

ADVOCATE



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NATIONAL DISTRICT ATTORNEYS ASSOCIATION
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COMMISSION ON VICTIM WITNESS ASSISTANCE

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PREFACE

Since its inception, the Commission on Victim Witness Assistance field units have strived to accommodate and facilitate the needs of those forgotten persons in our criminal justice system--the victims and witnesses.

The Commission offices have worked diligently to curtail the most cumbersome problems encountered daily by victims and witnesses involved in our judicial system: long delays, continuances, property return, transportation, restitution, etc.

It has been the intention of the National District Attorneys Association to treat victims and witnesses as humans with personal feelings and not as a piece of evidence to be used and later discarded. We hope that through the services our units have and continue to provide and those we have outlined in our publications, that your program will obtain the goals and objectives you have set forth.

Once off the ground and operating, an assessment of your community should reflect a gainful confidence in the criminal justice system. We would aspire to anticipate that each person in contact with your office can truthfully recognize the change and say there is someone "WHO CARES," and that someone is You.



CARL A. VERGARI
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Dear Fellow Prosecutor:

The Commission on Victim-Witness Assistance of the National District Attorneys Association, is pleased to present this issue of our publication, "THE VICTIM ADVOCATE".

Since its inception in 1974, the Commission, now grown from its original eight members to its present strength of 85 participating prosecutors' office throughout the United States, has developed, tried and proven the value, worth and effectiveness of victim-witness assistance programs. This issue of the "ADVOCATE" describes these programs and provides technical information for their implementation.

The Commission and its staff trust that you will find these materials helpful and remain ready to provide direct advice and assistance to any prosecutor who wishes to join us in our special efforts to serve our "clients" in the justice system -- the victims and witnesses of crimes.

Sincerely yours,

CARL A. VERGARI
Co-Chairman
Commission on Victim-Witness
Assistance
National District Attorneys
Association

CAV/am

LEE C. FALKE
PROSECUTING ATTORNEY
MONTGOMERY COUNTY
OHIO

Dear Colleagues:

The NDAA has become, in recent years, very concerned about the plight of crime victims and witnesses. This concern has been demonstrated through the sponsorship of the Commission on Victim Witness Assistance. Member offices from all parts of the county have implemented programs that encourage witness cooperation and help to ease the trauma of crime victimization.

The services have been many and varied, depending upon community need, size, and financial resources. The variety of programs have ranged from improved witness notification procedures to 24-hour crisis counseling services. There has been increased recognition of the need for improved treatment of sexual assault victims, abused children, battered women, and elderly crime victims, with many offices developing specialized programs to help meet those needs.

We have learned that regardless of the size or budget of the office, there are services that prosecutors can deliver to aid victims and witnesses. We would like to share these programs and ideas with you. As importantly, we would like to learn from what other offices are doing and grow from your experience.

Please accept my invitation as co-chairman of the Commission on Victim Witness Assistance, to join the Commission if you are not a member. Together, through mutual sharing and combined effort, we can all improve the treatment victims and witnesses receive in the communities we serve.

Sincerely,


Lee C. Falke

LCF:slc

SPECIAL SERVICES

TO

VICTIMS

Property Return

Restitution

Social Service Referral

Emergency Services

Witness Intimidation

PROPERTY RETURN

To an elderly shut-in, a radio or television may be the primary link with the outside world. If the radio or TV is stolen, the link is broken. If the police recover the stolen items, it may still be months or even years before the owner gets the property back--if at all. And if the victim is poor, he may be forced to do without. Thus he is further victimized by the system that is meant to protect him.

Not every victim is an impoverished elderly shut-in, of course, but there is no reason why a citizen's property should be retained longer than necessary. Retaining the property exacts a double tax on society: it deprives the owner of its use, and burdens the state with the costs of storing it.

There is also a good chance that a crime victim may never have his property returned at all. In separate Commission surveys, 25% in Philadelphia and 29.6% in Oakland, of those persons who claimed the police had recovered their property said they never got it back.

The prompt return of recovered stolen property is one victim service a district attorney can implement easily and inexpensively. Property return programs are successfully operating in most of the Commission's participating jurisdictions.

In many instances, the property is reflexively retained as evidence. A photograph or testimony would serve at trial as well as the "real" or "original" evidence. But the police won't release the property because, "The DA hasn't given his OK." The DA, in fact, has not given it a thought. The victim could perhaps petition a court for release of property, but even if he knows of the procedure, it is cumbersome, expensive and intimidating.

An adequate property return system may require the cooperation of the police or sheriff's office to preserve an adequate evidentiary record for use at trial. This may include:

- Recordation of a description of the property, including serial number or other identifying characteristics, into a property log book;
- Engraving of an identifying number on the property if state law permits; and,
- Photographing the property to be released. The photograph may include the victim holding his property. There should also be a photograph of the serial number and any unique or distinguishing characteristics of the property.

