

Crime and sentencing

Should the victim have a say in deciding penalties?

By Tim Richard
staff writer

Law enforcement people like the idea. Defense attorneys don't.

The idea is to give "victims" of crime some input into all stages of criminal proceedings against defendants — including advice to the sentencing judge.

"There is no legal right for victims to have input in sentencing," said Ronald Covault, a division chief in the Oakland County prosecutor's office. "It has been treated largely as a matter of grace. Some judges do invite victims of crime into their chambers."

Of all the 66 recommendations from a presidential task force discussed last Thursday at Sheriff Johannes Spreen's professional conference on "The Needs of Victims and Witnesses," the proposal to give crime victims more input into the lengthy law enforcement process got the most-persistent amount of attention.

"A PERSON is not a 'victim' until a conviction has been sustained," argued defense attorney Elbert Hatcher of Pontiac. "We should more properly refer to the person as a 'complainant,' not as a victim."

"I have a real problem," said defense attorney Jo Ann Bigler of Royal Oak, with victims having a role in sentencing, co-prosecuting and plea bargaining.

"Victims will add things like retribution and anger" to the process, she went on. "A judge has all the information necessary to make a sentence. Why should one defendant receive a harsher sentence because his victim has a sadder story?"

To a hostile questioner who asked Hatcher how he could sleep at night when he has got a defendant freed on a legal "technicality," the defense lawyer shot back:

"There is no such thing as a technicality. If the Constitution is there that's the most substantive thing there is. That's not a technicality."

PRESIDENT Ronald Reagan's task force report on "Victims of Crime in America" proposed additional rights to the Sixth Amendment of the U.S. Constitution which would guarantee crime victims "the right to be present and to be heard at all critical stages of judicial proceedings."

(As it stands, the Sixth Amendment protects the rights of the accused to "a speedy and public trial by an impartial jury" in the state where the crime was committed, to confront witnesses against him and to have legal counsel.) The task force also asked judges to "allow for, and give appropriate weight to, input at sentencing from victims of violent crime." It further suggested victims be allowed "to attend the trial, even if identified as witnesses, absent a compelling need to the contrary."

Conference keynoteer H. Jerome Miron, director of the National Sheriff's Association Victim Witness Program, noted the U.S. Supreme Court has ruled a victim currently has "no judicially cognizable reason to participate in the prosecution of a case."

COVAULT, a 12-year veteran of the prosecutor's staff, felt victims should be allowed to attend trials.

He told of an unnamed judge who refused to let the young victim of a sex crime attend a trial "on the grounds the jury would be inflamed by the presence of a child."

Covault said some judges dislike to admit color photos of injuries as evidence. "The court tends to forget there is a real victim, a person in the grave who will speak and walk no more," the assistant prosecutor said, deploring the

judicial tendency "to squeeze life out of a trial."

Covault revealed the prosecutor's and sheriff's offices will present a proposal to the County Board of Commissioners for a joint victim-witness task force "when the moment is propitious."

CIRCUIT JUDGE Alice Gilbert praised the presidential task force proposal for "victim impact statements" telling the sentencing judge the effect the crime had on his/her health, physical well-being, mental well-being, reputation and income.

Gilbert, a former Birmingham district judge, attacked the "unfettered discretion" American prosecutors have in deciding whether and how to prosecute a complaint. She suggested victims be allowed to apply to the state attorney general or the judiciary for a review of what appears to be lack of diligence by a prosecutor.

"Victims have no recourse if a pro-

secutor decides, for whatever reason, not to prosecute," she said.

In the effort to treat victims of crime more humanely, Gilbert said corporations and organizations should be recognized as victims, too. She cited a case where a physician had defrauded Blue Cross/Blue Shield of Michigan of \$300,000 in a plea bargained settlement with the U.S. attorney's office, the physician was punished by loss of his medical license, a \$100,000 contribution to a charity and four months behind bars.

"There was not one word about restitution to Blue Cross/Blue Shield," she said, adding that the charitable contribution was tax-deductible.

SREEN'S DAY-LONG conference, which he called the first of its kind in the nation, attracted about 120 law enforcement and legal professionals to the Silverdome in Pontiac.

Spreen, a Democrat who is leaving

the office of sheriff to run for county executive Nov. 8, praised Republican Reagan's concern for the plight of crime victims. "He said the best law enforcement recommendation I've seen in the courts, hospitals, schools and even business have a role in helping crime victims."

Novi Chief Lee Pollock, president of the Inter Lakes Chiefs of Police, said prosecutors should spend time with crime victims and witnesses because "it's more important to be intimidated by the defendant."

Royal Oak Chief John Ball, president of the South Oakland Chiefs of Police, said police responsibilities to victims "transcend the legalistic. They are humanitarian. We have the ability to diagnose when something is wrong and needs attention."

"Many victims and witnesses want nothing more than to be listened to —

to be made a part of the process. They want to know we care," Ball said.

COVAULT of the prosecutor's office indicated the task force recommendation for separate waiting rooms for prosecution and defense witnesses.

Cited a recent homicide case involving two different victim groups who witnesses waited in the same hallway, Covault called the arrangement outside Oakland Circuit Judge Steven Andrews' courtroom as one of "stupidest things I've ever seen."

Charles Ludwig, child welfare supervisor for the Oakland Probate Court, said great efforts are being made to have juvenile offenders make restitution for their misdeeds, adding, "I'm not sure we ever can satisfy some of the victims."

But restitution may be impossible, Ludwig added, when the child can't pay or is placed outside the home by the juvenile justice system.

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