

VICTIMS OF CRIME

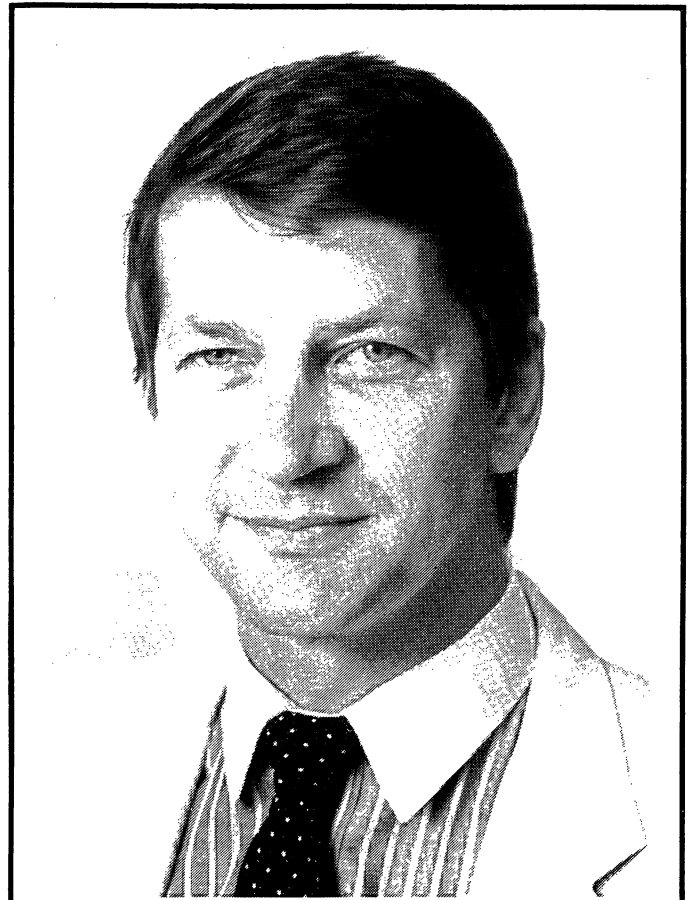
by
PROFESSOR IRVIN WALLER

IT is a very special privilege to be in Adelaide and to be part of "*Criminal Justice and the 21st Century*." The one thing that I am sure about in criminal justice in the 21st century is that the victim is going to be part of criminal justice in the 21st century and that we are going to overcome more than 200 years of neglect of the victim by setting up services, by recognising that crime actually is not just against the Queen, but is against individual citizens — men, women, old, young, firm, infirm — and that means that we are going to see them as part of the court's process. We are going to see them treated well by police, the number one client of police, and we are going to see services established for them.

What I want to try and do today is to remind you a little bit of the position of the victim in criminal justice in most of the industrialised world. I won't tell you about the civilised way in which victims are treated in much of the developing world. I am going to focus on countries like Australia, the United States, France, England and Canada. I am going to tell you something about the major international declarations that have been adopted, particularly the United Nations one, but also three instruments that have been approved by the Council of Europe and then I am going to come back to those countries I mentioned to tell you something about progress there and I am going to try and conclude with some of the things I hope will be part of criminal justice in Australia in the 21st century and I hope before the 21st Century.

I thought I would start by showing you a cartoon that I gather many of you have seen before (it happens to be from my local newspaper so that is why I brought it around with me). I think it is a good way, and a calm way, of reminding us what is the position of the victim and criminal justice in the industrialised world. It shows a fairly average event — a person attacking a woman on the street, taking her bag and it has her calling for help. Actually, we don't know very much about what victims do when they are the victim of a crime. Fortunately, led by the United States, there have been surveys done of victims. In the United States, every year, since 1972, there has been a survey of the general population to see the extent to which they have been victims of crime and to see what they do about it. You, I understand, in Australia, did the same type of survey in 1975 and 1983. I gather you do not have plans yet to do this on the regular basis that it is done in the United States.

