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NOTES

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A Diversionary Approach for the 1980's.—Various changes in social thought and policy of the past several years carry important implications for the treatment of young offenders. These changes include a marked decrease in public willingness to spend tax money for social programs, a shift in focus from offender-rights to victim-rights, and an increase in the desire for harsher treatment of serious offenders. The general social ethos reflected in those positions has prompted a reassessment and new direction for the delivery of juvenile diversion services in Orange County, California. Authors Arnold Binder, Michael Schumacher, Gwen Kurz, and Linda Moulson discuss a new Juvenile Diversion/Noncustody Intake Model, which has successfully combined the collaborative efforts of law enforcement, probation, and community-based organizations in providing the least costly and most immediate level of intervention with juvenile offenders necessary to protect the public welfare and to alter delinquent behavioral patterns.

Home as Prison: The Use of House Arrest.—Prison overcrowding has been a major crisis in the correctional field for at least the last few years. Alternatives to incarceration—beyond the usual probation, fines, and suspended sentences—have been tried or proposed. Some—such as restitution, community service, intensive probation supervision—are being implemented; others have simply been proposed. In this article, authors Ronald P. Corbett, Jr. and Ellsworth A.L. Fersch advocate house arrest as a solution to prison overcrowding and as a suitable punishment for many nonviolent, middle-range offenders. The authors contend that with careful and random monitoring of offenders by special probation officers, house arrest can be both a humane and cost-effective punishment for the offender and a protection to the public.

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explains that exclusionary rules developed to keep illegally obtained evidence from being used in court and that both arrests and searches can occur without a warrant in specific circumstances.

Assessing Correctional Officers:—Authors Cindy Wahler and Paul Gendreau review the research on correctional officer selection practices. Traditionally, selection of correctional officers was based upon physical requirements, with height and size being a primary consideration. A number of studies have

employed the use of personality tests to aid in the identification of the qualities of "good" correctional officers. These assessment tools, however, have provided qualities that are global and not unique to the role of a correctional officer. Noting a recent trend towards a behavioral analysis within the field personnel selection, the authors argue that a similar type of analysis may provide a more fruitful avenue for assessment of correctional officers.

All the articles appearing in this magazine are regarded as appropriate expressions of ideas worthy of thought but their publication is not to be taken as an endorsement by the editors or the Federal probation office of the views set forth. The editors may or may not agree with the articles appearing in the magazine, but believe them in any case to be deserving of consideration.

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The Victim's Role in the Penal Process: Recent Developments in California*

BY DONALD R. RANISH AND DAVID SHICHOR**

ONE OF the most important recent public concerns about the criminal justice process is the victim and his place within the complex of due process standards and procedures. The focus has for so long been on those who violate the standards of societal behavior and not on those who have suffered the consequences of criminal activity. Some have argued, therefore, that the criminal justice system is unbalanced since it ignores the needs and concerns of victims.

This pattern is changing, however. Both scholars and the public have begun to recognize the problems facing victims of criminal acts. This concern was manifested in forceful terms in June 1982 when California voters approved an initiative known as Proposition 8, the so-called Victims' Bill of Rights. Its leading sponsor and advocate was Paul Gann who, with Howard Jarvis in 1978, wrote the now-famous Proposition 13, which cut property taxes in California by more than half. Given this notoriety, Gann and his supporters were easily able to qualify the amendment to the California constitution. The voters approved it by more than 55 percent of the votes cast.

The new constitutional initiative is actually a complex of procedures and alterations to California's penal code.¹ This article focuses on two interrelated provisions of the Gann initiative. The first is the right of a victim or his next of kin to appear at the sentencing hearing of the criminal defendant in order to present to the court his views regarding the defendant's criminal behavior and the impact of that behavior on the victim. The law provides the victim with the opportunity to address whether the defendant should be sentenced to state prison or be granted probation. The second component of this initiative allows a victim or his next of kin to appear before a panel of the Board of Prison Terms—commonly known as the parole board—which considers a release date for the prisoner

guilty of the particular criminal act or acts in question.

