

**6<sup>th</sup> IAP Middle East & Asia-Pacific Regional Conference  
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Good morning. I want to thank you for inviting me to speak here today. It's always an honor and a privilege for me to come to Dubai, and I'm especially thrilled to be speaking at a conference hosted by the International Association of Prosecutors – as I am a former criminal prosecutor myself, and I have the utmost respect for each and every one of your members.

Let me tell you a little bit about myself. I am the Commissioner and Chair of the New York City Human Rights Commission. Now, it isn't a typical transition to have someone go from working as a prosecutor to heading a civil rights agency. But Mayor Michael R. Bloomberg isn't a typical mayor. He wanted someone with a criminal justice background to head the Human Rights Commission and put some "teeth" into the Law. He recognizes – as do I – the parallels between the two positions, i.e. the prosecutorial

nature of what we do at the Commission. The New York City Human Rights Law, which I am charged with enforcing, is a civil rights law created to prohibit discrimination in the areas of housing, employment, and public accommodations, based on 16 protected groups of individuals, ranging from the familiar classes of race and religion to the less familiar classes of lawful source of income and status as a victim of domestic violence, sex crimes, and stalking. With many of the protected groups, there is an overlap between our agency and the criminal justice system, such as, for instance, cases involving individuals who suffer from domestic abuse; they may find themselves victimized again at the hands of employers who refuse to hire them because of their status as a domestic violence victim.

So, I now deal with a different type of victim than I was when I was in the District Attorney's Office. My background in prosecution, coupled with my current role heading a civil rights agency, has given me a unique perspective on the

issue of victims' rights and protections, and I'd like to share some thoughts with you today.

When an individual's life is affected by crime, the experience can have a profound impact. If the crime is a violent one, the victim may never be the same. He or she may become permanently scarred or physically disabled. In addition, there is a great deal of psychological and emotional impact that can result from violent crime. The victim's sense of security and outlook on life may become indelibly skewed. Law enforcement can't heal a physical scar, but victims look to us to correct some of the emotional trauma by providing a service for the victim. That sought-after service that we can provide is called "justice."

Those of us in law enforcement who seek justice for the citizens we serve must be concerned with the treatment of **both** the accused criminal defendant **and** the crime victim and we must take a closer look at the role and treatment of victims:

‘Has the balance of the scales of justice now swung too far in favor of the accused and, as a result, has the treatment of crime victims and witnesses suffered?’

and

Are we really dispensing and preserving “equal justice” to both the accused and the accuser?

Benjamin N. Cardozo, Justice of the United States Supreme Court once said, “Justice, though due to the accused, is due the accuser also.”

This quote was taken from a decision in *Snyder v. Massachusetts* in 1934. So, as you can see, for *at least* eight decades, those involved in the United States justice system have been wrestling with issues concerning the system’s treatment of crime victims and their rights.

On the front of the building housing the United States Supreme Court, the highest court in the nation, is inscribed the words “Equal Justice Under the Law.” When Americans read those words, they often picture a blindfolded woman

balancing a scale and sitting in judgment of a criminal defendant. The balance of the scales of justice is symbolic of the fair and equal treatment that an individual charged with a crime has a right to receive in a court of justice. I doubt that most Americans would even question whether or not the *victim* received fair and equal treatment in the pursuit of justice. The United States Constitution explicitly protects the rights of the accused, but is silent with regard to the accuser – the victim. Consequently, our entire criminal justice system focuses primarily on protecting the rights of the accused. The way the victim is treated by anyone other than the accused is not usually an issue brought before the courts. For the most part, any issues regarding the victim are dealt with by the prosecutor and/or a non-governmental organization, outside of the court. But if the victim gets no justice, then justice is not served.

In the United States as well as many other emerging democratic countries, there are countless volumes of laws

and court decisions regarding the rights of the defendant, but there is little in the way of legally mandated protections for the crime victim.

As most of you know, the United States is dedicated to the rule of law. Theoretically, our system supports what we believe to be the impartial enforcement of the common will of all people. We do this through a process which undertakes to primarily protect the common good, which are the rights of society as a whole, while recognizing and protecting individual rights. This is accomplished through the enactment of laws that reflect the common will of the people. The system's authority is rooted in our acceptance of the law and reliance upon an individual's willingness to work for the common good.

