portmanteau, was popularized in the 1940s by Alcoa Aluminum to describe its blending of imagination and engineering and adopted by Walt Disney a decade later. Why shouldn’t lawyers, judges, and politicians be imagineers in ethically appropriate circumstances? Lincoln and Frederick Douglass were imagineers. (John Stauffer, *Giants: The Parallel Lives of Frederick Douglass and Abraham Lincoln* (2009), preface, pp. xi-xii.) One final, related thought: An old, old friend and former colleague in the Alameda County District Attorney’s Office, who is gone now, Howard Gilbert, at different times, was a consummate prosecutor and devoted defender. He was an imagineer of concluding arguments in jury trials. He spent countless hours meticulously preparing and trying his cases, but he also spent countless hours in each individual case that he tried, deeply pondering how to fit the facts and inferences he believed he had proven, beyond a reasonable doubt or by establishing the contrary, into the most compelling and persuasive story he could cobble to aid the jury to do justice. Riverside County Public Defender, for whom Howard then worked, suggested to me, “Every prosecutor’s or defender’s office should have a Howard Gilbert . . . , but only one.” He was needling me because I originally suggested that he hire Howard. Even so, Howard was a master of the jury and oral argument. For more of John W. Cooley, see his *A Classical Approach to Mediation — Part I: Classical Rhetoric and the Art of Persuasion in Mediation* (1993) 19 University of Dayton Law Review 83, and *Part II: The Socratic Method and Conflict Reframing in Mediation* (1994) 19 U. University of Dayton Law Review 589.

and decisively, as they did so effectively in the 1970s and 1980s, and listen attentively and patiently to the plaintive cries of anguish by millions of victims of crime and violence and their families, all of them praying and pleading, largely alone and unheeded, for governmental protection from crime and violence and for prompt relief from their shared fears and miseries. The fact is that victims of crime and their families have been overwhelmed by malicious criminals and killers, whatever their age, mental condition, or motive, who currently roam free-range in too many places, largely in urban America, especially in our inner-cities. And, we must all remember, to the parent of a murdered child, none of those things matter. To that parent, the administration of criminal justice is failing.

In addition to enforcing crime victims' existing statutory and constitutional rights, here are some things that defenders of the public's right to life, liberty, and property could do:

First, given that past presidents, senators, and members of Congress of *both parties* declared their support for crime victims' rights, including a yet unrealized amendment to the U.S. Constitution, perhaps major political figures today from both parties could collegially collaborate and make such an amendment happen. After all, the idea has percolated since Washington State Attorney General Ken Eichenberry suggested it more than 40 years ago while serving on President Reagan's Task Force on Victims of Crime. President Clinton, too, endorsed it. Such an amendment is needed more today than ever.

Second, a major area of remaining concern is the lack of representation for victims. After all, criminal accuseds have a right to counsel under *Gideon*,<sup>73</sup> but their victims do not. Frank Carrington, once again, stepped into the breach with the book that he co-authored with James Rapp of the Illinois Bar about victims of crime and civil litigation. His seminal research and advocacy are memorialized in the ongoing work of the National Crime Victim Bar Association (NCVBA).<sup>74</sup>

Third, as observed in a seminal article by John Gillis and Douglas Beloof: "The failure of legal education to produce lawyers with any knowledge of crime victim law is a substantial barrier to enforcement of victims' rights. The course 'Victims in Criminal Procedure' is presently taught in only a few

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<sup>73</sup> See citation in footnote 5, *ante*.

<sup>74</sup> See <https://victimbar.org> and "Our History and the Legacy of Frank Carrington," <https://victimbar.org/about-us/#history>.

law schools, and victim law is not significantly addressed in any other existing criminal procedure casebook. As a result, year after year law students who wish to practice criminal or civil rights law graduate from law schools around the nation with no awareness that the victim field within criminal procedure exists. As a result, few young lawyers with training in victim law are available to crime victims.”