The Fremont Police property return procedures (See Appendix A) put the burden of finding the owner of recovered stolen property on the officer involved in the case. Other victim witness programs discover if the police are holding property from police reports or from the victims themselves.

Most Commission offices have developed an informal procedure for returning recovered property. The unit chief determines where the property is being held and if there is any reason why it should not be released, and then directs--or may personally escort--the victim to the property room for the release of the property. In other cases he completes a simple form (see Appendix B) which, when signed by an assistant district attorney, releases the property.

Generally, recovered stolen property will be released when the claimant has adequately identified himself and provided some reasonable proof of ownership, and there is no known dispute over ownership of the property. This is the case in most instances. The difficulty of this process is that it fails to provide notice of disposition to the person from whom it was taken. Even an accused thief has a sufficient possessory interest in property he is alleged to have stolen to be afforded due process. The informal scheme does not provide it. So, under any property return system, the defendant should be given the chance to oppose the return. In most cases, of course, he will not.

The California legislature, in legislation drafted by the Commission's Alameda County Unit, adopted a property return law that embodies many of the procedures described above. (CAL. PENAL CODE 1413 (West Supp. 1976)). Commission staff has, based on the California statute, prepared a model property return statute, and an accompanying memorandum which discusses the legal ramifications of the procedure.

Finally, some effort should be made to ensure that once a case is closed, property used as evidence is returned to its owners. The Alameda County District Attorney distributes weekly a disposition sheet that notifies police departments of property they may promptly release. In offices without that technology, the district attorney's office can periodically review closed cases to insure that no property is unnecessarily retained. Another possibility is to provide each case jacket with a property return check-off for the trial assistant handling the case; the docket clerk could then check the case jacket before finally closing the case.

Whatever procedure is adopted, it should be relatively automatic, and the burden should be on law enforcement agencies to demonstrate why property should not be released.

APPENDIX A

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Property Processing
Processing of Property

I. POLICY

It shall be the policy of the department to release to the victim/owner, at the earliest possible time, all recovered property of evidentiary value, the ownership of which is not disputed, and which otherwise meets the criteria defined in this directive.

II. PURPOSE

The purpose of this directive is to establish and implement a program to expedite the processing and return to the victim or owner of any evidence or property recovered by the department, except as noted in Section D.

III. PROCEDURE

A. When possible the officer shall release the property to the victim/owner or responsible agent at the scene. If immediate release is not possible, the officer shall attempt to locate the victim/owner at the earliest possible time, inform them of the recovery of their property and request that they respond to the department Property Unit for return of their property. The officer may utilize the Citizen Services Representative to assist in arranging for the release of property.

B. Criteria for Release of Property/Evidence

1. Victim/owner is known.
2. The victim/owner or responsible agent presents proper personal identification and reasonable proof of ownership.
3. Ownership of property is not disputed.
4. The victim/owner or responsible agent signs the Property Release form.
5. The property is not one of the six categories of items defined Section III - D of this directive.

C. Procedures for Release

1. Prior to Release:

- a. Items with a serial number or other identifiable numbers shall be checked by the officer through the automated property system (by radio if release of property occurs in field);
- b. If the item is of evidentiary value:
 - (1) property of evidentiary value which is recovered between 2200 and 0700 shall not be released from the field. It shall be booked and arrangements made for release to the victim/owner or responsible agent after 0700 the next working day, in accordance with procedures defined in number (2) following.
 - (2) a photograph shall be taken:
 - (a) the photograph(s) shall be taken by the Evidence Technician;
 - (b) the photograph(s) shall contain the owner/victim or responsible agent, the property to be released, and report number, which must be written on the cardstock provided for this purpose (see copy attached), and propped up or held up by the victim in the picture; if possible, a photograph should be taken of the serial number, if any. A photograph should also be taken of any unique or distinguishing characteristics which would be beneficial in establishing ownership of the property;
 - (c) the victim/owner or responsible agent must sign the "Property Release" form (see copy attached), declaring ownership and agreeing not to dispose of property until notified that the case is officially closed or adjudicated. If the victim/owner or responsible agent will not sign the form, the property may not be released and must be booked through the department Property Unit, consistent with existing procedures;
 - (d) if the property is photographed in the field, the photograph(s) must be taken prior to the officer's leaving the scene;
 - (3) if the item has no serial numbers or other uniquely identifying features, the officer should mark the item for court identification in an inconspicuous place, in accordance with the rules of evidence and department procedures.