Consequently, in the United States, like in the UK, crime is not committed against an individual; it is committed against society. For instance, the charging court documents in a New York State criminal case read, "The People of the

State of New York v. name of accused.” It does not mention the name of the crime victim, that is, John Doe, accuser vs. name of accused. Anyone found to violate the laws set in place will be subject to punishment based upon the penalties attached to the crime as mandated legally by the citizens of society, not by the victim. In fact, when individuals are released from prison, we usually say that they “have paid their debt to **society**,” not to the victim that was wronged.

The victim, as a member of society, has an obligation to cooperate with the prosecution of the criminal defendant, whether they agree or not. In fact, in the United States, victims of and/or witnesses to a criminal act can be arrested and held to ensure their presence and cooperation at trial. This authority is rarely used, but it is available. On the other hand, the accused’s rights are protected by the United States Constitution, including the right to choose whether or not to testify at trial. Individual state constitutions also protect the defendant. In New York State, for instance, there

are over 130 types of judicial hearings that could be conducted to protect the rights of the accused to ensure that justice is served. But if the victim gets no justice, then justice is not served.

While the role of a crime victim/witness is extremely important and necessary in the adjudicative process, it is not a powerful role in state cases. Some advocates want the crime victim to have a more powerful role in the justice process. Essentially, they want the victim to have an authoritative role recognized and supported by legal mandate, much like the rights of the accused. This type of legislative mandate would create a crime victims' rights body of law. To legally mandate rights to crime victims implies responsibilities or duties and this, in turn, requires a great deal of consensus in the community regarding the appropriate definitions for many of these legal terms. Some legal scholars argue that the term 'victims' rights' is a restrictive legal term and that, by legally defining the term to



create a mandated entitlement for crime victims, they also set up hurdles for the crime victim who wants legally recognized status. They contend that, in order for a crime victim to access the legal right, he or she would have to meet the requirement as set forth by the legal definition conveying the status of victim. So any crime victim unable to meet the legal qualifications and statutory hurdles would not be considered a victim under the law and would, therefore, not be entitled to all the rights therein. The worst-case scenario is that there could potentially be real or perceived crime victims who will be unable to meet the legal requirements.

In opposition to legally supported victims' rights are some members of law enforcement who believe that authoritative victim participation in the criminal justice process will jeopardize a well-established criminal justice system. They fear that the affirmation of crime victims' rights will lead to the violation of traditional legal safeguards for the

rights of the accused and will essentially shift an already punitive-in-nature criminal justice system toward a more vindictive direction. They feel that the imposition of legally mandated victims' rights will reduce the power or will pose a challenge to government authority, prosecuting cases.

Neither of these two completely divergent political views reflects the positive dialogue taking place among participants in the criminal justice system, nor do they accurately reflect what is really taking place within the system.

Under the current system, when one is a victim of a crime, he or she has no say as to what crimes are charged. Before a criminal trial takes place, the arrest information is presented to a Grand Jury, which is a body of civilians selected by the courts to hear evidence presented by the prosecutor regarding the accused's culpability. The Grand Jury decides what crime, if any, will be charged. The prosecutor may or may not call the crime victim to the Grand Jury to testify. And if the victim is called to testify, that is the

extent of the victim's role in the process of charging the accused; the crime victim has no say as to what crimes will be charged in the indictment. The jury, after a trial that the victim can be forced to attend, determines the guilt or innocence of the defendant. If convicted, the judge determines the ultimate sentence or punishment, of course staying within the parameters created by the legislature.

Though the crime victim has a right to speak at the sentencing, and we presume that the judge considers the victim's opinion, the judge is under no legal obligation to do so. The victim may even appear and speak at parole hearings, which are held to determine whether or not the convicted criminal should be released back into society, but again, the parole board has no legal obligation to adopt the victim's position and may act in a manner they determine to be in the best interest of society. A victim, who testified against an accused who was later convicted and incarcerated, has no right to be notified when the convicted

criminal will be released, even though such release may endanger their lives.

Obviously, the crime victim's desire for revenge must be tempered with reasonable and consistent implementation of punishment, but shouldn't they have rights and protections similar to the accused? Because if the victim gets no justice, then justice is not served.