Gillis and Beloof also explain the reason for this failure: “While unfortunate, the failure of legal academia to educate students about one of the most successful and dynamic civil rights movements of the last several decades is understandable. An indirect effect of the Warren Court, which aggressively extended federal constitutional law to the states, was that law school criminal procedure courses became almost exclusively about the federal constitution. Because federal constitutional law proscribes the boundaries of procedures within which states can formulate procedure, it does have relevance in the states. Because the only criminal law rights in the United States Constitution are defendants' rights, these are the only rights typically taught in law school. In trial procedure casebooks the focus is on the Federal Rules of Criminal Procedure. The difference in legal academia's distinction between a Supreme Court ruling which instantly dictates the nature of federal constitutional rights for the entire country and the incremental, albeit prolific, state-by-state development of victim statutes and state constitutional amendments is profound. Victims' rights are off the academic radar screen.”<sup>75</sup>

Yet, if law schools can offer a variety of classes dealing with criminal accuseds' rights (as virtually all do), they can certainly offer at least one class on crime victims' rights.<sup>76</sup> If that seems daunting, they need only draw some inspiration from Cooley's chapter on “The Thinking Function.”<sup>77</sup> With a little

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<sup>75</sup> John W. Gillis & Douglas E. Beloof, *Next Step for a Maturing Victim Rights Movement: Enforcing Crime Victim Rights in the Courts* (2002) 33 *McGeorge Law Review* 689, 696-698, <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=2235&context=mlr>; more generally, see *Victims in Criminal Procedure* (4th ed. Carolina Academic Press 2018) (co-author with Douglas Beloof, Steven J. Twist, and Margaret Garvin); and Paul Cassell, *Defining 'Victim' Through Harm: Crime Victim Status in the Crime Victims' Rights Act and Other Victims' Rights Enactments*, \_\_\_ *American Criminal Law Review* \_\_ (forthcoming) (with Michael Morris).

<sup>76</sup> I believe one reason they don't is inertia, or in plain language, “That is the way we do things around here.” Early in my life and later in my professional career, I recognized many such declarations as challenges to be remedied. In baseball, if a player gets a hit three times every 10 at bats long enough, he winds up in the Hall of Fame. Why is that? Because few are able to fail 70 percent of the time and endure long enough to establish a sufficient record. I have answered enough challenges such as that presented by the dearth of law school classes dealing with the legal rights of victims of crime and their families to have learned that you can never prevail with any good idea, any worthy idea, unless you try, and if necessary, again and again. I have failed in trying roughly 70 percent of the time. Michael Jordan perfectly describes what failure meant in his basketball career in a television advertisement, <https://www.youtube.com/watch?v=nvrbQBI4EIL>.

<sup>77</sup> See footnote 72, *ante*.

thought, a new course comes to mind easily. My suggested title is, *Organizing for the Legal Rights of Crime Victims and their Families*. Such a class would survey the statutory and constitutional rights for victims that are on the books in most states and the legal and political strategies that succeeded historically to foster the broader agenda of *Cardozian balance*.<sup>78</sup> This proposed course would also focus on how coalitions are constructed and include instruction on laws governing funding, disparities in healthcare and mental health counseling for victims of crime and their families, and the sentencing, probation, and parole opportunities for crime victims or their survivors to be heard meaningfully. My proposed class, sprinkled ubiquitously into every law school in the nation, would surely catalyze a leap ahead toward informing future generations of lawyers and judges that nice people who become victims of crime, and their families, have rights, too, as observed by Chief Judge Wilbur K. Miller.<sup>79</sup> A related continuing legal education class conducted in all the law schools for lawyers and judges could also help to inform the present generation of crime victims as well.

I conclude with a few words about prosecutors and peace officers.