- c. If the item is not of evidentiary value, the officer shall, after checking the item through the stolen property system, obtain the signature of the victim/witness or responsible agent on the Property Release form and release the property.
 3. The officer shall include in the police report:
 - a. A description of property released,
 - b. A serial number of property, if any,
 - c. A statement indicating that the property was released to the victim/owner or responsible agent and where it was released (at the scene, in field or at station),
 - d. A copy of the Property Release form shall be attached in all field release cases.
 4. When it is not possible to return the property to the owner/victim, the officer shall book the property through the Property Unit of the department:
 - a. The Property Inventory Record must include:
 - (1) a description of the item,
 - (2) a serial number of item, if any,
 - (3) report number,
 - (4) name of reporting officer and signature of initials and employee number.
 - b. Items with serial or other identifiable numbers shall be checked by the officer through the Automated Property System.
- D. The following property must be booked by the officer and may NOT be released to the victim/owner or responsible agent without prior approval of appropriate authority:
 1. Items used as weapons in commission of a crime,
 2. Items necessary to show the aggravated nature of crime (arming),
 3. Items taken as the result of a search warrant,
 4. Money,
 5. Items which are illegal to possess under municipal, state or federal law, including property with altered or defaced manufacturers' identification numbers,

6. Evidentiary items which cannot be examined in the field and must be processed by the Crime Lab (e.g. clothing with blood traces; small items for serial number restoration, channel lock pliers for comparison, etc.).
-

PROPERTY RELEASE FORM

I, _____, have received from the Fremont Police Department,
(print name)

the property described below, which I declare is owned by me:

<u>Item</u>	<u>Serial Number, Color, Distinguishing Characteristics</u>

I have been advised that I must be able to produce these items if they are required by the Court in the future as evidence in any criminal proceeding in connection with its original loss. Therefore, I understand that I should not dispose of these items or alter the physical characteristics until after any criminal prosecution involving the property's loss is completed.

I understand that, if I can't produce the property if required by a Court, there is a serious risk that any criminal prosecution involving the property will be dismissed.

Signature of Recipient	Date
------------------------	------

Release Authorized By:	Employee Number	Date:
Released by:	Employee Number	Date:
<input type="checkbox"/> Field Release (Attach original to report)	<input type="checkbox"/> Station Release (Original to Information Section)	
<input type="checkbox"/> Property of No Evidentiary Value - Retention of Items by Recipient not Required		

Report Number									
---------------	--	--	--	--	--	--	--	--	--

Copy to recipient

APPENDIX B

(Prosecuting Attorney)

(Address)

REFERENCE:

C.A.O. NO. _____

P. D. NO. _____

ALL OF THE EVIDENCE: THE FOLLOWING SPECIFIED EVIDENCE,
PRESENTLY WITHIN YOUR CUSTODY AND CONTROL IN THE CASE(S) OF THE
COMMONWEALTH OF _____ vs. _____
MAY BE RETURNED BY YOU, AT THIS TIME, TO ITS LAWFUL OWNER OR
DISPOSED OF IN ACCORDANCE WITH LAW.

(DESCRIPTION OF PROPERTY)

SPECIAL INSTRUCTIONS:

PLEASE PHOTOGRAPH PROPERTY. PHOTOGRAPHS ARE TO INCLUDE PICTURES OF
THE PROPERTY TO BE RELEASED, THE PROPERTY WITH ITS OWNER, AND PICTURES
SHOWING SPECIAL IDENTIFYING FEATURES OF THE PROPERTY, SUCH AS SERIAL
NUMBERS, SOCIAL SECURITY NUMBERS, AND OTHER IDENTIFYING FEATURES.

DOCUMENT DATE, TIME, PLACE, TO WHOM, AND BY WHOM THE PROPERTY IS
RELEASED. PRESERVE SAID DOCUMENTATION IN YOUR FILE. RECORD ALL SUCH
INFORMATION ON THE REVERSE SIDE OF EACH PHOTOGRAPH.

(ASST.) COMMONWEALTH'S ATTORNEY

DATE

RESTITUTION

INTRODUCTION

The ancient concept of restitution is receiving increasing attention as a sentencing alternative with positive effects on the offender. Many state statutes specifically authorize restitution; if not, a restitution order may be within the inherent sentencing power of the court. Little attention, however, has been paid to restitution as a device to compensate crime victims for losses caused by their victimization.

The potential of restitution as a victim assistance device should not be overstated. Victims are generally better served by state compensation program that can make awards without regard to the apprehension and conviction of the offender. Moreover, many defendants lack the financial resources to pay any substantial amount of restitution. In other instances, the victim's losses are so great that there is no realistic chance that even a reasonably solvent defendant can make restitution in any but a nugatory way. But in some cases restitution is feasible, and is a potentially victim-oriented sentencing device that a district attorney should routinely consider.

A well-administered restitution program can benefit victims, defendants, and the community as a whole. Such a program has the potential to return its costs and more to the community, both by restoring the victim's losses, and by keeping some defendants out of jail thus saving the expenses of their incarceration.

There are a number of operational and policy considerations in a restitution program of which a district attorney should be aware. It is not our purpose to provide an exhaustive description of these considerations, but merely to raise certain basic issues that arise if restitution is employed as a way to help crime victims.

1) The district attorney should seek only special damages--medical bills, lost wages, property damage, and the like--that are relatively easy to establish. General damages should be left to separate civil actions initiated by the victim.

