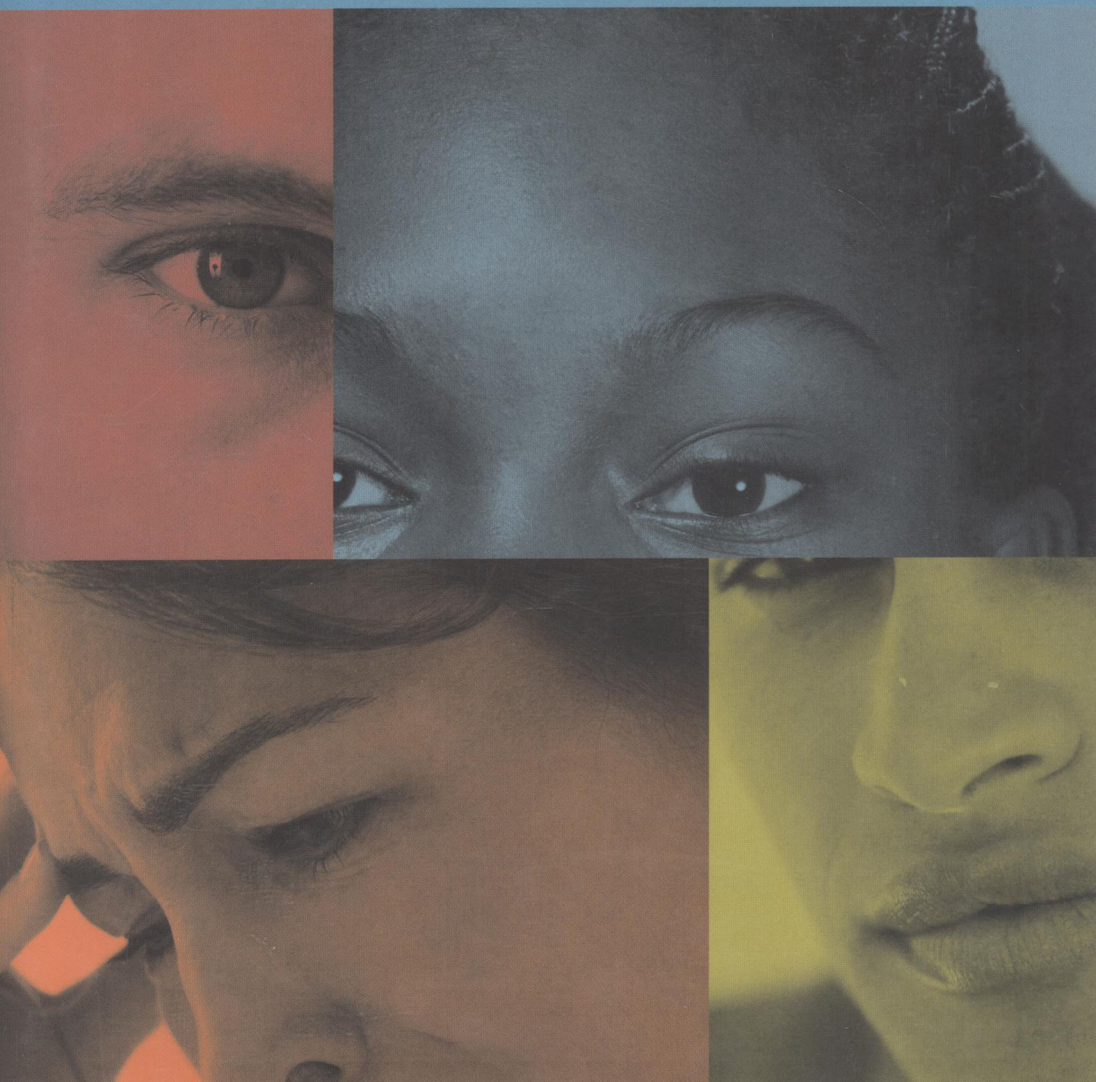
REBALANCING JUSTICE

RIGHTS FOR VICTIMS OF CRIME

Irvin Waller



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FIGURES

ABBREVIATIONS

BJS: Bureau of Justice Statistics, the agency responsible for producing and disseminating statistics on victimization and other criminal justice issues in the Office of Justice Programs, U.S. Department of Justice.

