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Victims' Rights in California:

A Historical Perspective to Modern Day

INTRODUCTION

Under English Common Law and initially adopted in early nineteenth century America, crime victims controlled the investigation and prosecution of crimes committed against them. It was not until the early 20th century that the American justice system began to evolve into a public prosecution system, leaving victims with no formal legal status other than as a crime reporter and/or witness for the State.¹

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** Harold "Bosco" Boscovich was the co-founder and first director of the Alameda County Victim Witness Assistance Division in 1976. He worked there for more than 30 years. Before that, Bosco served as an Inspector assigned to the trial team in the District Attorney's Office. Though he retired in 2004 from full-time service, Bosco soon returned to the District Attorney's Office where he continued his important victims' rights work until he retired again in 2023. Before joining the Alameda County District Attorney's Office, Bosco was a peace officer in the City of Oakland. Bosco is a national leader in the Victims' Rights Movement. He was instrumental in the creation of the National Victim Assistance Program and traveled across America assisting and guiding other counties as they created their victim assistance program. He served as an officer and leader of National Organization for Victim Assistance (NOVA) and for several years, he coordinated and taught at the Victim Witness Training in California. In September 2022, during its Annual Summer Conference, the California District Attorneys Association named its "Victim Advocate of the Year Award" after Boscovich. It reads, "In grateful recognition of your enduring passion for victim's rights. Your pioneering efforts in California and nationally have created a long and lasting legacy that will continue to inspire the work of generations of advocates.

¹ Fundamentals of Victims' Rights: A Brief History of Crime Victims' Rights in the United States. Office of Victims of Crime (OVC) NCJRS Virtual Library No. 249530 (11/2011).

The new criminal justice system at that time failed to recognize any impact or trauma inflicted on victims and witnesses of crime. As such, during the 20th and much of the 21st Centuries of jurisprudence, victims and witnesses were given no consideration, other than their presence on a witness stand, in open court, with the perpetrator facing them from counsel table. Only the accused, the defendant, had an attorney protecting his or her rights.² Until the 1980s, victims had no rights, no support, no resources for healing or moving beyond the crimes.

There was little to no consideration paid to victims of crime by law enforcement investigators or prosecutors, certainly not by the defense attorneys nor even the Judge. To take these injustices further, the Criminal Justice System and those working within it, discounted certain types of crime, such as sexual assault and abuse, child abuse or domestic violence, which were mainly considered “family matters.”

The institutionalization and standardization of a system that was driven by a lack of support for victims of crime, or respect for witnesses, was not unique to one jurisdiction, nor one state nor to the federal government. It was just the way things were, sadly. The result was that victims felt blamed, betrayed, abused, and disregarded by the criminal justice system. Growing numbers of victims consciously decided not to engage with the prosecution or law enforcement. If a victim was personally served with a subpoena to appear in Court, and that victim chose to disregard the subpoena, s/he could be arrested and it was the victim who could land in jail, even at times when the perpetrator was not.

In any criminal case, the prosecutor must present evidence and prove the case beyond reasonable doubt. Most criminal cases, and some civil cases, center around harm to a victim(s). Now as was then, the rules of American jurisprudence, with limited exceptions, require victims to testify under oath in court and, if possible, identify their perpetrators, and the nature of the circumstances inflicted on them or their property by those perpetrators. Other individuals may also testify under oath to witnessing the crime(s) committed, identifying the perpetrators, or providing other relevant information. Witnesses, including professional witnesses, can identify a deceased victim(s) and/or declare the official cause of death and whether it was an unlawful homicide.

² Before and after Gideon, few crime victims could or can afford counsel, that is, crime victims and their families have no right to government funded counsel as do those accused of committing the crimes against them; *Gideon v. Wainwright* (1963) 372 US 335, requires criminal accuseds to be provided defense counsel at government expense if they cannot afford defense counsel.

For both the victim and witnesses to the crime, testifying can be extremely intimidating and resurrects the trauma, fear, and other emotions felt at the time of the crime. This is especially true when confronting the accused face-to-face in a courtroom. Remarkably, because of the Victims' Rights Movement, focus does not shift away from the accused; rather, it gives focus on and to the victims and witnesses as well. The rights of victims would never have occurred without the vision and determined leadership of countless pioneers in the Victims' Right Movement. And, through the efforts of these courageous advocates, and a few brave legislators of the time, victims now have rights too.

THE BEGINNING OF CHANGE

As stated above, in the 1960s and 1970s, victims of crime had no rights, and no protective status in the criminal justice system. At the same time, serious and violent crime, as well as social unrest, sometimes violent unrest, steadily began to rise in the United States, including Alameda County. The systems' responses to protests and organizations challenging law enforcement and other government systems also resulted in increased criminal engagement and victimization.

The resulting developing phenomenon was that in the moments following a crime, victims and witnesses became increasingly less likely to call the police. The police would generally respond to a call for help, especially involving violent crimes, victims were forced to navigate the process without victim advocates or resources providing them support. These circumstances were epitomized by Sgt. Joe Friday, a fictional 1940, 50s, and 60s Los Angeles Police Department police officer, who often proclaimed on radio and television hit shows, *Dragnet*, "Just the facts, ma'am!"

Change began in the early 1970s when brave, bold, outspoken individuals began to rise up and to organize around the rights of victims of crime. They were advocates for improving the treatment of and support for victims of crime. Slowly, a Victims' Rights Movement coalesced and began to parlay into the creation of a system in which victims could find themselves with support and necessary services, such as medical care, fiscal assistance and the like. Actual statutory and constitutional rights for victims of crime and their families were on the way to being achieved. The nascent, but rapidly growing Victims' Rights Movement became virtually ubiquitous and very vocal; victims and those sensitive to the plight of victims became political activists, strategically working through legislatures across America. They advocated for change to the federal government as well.

While change came slowly, the Victims' Rights Movement persevered by gathering more and more supporters and partners. By the mid-1970s, the Victims' Rights Movement included district attorneys, legislators, non-government victim advocates, survivors of crime, the public, and voters. These courageous individuals recognized the impact of crime on victims and the importance of victims' participation in the Criminal Justice System. At the same time, they brought the spotlight on the trauma and other serious impacts of crime on the victims, and those who witnessed the crime as well.