If restitution is to be made in kind, it should only be with the victim's consent. Otherwise, the victim should not be burdened with collecting his restitution.

Special damages should be routinely recorded in the case file. The police, and assistants who have early contact with criminal cases, would be encouraged to collect the information immediately after the crime in incident reports and interviews with the victim. Damages, as they occur, should be noted throughout the case.

2) The district attorney should establish some guidelines on which defendants are appropriate candidates for restitution. Among the factors that should be considered: the nature of the crime, the extent of damages to the victim, the offender's age, criminal record, and employment.

It is obviously of little value to anyone if a restitution agreement is arranged that an offender is unlikely to complete. The defendant's ability to pay, as well as the victim's loss, is always an important factor. In many cases, the defendant will simply lack the means to compensate the victim at all, and to impose conditions on him he cannot meet will only damage him without helping the victim.

The indigent defendant raises equal protection questions. A defendant cannot be denied sentencing alternatives--say, probation--because he lacks the financial ability to make restitution to his victim. Generally, the district attorney should not seek restitution unless:

- a) the defendant is convicted;
- b) the defendant is, or will be, able to pay the costs of restitution;
- c) the court has had the opportunity to consider the burden restitution placed on the defendant and his ability to support himself and his family (similar to the protections afforded civil debtors);
- d) the defendant should have the chance to petition the court for a reduction or suspension of charges in cases of changed circumstances;
- e) a defendant who fails to meet restitution payments should have the opportunity to show a good faith effort to complete the agreement before being penalized for his failure.

It is important for trial assistants to weigh these considerations in the context of plea-bargaining. Defense attorneys, in their efforts to reach a result favorable to their clients, may oversell a defendant's ability to make restitution. The assistant must ascertain--independently if possible--if the defendant has a realistic chance of completing the agreement. At the same time, he must be careful not to condition certain classes of plea bargains on restitution if to do so may discriminate invidiously against poor and indigent defendants.

3) In most cases, it is advisable not to allocate fault (and thus amount of restitution) among co-defendants on any but an equal basis. There will naturally be exceptions to this guideline which will call for the exercise of common sense.

4) The assistant district attorney should seek restitution in a lump sum payment if possible, so that the victim will receive a benefit from repayment as early as possible. If restitution is to be paid in installments, the number of payments should be as few as possible. This practice not only channels benefits to the victim promptly, but also reduces the likelihood that the defendant will default on his agreement.

5) Usually, the defendant and his counsel and the trial assistant can agree on a restitution program, including total amount due and a schedule of payments, before sentencing. This agreement, if possible, should be made a part of the court's judgment order. This procedure not only spells out the terms of the court-approved arrangement to the parties, but also makes the agreement easier to enforce.

The victim's name and address should be indicated on the order, so that payment can be promptly made to the proper persons.

6) The victim witness office should always notify victims of the amount of restitution and the repayment plan. It should request victims to contact the office if the defendant does not comply with the restitution agreement.

7) Normally, restitution will be paid through the jurisdiction's probation office or court administrator. Although few victim witness programs actually collect restitution payments, the unit should be prepared to monitor the program.

Some district attorneys take a hard line if it appears that the offender is not making his payments as agreed. They argue that the defendant, usually a probationer, has had his chance and failed. Since the major thrust of the program is to help victims, however, the office can make inquiries through defense counsel or the probation department to discover why the defendant has not paid. The fact alone of an inquiry may precipitate payment.

The office should also recognize that a change in the defendant's circumstances can make future payments unlikely, despite his good faith efforts. In this event, few courts will penalize a defendant further. At best, payments might continue on a reduced basis.

Of course, if the offender has simply refused to pay, or has been convicted of another crime, the district attorney may well seek court enforcement of the order, revocation of probation, or other appropriate remedy.

SOCIAL SERVICE REFERRAL

In general, society regards victimization as a private matter. The criminal justice system is structured to set the criminal against the society as a whole, and the fact that something has been done to the victim is ignored.

But victims of crime frequently suffer injuries beyond the immediate trauma of the crime itself, high medical bills, emotional harm, and property damage. The district attorney lacks the resources to attack these problems himself, but he can have a victim witness program assist victims by referring them to social service agencies that can help. Typically, these services include physical and emotional care, emergency shelter, welfare assistance, food stamps, and--if state law provides--compensation for financial losses resulting from the crime.

Representation of victims in this manner requires the accomplishment of three inter-related tasks:

- Location and assessment of the community's resources;
- Personal contact with the agencies to explain the victim witness program and secure the agency's support; and
- The development of an easy-to-use reference system to enable staff members to find quickly the resources they need to help victims.

First, the community's resources must be carefully catalogued, not only by the type of service offered, but by the agency's "catchment area" and the types of persons who are targets of their services.

This requires personal contact with the various agencies. A social service directory may be a good starting point, but cannot be relied upon. In many instances, an agency's capacities and policies shift over time.