CDCP: Centers for Disease Control and Prevention, a component of the U.S. Department of Health and Human Services, located in Atlanta, Georgia. Here it refers mainly to the Division of Violence Prevention, which is part of the National Center for Injury Prevention and Control.

DWI: Driving while intoxicated—refers to crimes committed when the driver of a vehicle is impaired.

FBI: The Federal Bureau of Investigation, an agency of the U.S. Department of Justice. Its main function is to do skilled detective work on major offenses. It publishes the UCR (see below).

GAO: Government Accountability Office, mandated to assess implementation of the Justice for All Act.

IACP: International Association of Chiefs of Police, the world's largest nonprofit association of police executives with 20,000 members from the United States, Canada, and other countries. Its headquarters are located near Washington, DC.

IBCR: International Bureau for Children's Rights, based in Montreal, Canada.

ICVS: The International Crime Victim Survey, which focuses on a representative national sample of 2,000 respondents in most major developed countries. It is completed every five years and asks a number of questions important to this book that are not included in NCVS (see below).

INTERVICT: The International Victimology Institute Tilburg was established to use knowledge about victims of crime and remedies to their problems to better implement rights for victims of crime.

IOVA: International Organization for Victim Assistance, based in Newberg, Oregon. It was established to make a difference to victims and survivors across the world. Its founders combine many decades of experience working with victims of crime.

MADD: Mothers Against Drunk Driving, an organization that leads legislative battles to reform U.S. state and national laws on drinking and driving.

***Magna Carta*:** An abbreviation for the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

NCVS: The Bureau of Justice Statistics undertakes the National Crime Victimization Survey every year to provide national statistics on the victimization of adults (including whether they reported the crime to the police).

NIJ: National Institute of Justice, the agency that funds research on victimization and criminal justice issues. It is part of the Office of Justice Programs, U.S. Department of Justice.

NOVA: National Organization for Victim Assistance, a network of persons working to provide assistance to victims of crime. It promotes rights and services for victims who have suffered from crime and other crises.

NRC (U.S.): National Research Council, part of the United States' National Academies, which enlists the foremost scientists in the United States to provide policy advice under a congressional charter. The Institute of Medicine is a component.

NVCAP: National Victims Crime Amendment Passage, a group that came together to promote a victims' rights amendment to the U.S. Constitution.

OVC: Office for Victims of Crime, established by the Victims of Crime Act in 1984 and a component of the U.S. Department of Justice.

PTSD: Post-traumatic stress disorder (see the American Psychiatric Association Diagnostic Standards Manuals IV and V) is a set of psychological symptoms that victims of crime may experience. Common symptoms

include sleeplessness, inability to return to work, and frequent reliving of the trauma.

UCR: Uniform Crime Report, issued every year by the FBI to provide statistics on crime in the United States. It is limited to crime recorded by police departments.

VAWA: Violence Against Women Act, first passed in 1993, revised and reauthorized in 2000 and 2005, and slated for reauthorization in 2010.

VOCA: Victims of Crime Act, passed in 1984.

VSE: Victim Support Europe, a network of the national victim assistance organizations in Europe, has played a key role in recommending improvements in the delivery of services for victims of crime as well as equity between victims and offenders in courtrooms.

WHO: World Health Organization, headquartered in Geneva, Switzerland. The WHO's section on Violence, Injuries, and Disability has done landmark work to advance the prevention of violence, traffic injuries, child maltreatment, and gender-based violence.

WSV: World Society of Victimology, a non-profit nongovernmental organization that aims to advance victimological research and practices around the world.