CHANGING A SYSTEM, ONE STEP AT A TIME

Alameda County was at the forefront of the Victims' Rights Movement as it pertained to the criminal justice system. Great strides were made by volunteers from local communities. Many of the volunteers had been victims and survivors of violent crimes, particularly victim/survivors of interpersonal violence, including sexual assault and domestic violence. These were two crimes that were quite literally ignored and/or mishandled by law enforcement. In the early days preceding reform, a responding peace officer would often challenge the veracity of a victim/survivor's statement about being sexually assaulted. It was not uncommon for an officer responding to domestic violence to treat the case as a "family matter" which may have included walking the accused batterer around the block to "cool off." It was also not uncommon for a peace officer to counsel the victim, mostly women, to simply not provoke the man.³

These two common areas of systematic, official disrespect for and discounting of victims of sexual assault and domestic violence, led the victims to become, in large measure, central figures in a growing and powerful corps of volunteers whose outrage and advocacy against the insufficiency of response by peace officers and prosecutors led to significant mitigation of negative official behavior and progress by fostering major procedural and legal reforms. In the 1960s, Bay Area Women Against Rape (BAWAR), founded in Berkeley, Alameda County, was one of the first grass-roots efforts to address mistreatment of sexual assault victims. The District Attorney's Office in Alameda County was one of the first prosecutor offices with a Unit to support Victims of Crime.

³ DA (Ret) Nancy O'Malley served as a volunteer for one of the first Battered Women's Shelter and the second Rape Crisis Center in California. Not only did she join in the protests of the volunteers, she witnessed first-hand the treatment of victim/survivors of interpersonal violence, including victims of the East Area Rapist/Golden State Killer recently convicted by Sacramento District Attorney's Office under the Leadership of then District Attorney Ann Marie Schubert, a National DNA Expert.

LEADERS OF CHANGE

In 1972, the federal government funded the first three victim assistance programs in the United States. This declaration of victims' rights was followed by follow-on fiscal support which was a monumental step in the recognition that victims' rights are human rights.

The first three agencies selected for the grants were the Bay Area Women Against Rape (BAWAR), located in Alameda County, California.⁴ The second program was Rape Crisis Services (DCRCC) located in Washington, D.C.⁵ The third program was Aid to Victims of Crime, located in St. Louis, Missouri.⁶ All three organizations concentrated on crisis intervention for crime victims. In 1974, the first battered women's shelter was established in Denver, Colorado. Also in 1974, the Contra Costa County District Attorney's Office funded the first Rape Crisis Center in the county.⁷

As previously stated, leaders in the Victims' Rights Movement included Alameda County leaders such as District Attorney D. Lowell Jensen, Deputy District Attorney Lois (Haight) Herrington, who later advocated for the passage of the Victims of Crime Act (VOCA) and served as the first Director of the Office of Victims of Crime under the U.S. Department of Justice. District Attorney Inspector Harold Boscovich and other members of District Attorney Jensen's leadership team began to develop a recognition of and sensitivity to the perceived "apathy" of victims of crime in participating in the criminal justice system.

Jensen's team grew increasingly concerned about the treatment of victims of crime. District Attorney Jensen was a national leader in the law enforcement and prosecutorial efforts and led the national Prosecutorial leadership as the – Prosecutors and Law Enforcement -- joined the National Victims' Rights Movement.

Members of the Alameda County District Attorney's Office, Inspector's Division, had their regular Friday morning meeting with DA Jensen in the District Attorney's Main Office Law Library. DA Jensen spoke of the lack of cooperation from the public to becoming involved in the criminal justice system, and the unwillingness of the public to report crime or cooperate with

⁴ BAWAR is still serving victim/survivors. BAWAR was founded by Oleta "Lee" Kirk Abrams and Julia Rosalind Schwendinger. Abrams created the first 24/hour Hotline for victims and was the first person to ever accompany a victim to court when they testified against their attackers. Two years after founding BAWAR, Abrams was the first employee of the Alameda County District Attorney Victim Witness Advocacy Program in 1975.

⁵ DCRCC is still operating.

⁶ Still operating, now named "Crime Victims Center."

⁷ There are now 1,579 Rape Crisis Centers across America; California leads the country with 101 Rape Crisis Centers.

law enforcement and the prosecution of those involved. It was at that time DA Jensen declared that “[t]hings would change...” But he knew that merely declaring it so would not necessarily bring the change. He knew that there needed to be an army of supporters, both inside the District Attorney’s Office and beyond. This was especially true at the national level in order to accomplish the very important and critical tasks at hand – to build sustained systems and policies that recognized the impact of crime on victims and witnesses and, to increase the participation of victims in the justice systems in holding offenders accountable.

DA Jensen held a meeting with Inspectors.⁸ He informed the Inspectors that the Alameda County District Attorney’s Office had applied for a grant from the Law Enforcement Assistance Administration (LEAA)⁹ through the National District Attorney’s Association (NDAA)¹⁰ to determine whether the perception of victim and witness non-involvement was accurate, not just in Alameda County but across the Nation. If the perception was found to be true, DA Jensen proposed a national effort to determine why and what could be done to change it?

Following the meeting, Inspector Harold Boscovich met with DA Jensen to express his interest in being considered for assignment should the grant application be successful. Inspector Boscovich, former Oakland Police Officer, had worked with Assistant District Attorney Howard Janssen and encouraged ADA Janssen to make the same request, which he did.

In Summer of 1974, the Alameda County District Attorney’s Office was selected as one of eight (8) counties to receive a Victim Assistance grant. The grant study proposed by NDAA was to determine whether the public’s attitude regarding the treatment of victims of crime were the same in small, medium, and large counties throughout the United States. The eight county prosecutor offices selected were: two from small counties: Davis County – Farmington, Utah and Kenton County, Covington, Kentucky; three from medium-size counties: Alameda County, Oakland, California, Denver County, Denver, Colorado, and Westchester County, White Plains,

⁸ Inspectors are sworn police officers working in the District Attorney’s Office.

