Judges who articulate their decisions in simple language make it easier for victims to understand the proceedings. Terse, short comments from the bench are often misconstrued or misunderstood by the victim and court attendees.

Additionally, in an effort to promote victim recovery, it has proved helpful if judges stay away from addressing the defendant in front of the victim with statements like, "You ruined the victim's life." A less debilitating statement might be, "Your actions have had a dramatic effect on the victim." This leaves the victim feeling more in control of their healing process.

The absence of a victim at a hearing does not necessarily indicate the level of interest in the case. Mitigating circumstances, including intimidation and fear of the defendant, often discourage victims from being present.

*The offender took everything from me... it felt like I became a different person. When I gave the court my Victim Impact Statement I found my voice again and finally began to heal.*
– Victim of Crime

*After the judge sentenced my stepfather, he commended my sister and me for having the courage to come forward. With those words he took us from victims to survivors.*
– Victim of Crime

## SUMMARY

The intent of this guide is to address key issues that concern victims. It also recognizes the important role the judiciary plays in providing a positive environment for victims engaged in the court process.

*When our criminal justice system treats victims as irrelevant bystanders, they are victimized for a second time.*
– President George W. Bush,
*Milestones in the New Millennium*

## REFERENCES


*2006 WATCH Victim Impact Statement Study,* University of Minnesota

*The Crime Victims Right to Be Present,* U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime

*Impact Statements: A Victim's Right To Speak, A Nation's Responsibility To Listen,* U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime

*It's Your Turn, Texas* Department of Criminal Justice

*Victim Impact Statement Workbook,* MADD

*Victim Impact Statement Form,* Mississippi Department of Correction, http://www.mdoc.state.ms.us

*What Practioners and Judges Need to Know Regarding Crime Victims' Participatory Rights in Federal Sentencing Proceedings*, Russell P. Butler, Executive Director of the Maryland's Crime Victims' Resource Center, Inc.

Janice Murakami, Ph.D

Pitman, R.K., Sparr, L.F., Saunders, L.S., McFarlane, A.C. (1996). *Legal Issues in Posttraumatic Stress Disorder.* B. van der Kolk, A.C. McFarlane & L.Weisaeth (Eds.), *Traumatic Stress: The Overwhelming Experience on Mind, Body, and Society* (pp. 378 - 397). New York: Guilford Press.



US Department of Justice
United States Attorney's Office - District of Vermont


# VICTIMS IN COURT

A JUDGE'S GUIDE

# VICTIMS IN COURT: A JUDGES GUIDE

*Just as despair can come to one only from other human beings, hope, too, can be given to one only by other human beings.* – Elie Wiesel

The landmark 2004 Justice For All Act gave victims of crime a powerful voice in the federal criminal justice system. This new federal law illustrates the greater recognition and commitment to victims' rights both in the federal and state courts. This new era will lead to greater interaction between the courts and victims.

This guidebook has been prepared to assist judges as they endeavor to make a victim's courtroom appearance as positive and productive as possible. Often the victim of a crime has never stepped foot in a courtroom and the experience can be overwhelming and intimidating. Over the years, seasoned victim advocates have observed a variety of simple, thoughtful practices implemented by judges to address the needs and concerns of victims in court. This guidebook attempts to share some of those practices that have aided victims during the judicial process.

**Aimee Stearns, VWC, District of Vermont, United States Department of Justice**

## VICTIM RETRAUMATIZATION

Victims who have experienced the trauma of a violent crime may suffer from a variety of stress- related disorders. The court process can trigger psychological responses or physical challenges for the victim (e.g., anxiety, headaches, nausea, etc.). Seeing the offender for the first time, hearing their voice or listening to their defense often creates difficulties for the victim that last beyond the court process. While it is the Victim Advocate's job to assist victims with counseling and support, it is beneficial for the judge to be aware of these dynamics.

## ACKNOWLEDGING THE VICTIM

To victims, the acknowledgement of the court is of paramount importance.