FOREWORD

In January of 1987, after my brother was murdered, I encountered the criminal justice system with new eyes. My viewpoint suddenly shifted from that of a very successful criminal defense attorney to that of a victim of crime and a victims' advocate. I realized firsthand how problematic the criminal justice process was for crime victims and their families. As a defense attorney I had known the concerns of criminal defendants and had supported their need for balance and fairness in a justice process that often diminished their lives. But suddenly I became aware of how often the lives of victims and surviving family members were likewise diminished by the lack of access to, and standing in, the criminal justice system.

At the age of forty, I was appointed a chief justice of the Texas Court of Appeals in El Paso. One of the first things I did—without fully appreciating the national consequences of my actions—was to stop the traditional protocol found in appellate opinions of calling a victim an "alleged victim" or a "complainant." By the time cases reached my chambers, years after the initial victimizations, the grass may have grown over the graves but the hurt was not forgotten. The victims stood before me not as "alleged victims," but as true memorials to a criminal justice system out of balance.

Rights for Victims of Crime: Rebalancing Justice embraces critical issues that I embrace. It calls upon everyone to recognize the fact that, for all the progress that has been made, there is a new need for leadership.

More Offices for Victims of Crime, clear professional standards for victim assistance providers, and ombudspersons for victims. It also calls for the establishment of institutes for victim services and rights. Whether or not these are limited to research and development and based in a university setting, the very proposal reflects the vision of Benjamin Mendelssohn when he first proposed such institutes in the late 1940s. And although this idea has been late in coming, I firmly believe that now is the time to bring it to fruition in North America and that such institutes should include all levels of educational and training opportunities including those that might exist at high schools, community colleges, and vocational schools across North America.

Rights for Victims of Crime: Rebalancing Justice focuses on the next steps forward for victims: comprehensive laws, permanent funding, and rights. Professor Waller's analysis of how funding and resources could be allocated to bring about real solutions is enlightening and is sure to inspire my colleagues in the victims' movement as they continue their pursuit of a proper balance of the constitutional rights of criminal defendants with those of victims of crime.

I encourage anyone who has been a victim of crime in any sense of the word, or anyone who knows someone who has been touched by the criminal element, to read and embrace this book. It is a work that people must hold up to their legislators to demand that victims' issues be urgently addressed through legislation that will change our national agendas. Only then will we see a proper balance of justice in our society.

Chief Justice Richard Barajas (ret.)
Texas Court of Appeals, El Paso

ACKNOWLEDGMENTS

This short book prepares its readers to advocate for the rights of victims of crime. It shares what I have learned from the leading advocates across the world over four decades. I have been inspired by many exceptional and dedicated individuals, but none more than Marlene Young, through her speeches, her vision, her academic knowledge and her ability to put it all together so that victims of crime could have a better life.

My active engagement in shifting public policy to respect the rights and needs of victims of crime started in 1982 as we moved mountains in just three years to get the General Assembly of the United Nations to adopt the *magna carta* for victims of crime. Elias Carranza, Yael Danieli, Matti Joutsen, Irene Melup, Leroy Lamborn, and Claudio Stampalija were my partners, friends, and teachers. It continues today in the International Organization for Victim Assistance with the brilliance, vision, and commitment of John Stein, Karen McLauglin, and Sherry Young. You are the unsung heroes, whose outrage at the lack of justice and caring for victims of crime has fired our lifelong pursuit of justice and caring where it is still needed most. You have taught me many things, but more than anything that we *can* and *will* make a difference.

From the 1980s forward, I was lucky to be inspired by the pioneers on the board of the National Organization for Victim Assistance. I am grateful for the bravery of so many of the leaders of the World Society of Victimology

who knew that academic debate without practical outcomes is not fighting for justice. To mention but a few—K. Chockalingam, Sarah Ben David, John Dussich, Paul Friday, Ester Kosowski, Marc Groenhuijsen, Maria de la Luz Lima, Hidemichi Morozawa, Helen Reeves, Chris Sumner, Paul Separovic, Jan van Dijk, and Ray Whitrod.