⁹ LEAA was a U.S. Federal agency within the U.S. Department of Justice. It was formed in 1968 by President Lyndon Johnson as part of the “Omnibus Crime Control and Safe Streets Act of 1968.” It was abolished in 1982. The program administered federal funding to state and local law enforcement agencies and funded educational programs, research, state planning agencies, and local crime initiatives.

¹⁰ The National District Attorneys Association (NDAA) was founded in 1950. It is a national, non-partisan non-profit membership association that provides training, technical assistance, and services to prosecutors around the country in support of the prosecution profession.

New York; and three large counties: Cook County, Chicago, Illinois, Orleans Parish, New Orleans, Louisiana, and Philadelphia County, Philadelphia, Pennsylvania. NDAA funded these eight programs with funds provided by LEAA. LEAA also supported the first two law enforcement-based victim-witness programs in Fort Lauderdale, Florida, and Indianapolis, Indiana.

As part of the large NDAA grant, DA Jensen created the first District Attorney based Victim-Witness Assistance Bureau. He named Assistant District Attorney Janssen as the Project Director and Inspector Boscovich as the Assistant Project Director.

Elements of these early victim assistance programs have remained guideposts as the Victim Assistance / Victims' Rights Movement has grown. These early programs formed the foundation of basic victim services today: crisis intervention, support during the criminal justice process, assistance in applying for compensation and in receiving restitution, assistance during the post-conviction, pre-sentencing process which includes assisting victims in preparing Victim Impact Statements. Notably, in today's world, virtually every prosecutor's office in the country has a Victim-Witness Assistance program along with Community-Based Victim Advocacy.

VICTIMS' RIGHTS ARE HUMAN RIGHTS

On November 15, 1974, Preston Trimble, the President of NDAA, visited Alameda County as the official start date for the eight counties selected. At the opening of the visit, DA Jensen made the inspiring and catalytic statement, "*Victims of crime are people and not pieces of evidence...we should treat them with respect and dignity.*" As a result, the NDAA adopted, "Victims are People," as its grant theme for the eight selected counties.

As part of the effort to learn more about victims' and witnesses' response to the criminal justice system, ADA Janssen and Inspector Boscovich, in a stroke of genius, created the "Victim/Witness Survey of April, 1975." The survey sought to learn about the experiences of victims and witnesses throughout their participation in the criminal justice system. The survey invited responders who felt their treatment was unsatisfactory to make recommendations as to procedures that could be developed and adopted which would correct these flaws for future cases? The results of the surveys were used to develop procedures to help make prosecutors' offices more responsive to the needs of both victims and witnesses of crimes.

During the time that the surveys were being conducted, new and corrective procedures were being developed to address issues that victims and witnesses

presented during the survey interviews. Training programs were being developed to instruct professionals in a multitude of fields with whom victims would or could come into contact. At that time, each discipline provided their own training protocols and delivery. It was much later that trainings were consolidated and delivered as a holistic response to victims of crime.

DISTRICT ATTORNEY VICTIM WITNESS CHANGING POLICIES AND PROCEDURES

During January 1975, the first procedures were being developed to improve engagement with victims and witnesses. Two critical procedures were created:

1) A District Attorney Witness Notification Program (DAWN), a case notification procedure by which victims of felony crime would be notified by mail.¹¹ The letter invited the victim to contact the Victim Witness Assistance Unit with any questions. In assault and homicide cases, the letter notified victims or the next of kin of the victim about the availability of California's Compensation for Victims of Crime Program.

2) A Subpoena by Mail Procedure beginning with the Berkeley-Albany Judicial District.¹²

Following adoption of the new protocols based on the first survey, a second survey was mailed to different victims and witnesses asking the same questions as the first survey. The second survey revealed that victims of crime and their families continued to suffer physically and emotionally from the impact of crime, especially victims of sexual assault, domestic violence, and homicide. One of the important lessons learned from the second survey was that the crime, followed by the criminal justice system response, were just the beginning of problems for the surviving victims of a crime and their families after responding peace officers left the scene. This was critical knowledge for the Victims' Rights' Movement. It was also clear that there was a tremendous amount of continued learning needed. The mission became to develop protocols and implement humanity-based processes. This awakening was shared across the United States with other victims' rights advocates and grantees of the original victim services grants.

¹¹ In addition to details about the case involving the individual, the mailing included an informational brochure about the criminal justice process, the court location and parking. The letter provided the name(s) of the defendant(s), a docket number and the charges filed.

¹² The survey showed that 93.7% of the people surveyed responded that they would have come to court if the subpoena was mailed to them. This change resulted in cost savings of \$1500/month in police savings for the 300 subpoenas usually served personally.

In August, 1975, Alameda County District Attorney's Office hired Oleta "Lee" Kirk Abrams as the first Victim Consultant/Victim Advocate in the newly created Victim-Witness Assistance Bureau. It was the first time a District Attorney Office had hired the Director of a non-government Victim Advocacy Center to oversee delivery of services and support to victims of crime within a prosecutor's office. Ms. Abrams was hired to engage with sexual assault victims in a way that lessened the emotional impact of the crime committed against them. Ms. Abrams received a copy of the police report in a timely manner and it was she who initiating contact with the victim-survivor of sexual assault.

Empowering community-based victims' advocacy programs, working collaboratively with law enforcement and prosecution offices, and building divisions of victim services within prosecutors' offices, proved to be profoundly successful. These efforts demonstrated clear support for victims and witnesses, from humanitarian perspectives as well as professional, governmental perspectives.

As was the case with the evolving Victims' Rights Movement, in general, change in *one county* was not the overarching goal; *change in all counties across the country* and across all disciplines, including non-government allied partners, was the critical goal of those involved in the work being done. The evolution of change included allowing advocates to be present in court when victims testified, even over the objection of the defense, and the incorporation of many more considerations for victims of crime and those who witnessed crime. This was especially true for those victims and witnesses who came to court to testify.

Advancements also included returning, as promptly as possible property taken from the victim. Prosecutors began to substitute a photograph of the victim's stolen property rather than hold the property as evidence for limitless amounts of time. Also, Victim's Compensation was created and funded in order to pay for mental health, medical treatment, relocation, and other needs of the victims.