While these are not new provisions in the criminal justice system in California or elsewhere, the Gann initiative has provided a structural and operational scheme by which victims of serious crimes can communicate to the authorities charged with dealing appropriately with the criminal about the crime, the offender, and the meaning of the criminal act to the victim's life.

Given the new reality in California, this article focuses on the rights of victims to participate in sentencing and parole procedures, by first addressing the specific elements of the California law now in place and then by reviewing the appropriate victimological literature. The authors' purpose was to ascertain where these California procedures fit within the theoretical criminological research, as well as to review other efforts to assist the victim. The authors analyze the law's actual impact on the sentencing and parole systems in California and determine what kinds of victims are taking advantage of these options. Finally, this article attempts to examine and evaluate these procedures within the context of a variety of criminological, constitutional, and political issues which are raised by the use of the options now available to victims in California's criminal justice system. What is important to address is the degree to which these possibilities for victims are beneficial to all involved in the disposition of criminal defendants, not only for California but for the nation as a whole. This entire inquiry, it must be noted, must be developed within the context of California's determinate sentencing law which provides the parameters for sentencing in the criminal courts.

The ultimate question, of course, is whether society is better served by the two related procedures for victims described here. Is it clear that the community is safer, and are victims of crime better able to deal with and understand their misfortune? What

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¹ The Victims' Bill of Rights has a number of interrelated provisions dealing with the criminal justice process in California. These include evidence standards, testimony regarding previous felony convictions, the limitation of the diminished-capacity defense, and restrictions on plea-bargaining. There are other sections involving the right to safe schools, youthful offenders, and a restitution system for victims.

are the benefits to individuals involved and society at large? Finally, is there an underlying political motive for the advocacy of these kinds of provisions now developing in the criminal law?

Provisions of the Law

The provisions of the Gann initiative under examination involve two separate but interrelated elements. First, the law provides that a victim of any crime or the next of kin, if the victim has died,² has the right to attend all sentencing proceedings to present to the judge his views about the crime, the criminal defendant, and the possible need for restitution. The court is required to consider the statement made by the victim which becomes part of the permanent record of the criminal case. The prosecuting attorney, a deputy district attorney for the county in which the trial has occurred, notifies the victim (or victims) of the actual sentencing hearing at which the victim may appear. The law also allows the victim to retain private counsel to present the victim's position of the issues in question. The actual language of the law indicates that the county probation officer involved in the case is responsible for notifying the victim regarding the sentencing hearing (California Penal Code, Section 1191.1).

The other element of the Victims' Bill of Rights allows or provides for the victim, his next of kin, or retained counsel to be notified of any parole eligibility or setting of a parole date for any prisoner in state custody 30 days before the actual hearing by a panel of the Board of Prison Terms. At this hearing, the victim or counsel has the right to "adequately and reasonably" express his or her views regarding the crime and the offender. This statement becomes part of the record of the Board of Prison Terms and must be considered as part of the decisionmaking process regarding the disposition of the defendant (California Penal Code, Section 3043). The same procedure is available for victims of young offenders under the Youth Offender Parole Board (California Welfare and Institutions Code, Section 1767).

Before the new law was instituted in July 1982, victims had opportunities to appear informally at sentencing hearings. Judges rarely denied a victim in California the opportunity to express his point of view. Parole release decisions likewise have been subject to public comment. Citizens have organized letter and petition campaigns to seek the retention of a prisoner in state prison. These developments

need victimological perspective; therefore, a brief theoretical review of the victimological literature is appropriate.

Victimology: Some Theoretical Thoughts

Historically, the victim has been an integral part of the criminal justice process. Schafer (1977) in his review of the victim's role in this process notes that in ancient times social control was in the hands of individuals. At that time, social organization was not sufficient, thus individual members of society were forced to take the law into their own hands. The individual "made the law, and he was the victim, the prosecutor and the judge" (Schafer, 1977: 7). He revenged harms committed against him and demanded compensation for them. When people began to live in kinship groups, an offense against an individual was considered to be against the whole group. This development facilitated the emergence of the concept of collective responsibility, which in turn led to the practice of blood feuds. This custom increased the cohesion of the kinship unit and served as a social defense mechanism against outsiders. With the development of a more stable economic system and higher level of material culture, the arrangement of compensation has emerged.