A personal visit permits the victim witness unit's staff to explain that it is not seeking to duplicate the agency's services but instead only wants to back it up. The visit also allows the victim witness unit to get to know a person to contact, should the agency's services be needed, and helps the unit to understand the agency's eligibility requirements. This permits the unit to make the first contact with the agency directly, and avoids the problem of having the victim stand in long lines only to be told at the end, "you're not eligible."

Finally, a reference system is indispensable. A system listing agencies by the type of assistance they can provide is effective. Thus, a staff member should be able to find the service needed by simply consulting the type of service he is seeking.

The district attorney should try to coordinate the unit's referral system with any emergency services provided by the police. As with other agencies, the prosecutor should explain the nature of his program to the police and stress that he is trying to augment their services, not duplicate them.

It has been the Commission's experience that referrals do not themselves solve problems. Social agencies rarely see the crime victim differently from other clients, and do not view their needs more urgently. This fact underscores the importance of credible personal contacts between the unit and the agency. An effective referral system demands a sensitive on-going relationship with the service agency; and services themselves must be expedited because assistance delayed in many cases is no better than assistance denied.

Victim Compensation

State programs that compensate crime victims for financial losses resulting from the crime are appearing in more and more states. In states where these programs exist, a victim witness unit can take an activist role in seeking compensation for eligible victims. To be an effective advocate, of course, the unit must be familiar with the board's procedures and eligibility criteria. Such familiarity permits the unit to assist victims in filing claims and filling out forms; it also assists the board by screening out ineligible claimants. The unit can thus shepherd claimants through what tends to be a slow bureaucratic process. It must be remembered, however, that state compensation plans can rarely meet emergency needs.

WITNESS BROCHURES

Many prosecutors have begun to give potential witnesses pamphlets providing an introduction to the witness' role in the criminal justice system. Such pamphlets are a fundamental part of any victim witness program, and are the only medium that the prosecutor can be reasonably sure will reach every witness.

The pamphlet should provide the witness with the information essential to his effective participation in the criminal justice system. It should be written in plain language readily understood by the layman.

Many pamphlets focus almost exclusively on trial testimony. But the majority of witnesses, like the majority of cases, do not get to trial, and many witnesses never testify at all, even at preliminary hearings. Yet their participation is indispensable to the functioning of the criminal justice system. It makes sense, then, to aim the informational pamphlets at all potential witnesses, not just those who actually testify in court.

The recommended pamphlet is one that places the witness in the criminal justice system, explains each stage of the prosecutorial process, and how the witness fits in. It should stress the importance of the witness' role in the administration of justice and in the prosecution of the case.

What is finally included in the pamphlet depends on the jurisdiction's criminal procedure, and on the victim witness services available. At a minimum, the pamphlet should describe the grand jury, preliminary hearings, trial, and sentencing alternatives--and how the witness is important to each step. It should explain subpoenas and continuances, and tell the witness what to do if he is threatened. And it should provide a contact in the district attorney's office for witnesses with questions.

The pamphlet should also describe the victim witness services available in the office. The reception center, notification programs, telephone alert, and social service referral should be mentioned if they exist. The pamphlet can also contain a simple map of the courthouse, and nearby parking lots and transit stops. It can tell how to secure witness fees, and how to recover personal property used as evidence in the prosecution.

Many pamphlets include a series of detailed "tips" for witnesses who do ultimately testify. Although "tips" are useful, it is probably only necessary to remind the witness to tell the truth as he remembers it and to explain the function of cross-examination.

The appearance of the witness pamphlet is probably as important as its contents. The best pamphlets are those that are most attractively designed--pamphlets that draw the reader into them. The employment of a professional designer, though initially expensive, is worth the cost if it results in a more attractive publication.

The pamphlet should not be too long. Some leaflets, complete, clear, and otherwise admirable, discourage reading merely by their length. The usual size is about 8.5 x 12 inches, folded to form three panels and fit easily inside a business envelope. The print should not convey the image of legal "fine print;" it should be large enough to be easily read, and should obviously be compatible in size and color with the pamphlet's paper. There should be enough "white space" to avoid making the pamphlet imposing. Headings should be clear.

Reception Center

In many courthouses across the country, witnesses must await their turn in court in crowded, uncomfortable hallways, often shared with the defendant and his family and friends. It is not, typically, an atmosphere calculated to quell an apprehensive witness' anxiety or increase his sense of security.

The victim witness reception center is an area in which victims and witnesses can wait for their interview with the assistant trying their case or for their turn to testify. The center has three main purposes: convenience, security, and comfort. Most witnesses are unfamiliar with the courthouse and the district attorney's office. With a reception center, the witness' only responsibility is to find a centralized waiting room which can be well-marked and well-known to courthouse staff. The burden of getting the witness to his particular destination is shifted to the reception center staff.

The center provides witnesses with a secure place to wait. Rather than mingling with the defendant in the hallways, the witness can wait in a place that is reserved for genuine witnesses and district attorney staff.