FEDERAL GOVERNMENT AND STATE RECOGNITION OF AND SUPPORT FOR VICTIMS OF CRIME

In 1981, California Governor Ronald Reagan became the 40th President of the United States. In 1982, President Reagan formed a presidential task force. Former Alameda County Assistant District Attorney Lois (Haight) Herrington served as Chair of the President's Task Force on Victims of Crime.

The mandate of the Task Force was to “conduct a nationwide study to assess the poor treatment of crime victims in the criminal justice system.” The Task Force members crossed America, interviewing crime victims, hearing about their needs, their concerns, and their experiences. The Task Force members were unified in their conclusion that the criminal justice system regularly re-victimized victims and that the system was out of balance in favor of offenders. The Task Force’s recommendations centered on what could help make the victim as whole as possible, and then to help prevent secondary victimization by the system.

In the Task Force’s final report, Herrington declared, “*You must know what it is to have your life wrenched and broken, to realize that you will never really be the same. Then you must experience what it means to survive, only to be blamed and used and ignored by those you thought were there to help you. Only when you are willing to confront all these things will you understand what victimization means.*”¹³

She added, “*During our hearings we were told by one eloquent witness. ‘It is hard not to turn away from victims. Their pain is discomfoting; their anger is sometimes embarrassing; their mutilations are upsetting.’ Victims are vital reminders of our own vulnerability. But one cannot turn away.*”¹⁴

Herrington is widely credited for her exemplary work in leading the President’s Task Force, subsequently shepherding necessary changes, and catalyzing others. It is worth noting that President Reagan nominated and the United States Senate confirmed Edwin Meese as the nation’s 75th Attorney General. Meese was a former Deputy District Attorney in Alameda County.¹⁵ President Reagan also nominated and the United States Senate confirmed former Alameda County District Attorney D. Lowell Jensen as United States Assistant Attorney General, Head of the Criminal Division. Alameda County District Attorney John “Jack” Meehan and Inspector Boscovich testified before the Task Force at the hearing held in San Francisco. Once again, Alameda County District Attorney’s Office was in the forefront of the Victims’ Rights Movement.

The efforts of the President’s Task Force were just the beginning of expansive government support, through passage of laws and through the growth of

¹³ At p. vii.

¹⁴ Id.

¹⁵ Meese was awarded the Presidential Medal of Freedom by President Donald Trump in 2019 during a ceremony in the Oval Office at the White House. Meese received the award for his “distinguished leadership and legal guidance while serving as attorney general under President Ronald Reagan. “Meese is The Heritage Foundation’s Ronald Reagan distinguished fellow emeritus and namesake of the Meese Center for Legal and Judicial Studies.” “Edwin Meese III Receives Presidential Medal of Freedom,” Heritage Foundation News (October 8, 2019).

federal and state fiscal resources that promoted and expanded the rights of crime victims. Many of these programs continue through today building and rebuilding a system of justice by remembering and providing fairness for crime victims and communities.

In 1982, Congress passed the first piece of Federal Crime Victims' Rights legislation, the Victim and Witness Protection Act. In 1983-84, significant federal actions were taken based on lessons learned through the President's Task Force. The Federal Office for Victims of Crime (OVC) was created to implement the President's Task Force recommendations for a variety of related agencies and organizations, public and private. Congress also passed the Victim of Crime Act (VOCA) and Lois Haight Herrington was appointed Assistant Attorney General in charge of the Office of Justice Assistance.

As part of the legislative mandate, OVC provided and managed federal aid to the states for victim compensation programs and for a broad array of programs and services that focus on services to victims of crime and their families. Policies enacted by OVC provided guidance for the State Victim Assistance and Compensation Grant Programs. These policies were in line with the findings of the President's Task Force. There was also an underlying effort to build policies that treated and protected victims on the same scale as upholding the rights of criminally accused, specifically, constitutionally held Victims' Rights.

States, including California, followed the federal advancement of victims' compensation by enacting a statutory structure for compensation for victims. Clearly, one of the important rights communicated to victims was the availability of compensation in the form of payment to providers for treatment of a victims' injuries. Payments were authorized through the California State Board of Control (SBOC). However, quite quickly, the SBOC developed a backlog of claims for reimbursement of victims' medical costs and lost wages. To address the backlog and expedite claims, the SBOC implemented a Joint Powers Agreement (JPA) Program with a few Victim Witness Centers serving counties within their region of the state.

Alameda County's District Attorney's Office was one of the first Victim Witness Centers to process state compensation claims to assist victims and their families with the application process and to expedite the process. Soon, other established Victim Assistance Centers were also selected to begin a Claims Unit within their offices. Some JPA units were assigned to process claims from neighboring counties as part of the agreement.

The SBOC provided training for Victim Centers' newly hired claim specialists and developed a strong working relationship for the purpose of assisting victims and their families was developed with employees of the SBOC and victim centers.

The claims specialists served as an intermediary between the victim and the SBOC. Claims were processed more efficiently and timely. Applicants for victim compensation had access to the local claims' specialist and a victim advocate who could answer their questions and help with supporting documents for the claim process. The claims specialists worked in cooperation with the victim advocate assigned to the case. In homicide cases, the homicide victim's next of kin/family could file an application to be reimbursed for the funeral and burial expense. Victims could file an application to pay for any medical or hospital bills for life-saving treatment of the victim prior to the victim's death and loss of support of dependent family members due to the death of the victim of crime within statutory reimbursement limits. As the programs expanded, payment for mental health services were included and other critical services for individual victims.

VICTIMS' RIGHTS MOVEMENT CONTINUES TO GROW COMMUNITY RESPONSE TO CRIME VICTIMS

There are now thousands of non-government leaders in the Victims' Rights Movement. Many have been consistently engaged in the development and delivery of victims' services and the growth of victims' rights. It was long ago recognized that the government alone could not provide for all of the needs and empowerment of victims; nor could the government agencies provide all of the resources for all victims of crime. As the Victims' Rights Movement grew, the Federal and state governments wisely built partnerships with and, to this day, continue to provide fiscal and other support for non-government victim service providers.