In fact, ancient law is more a law of torts than a law of crimes (Maine, 1887). For instance, most offenses that in modern societies are considered to be criminal violations—such as, theft, robbery, and assault—were handled as torts in Roman law (Meiners, 1978). Similarly, the law in primitive societies "contained monetary evaluations for most offenses as compensation to the victims, not as punishment of the criminal" (Laster, 1975: 20).

During these historical periods, the victim was a major focus of interest in the law. The victims' role in the offense was not questioned; victims were assumed to be innocent and passive, and their major role in the proceedings was to be compensated for the harm suffered. The importance of the victim started to decline with the rising political and economic power of the kinship. Eventually the concept of criminal law has developed to consider most offenses committed by one individual against another as offenses against the state, rather than as offenses to the individual who was actually harmed. The victim's relation to the crime was viewed as a civil rather than a criminal matter, hence he could find remedies only through the civil law. These developments underline the "decline of the victim" (Schafer, 1977: 15).

In the twentieth century the interest in the fate of the victim started to increase. Schafer (1977: 24) writes:

² The Gann initiative provides that the next of kin shall be defined, in the following order, spouse, child or children, grandchild, parent, brother, sister, niece, or nephew.

There has been renewed recognition during the past few decades that crime gives rise to legal, moral, ethical, and psychic ties not only between the violator and society, but also between the violator and his victim.

But this increase in interest was gradual, and until recently, to many the victim was the forgotten link in the criminal justice process. This state of affairs was connected with the rehabilitative ideology prevalent in the criminal justice system during the greater part of this century. During this time the focus of criminological interest was on the offender. The main concern was with his personal and socioeconomic characteristics, his legal rights, and the effect of the criminal justice system on him. In comparison, professional literature dealing with crime victims was limited until the 1970's. Since the 1970's, an increasing number of theoretical and empirical works have been written about victimization, the victim's role in crime, typology of victims, victim compensation and restitution, and other related topics. The Bureau of the Census conducted yearly victimization surveys, several victimology conferences were held, and the World Society of Victimology was established.

The victim's role in the criminal justice process also came under scrutiny. In their review of the victimological literature Decker, Shichor, and O'Brien (1982) found several works which pointed out that the criminal justice system takes into consideration the identity of the victim. Historically, the identities of both the offender and the victim have been determining factors in the administration of justice (Pritchard, 1955; Barnes and Teeters, 1959). To a degree this is still true today, although it happens in more subtle ways. Newman (1966) found that the behavior and personal characteristics of the victim are important variables in the conviction or the acquittal of an offender.

On the other hand, Williams (1976) has found that although the personal characteristics of the victim affect the way in which a violent case is being processed (that is, the prosecutor's decision to screen or to continue a case), such characteristics did not appear to have an influence on whether the defendant was found guilty or not. According to this research, the only factor which had an effect on the guilty verdict was the existence of a personal relationship between the victim and the defendant. The likelihood that a case will be dismissed or dropped altogether (except in the case of homicide) when there is a familial or friendship relation between the victim and the defendant is much higher than under any other circumstances.

Another study has indicated that "victim precipitation" and the image projected by the vic-

tim appear to influence the judge in the sentencing process (Denno and Cramer, 1976: 224). While the ways in which the victims were dressed and behaved were important in the courtroom, their ascribed characteristics (i.e., sex, age, and race) seemed to have even greater impact on the proceedings.