Unlike rights that ensure freedom, protect against oppression, and prohibit unconstitutional abuse of power by the state and/or government intrusion, the rights ascribed to crime victims can create conflict between the state interests (society) and the individual. Law enforcement agents, such as the courts, prosecutors, and police, represent the interest of the broader needs of society. There exists a fragile balance between victims' advocates, legislators, and prosecutors. I submit that it is this fragile balance that must be considered by all participants when assessing the impact of the legal implementation of crime victims' rights. I believe

the mission and focus of the dialogue on crime victims' rights should be centered on meeting the needs of and caring for all of the unfortunate individuals who are involved in the criminal justice system, recognizing the individuals' humanity and human dignity.

As a prosecutor, I remember trying the case of a young woman who was assaulted and robbed by a neighborhood thug. During my preparations for trial I learned that the victim had a lengthy criminal record for drug use and various petty crimes. Under the law I was obligated to turn over the victim's criminal record as well as any other bad acts that she committed over her lifetime. By doing so, I was forced by law to subject this victim to a virulent cross-examination by the defendant's attorney. At the conclusion of the cross-examination the victim yelled to the jury "Am I the victim or defendant here?" Had the defendant taken the stand in that case, I as a prosecutor would have been very limited in my ability to discuss any of his prior criminal history. The law

provides this protection for the defendant so as not to prejudice him/her in the eyes of the judge and jury. The law does not provide these same protections to the victim. Under this system, victims face the possibility that the defendant will have the opportunity to victimize them again.

I am also reminded of a victim of domestic violence who was stabbed 25 times with an ice pick by her husband. The husband, who left her for dead, committed this act in front of her young son. This courageous woman survived and testified against her husband at his trial. The husband was convicted based solely on her testimony. Despite the violence of this crime, the Judge sentenced this defendant to only 10 years instead of the maximum of 25 years permitted by law. The husband is due to be released from prison in the near future. How is the criminal justice system going to protect this victim? If the victim gets no justice, then justice is not served.

In addition to a prison sentence, a judge can require a criminal defendant to pay restitution to the victim. In most instances criminal defendants don't have the money to pay restitution; however, this often arises in fraud or other white-collar crime prosecutions. The CEO of a large corporation who is convicted of stealing money from the company may be required to pay the money back in addition to serving a prison sentence. This practice benefits the victim, the corporation and its shareholders, while at the same time, protecting the interests of society. This attempt to balance the interests of society and the victim has often been criticized since it appears to let wealthy defendants buy a lesser sentence through the payment of money. As before; however, the victim has no legal right to demand that the judge or the prosecutor require the criminal defendant to pay monetary damages.

A victim in a criminal case may sue a criminal defendant in civil court and obtain monetary damages;

however, unless the defendant has money, this right is of little value.

What about the opposite scenario? What right should a victim have to request that the criminal justice system be lenient on a criminal defendant? In the United States, many victims know and have relationships with the individuals who commit crimes against them. This is most common in domestic violence cases. As a prosecutor, I have seen hundreds of cases where a man comes home, possibly drunk or high, and takes his frustrations out on his wife's face. The wife calls the police because she wants to defuse the situation and get away from her husband for the night. She will usually have no intention of having her husband stand trial and go to jail for any length of time. Should the criminal justice system acquiesce to her desires and let the husband go? What happens the next time he decides to slap her around and the police have to respond? The third time? The fourth time? What happens when things get out of hand



and he kills her? As I indicated earlier, these are crimes against society, and the victims' wishes are not always what is best for society, or even her. In many areas of the United States the police are required to make an arrest in these circumstances, regardless of the wishes of the victim. They carry cameras in their patrol cars and they take pictures of the victim's injuries so they can't be denied later, and in some instances, prosecutors will proceed to trial, even without the cooperation of the victim.

What about a rape victim and a defendant that may be infected with HIV? Society wants to punish the individual and keep him from doing this to someone else. The victim wants revenge, but also has an interest in knowing whether she has been exposed to the AIDS virus. The criminal justice system may not have the ability to force a defendant to provide a blood sample without his consent. Should the prosecutor place society in jeopardy by agreeing to a lesser

sentence in exchange for consent to blood tests so that the victim can know whether or not she has been exposed?

Another example may be statutory rape, a case where an adult has consensual sex with a minor. The minor is presumed to be unable to consent to the sex; therefore, society has determined that this is rape. There have been several cases publicized recently in the United States involving adult female teachers who have engaged in consensual sex with minor male students. Each professes undying love for the other and the victim doesn't want to see the teacher prosecuted and punished. Yet society forces the victim to testify and cooperate with the prosecution. Like it or not, many of these women are serving prison sentences. Unfortunately, these examples I shared with you represent only a few of the many individuals who have been victimized by crime in the United States.