In 1975, the National Organization for Victim Assistance (NOVA) was founded. It was the first national organization to assist and advocate on behalf of crime victims. NOVA held its first national conference a year later. NOVA is the oldest national victim assistance organization of its type in the United States and is a recognized leader in victim advocacy, education, and credentialing. NOVA is a private, nonprofit organization of victim and witness assistance practitioners, criminal justice professionals, researchers, former victims, and others, committed to recognizing victims' rights in four areas: national and local legislative advocacy, direct victim assistance, member support, and professional development. NOVA coordinates a

National Crisis Response Team and a National Crime Victim Information and Referral Hotline.

NOVA has been the leader in developing and providing crisis response training for victim advocates of government and private non-profit agencies throughout the Nation. NOVA has sent crisis response teams to assist local government agencies in the aftermath of tragic occurrences, (e.g., mass school shootings, World Trade Center massacre on 9/11). NOVA provides training to victim centers throughout the nation and annually convenes a National Training Conference for Victims of Crime and their families, victim advocates, and related public and private agencies. NOVA oversees the annual National Victim Rights Week held in April each year in Washington, D.C. and across the Nation.

In 1978, the National Coalition Against Sexual Assault and the National Coalition Against Domestic Violence were organized by rape crisis and domestic violence program providers. The first national organization to assist homicide survivors, Parents of Murdered Children, was created. Mothers Against Drunk Driving was formed 2 years later in 1980.

In addition, the Vera Institute of Justice began a demonstration project in the 1970s that assisted victims and witnesses in criminal courts in Brooklyn, New York. Today, this comprehensive nonprofit program known as Victim Services, Inc., is located in two sites in Pennsylvania and employs a staff of 650. It operates with an annual budget of \$30 million.

Communities around the country began working toward the goal of integrated victim service delivery systems where quality services to crime victims are available and readily accessible to all victims. Recognition and embracing the diversity of America is has been an extremely important advent. Its importance is especially pronounced in the administration of criminal justice and provision support and services to victims of crime. In order to effectively serve victims, advocates and organizations give great focus on the unique experiences and cultures of our diverse society, including race, gender, ethnicity, culture, sexual orientation and other community and individual factors making the United States rich in its populations.

Throughout the growth of the Victims Rights Movement, it has been critically important for victim assistance professionals to be trained to provide effective and sensitive services to all victims, including embracing, recognizing and respecting individual differences. Victim advocates and other professionals in the administration of criminal justice ensure services and information are available in multiple languages other than English, including serving deaf and hard of hearing clients.

While the profession of delivering victim services does not yet fully reflect the extraordinary diversity of our nation's population, achieving that end is one of our highest priorities. Increasingly, victim service providers share ethnic, gender, cultural and other factors with those they serve.

Part of the expansion and growing the breadth of victim support, victim advocates are now trained and are specialized in meeting the needs of victims with disabilities who are particularly vulnerable to becoming victims of crime. This is especially true for those suffering from developmental or severe disabilities, who are often victimized by their own caretakers, making them extremely fearful of retaliation if they report the crime. In 1986, Marilyn Smith founded Abused Deaf Women's Advocacy Services (ADWAS) in Seattle, Washington, providing counseling and legal advocacy for deaf and deaf-blind victims of sexual assault and domestic abuse. This is but one example of the specialization of victim advocacy that ensures trained and experienced professionals are available to address the unique needs of victims. The goal and results foster critical engagement of professionals and volunteers to provide healthy, safe, caring, and experienced support for all victims.

STATE AND COUNTY VICTIM WITNESS ASSISTANCE CENTERS

Victim Witness Centers were established in county prosecutors' offices, probation offices and non-profit organization offices across America. In 1977, the California District Attorneys Association (CDAA) established the first of four annual California Forgotten Victims Weeks.¹⁶ Every Victim Witness Center aligned on the themes. Political and civic leaders throughout California and thousands of victims and advocates endorsed and celebrated that seminal Week. Many national political and civic leaders supported it too. Victim Witness Assistance Centers flourished as the Governor's Office of Criminal Justice Planning (OCJP) began to provide grant money to county-based Victim Witness Centers.

To ensure the access of services to victims of crime, legislation has been passed and funding structures embedded in the States' legislative structures. It is not enough to verbalize support for Victims' Rights; the States must ensure stable and consistent funding for staff to provide those services.

In California, as in many of the States, the Victim Witness Advocates created the California Crime Victim Assistance Association (CVAA), now the California Victim Witness Coordinating Council (CVWCC). Through those

¹⁶ George Nicholson, "The Roots of America's Crime Victims' Legal Rights Movement, 1975-2023, A Personal Retrospective, an unpublished manuscript (2023).

efforts, there is a structure for government funding to support the Victim Witness Centers based on its population, and additional funding based on its crime rate/population comparison. Victim Advocates from the Victim Witness Centers advocated for and were successful in getting laws passed that ensure every county has a Victim Witness Center, with funding. The legislation also established a required training curriculum for personnel in the Victim Witness Assistance Programs. (Cal Penal Code, Section 13835, et seq.) The CVWCC was tasked with developing the training curriculum and for a number of years, the Alameda County District Attorney's Office hosted the mandatory training.

Despite the monumental efforts and advancements in upholding Victims' Rights in California, there occasionally must address and reconcile tension between community-based victim support centers, particularly Rape Crisis Centers and Victim Witness Assistance Centers. In 1987, at the urging of OCJP, leaders of Victim Witness Centers met with leaders of Rape Crisis Centers. The efforts were successful in negotiating a plan to allow Rape Crisis Centers to share in California Penalty Assessment Funds, which are supposed to be paid by convicted individuals and are provided to Victim Witness Assistance Centers and other programs. Through these efforts, Rape Crisis Centers were provided with stable funding. (Cal. Penal Code, Section 1464.)