Prosecutors serve a distinct and indispensable function in our adversary system which is basic to the continued integrity of our state and federal administrations of criminal justice and to the continued vitality of our constitutional republic. They must be unwaveringly honest and ethical, of course, but they are not social workers or social reformers. Instead, prosecutors have a particular legal duty to be bold, courageous, diligent, and fair, but always aggressive whenever and wherever necessary to protect the victim and the public. They must seek convictions when the evidence is sufficient, decline to charge when the evidence is insufficient, and ask judges for prompt and consequential punishment of criminals who are convicted, especially violent criminals and killers. It seems forgotten in today's political and legal worlds that consequential sentencing plays a potent deterrent role, not only to the convicted criminals who receive empirically impactful sentences, but to those who may be tempted to commit similar crimes. At the

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<sup>78</sup> *Snyder v. Massachusetts* (1934) 291 U.S. 97, 122.

<sup>79</sup> *Killough v. United States* (D.C. Cir. 1962) 315 F.2d 241, 265 (dis. opn. of Chief Judge Wilbur K. Miller). [“Under our system of criminal law, the legal rights of a defendant must be protected even if the result is prejudice to the public. But justice does not require that those rights be exaggerated so as to protect the defendant against the consequences of his criminal act in a factual situation where he is not entitled to protection. That would be more than justice to the defendant, and unjustifiable prejudice to the public. In our concern for criminals, we should not forget that nice people have some rights too.”]



same time, there are cases in which mercy is called for, but not in some purely emotive, irrational way.<sup>80</sup>

Prosecutors, whether progressive or traditional, take oaths of office fully and faithfully to enforce the law and defend the Constitution. They have no discretion or power to ignore massive categories of crime and violence under the rubric of prosecutorial discretion, which deals largely with individual cases. And whether progressive or traditional, they must enforce the law evenly throughout their respective jurisdictions. They must fully, faithfully, and firmly seek – as well as deliver – *Cardozian balance*. In that connection it would be useful for all prosecutors to locate in their law libraries, old copies of the *Uniform Crime Charging Standards*, and the *Uniform Crime Charging Manual*, both published years ago by funding from the Law Enforcement Assistance Administration, or LEAA, and to read them carefully and apply them rigorously.<sup>81</sup> Copies of these two venerable and authoritative publications might be retrieved by the National Association of Attorneys General, the

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<sup>80</sup> The third annual Court-Clergy Conference was conducted in Sacramento in 2016. It focused on mercy and justice. The site for these conferences has varied from year to year. In 2016, the conference was held at the SALAM Center, a Muslim community center and mosque. Presiding Justice Vance W. Raye, California Court of Appeal, Third Appellate District, and Presiding Judge Kevin Culhane, California Superior Court, County of Sacramento, provided opening remarks and welcoming statements. The morning plenary session was presented by four clergy, Imam Mohamed Abdul-Azeez, Tarbiya Institute; Rabbi Mona Alfi, Congregation B'Nai Israel; Reverend Alan Jones, St. Mark's United Methodist Church; and Pastor Lesley Simmons, South Sacramento Christian Center. The afternoon session was presented by three judges, Justice Carol Corrigan, California Supreme Court; Justice Patricia Bamattre-Manoukian and Justice Nathan Mihara, both of the California Court of Appeal, Sixth Appellate District. At the time, these three justices have been judges and lawyers for more than 40 years each and were still serving with great distinction. Uniquely, Justice Corrigan and Justice Bamattre-Manoukian are Judicial Council *Jurists of the Year* and *St. Thomas More Award* recipients, the highest legal honors bestowed by their profession and by their faith. Something new and novel, a *judicial benediction* was presented by three judges, Justice William J. Murray, Jr., California Court of Appeal, Third Appellate District; Judge Barbara Kronlund, California Superior Court, County of San Joaquin; and Judge Garen Horst, California Superior Court, County of Placer. Judge Jim Mize, California Superior Court, County of Sacramento, describes the new *judicial benediction* generally this way: "Each of the three judges we invite, federal, state, and tribal, speak in ways that reflect our shared reverence for our profession and for the rule of law. Some judges who participate may choose to quote famous inspired legal quotes such as the Preamble to the Constitution or a passage from Abraham Lincoln's Second Inaugural Address. Other judges may reminisce a bit on why he or she became a judge, or reference comments someone may have made to them encouraging them to become a judge. Finally, others speak of how Atticus Finch, a fictional character, was his or her actual inspiration to become a lawyer." For the entire story, see Doug Potts, *Religious Conviction and Judicial Decision-Making: Weighing Justice and Mercy*, *Sacramento Lawyer* (March/April, 2017), at p. 10, [https://issuu.com/milenkovlairs/docs/v2\\_mb\\_saclaw\\_mar-apr\\_\\_2017\\_web/10](https://issuu.com/milenkovlairs/docs/v2_mb_saclaw_mar-apr__2017_web/10).