For the record, the US has experienced a record-setting decline in crime rates. Homicide and robbery rates fell to

their lowest levels in the US since the 1960s and serious violent crime continues to decline. In New York City, we are enjoying our lowest crime rate since 1964.

Notwithstanding this decline, in 2002, US residents age 12 or older experienced approximately 23 million crimes according to findings by the National Crime Victimization Survey, Bureau of Justice Statistics.

- 76% / 17.5 million were property crimes
- 23% / 5.3 million were crimes of violence
- 1% were personal thefts

For every 1000 persons age 12 or older, there occurred:

- one rape or sexual assault
- one assault with injury
- two robberies

Currently, there are approximately 10,000 justice system and community-based non-governmental organizational programs that provide services and support to these and other unfortunate victims of crime and their families. Experience has taught us that collaboration

between government and non-governmental organizations is a pivotal component in the support of crime victims' needs.

In general, the crime victims' rights movement in the US has supported a political agenda of vindictiveness and punitiveness, including the death penalty, harsher sentences, and pre-trial incarceration. Some victims' rights programs are also direct beneficiaries of tough crime policies, because a large share of their funding comes from fines levied against those who are convicted of federal crimes and forfeit assets. (e.g. Doris Tate's Crime Victim's Bureau was the driving force behind California's three strikes legislation, received 78% of its funding from the state prison guards' union.)

An alternative political view, being supported among some victims' advocates, is referred to as restorative justice. Many argue that one of the virtues of a restorative justice system is that the victim's involvement is key and that the

system focuses on justice for the victim who, after all, is the aggrieved party, not society.

Restorative justice is defined as “a process of bringing together the individuals who have been affected by an offense and having them agree on how to repair the harm caused by the crime” with the goal of restoring victims, offenders, and communities, in a way that all stakeholders can agree is just. Restorative justice assumes that the victim or their heirs or neighbors can be, in some way, restored to a condition “just as good as” before the criminal incident. The system is based upon the recognition that crime harms individual victims and relationships within the victim’s and offender’s respective communities.

Oftentimes, the restorative justice model is viewed to be in opposition to the punitive model. In contrast to the US justice system, which is designed to establish the culpability of the offender and to exact an appropriate punishment, the aim of restorative justice is to establish accountability for the

harm, promote mutual understanding of its causes and effects, and develop a process to make amends. In the restorative justice paradigm, the offender is not ordinarily incarcerated, but instead is obligated to apologize and otherwise compensate their victim, ideally receive forgiveness, and be reintegrated into the community. In some jurisdictions in the United States that follow a restorative justice model, penalties have included community service, restitution, and alternatives to incarceration that keep the offender active in the community and re-socialize him or her into society.

These are very difficult issues and I do not profess to have the answers. I hope that I have been able to provide some insight and at least start a dialogue regarding this complex issue of crime victims' rights. We in the criminal justice system have been attempting to strike an appropriate balance between the defendant's and the victim's rights for

years. It'll be an ongoing struggle, but I think we've had some success.

It is important to note that the issues I'm referring to apply to state cases. The Federal Crime Victims' Rights Act in the US greatly improved the rights of victims in *federal* cases. They have the right to be reasonably protected from the accused; the right to full and timely restitution as provided in law; the right to be treated with fairness and with respect for their dignity and privacy. And they have the right to be heard. The Victims Rights Act is the first act in the US that gives victims the right to be involved and that specifically lists their rights, **but** the rights under the Act apply only to federal cases. So, while our federal law has evolved, our state laws still do not afford the victim any legally mandated rights. And, **most criminal cases are held in state court.** I am optimistic, however, that the Crime Victims Rights Act will one day serve as a model for wider application on the state level, and that its bill of rights can continue to serve as

a model internationally. Other jurisdictions have modeled legislation based on the Crime Victims Rights Act – such the Crown Prosecution Service’s “Prosecutor’s Pledge” in the United Kingdom – and they have based their codes of practice for victims rights on the US federal system. **I have brought copies of the Act with me to share with you, so you may see the breadth of this legislation.** I also would like to present to you a poignant video, presented by US Department of Justice, that sums up the Crime Victims Rights Act. As you watch it, keep in mind that if the victim gets no justice, then justice is not served. Thank you.

*[At this point, please play this video:*

<http://www.youtube.com/watch?v=pV9zTN8Jg64>]