FEDERAL AND STATE LAWS ENACTED TO PROVIDE FUNDING FOR VICTIM SERVICES AND THE VICTIMS' RIGHTS MOVEMENT

In 1994, federal legislation enacting the Violence Against Women Act (VAWA) was introduced by Representative Jack Brooks (D-TX) in 1994. The bill gained widespread support in Congress and passed through both houses with bipartisan support within the year Congressman Brooks introduced it. VAWA established rights, protections, and funding for women. In addition, VAWA provided \$1.6 billion for investigation and prosecution of violent crimes against women. The Act also imposed automatic and mandatory restitution¹⁷ on those convicted, and allowed civil redress when prosecutors chose to not prosecute cases. This Act also established the Office on Violence Against Women within the U.S. Department of Justice.

In 1996, President Bill Clinton created a new Task Force on Victims of Crime. He declared that when someone is a victim of crime, he or she

¹⁷ Courts, state or federal, rarely imposed restitution orders before 1982, no matter how necessary or deserving. That year, restitution in all criminal cases became mandatory in California due to a constitutional amendment contained in Proposition 8, the Victims' Bill of Rights adopted that year by voters. (Cal. Con., article I, section 28(b), since greatly broadened in 2008, Cal. Con., article I, section 28(b)(13). .).

should be at the center of the criminal justice process, not on the outside looking in. The President made the point that accused individuals have constitutional rights, ordinary citizens have a constitutional right to serve on a jury, the press has a constitutional right to attend trials ... it is only the victims of crime who have no constitutional rights....

In April, 1996, and again in January, 1997, the Victims' Rights Constitutional Amendment was introduced by Senators Jon Kyl (R-AZ) and Dianne Feinstein (D-CA) in the U.S. Senate and by Representative Henry Hyde (R-IL) in the House of Representatives. The bill has never passed out of Congress. Congress did pass the Crime Victims' Rights and Restitution Act which established several rights of victims of crime, but only in federal criminal cases. (CVRRA, 34 U.S. Code § 20141; and the Crime Victim Rights Act (CVRA, 19 U.S. Code. § 3771.) During the past several decades victims' rights legislation has passed in all fifty (50) states, but not every state has amended its Constitution to include protection of Victims' Rights, nor has the federal Constitution adopted Victims' Rights as a Constitutional Right.

Since 1982, thirty-three (33) States have amended their constitutions to include victims' rights, beginning once again with California. California established statutory and constitutional rights for victims of crime and their families when the voters passed Proposition 8, the Victims' Bill of Rights, on June 8, 1982. Slightly more than a quarter century later, almost 54 percent of Final Election voters enacted Proposition 9, the Victims' Bill of Rights Act, "Marsy's Law," on November 4, 2008. Proposition 9 adopted and expanded all the rights contained in Proposition 8, especially restitution as noted, *supra*, footnote 17.

Sadly, many laws are passed because of outrageous tragedies, such as early release of offenders, or lack of services for victims, as we have seen for many years.

Marsalee (Marsy) Ann Nicholas, was a beautiful, vibrant young woman attending the University of California at Santa Barbara. She was stalked and murdered by her ex-boyfriend in 1983. Only one week after her murder, and on her way home from Marsy's funeral service, Marsy's family stopped at a market to buy bread. Marsy's mother was confronted by her daughter's murderer who had been already released on bail. Marsy's family had no notification nor any warning that he was released and walking around carefree and free.

There was no notification to Marsy's family because there was no mandate for the courts or law enforcement to make notification. At the time of passage, Marsy's Law established the strongest and most comprehensive statutory and constitutional rights for victims of crime and their families in the United States and sustained California's decades-long, ground-breaking leadership at the forefront of the national Victims' Rights Movement.

Marsy's Law gives crime victims and their families nineteen (19) meaningful and enforceable statutory and constitutional rights to help balance their rights in the scales of justice, without, in any way, encroaching on the rights of criminally accuseds. This is as it should be.

As Justice Benjamin Cardozo sagely admonished us almost 90 years ago, "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.)

Justice George Nicholson (Ret), a former senior prosecutor with the Alameda County District Attorney's Office, relying on Justice Cardozo's inspirational words, was instrumental in the enactment of Proposition 8. In 1976, Justice Nicholson left Alameda County District Attorney's Office to become executive director of the California District Attorneys Association (CDA), and a few years later joined the California Attorney General's Office as a special assistant attorney general. While in the Attorney General's Office, he was principal architect of Proposition 8, the Victim's Bill of Rights.¹⁸

NEW ISSUES BRING NEW ADVOCACY FOR VICTIMS' RIGHTS

Several issues impacting victims' rights have emerged. Successful advocacy and efforts have brought forth new attention, new resources, and new laws in victims' rights. Then San Diego City Attorney Casey Gwinn brought attention to the fact that victims of interpersonal violence, particularly domestic violence, elder abuse, and sexual assault, were not accessing available services because they were disjointed and separated. Essentially, victims of heinous crimes were forced to navigate the "services promised them" on their own. The outcome, City Attorney Gwinn discovered, was that most victims of interpersonal violence were not being served effectively or comprehensively.

¹⁸ After several years as a prosecutor in a variety of senior roles, local and state, Justice Nicholson was appointed by Governor George Deukmejian to the Sacramento Municipal Court in 1987 and to the Sacramento Superior Court in 1989. Governor Deukmejian nominated him to serve on the Court of Appeal, Third Appellate District (Sacramento) in 1990 and confirmed by the California Commission on Judicial Appointments the same year. He served for 28 years on the Third Appellate District until his retirement in 2018. U.S. Supreme Court Justice Anthony M. Kennedy (by video) and Chief Justice Tani Cantil Sakauye, among other very distinguished judicial dignitaries, spoke at his retirement dinner.

City Attorney Gwinn brought the issue to the U.S. Capital, resulting in the October, 2003, announcement by President George W. Bush of the creation of the President's Family Justice Center Initiative. The announcement included \$20 million in federal dollars to create "specialized, one-stop shops" which co-located service providers in a multi-disciplinary service center for victims of family violence and their children.

The concept of multi-service centers under one roof is fantastic. The 2003 Initiative was followed by a federal grant program which funded the opening 15 Family Justice Centers (FJCs) in the United States. In 1995, the Alameda County Family Justice Center (ACFJC) was one of the first 15 Centers to receive the grant. At its inception, the ACFJC was applauded as the most diverse FJCs at the initial meetings with the grantees.