The victim's importance in the courtroom is demonstrated also through the proliferation of victim-witness programs. Those were established as an outcome of a "new" trend of criminological thinking which claimed that the criminal justice system disproportionately paid too much attention to the offenders (i.e., protecting their constitutional rights), while their victims receive much less attention. Furthermore, victims often go through very negative experiences in the criminal justice process. They can be summoned numerous times to court, can be questioned rigorously and often even offensively on the witness stand, and can be harassed by the accused or the accused's relatives and friends. Because victims also often feel that the authorities are indifferent to their plight, they often decide not to report crimes. This situation has prompted the launching of victim-witness programs which are meant to, first, satisfy "the emotional and social needs of crime victims and witnesses," and secondly, "...increase the willingness of victims and witnesses to cooperate with police and prosecutors after they have reported a crime" (Rosenblum and Blew, 1979: 3). In addition, these programs are meant to underscore that victims and witnesses are important participants in the criminal justice process.

McDonald (1982) has reviewed recent developments regarding the victim's role in the American criminal justice system. He mentions two special programs designed to increase the victim's participation in the criminal justice process. For instance, in a program established in Miami, victims were invited to participate in the plea-bargaining session at which the judge, the prosecutor, the defense attorney, and—if the victim wanted—the defendant were present. It was found that victims attended these sessions in only one-third of the cases. These sessions, which lasted an average of 10 minutes, did not delay the court proceedings. When victims did attend the proceedings, they hardly said anything and thus their participation was minor. They usually approved the agreements which were already discussed between the lawyers and did not demand vengeance. The impact of the presence of the victim on changing the agreement was found to be minimal.

Another example is McDonald's own small scale study of 37 victims in Detroit. In this project the

victims were asked by the prosecutor what kind of sentences they wanted for the defendant if he were found guilty. Forty-six percent of the victims requested the maximum possible sentence. McDonald attributes the major difference between the Miami and the Detroit projects to the different settings in which the victims made their recommendations. In Miami, since the victim was physically present with the defendant in the same room where the lawyers were negotiating, he might have been reluctant to speak his mind. On the other hand, in Detroit the victims made their recommendations in a private discussion with the prosecutor. Nonetheless, in Detroit the victims of violent personal crimes were less likely to request the maximum sentence than were the victims of property offenses.

Questions regarding these two projects linger. The victims in Miami possibly wanted harsher sentences but were afraid or too embarrassed to request them. Indeed, they might have found the new procedures frustrating. Another possibility is that the active participation in the negotiations provided them with a more humanizing experience; it might have dampened their demand for revenge. In Detroit, while victims had the opportunity to recommend a sentence, they did not actually participate in the proceedings and therefore may have become frustrated. Writes McDonald (1982: 401):

The victim will recommend the maximum but probably will get less. The criminal justice official will regard the request for the maximum as unrealistic and he will see the victim's involvement as not worthwhile.

Finally, a study conducted at Georgetown University addressed the degree to which victims convey to prosecutors what they believe to be the appropriate plea bargain or disposition of the case in question. Fifty-nine percent of the prosecutors claimed that they very seldom heard from the victims. Another 15 percent indicated that when they heard from victims, it was usually in the case of serious violent crimes. As to how much weight prosecutors gave to the victim's opinions, 15 percent indicated none at all, while 32 percent indicated a significant amount. Some respondents claimed that they would not plea bargain if the victim opposed this kind of arrangement. Finally, 43 percent declared that they give a significant weight to the victim's wishes; however, a number of factors played a part in the decisions. These included the nature of the offense, the extent of the harm done

the victim, and the credibility of the victim. Thus, 74 percent of the prosecutors in this survey claimed that the victim's opinions and wishes were important for their decisions. In a simulated plea-bargaining situation, 41 percent of the prosecutors took into consideration the victim's attitude toward the plea bargain.

This brief review of the literature reveals that victims can and do have an impact on the judicial process. Clearly, victims can and often do influence the sentencing process in some way, although to empirically establish and evaluate this is not a simple task. Whether this is true for the newly implemented Gann initiative in California is the subject of the next section.