The design of the reception center should reflect its three purposes. The goal of a quiet, secure, comfortable atmosphere is best achieved through the use of natural, muted colors and soft lighting. Furniture should be stable and soft; institutional furniture should be avoided.

The center can be staffed by a host or hostess who should be able to brief witnesses on what to expect in court, escort them to the courtroom, and answer basic questions on the criminal justice system. It can also house representatives from public and private organizations, such as the welfare department and anti-rape programs.

WITNESS BRIEFINGS

Although a good informational brochure is at the core of a victim witness assistance program, a pamphlet is no substitute for personal contact with the staff of the victim witness unit. Many victims and witnesses know about court proceedings mostly from television and movies, and a pamphlet, however thorough, cannot ease their anxiety as successfully as a personal explanation of what is expected of them. A personal briefing also emphasizes to them that the victim witness program is committed to helping them.

Many witnesses are anxious about their court appearances, and many others are understandably reluctant to discuss their personal problems publicly. Witness briefings, then, should be conducted in a calm, secure atmosphere. The unit's office, a small room off the reception center, or even a booth in a quiet corner of the center will serve. The interviewer should try to make it clear to the witness that his aim is to help him. And he should emphasize that he will keep the information confidential to the extent that he is able. Although the information is not legally privileged, the privacy of victim witness communications should be respected as a matter of office policy.

First, the staff of the victim witness program should inform the witness of the purpose of his appearance. If the witness has been called to testify at a preliminary hearing, for example, his interviewer should tell him the reason for the hearing, what the judge may do and why, and what he is expected to do as a witness. The interviewer should also advise the witness that he may be subpoenaed again to testify before the grand jury and/or at trial.

Similar explanations should be provided at each stage of the criminal process.

Second, the staff should brief the witness thoroughly on the services available from the program. Merely listing the program's services does no good if the witness does not understand what they are or how to get them. The staff should also encourage the witness to turn to social service agencies if he needs help. The Commission has found that while witnesses respond enthusiastically to offers of such services as property return or employer intervention, they are often unwilling to admit a need for social services--so encouragement is needed.

At each successive briefing, the witness can be reminded of services available from the victim witness program.

Follow-up Briefings

A number of Commission units regularly interview victims and witnesses after their court appearances. The purpose of the interviews, which may be in person or by telephone, is to explain the results of the case and uncover any lingering crime-related problems.

In most instances, routinely mailed disposition letters are adequate, but some cases--unusual sentencing measures, or dismissals, for example--merit personal explanations. The Commission has found that the most frequent complaints at this stage of the prosecution are that the sentence was "too light" or that the defendant was acquitted. Others complain that the defendant escaped because of a "legal technicality." This angry reaction is understandable among persons who have witnessed or been victimized by a crime, and a clear explanation of the procedural and evidentiary mandates of the criminal law may help dispel this anger. It also provides a way for the citizen to share his loss.

Follow-up briefings are also an excellent way to assess the effectiveness of the victim witness unit, and the public's perception of the treatment they receive from the district attorney's office. The interviewer should ask the witness if he has been courteously treated and if he has any unresolved problems because of the crime or the prosecution which the unit might address. The interviewer should also ask the witness if he has any suggestions about how to improve the treatment of other victims and witnesses in the future.

ESCORT SERVICES

In many jurisdictions, courthouses are large, crowded, and intimidating, without adequate guideposts to direct citizens to their destinations. In others, facilities are widely separated: the district attorney's office, for example, may be several blocks from the courthouse. In these circumstances, the victim witness program may want to provide escort services to its clients.

Escorts serve several purposes. Most important, they ensure that victims and witnesses reach their destination promptly. This cannot always be assumed in a crowded, confusing courthouse. Second, it reassures witnesses who are anxious about testifying. Third, it provides a measure of protection to witnesses from harassment by the defendant and others in the courthouse. Fourth, the escort may expedite such things as payment of witness fees or property return if he accompanies the client.

Typically, escorts will be between the unit or reception center and the courtroom, but may be used in any instance in which the victim or witness' destination is difficult to find, or in which he needs assistance once he gets there. In most cases, a unit's paralegal, volunteer, or secretary can serve as the escort.

Employer Intervention

A number of victims and witnesses have employers who are reluctant to allow them time off to come to court. In some cases, a person who comes to court in response to a subpoena will lose a day's pay (or more) or be charged personal leave or vacation time. In a very few instances, witnesses have actually lost their jobs because they took time from work to testify. In these circumstances, employees may be understandably reluctant to appear in court.

The district attorney and his victim witness unit can use their powers of persuasion to discourage penalizing citizens who testify in criminal cases. They can encourage employers to allow their employees to attend court without loss of pay or time off. In return, as suggested in the manual section on telephone alert, the district attorney through the victim witness program can try to minimize the employee's loss of time.