In 2018, the Office on Violence Against Women honored the ACFJC as one of the twenty most impactful FJCs, providing expansive multi-agency services to a diverse population. Alameda County has been identified as the fourth most diverse county in the United States and that is reflected in both victim witness, community-based advocate service providers, as well as the ACFJC. The ACFJC was created, designed, led, and sustained by then Chief Assistant District Attorney Nancy E. O'Malley, who became the District Attorney of Alameda County in 2009 and retired in January, 2023.

Clearly, this model and the successful expansions and adoptions of FJCs across America and Internationally falls squarely on the shoulders and hard work of Casey Gwinn and Gael Strack, a former prosecutor in the San Diego City Attorney's Office. They continue as the leaders of the ever-expanding FJC movement today.

Due to the successful impacts of FJCs, additional federal resources have been provided. FJCs is now identified as a "purpose area" under VAWA. The new San Diego FJC has been hailed as a national and international model of a comprehensive victim service and support center. There are over 100 FJCs and multi-agency models across the country now. Alameda County FJC has been considered a model and includes a Trauma Recovery Center, providing free trauma and other mental health counseling services.

DNA (deoxyribonucleic acid) evidence has had a remarkable impact on the investigation, prosecution and conviction of offenders who leave body fluid on or around the victims of crime. Former Alameda County prosecutor, Ming Chin, became a member of the Court of Appeal, First Appellate District. He gained recognition for his majority opinion in *People v. Barney* (1992) 8 Cal. App. 4th 798, that the statistical model used to match DNA evidence to the

defendant was not yet generally accepted in the scientific community. Seven years later, in *People v. Soto* (1999) 21 Cal. 4th 512, then Supreme Court Justice Chin joined the high court majority to rule that DNA science was ready to be used as evidence in trial courts. In the years between, Barney and Soto, Justice Chin also became a nationally renowned expert on DNA evidence.

Every person's body fluid contains that individual's DNA, which is the carrier of genetic information. DNA is a powerful tool that has made monumental advances in crime solving, in exoneration of wrongly convicted individuals, and in victims' rights, by solving crimes committed by unknown assailants. The use of DNA technology in forensic laboratories and in court started in England (1986) and America (1987). The most important way in which DNA has impacted victims of crime is in solving sexual assault cases.

The victim-survivor of sexual assault consents to an examination where fluids are collected from her or his body and a forensic sexual assault kit "SAK" is created. Survivors always have the choice of whether to participate in the criminal justice system, or to submit to a forensic sexual assault examination. The completed SAK is collected by law enforcement and logged into secure, locked evidence rooms at the police or sheriff's departments. For too many years, it required someone in law enforcement to remove the SAK from a secure evidence room and submit it to a forensic crime laboratory for testing. This was simply not happening across the Country, and serial rapists were undetected, repeatedly sexually assault victims, often times in multiple states.

The unthinkable insult to victims has been that hundreds of thousands of SAK were never submitted for testing. This is in spite of the fact that if there is foreign DNA, and the unknown perpetrator is identified in other forensic settings, his identity will become known. The FBI maintains a national database, Combined DNA Index System (CODIS), and most states maintain their own DNA profile databases for known and unknown samples of offenders of a multiple of crimes, from murders, sexual assaults to burglaries. Some states have passed laws that require the collection of an offender's DNA sample once convicted of certain crimes. That DNA profile becomes part of CODIS. Some States have passed laws that require a person arrested for certain crimes to submit a DNA profile developed from the sample is uploaded into CODIS and into the individual States' own database as well.

Regularly, DNA profiles of unknown assailants are run against DNA profiles of known individuals whose DNA was collected through a criminal justice process. If the DNA of the unknown assailant matches the DNA of a known assailant, it is referred to as a "hit."

Law enforcement has been very expansive in the collection of DNA, with remarkable outcomes. Some states collect DNA in many types of crime, including sexual assault, homicide, burglaries, and other crimes where the perpetrator is likely to leave DNA behind. Identifiable samples may be retrieved if a burglar drinks from a bottle in the refrigerator of the residence he is burglarizing. Or, in a sexual assault crime, the rapist may leave identifiable DNA on the body, clothing, or other items of the victim. DNA evidence is a valuable forensic tool, generally, but DNA evidence has been most useful and most utilized in sexual assault cases.

The National Institute of Justice (NIJ), an arm of the Department of Justice, has worked with a number of cities – Los Angeles, Detroit, Houston and others by providing funding for testing SAKs. Ignorance of or indifference to victims' rights is demonstrated in the huge volume of untested SAKs: Houston had 16,600; Detroit had 11,303; New York City had 20,000; Alameda County had 1,900. It was believed that more than 300,000-800,000 SAKs remained untested.

The outcome of not testing SAKs generally resulted in the failure to capture violent criminals who commit sexual assault. Clearly, not testing the strongest evidence of a perpetrator's identity results in denial of closure and lost justice to the hundreds of thousands of victim/survivors. What testing has shown is the unbelievably high number of serial rapists who continue raping until they are caught and prosecuted.

One of the advocates for change and in holding law enforcement accountable for not testing SAKs has been District Attorney Nancy O'Malley. She has been a strong and successful voice in lifting up the rights, protections, and empowerment of victims of crime. She worked with then Vice-President Joe Biden and his VAWA Advisor on the disgrace of Untested Sexual Assault Kits. At the time, the FBI Crime Lab guesstimated that more than 300,000 untested sexual assault kits were sitting in police evidence rooms. DA O'Malley challenged that status quo, by outlining where backlogs occurred; she showed that SAKs were sitting in police property rooms, never submitted for testing.

DNA was not a new science to the Federal Government, as DA O'Malley demonstrated. The Federal government provided funding to government crime labs through the "Debby Smith Act" to test previously untested sexual assault kits. However, as DA O'Malley pointed out, if the police never submitted a sexual assault kit, a crime laboratory could never test it. DA

O'Malley even drew a diagram of the flow of a SAK from crime to entry into an evidence room to testing. Some SAKs had sat in an evidence room for more than 20 years.