The Victims' Bill of Rights Implemented: How Has It Worked?—The First Year

Any law's effect must be measured by the degree to which it changes or makes a difference in the policy matter in question. The evidence is clear that the two procedures examined here have not had any dramatic impact on the way in which sentencing and parole decisions are rendered. This is because of the limited numbers of victims who have sought to appear before the court at sentencing hearings or present themselves to a Board of Prison Terms panel reviewing a petition for a prisoner's release.

Before the Gann initiative, California law already provided that in sentencing, a judge has before him a probation report prepared by the county probation department, the position of the deputy district attorney, the defendant's attorney, and the sentencing rules mandated by the legislature. In essence, the practical reality is that judges use two criteria in sentencing beyond the requirements of the law: the facts of the particular crime and the defendant's prior criminal record.

It must also be noted that about 90 percent of the criminal cases are disposed of through plea bargaining. This is true in spite of the limitation of plea bargains under the Gann initiative.³ The new law disallows plea bargains in superior or felony court for most serious crimes; however, plea bargains can still be accomplished in municipal court where a preliminary hearing occurs. Since the parties involved make an arrangement—a plea bargain—affecting the charge to which the defendant will plead and the sentence to be imposed, there is little discretion left. Judges do, however, know the "going rate" of a sentence to be imposed in any given jurisdiction for any particular crime and can evaluate the plea bargain before them in those terms. And there is the determinate sentencing law in California which must be upheld. Regardless of this law, there is

³ The Victims' Bill of Rights restricts plea bargaining at the felony or superior court level; however, there is no such limitation at the municipal court level. This is where preliminary hearings are held and the place where plea bargains are being accomplished. In this instance, the Gann initiative has simply shifted the plea-bargaining process from the superior or trial court to the preliminary hearing court.

judicial discretion in the application of a sentence to a defendant, and this is where the Victims' Bill of Rights provisions might provide for a victim to make a difference in the judge's sentencing decision.

Victims' requests to appear before panels of the Board of Prison Terms for release determinations have been few. Indeed, during the first year of the law's effect, only 32 victims or next of kin filed requests in 14 different cases with the state board (Cavanagh, 1983). During this time, there were a total of 818 parole consideration hearings held (California Board of Prison Terms, 1983: 7). It must be noted that many of the state's prisons are in central and northern California; one-third of the state's population is in Los Angeles County. The distance for a victim to travel might be prohibitive and therefore deter individuals from seeking an audience before the parole panel holding hearings at one of the state's prisons. By definition, then, it would appear that victims appear less before the parole board panels than before a judge conducting a sentencing hearing.

In summary, it is difficult to conclude that the provisions of the Victims' Bill of Rights have had any major impact on the sentencing and parole decisions made regarding felony offenders in California.⁴ The criteria and systemic dynamics had been well established before the implementation of the Gann initiative. The actors within the criminal justice system—the prosecuting attorney, defense counsel, the judge, probation authorities, and correctional officials—continue to conduct themselves as always. The only exception might be in highly publicized cases for which exist a high degree of public interest in the criminal offender and the disposition of his sentencing or parole determination.

Although the Gann procedures have minimally affected criminal justice process in California, the intention of this legislation should still be explored. What has been incorporated into California criminal law is an effort to provide a mechanism by which criminal victims can have more direct input and impact on the criminal justice system. This new reality in California raises criminological, constitutional, and political issues, the subjects of the next sections.

Some Criminological Issues

There are a number of criminological issues raised by the provisions of the Gann Victims' Bill of

Rights. First of all, if a victim's participation in the sentencing and parole decisions has an impact, is disparity introduced into the criminal justice system since only some of the victims exercise this right? Very likely, middle and upper middle class persons will be more inclined to participate in these proceedings, either directly or through legal representation.

In a somewhat similar vein, Black (1976: 95) suggests:

The more organized the victim of a crime, . . . the more serious is the offense. Accordingly, the police are more likely to hear about a robbery of business than the robbery of an individual on the street. If they do, they are more likely to make an investigation and an arrest, prosecution is more likely, and so is a conviction and a severe sentence.