Individual Witnesses

In its first contact with the witness, the staff of the victim witness unit should ask the witness if he anticipates problems in getting time off from work, and if he wants the unit to contact his employer to explain the situation. If the witness requests employer intercession, the staffer should obtain the name, address, and phone number of the witness's supervisor at his place of work. He should also tell the witness to call the unit again should the employer's reluctance persist.

The contact can be made either by telephone or letter. The choice would seem to hinge on the unit's workload and the severity of the witness' problem. In either case, the unit staffer should explain to the employer the importance of the witness' participation in the criminal justice system and his legal duty to appear. The staffer should urge the employer to pay his employee, without loss of vacation time, for the time he spends in court--in short, make an appeal to the employer's sense of civic duty.

The unit should also stress that the witness is just a witness, and he is not in any way charged with any wrongdoing. The witness' innocence will not always be clear from his own explanation that he has "to go to court" on a certain day.

Finally, the unit should stress, to the extent that its programs allow, that it will try to keep the employee's time in court to a minimum through its various appearance control programs. (See Telephone Alert)

In the case of a victim or witness who has been forced to stop working because of a crime-related injury, the unit can request the employer to rehire his former employee. If the victim or witness has been partially disabled, the unit may be able to persuade the employer to allow the employee to return part-time

Employers Generally

The district attorney can also attack this problem by using his position of leadership in the community to encourage employers generally to cooperate with the criminal justice system by permitting employees to appear in court without loss of vacation or pay.

His appeal is much the same as in individual cases of employer intercession to the organization's sense of civic duty. Participation can be publicized, both as a way of rewarding cooperation and encouraging other employers to join the program. One district attorney issues "certificates of appreciation" to cooperating employers.

But it is helpful if the prosecutor can offer more than these psychic rewards: a good notification system that minimizes an employee's time away from the job will also aid the recruitment of participants.

One obvious place to start the program is with the county or municipal government of which the district attorney's office is a part. The successful participation of the local government gives the prosecutor a persuasive example to point to in his efforts to recruit other employers to the program.

Perhaps the simplest method of recruitment is for the district attorney to urge employer cooperation at the public meetings he addresses from time to time.

But this effort can be joined with a more direct solicitation. One of the Commission's units send a letter to every employer in its jurisdiction with more than 100 employees explaining the unit's notification system and asking for the employer's cooperation. The letter included a card to be returned if the employer agreed to cooperate listing a telephone number and a contact person. If the letter fails to draw a response, the unit can attempt to contact the employer by telephone to seek his participation. In cases of the area's largest employers, the district attorney himself might want to make the call.

Over time, the victim witness unit can build a file of participating organizations and contact persons at each. This will make it easier to deal with some individual victim witness problems that arise in the future.

The district attorney can also seek legislation requiring employers to give "court leave" days at full pay to their employees.



National District Attorneys Association

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RE: COURT APPEARANCE OF:

STATE vs

CASE NO:

Dear _____:

Your above named employee(s) has been subpoenaed to appear in _____ Criminal District Court as a witness on _____ (date) at _____ a.m. (p.m.).

Your employee has expressed his willingness to cooperate with us and we indeed appreciate this kind of citizen involvement. It is only by such involvement that our criminal justice system will be effective.

It is our hope that your employee _____ (name) will not forfeit any compensation because of the court appearances. Your cooperation in this regard will be appreciated.

If you need further information, please call our Victim Witness Unit at _____ (phone).

Sincerely,

(District Attorney)

WITNESS INTIMIDATION

More prosecution witnesses are harassed by criminal defendants than is generally recognized. In many areas, in fact, an increasing number of citizens are reluctant to cooperate openly with the district attorney because they fear for the safety of themselves, their families, or their property. The threat may be real or imagined, but if the witness perceives it as genuine he may be persuaded to stop working with the prosecutor and testifying against the defendant.

A certain amount of harassment is inevitable. There is no practical way, for example, to stop the defendant and his friends from glaring menacingly at a witness in the courthouse halls. But the district attorney can minimize the effect of this type of intimidation with a secure reception center and an escort service in the courthouse.

Harassment outside the courthouse is more difficult to combat. The victim witness unit must actively seek out cases of intimidation, because a truly intimidated witness is unlikely to inform the police. In the Commission's experience, however, most witnesses will admit harassment if asked directly, and the unit should make this inquiry routinely. Witnesses should also be asked to report any future harassment to the unit.

In most instances, intimidation or harassment of witnesses is a crime, but it is a crime that is difficult to investigate and prove. There are a number of measures a prosecutor can take, however, short of a separate prosecution.

The first consideration should be the safety of the witness and his family. In the overwhelming number of cases, they will be in little danger of physical harm. But if there seems to be a real risk of harm, the prosecutor should be prepared to see that they are protected. Witnesses can be guarded, moved (temporarily or permanently) or both. If the state does provide protection to witnesses, it should be disclosed to defense counsel at trial.