From those conversations and advocacy through Congress, came the creation of the federal Sexual Assault Kit Initiative (SAKI), overseen by the Bureau of Justice Assistance and providing millions of dollars of federal money for the testing of backlogged of untested SAKs. Thousands and thousands of SAKs have now been tested as a direct result of the SAKI.

From the early 1980s, there have been initiatives, such as SAKI, where the gap is identified, the need is great, and the law makers and decision makers hear the plea and/or respect the advocacy. SAKI, just like the creation of the Office of Victims of Crime and so many other initiatives uplifting the rights, respect, support, and care for victims are to be applauded.

But, much, if not all, of this would have ever happened without public demands and outcries, especially by victims of crime and their families, and their growing numbers of advocates, and, of course, voters. Voters put politicians' feet to the fire by doing their jobs for them. For the better part of a half century, voters have been responsible for substantial progress in procedural support and growing legal rights for victims of crime and their families. Even so, much more remains to be done, especially now, when crime and violence, including sexual assaults, are once again exploding dramatically nationwide.

DA O'Malley has been at the forefront of legislative change in California. She wrote and sponsored legislation to eliminate the Statute of Limitation in sexual assault cases, so a case can be filed no matter how old the case is. She worked with then Senator Connie Leyva in writing and sponsoring legislation that resulted in mandatory submission of SAKs by law enforcement for testing; she worked with then Assemblymember David Chiu in passing legislation to create SAFE-T. SAFE-T is an online portal maintained by the California Department of Justice, that empowers and allows sexual assault survivors to monitor the status of her, or his, own SAK as it goes through the testing process.

Many states have enacted laws regarding collection, handling, and preservation of SAKs and through these mandates, hundreds of thousands of sexual assault and other serious crimes have been solved. Frighteningly, hundreds of thousands of sex offenders have been deemed serial rapists through DNA, including, Joseph James DeAngelo, the Golden State Killer

(statewide) and the East Area Rapist (Sacramento). DeAngelo committed at least 13 known murders, 51 known rapes, and 120 known burglaries across California between 1974 and 1986. Former Sacramento District Attorney Anne Marie Schubert worked with criminalists, organized multiple District Attorneys from across the State and became a national expert in DNA. Her leadership led the successful identification and prosecution of the East Area Rapist/Golden State Killer. DA Schubert began her career in DNA years before when she was a Deputy District Attorney in Sacramento County handling sexual assault cases. She was the first prosecutor to file a sexual assault case against an unknown individual, using only his DNA code.

Ironically, District Attorney O'Malley served as a volunteer rape crisis counselor in 1975 and was an advocate for one of the women who was sexually assaulted by the then unknown perpetrator (DeAngelo). Forty-three years later, due to the legislative advocacy of DA O'Malley who, in 2018, worked to get a law passed that all SAKs had to be submitted to a crime lab, jurisdictions began submitting SAKs and the East Area Rapist / Golden State Killer was identified. Survivors and family members of those who had been murdered or were deceased finally secured justice.

WHAT IS THE STATUS OF VICTIMS' RIGHTS NOW

Unlike years past, we are now seeing state governors and legislators' chip away at the rights of victims of crime and their families. These conscious, adverse efforts by politicians appear to be creating an imbalance between the rights of victims and the rights of criminal accuseds and convicted criminals. History has shown that upholding the rights of the accused and the rights of the victims are not exclusive and do not have to be pitted against each other.

Rehabilitation is important and is favored in many situations. There are programs for offenders that could allow them to avoid incarceration; there are programs that provide job training, or mental health engagement, but they are subjected to little objective monitoring and little public accountability.

There are programs that focus on drug addiction, or mental health courts, or courts specific to veterans who suffer post-traumatic stress, there are diversion programs, and restorative justice programs and many more offering to help individuals find their pathway out of the criminal justice system. These are all options for the individual who can participate, even those individuals who were sent to State Prison after conviction for the most serious crimes.

Through changes in the law, victims are not necessarily notified if a convicted individual is being released significantly sooner than their sentence. There is a constitutional provision mandating, “Truth in Evidence,” in California.¹⁹ For victims, there is a law mandating “Truth in Sentencing” but victims are not necessarily informed of changes.

From the perspective of victims’ rights, any policy and/or changes to the laws should include consideration on victims of crime and their families. Enhancing opportunities for criminals to make the necessary changes to separate from and remain free of the criminal justice system are important and respectful to criminals and their families. Critically, public policies should not pit executive programs or law enhancements to the rights of criminals as against the rights of their victims.

A subtle but impactful example of the diminishment of a victim’s right involves the right to appear at a parole hearing of the person who committed the crime against the victim and/or his or her family member. Constitutional rights of crime victims are set forth in Article 1, Section 28(b). One of those rights is the right of victims to attend and speak at parole hearings. New regulations impose impediments or flat out denials of that right by requiring victims or impacted persons to register with the parole board at least 30 days prior. Failure to do so means they cannot participate in the parole hearing. This is not a change in the law, but an administrative change that impedes victims in the free exercise of their constitutional right to appear and be heard.

Executive branch administrators may adopt rules, but only if they do not impede or otherwise restrict statutory or constitutional rights of victims or family members of victims. Victims should not be required seek emergency writ relief from the courts to appear at a parole hearing for which they had no timely notice and thus were unable to provide 30 days’ notice of their intention to appear and testify.

Laws, executive policies and practices that improve conditions for criminally accuseds and/or convicted criminals are important; however, the changes should not be at the expense of upholding the rights we have created for victims of crime and their families. Victims’ Rights Movement advocates continue to pay close attention to changes that may impact victims’ rights. Advocates are vigorously speaking out publicly to expose and attempt to stop efforts to chip away, sometimes in a subtle, elusive ways, at the rights

¹⁹ Cal. Con., article 1, section 28(b)(f)(2).

of victims of crime and their families. We must learn from the past, recognize why Victims' Rights Movement was so critical for society and the administration of criminal justice, and resoundingly echo the sentiments and words of our former, venerable leaders ... "Victims are people, and not pieces of evidence..."



Nancy E.
O'Malley



Harold
Boscovich