In essence, the more "important" the victim is, the more participation there will be in the sentencing and parole hearing process, and the victim's impact on the criminal justice system will grow in direct proportion.

The provision of the Bill of Rights which provides that there must be a consideration of whether the person would pose a threat to the public safety if released on parole would be very speculative. The prediction of "dangerousness" is predicated more upon subjective and emotional factors than objective evidence and criminal justice procedures. The Gann initiative is clearly designed to intimidate judges and parole board members. It attempts to influence these professionals in one specific policy direction—toward harsher punishment or denial of parole. It is openly based upon the claim that judges and parole boards (and perhaps others within the criminal justice system) by and large do not do an adequate job of carrying out their responsibilities.

Since the Gann bill is devised to bring about more severe sentences, the result will be an increase in prison population, a trend evident before the passage of this proposal. There is now a serious overcrowding problem in the California correctional system. Since the implementation of the determinate sentencing law in July 1977, the California prison population has grown by more than 75 percent, from just under 20,000 inmates to almost 37,000 in late 1983 (Ingram, 1983: 3). The problem of overcrowding is so severe in California that in the spring of 1983 inmates were "housed" in tents in the maximum correctional facility at San Quentin. While there are other reasons for the large increase in the prison population, the underlying assumptions and attitudes of the Gann Victims' Bill of Rights can only contribute to an already difficult situation for correctional authorities.

⁴ In correspondence with the authors, Terence W. Roberts, Director of the Victims of Crime Assistance Center of the McGeorge School of Law, writes: "Given the rather limited nature of an appearance of a victim at a board [Board of Prison Terms] hearing, I don't believe that there will be much impact on the decision making of the panels" [regarding parole release decisions].

Some Constitutional Issues

There are a number of constitutional issues as well. Specifically, how do the Gann procedures conform to well-established standards of due process? That is, do the statements by the victims at sentencing and parole hearings meet the evidentiary standards otherwise required by criminal procedures? Gann provides no direction. What about the concerns regarding hearsay, biased witnesses, and the application of the exclusionary rule? Of course, there is no jury hearing the victim's statement; nevertheless, the comments of the victim become part of the defendant's record which might have an impact at the appellate court level if an appeal is filed.

Another consideration is that a judge might be unduly influenced by the emotional appeals of the victim. This is very understandable. Yet it must be remembered that the court's responsibility is to insure that standards of justice are not altered by emotional statements by victims. The legal process must be upheld, for it is legal guilt, not factual guilt, that is the foundation of the criminal justice system. It must be remembered that the judge has the probation and sentencing report, the statements of the attorneys, the testimony of the actual case (if there has not been a plea bargain), and his own perceptions of what justice requires in a given case.

The question still remains as to what degree a victim should participate in the sentencing process under a rule-of-law system. Sentencing has been formulated through the legislative process and reviewed by the courts. Does the victim's contribution benefit constitutional standards, hinder them, or have a neutral effect? That is the serious essential question from a constitutional standards perspective.

Regarding the Board of Prison Terms hearings, the situation is somewhat different. The rather informal hearing process provides for the defendant to have an attorney present. A representative of the district attorney's office of the county from which the commitment to state prison has occurred can also attend. The question of guilt or even of the initial sentence is no longer the issue. There is really a very subjective process occurring as the panel evaluates the prisoner's progress and establishes options including the setting of a release date. The victim's contribution to this process might be both important and limited. A victim can rarely contribute any substantive information regarding the offender's current status or the degree to which there has been any rehabilitation by the criminal in question. It seems clear that the victim's participa-

tion in the hearing is designed to put pressure on the board. While members of the parole panel will most likely be impressed by the victim's attendance—and may be witness to an emotional presentation—the members of the board are professionals who deal with not only criminal offenders but correctional personnel. The panel might not be as moved as one might assume or expect.