WHAT those surveys show us is something of the loss and injury that is experienced by victims. They show us something of the emotional trauma experienced by victims. They show us the extent to which victims do or do not report to the police. In over one-half of all so-called serious



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Criminology has been his interest throughout. After eight years at the Centre of Criminology at the University of Toronto he spent six years as the Director General, Research and Statistics, in the Office of the Solicitor-General of Canada. Since 1980 he has been Professor of the Department of Criminology at the University of Ottawa. He has done a great deal of specialist work and written much on crime prevention, sentencing and victim rights. He is the Secretary-General of the World Society of Victimology and it was in that capacity that he attended the conference in Adelaide last year.

His address to the conference was both entertaining and instructive and it is with very great pleasure that we now report it.

crime, by which I mean break and enter, robbery, serious assault, the police are not informed of the event. I think a fairly major indictment of criminal justice in the 19th and 20th centu-

ries, and something that should be extremely disturbing to policy makers, is why is it that the system that is so expensive, that is developed over centuries, a proud system based in the common law, why is it that so many citizens decide when they are the victims of crime not to go to the system, not to inform it about what happened to them? I think that is an important question to think about.

The third line of the cartoon shows us the criminal justice system arriving. I understand that in South Australia you have now moved to motor cycles and cars, and that you have radios in the cars! In North America, we have computers in cars in many instances. Still, the main response if the criminal justice system is

called in, is for the police to arrive. Police are the most important body to victims. They are the first public agency to get there. They are linked up with a whole range of other services.

Now, of course, the victim who called the police, or whose neighbour called the police, did not really know just what they were going to get, but they did think that they were going to get help. But what they actually got was a system that was obsessed with trying to catch the offender. This expensive system that has doubled in the last 20 years in terms of size, and quadrupled or quintupled in terms of actual expenditures, is a system that was designed to try and catch the wrongdoer, to catch the person who did the wrong against the Queen. The victim is somewhat surprised to find that the major interest of most police agencies and most police officers is, "Well, what colour were the eyes of the offender?", not, "How do you feel as the victim?" nor "What is it that I can do to help you to recover from this experience?". It is a surprise for most victims to find that the system is obsessed with trying to catch offenders.

You would think from those public opinion polls that say that the criminal justice system does not punish enough the same opinion polls that tell you what colour car the major manufacturers are going to produce next year, what soap to sell you would think from those surveys that all victims were obsessed with knowing what punishment would be handed out to offenders. Well, if you look at the systematic surveys that try to understand victims and ask them what they do want, as opposed to posing leading questions that provide no alternative really than saying, "severer sentences," you find victims want very different things. Yes, they may want punishment, but they also want respect and dignity from the police and the courts. They want to be informed about what is going on. They want to be part of that process. They want to be helped in recovering and they want some reparation from the offender. What they find is a system that looks only at punishment of the offender. You say I am exaggerating. Well, I want to exaggerate for this moment and, perhaps, in the discussions in the workshop tomorrow we can refine it, but in terms of its major orientation, the obsession of State interest in crime is cops, courts and corrections — trying to catch the offender, the convict.

Let me leave you with the last simple statement in the cartoon, "Hey, what about me!" That, I think, is a good backdrop to what I want to tell you about now. I do not want to spend too much time on giving you statistics about loss, injuries, emotional trauma; about problems victims have with courts and police; problems victims have with hospitals. I prefer to spend the time concentrating on what we can do to try and give victims a better deal. A better deal in this decade, a better deal in the next decade and a better deal in the 21st century.

IN 1985, as a result of the initiatives of Canada, France and Australia, and particularly the political initiatives of Chris Sumner your Attorney-General, 157 governments who are members of the United Nations decided to adopt a declaration of principles of justice for victims of crime and abuse of power.

This declaration, I think, is particularly significant in terms of how quickly it was adopted. It was the 40th anniversary of the United Nations in 1985. It took them nearly 20 years to adopt minimum standards for the fair treatment of prisoners an important, a very important UN document. It took them 15 years or more to adopt a declaration on torture. In the short space of two to three years from when it was initially proposed, 157 governments were able to agree on some simple, what they call basic, principles of justice for victims. I think that shows something of the realisation of how much the victim had been overlooked and how necessary it is for all of us concerned about crime, con-



cerned about justice, and concerned about social justice, to move and to act in order to give a better deal to victims of crime.