The district attorney through the local bar association or a meeting with the jurisdiction's judges, can point up the growing problem of witness intimidation and request that defendants routinely be enjoined from harassing state witnesses as a condition of pretrial release. This across-the-board approach is more likely to be successful than case-by-case requests, since the district attorney usually cannot specifically show the need for such a condition at that early stage of the prosecution. It is easier and quicker for a prosecutor armed with this special condition to show a violation meriting increased or revoked bond than to prove a separate offense.

There will be times when a witness is in fact harassed, when the prosecutor will not be able to demonstrate the defendant (or anyone else) responsible. It is virtually impossible, for example, to show who makes late night telephone calls, or slashes tires on a parked car. In this type of case, the prosecutor might consider contacting the defendant through defense counsel. Often, a warning is enough to stop the harassment.

The prosecutor should always tell the harassed witness of the steps taken to protect him. Intimidation sometimes may be only a perception of danger by the witness, and the knowledge that the prosecutor is looking after his interests can help reassure him and encourage his continued cooperation.

Witness Fees

There was no right to a witness fee at common law, and it remains a legal principle today that citizens have a public obligation to provide evidence, no matter how financially burdensome it may be.

Most states have long recognized that citizens who serve as witnesses in criminal cases can and do incur expenses, and have enacted statutes to reimburse witnesses for these expenses. But in many states, witness fees are wholly inadequate to meet the witness' actual expenses. Worse, even these inadequate fees are not disbursed as a matter of course, even though witnesses have a statutory right to them. In fact, many witnesses are never told they have a right to a fee.

Because witness fee statutes and methods of disbursement vary among jurisdictions, the Commission has not attempted to recommend one particular procedure. It does stress, however, that a vital aspect of any disbursement plan is that it be automatic. Payment should not depend on the witness' initiative. And, whatever procedure a jurisdiction adopts, everyone in the district attorney's office should be aware that witnesses are entitled to compensation, and should direct their activities toward an effective recognition of that right.

The district attorney may also examine the possibility of simplifying the payment procedures administratively. Some practices are so ingrained that they assume the color of a legal requirement. In one of the Commission's participating jurisdictions, for example, custom required the signatures of the assistant district attorney, the judge, and a clerk of court before a fee would be disbursed. Research uncovered the fact that the statute did not demand all these signatures, and arrangements were made to have fees paid solely on the signature of an assistant district attorney. In other instances, of course, legislation may be necessary to simplify the procedure.

The district attorney may also seek to amend the state's witness fee statute to provide fees more in accord with today's costs. In 1973, the National Advisory Commission on Criminal Justice Standards and Goals recommended fees of twice the prevailing minimum wage. The Commission, in an effort to mediate between the requirements of witnesses and the financial limitations of local governments, suggests in a model bill drafted by its staff, fees based on the minimum wage and keyed to the length of time a witness actually spends at court. Copies of the model bill are available from the Commission.

CHILD CARE SERVICES

An office starting a victim witness program often anticipates that witnesses will need day-care services for their children. In practice, the Commission has found that child care is not as great a need as might at first be imagined.

In general, victims and witnesses should be discouraged from bringing their children to court with them. Caring for young children whose parents are in court is a substantial responsibility, and one which can take staff away from their other duties. It also raises problems of space and liability.

Nevertheless, witnesses will bring their children with them at times, and the victim witness unit should be prepared. The office might be able to contract with a nearby day-care center in a church close to the courthouse, open to the children of victims, defendants, jurors, and witnesses for both sides.

In exceptional circumstances, the unit's staff might care for children in the reception center or their offices. It is best to have a few toys, or a television set, to keep children occupied while their parents testify.

NEW PROGRAM NOTIFICATION

National District Attorneys Association
Commission on Victim Witness Assistance
1900 L Street, Northwest, Suite 607
Washington, D. C. 20036

This is to notify you that the following Victim Witness Assistance Program is now in operation.

PROGRAM DIRECTOR AND TITLE: _____

PROGRAM DIRECTOR'S PHONE NUMBER: _____

PROGRAM TITLE AND ADDRESS: _____

SPONSORING AGENCY: _____

SERVICES: _____

PROSECUTOR'S NAME, ADDRESS
AND PHONE NUMBER: _____

Sincerely,

CHANGE OF ADDRESS OR PHONE NUMBER FORM

National District Attorneys Association
Commission on Victim Witness Assistance
1900 L Street, Northwest, Suite 607
Washington, D. C. 20036

This is to notify you that the following change(s) has taken place in the Victim Witness Assistance Program which was listed on page _____ of The Victim Advocate's National Resource Directory of Victim Witness Assistance Programs:

CHANGE:

Sincerely,

NATIONAL DISTRICT ATTORNEYS ASSOCIATION
COMMISSION ON VICTIM WITNESS ASSISTANCE

1900 L Street, N. W., Suite 607
Washington, D. C. 20036
(202) 872-9504

PROJECT DIRECTOR HERBERT C. JONES

STAFF

Susanne Berman
Deborah Lockett
Sharon Potter

END