Some Political Issues

The sponsors of the Gann initiative rightly believed that the public would respond to a proposal which appeared to provide strongly written criminal penalties and an acknowledgment of the needs and concerns of victims. Given crime's central concern among so many citizens, the proposal's provisions allowing victims to participate in the criminal justice process beyond the traditional roles of witnesses and jurors is appealing. It makes for good political rhetoric to be against crime—because who can be for crime, for coddling criminals, for not being concerned about the plight of the victims of criminal behavior?

At the same time, however, these procedures have not had the practical effect hoped for by the advocates and many in the public. In purely practical terms, the process formalized by the Gann initiative has serious problems. First of all is the problem of notification. While the law is specific in the requirement that the authorities notify the victim or the next of kin regarding a sentencing or parole hearing, the evidence clearly demonstrates that there has developed an informal network of notification and communication regarding the sentencing hearing in particular. Quite often, the deputy district attorney assigned to the case calls the victim or the victim's family. Similarly, often deputy district attorneys notify victims about parole hearings. These practices violate the standards of the formal Gann procedures which stipulate that the probation department will be in charge of victim notification.

Secondly, the question must be raised whether fashioning criminal justice procedures through the initiative process is productive or appropriate. While public contributions and support are vital in a democratic society to insure a criminal justice system which provides for equal access and protection, to what degree should the public—rather than legislators—write criminal procedures? This goes to the very essence of the public policy-making process. Is there some positive political function in the public's perception that it is dealing with the problems of criminal offenders in a direct manner? Is the community better served because of direct

public input, and does this increase the support of the criminal justice system among the public because of this avenue of expression?

The ultimate question is whether the community (in this case, California) is safer because of the implementation of these two procedures in the Victims' Bill of Rights. Furthermore, are the victims of crimes better able to handle the trauma associated with being a crime victim? The answer to the first question is probably no; the answer to the second is a qualified yes.

The complexity of the criminal justice system which is bound up within the political process forecloses any real ongoing impact among the public at large. The system functions with professionals who deal with criminal defendants daily. The citizen's input is minimal and cursory, although there might be well-publicized cases in which a plea by a victim at a sentencing hearing or parole review makes a difference.

At a more specific level, however, the opportunity for a victim to speak before the court at a sentencing hearing or before a parole panel can have a cathartic effect. Given the forum to speak out about what harm has been done, a victim can perhaps improve his emotional health and recover more quickly from the difficulties associated with being a victim. Since victims do not have to participate in this process, the election of taking part or not allows for the victim to make his or her own specific judgment. In this way, then, the Gann options can be beneficial to the victim as well as to the criminal justice system in general.

Summary and Conclusions

This article has examined the procedures instituted in California which allow a victim or his next of kin to appear at a sentencing hearing or a parole board panel to state his position regarding the crime, the criminal, and the possible options that should be considered for the offender. These procedures now are part of statutory law in California because of a political process which allows the writing of legislation by initiative. The results of this new procedure have been minimal in the first year of implementation; so far, the criminal justice system has not been affected by the new procedures. This is especially true given the limited number of victims who have taken advantage of the opportunity now available to them.

In a more general sense, the Gann initiative must be examined in terms of the political milieu in which it evolved. There is no question that the foundation upon which the Gann procedures are built is a conservative crime control model (Packer, 1964). The

goal of the initiative is to limit the options for criminal suspects and defendants and insure a greater control over the sentencing and the release of offenders. In ultimate terms, this entire effort is a political one, an attempt to direct public policy toward a specific, conservative direction. It demonstrates the ability of special interest groups.

It is possible to argue that the victims in this so-called Victims' Bill of Rights are a "trojan horse"; that is, victims have been used as a vehicle to gain public support for the initiative which is a grand attempt to restructure the criminal procedure of the state of California. If so, this is a very adept political effort, one that might be duplicated in other states and other fields of not only criminal law but other public policies as well. This might prove to be the most important legacy of the California Victims' Bill of Rights. The demonstration that the public can be convinced to support alterations in criminal procedure in the quest to "do something" about crime is important. However, the result is the manipulation by special interest groups to achieve their own policy ends. The only continuing check against violations of constitutional standards of due process is judicial review, something that no doubt will continue to occur regarding the Victims' Bill of Rights.