In Canada, I am grateful for the guidance, encouragement, and inspiration from so many, including Micheline Baril, Ruth Campbell, Arlene Gaudreault, Ross Hastings, Heidi Illingworth, Holly Johnson, Sharon and Gary Rosenfeld, Steve Sullivan, Claude Vézina, and Priscilla de Villiers. In Washington, I appreciate the support and trust of new friends as we fight on the front lines for victims' rights, particularly Steve Derene and Anne Seymour.

We have made progress, but as this book shows, there is much more progress for the next generation to make. Elmar Weitekamp, Dick Andzenge, Marian Hilft, Gerd Kirchhoff, and Robert Peacock and their network from the Dubrovnik course are inspiring a growing number of young people from across the world with their teaching and commitment to social justice. We are lucky to have the brilliance and commitment of so many—Maria Josefina Ferrer, Veronica Martinez, Emilio Jose Garcia, Sam Garkawe, Michael O'Connell, JoAnne Wemmers, and Xin Ren.

I acknowledge the editorial skills and support of Elizabeth Bond in completing this manuscript.

And last but not least, I'd like to dedicate this book to Susan and our growing family, whose patience and support is immeasurable.

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INTRODUCTION

Reinvigorating the Victim Rights Movement

Despite a decrease in rates of crime by 40 percent or more in the 1990s, more than 20 million Americans will still be victims of crime this year. That's more than one in ten Americans over the age of twelve. Although the majority of victims of violence will be male, nearly a million women will be victims of sexual assault this year alone. Another million women will be victims of violence at the hands of an intimate partner at least once over the next twelve months. What's more, three-quarters of a million children are reported as being victims of abuse—and sadly, the real number of young victims is likely much, much higher.

Economists have added up the costs of medical care, mental health counseling, property damage and loss, and work days lost for victims in the United States and have found that these exceed $100 billion a year. And if they factor in the pain and suffering lived by victims—assuming that a monetary value could ever be put on such a thing—the total damage and losses exceed $450 billion. Proportionate to population, the picture is similar in Canada and in England and Wales.

Many victims will not report the crime to the police. Those who do will experience the disillusionment of being a witness rather than a client—that is, they will be treated as a disenfranchised bystander to their own experience rather than being a first among equals with a voice. Initially lost to the aggression of the accused, victims have difficulty regaining their personal

power. Not surprisingly, this leaves a lot of victims (who are taxpayers and voters, don't forget) disillusioned, indignant, and angry. All victims in the United States are now entitled by law to a variety of basic services, but many of these people will still find law enforcement officers and judges who do not have the time or inclination to respect those laws because they are preoccupied with enforcing the laws that affect the perpetrators.

Today, victims aren't the only ones who know about the pain, shock, humiliation, loss of control, and powerlessness that victims of crime experience at the hands of their offenders. A growing number of advocates and social scientists know only too well how feelings of anger, depression, worthlessness, and fear oscillate and reverberate over the weeks, months, years, and even decades following a victimizing incident. While law enforcement agents and judges may not be inclined to transfer their focus to the victim, many of these advocates and social scientists are experts in how to respond to victims in caring and just ways, and in some cases they even have solutions to stop victimization from happening in the future.

More often than not, we know how to provide emotional support and counseling to victims. We know how to protect the victim from the accused and how to give the victim a voice and power in the criminal justice system. We know how to inform victims of services that will help them and how to get them access to those services. We even know how to pay their mounting bills and how to stop much of the violence. In sum, we have the solutions as to how to put victims back in the center of our support, reparation, and justice systems. It is baffling, then, why governments are still not doing enough to apply this knowledge.

If you are robbed while walking down the street, it should be your right to expect other citizens to come to your aid. If you call the police, it should be your right to expect the responding officer to listen to you, to protect you, and to tell you about what he or she will do next. It should be your right to have law enforcement help you to access social or medical assistance and inform you of what services are available to support you. Unfortunately, these obvious, inalienable rights are a reality only in some places, and only some of the time.

If you are a victim of sexual assault, it should be your right to speak to an officer or counselor of the same gender if you so wish. It should be your right to get medical attention and counseling to help you recover. It should be your right to get reliable information on how to avoid being attacked again. It should be your right to have reparation ordered from the