- Studies show that judges who convey a responsive and accommodating impression to victims help facilitate the healing process. Judges who make eye contact with the victim help underscore the value of the victim's presence.

- Attending court can be a cathartic, empowering experience for the victim. It is the victim's final opportunity to address the court and put closure to the legal process.

- When scheduling a hearing involving a victim, judges need to take into consideration whether there is adequate time to notify the victim. This is especially important when rescheduling hearings, as victims often must arrange time off with employers well in advance.

*Often sentencing is rescheduled on the day of the hearing while the victim is en route to the court. This is disruptive and stressful for the victim who has made special arrangements with their employer, and in many instances has traveled great distances. Aside from the enormous inconvenience, it is the cause of great anguish and frustration.* – Victim Advocate

- When a continuance is filed, some judges solicit input from the prosecutor's office to determine if a continuance will preclude the victims' attendance or unduly inconvenience the victim. Postponement of a hearing is often considered if the victim expresses a desire to be present, but cannot make the scheduled court date.

- In order to make victims feel an integral part of the process, judges could designate reserved seating in the courtroom.

*It meant so much to the family that the court recognized how important it was for us to be comfortable and acknowledged with reserved seating.* – Victim of Crime

- If victims are present for a hearing, some judges will make an effort to hear their case first if the victim's advocate makes a request. Others prefer to place the case last on the docket when the courtroom often is less populated, providing the victim with added privacy. Some judges defer to the victim's preference.

*When I walked into the courtroom, I felt like everyone there knew what he had done to me. I know it was irrational because they were there for their cases, but I couldn't help it.* – Victim of Crime

- While it is the responsibility of the victim advocate/prosecutor to inform the judge if the victim will be present at the hearing, judges find it advantageous to presume a victim is present.

*When a judge acknowledges a victim, they become a part of the process rather than a bystander.* – Victim Advocate

## VICTIM PARTICIPATION

- Encouraging the victim to participate in the criminal justice process achieves several goals:

  - Helps the victim feel more at ease when addressing the court
  - Educates the court, defendant and observers about the impact of the crime – the personal toll suffered, the trauma and economic consequences
  - Brings the humanity and vulnerability of the victim into the courtroom
  - Provides the victim with a sense of dignity and empowerment
  - Offers information that might affect the conditions attached to the final sentence, particularly when guidelines call for a probationary sentence

## THE VICTIM IMPACT STATEMENT

- Victim Impact Statements add the personal dimension to the court process and to the understanding of the consequences of the crime. The victim, his or her family, and those directly affected can best convey the loss, frustration and fear that crime imposes.

- For many victims, Victim Impact Statements are both liberating and paralyzing. Fear of retaliation is a primary reason for trepidation. By recognizing the implications of a victim's involvement, the court is uniquely situated to make participation as comfortable and non-confrontational as possible.

- Victim input into the pre-sentencing investigation is vitally important, particularly regarding requests for restitution.

- In appropriate cases, judges who reference key points from the Victim Impact Statement during sentencing provide tacit acknowledgement of the victim.

- Judges who thank victims for coming forward with their Victim Impact Statements, and acknowledge their courage in doing so, help in the healing process.

*As a victim, I cannot tell you how much it meant to have the chance to express my point of view in the court. The judge provided a respectful and supportive environment and it helped me come to grips with the trauma. I appreciated him thanking me.* – Victim of Crime

## SENTENCING

While it is the responsibility of the prosecutor and victim advocate to explain the plea agreement to the victim in order to minimize unrealistic expectations, judges who clarify their decision-making process also reassure victims that their status has been taken into consideration.

When judges take a moment to ask a victim if they are aware of the nature of the plea agreement and restitution, the decision is better received and understood by the victim.

Judges who are in the dual position of respecting the victim's input while basing the sentence on a plea agreement, sentencing guidelines or legislated mandates find the negative impact on the victim is minimized by explaining the decision-making process. This helps to alleviate victim misperceptions. For example, often victims feel limited jail space is a reason for not sentencing the defendant to jail time.