REFERENCES

- Black, Donald, *The Behavior of Law*. New York: Academic Press, 1976.
- Barnes, Harry E. and Teeters, Negley K., *New Horizons in Criminology*. Englewood Cliffs, New Jersey: Prentice-Hall, 1959.
- California Board of Prison Terms. "Life Prisoner Report Annual, July 1, 1982 Through June 30, 1983." Sacramento, California: State of California, 1983.
- California Penal Code, 1982.
- California Civil and Criminal Court Rules, 1981.
- "California Journal Ballot Proposition Analysis," *California Journal*, May 1982.
- California Welfare and Institutions Code, 1972.
- Cavanagh, Joan W., Executive Director, California Board of Prison Terms, 1983.
- Chen, Edwin and Rohrich, Ted, "Prop 8—A Legacy of Confusion," *Los Angeles Times*, April 19, 1983.
- Decker, David L., Shichor, David and O'Brien, Robert M., *Urban Structure and Victimization*. Lexington, Mass.: D. C. Heath, 1982.
- Denno, Debrah and Cramer, James A., "The Effects of Victim Characteristics on Judicial Decision Making," in William F. McDonald (ed.), *Criminal Justice and the Victim*. Beverly Hills, California: Sage, 1976.
- Hughes, Wesley G. and Farr, Bill, "Victims' Wives Confront Killer at Parole Panel," *Los Angeles Times*, June 10, 1983.
- Ingram, Carl, "Deukmejian Names New Prisons Chief," *Los Angeles Times*, October 18, 1983.
- Ingram, Carl and Farr, Bill, "Governor Stops Parole for Murderer-Rapist," *Los Angeles Times*, April 6, 1983.
- Laster, Richard E., "Criminal Restitution: A Survey of Its Past History," in Joe Hudson and Burt Galaway (eds.), *Perspectives On Crime Victims*. Springfield, Illinois: Charles C. Thomas, 1975.
- McDonald, William J., "The Victim's Role in the American Administration of Criminal Justice: Some Developments and Findings," in Hans Joachim Schneider (ed.), *The Victim in International Perspective*. Berlin: Walter de Gruyter, 1982.

- Maine, Henry S., *Ancient Law*. London: John Murray, 1887.
- Meiners, Roger F., *Victim Compensation: Economic, Legal, and Political Aspects*. Lexington, Mass.: D. C. Heath, 1978.
- Newman, Donald J., *Conviction: The Determination of Guilt or Innocence Without Trial*. Boston: Little, Brown, 1966.
- Packer, Herbert L., "Two Models of the Criminal Process," *University of Pennsylvania Law Review*, 1964, 113, pp. 1-68.
- Paltrow, Scot J., "New Anti-Crime Law in California Is Helping Some Accused Felons," *Wall Street Journal*, November 26, 1982.
- Pritchard, J. B., *Ancient Near Eastern Texts Relating to the New Testament*. Princeton, New Jersey: Princeton University Press, 1955.
- Roberts, Terrence W., Director, Victims of Crime Assistance Center, McGeorge School of Law, Sacramento, California.
- Rohrlich, Ted, "Jenny Kao's Slayer Gets Life as Mother Asks for Execution," *Los Angeles Times*, August 11, 1983.
- Rosenblum, R. H. and Blew, C. H., *Victim/Witness Assistance*. Washington, D.C.: U.S. Government Printing Office, 1979.
- Schafer, Stephen, *Victimology: The Victim and His Criminal*. Reston, Virginia: Reston Publishing Company, 1977.
- Thomson, Richard, "How Trial Judge Are Coping With the 'Victims' Bill of Rights," *California Journal*, January 1983.
- Williams, Kristen M., "The Effects of Victim Characteristics on the Disposition of Violent Crimes," in William J. McDonald (ed.), *Criminal Justice and the Victim*. Beverly Hills, California: Sage, 1976.