<sup>81</sup> My long ago, former prosecutorial colleague in the Alameda County District Attorney's Office, Justice Corrigan, authored an article which will help explain why I make this suggestion. See Carol Corrigan, *On Prosecutorial Ethics*, 13 *Hastings Constitutional Law Quarterly* 537 (1986) and related discussion in the text, *infra*, at p. 540 (footnotes omitted). "The prosecutor also carries the burden of upholding the public faith. He is empowered to make charging decisions, but it is his duty to make them fairly. If he fails to be fair, his failure affects not only himself and the accused, but that level of public trust on which the system depends. 'Where the prosecutor is recreant to the public trust implicit in his office, he undermines confidence, not only in his profession, but in government and the very ideal of justice itself.' ¶ In a democracy, the law must reflect the values of those who live under it. Americans take great pride in our commitment to justice. Accordingly, we use the law as a tool to assure a level of predictability, fairness and safety in our lives. Yet any tool is only as good as the workmen who use it."

50 state attorneys general, the National District Attorneys Association, and the 50 state prosecutors associations, to enable them to conceive and form a collective and collegial revision and republication council that would select a team of the best scholars from their state and national ranks to undertake the painstaking job of updating them. In but a short time, no more than a year, contemporary and well-grounded versions of the second editions of the *Uniform Crime Charging Standards* and the *Uniform Crime Charging Manual* could be published and made available to every prosecutor's office and law enforcement agency in the nation.<sup>82</sup>

Ultimately, even-handed, professional, and aggressive prosecutors and peace officers deal with everything from minor crimes, thereby utilizing practical and effective “broken windows” policing, to the most serious crimes, including murders of infants, gang drive-by ambushes and shootouts, and mass murders. Police officers are at risk every day. While less at risk, prosecutors to a significantly lesser extent personally and professionally also work in harm's way. Prosecutors have all faced death threats, and some have even been murdered for doing their jobs. But that is nothing compared to the routine dangers faced by peace officers or the numbers of them disabled by violent criminals or murdered.

Moreover, we must never forget that peace officers, all peace officers, in every community in America are prepared to die, and may well die at any given moment on any day or night while performing their duty for the citizens in their communities. This selfless willingness to engage danger is inculcated from day one into every cadet in every law enforcement academy. It becomes part of the head and heart of our nation's peace officers. The lyrics of a

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<sup>82</sup> Shared knowledge by prosecutors and peace officers is beneficial to all levels of law enforcement professionals and to victims of crime and their families, and to criminal accuseds and their families. Such ubiquitous knowledge can substantially benefit the administration of criminal justice by minimizing errors, particularly repeat errors. With the advent of digital technology, and in particular, the internet, another question lingers: Why don't law enforcement agencies and the California Commission on Peace Officer Standards and Training (POST) collaborate with the judiciary to devise a quick and easy to use digital mechanisms to provide every peace officer whose conduct is discussed in a supreme court or court of appeal slip opinion with a digital copy of that opinion. A digital copy should also be provided to the peace officer's commanding officer. What could be a better and more timely teaching tool for superior and subordinate peace officers than immediate receipt of specific judicial opinions that address how the courts assessed their conduct? In the past, I taught on occasion for POST. I have been friends with some of the heads of that agency. I asked the foregoing questions more than once and to no avail: Why aren't criminal jury instructions taught to peace officers. While peace officers may be taught *the law* as thought necessary for their work, including from the California Peace Officers Legal Sourcebook, among other sources, they have never been taught from *the book* of California jury instructions. It seems odd they would never have any interest in learning what juries are actually told by judges about the law related to the cases with which each officer is involved. (California has or had a Peace Officers Legal Sourcebook because I learned of Arizona's, obtained a copy, reviewed it, and suggested to Attorney General Deukmejian that our state might replicate it. He assigned top level legal staff to convert Arizona's sourcebook to one utilizing California law. It was once available in both hardcopy and digitally. I do not know whether that remains true.

country song, “American Soldier,” apply to soldiers, to be sure, but those solemn lyrics also apply to peace officers. The song was written and first sung by Toby Keith in 2003. It captures an eternal verity in simple, plain language:

“And I will always do my duty, No matter what the price,  
I’ve counted up the cost, I know the sacrifice.  
Oh, and I don’t want to die for you, But if dyin’s asked of me,  
I’ll bear that cross with honor, ‘Cause freedom don’t come free.”<sup>83</sup>

Consider the recent heroism of North Dakota police officer, Zach Robinson, who on July 14, 2023, was able to take down a Fargo suspect who had plans and materials to carry out a mass murder. The suspect killed Officer Jake Wallin and wounded two others, until from 75 feet away, Officer Robinson fired shots that first disabled the suspect’s rifle, then ultimately brought the suspect down. Officer Robinson effectively halted any more casualties, and his body cam footage captured the whole thing.

In tribute to his heroism, North Dakota Attorney General Drew Wrigley urged citizens to “‘be worthy’ — worthy of what [Officer Zach Robinson] did, worthy of the service of law enforcement officers, ‘worthy of what they’re willing to do...’ When the bodycam video is released, he asked, ‘watch it and understand that there are people who will do these things [that] we won’t and that we rely on them to do. Don’t just go to their funerals.’” (Scott Johnson, “Be Worthy” — The Bodycam Video (August 20, 2023), <https://www.powerlineblog.com/archives/2023/08/be-worthy-the-bodycam-video.php>.)

And, don’t forget, peace officers have families, too.<sup>84</sup>

Hopefully, the statutory and constitutional rights of victims of crime and their families will again become major elements in the daily work of the administration of criminal justice everywhere. And hopefully, *Cardozian balance* will once again become a shared universal value in the daily work of the administration of criminal justice in every local, state, and federal jurisdiction. Indeed, in this vision, a National Crime Victims’ Bill of Rights would be amended into the U.S. Constitution, thereby becoming a new and important

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<sup>83</sup> See, Robert K. Puglia, *Freedom Is Not Free* (2005) 36 McGeorge L. Rev. 751, <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=2389&context=mlr>.

<sup>84</sup> See John Kass, *Police Families, How Do They Bear It?* (July 31, 2020), Jewish World Review, <http://www.jewishworldreview.com/0720/kass073120.php3>.

element in the flow of the history of inalienable rights for everyone that began so long ago with the Magna Carta Libertatum and the Petition of Right.<sup>85</sup>

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George  
Nicholson

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<sup>85</sup> John P.J. Dussich, “International Victimology; Yesterday, Today and Tomorrow,” esp., “I. Victimology in Historical Perspective, A. Legal and Linguistic Roots,” [https://www.unafei.or.jp/publications/pdf/RS\\_No70/No70\\_12VE\\_Dussich.pdf](https://www.unafei.or.jp/publications/pdf/RS_No70/No70_12VE_Dussich.pdf); and for a brief history of victims’ rights provided by the National Organization of Victim Assistance (NOVA), <https://www.trynova.org/wp-content/uploads/2018/06/NOVAwebinarWhereWeAreWithEnforceableVictimsRights.pdf>.