This declaration really has six principles in it. The first four relate to victims of crime, victims of rape and robbery and burglary or break-ins, the survivors of murder. Those principles are basically that there should be services to help victims recover health-services that you are lucky enough to have in Australia already. Some countries, like the United States, which has more than two-thirds of a million people, the equivalent of two-thirds of the population of Adelaide, who do not have any form of health insurance. That figure represents the number of victims of injury of assault in the United States each year who are not covered by health insurance. So you can see something of the need to state the need to provide basic health insurance. But it is more than health services. It is social services and specialised services like rape crisis centres, like battered wives homes, but also the sorts of services that can help the survivors of murder deal with that horrible experience, or that can help burglary victims. There are as many people who suffer from emotional trauma as a result of burglary as are raped each year in the United States, and the same is true in Canada. Those statistics assume that only one in 10 of all rapes are reported to the police. Burglary is actually a major mental health problem. I am not meaning to say that every burglary victim suffers the same degree of degradation and pain as the rape victim, but I am trying to say that quantitatively there is significant mental health problem. So the sorts of mental health services that are available

to victims to help them recover are important. So the first principle is a principle of services for victims.

THE second principle is that the offender should make reparation to the victim wherever possible. That is, the judges in criminal courts should be considering what can be done to help the offender make good the harm — a principle very much supported by the developing world and being accepted only with difficulty in the developed world where criminal justice has always been separate from civil justice. We have assumed that it is the Queen's crime that we are going to deal with in criminal justice and that the victim must go off to a civil court, an expensive make-work programme for lawyers that will double up the number of courts. After you have been spending three to six months, or maybe longer, in a criminal court, you are then supposed to have the energy to go to a civil court to try and sue somebody who by this time may be in prison because the criminal court was not thinking what could be done to try and repair that damage. So, the second principle of the United Nations is reparation from the offender to the victim — what I would call civilised justice.

The third principle is that where the offender can not make those reparation payments, then the State should provide compensation. In Australia, you are lucky to be a country that has State compensation. I believe in South Australia recently, the maximum has been doubled. The UN declaration basically says that this is an important principle. It does not say what I would like to see it say: that informing victims about the availability of compensation is important. Nevertheless, it makes State compensation a basic principle.

The fourth principle is that there should be equity of justice for victims. There should be access to justice for victims. The UN declaration talks about informing victims about our wonderful criminal justice process. What is the role of the police? What is the role of the courts — explaining it to them. It talks about explaining what is happening in your case, or, rather, the Queen's case where the offender committed this offence against you; explaining whether your property has been found; explaining whether the offender has been caught and what is going on in terms of the prosecution of that offender.

Another part of that access to justice is a view that was not passed easily by the United Nations, but a view that the interests and concerns — the personal interests and concerns of victims — should be considered, whenever relevant. I am not reading the exact words, but that is the intent of the item. This basically means that when reparation is being considered, the victims' needs for reparation should be presented to the court. It means that, when the decision as to whether a person should be released on bail or given a prison sentence or not, or released on parole, the victim may have an interest in that decision. A battered wife has a real interest in whether the man who battered her is going to be released back into the community on bail, is going to be sentenced to probation or not, or is going to be released on parole.

Now those are the four basic principles — services, reparation, compensation and access to justice.

There are two other items that are mentioned in the United Nations declaration that I think are important to mention in passing here. One of them is that the victim of abuse of power should be given similar sorts of justice, so that the person who disappeared, the person who had their husband disappear, in Argentina should have some right to be part of the investigation into that disappearance and that there should be reparation set

up and there should be compensation set up for them. I will not go into details on that area. I do want to mention it in passing.

ANOTHER principle that is part of the UN declaration is prevention. The declaration calls on every government to introduce a series of measures to reduce victimisation and it specifies some of those measures. It specifies the importance of social policy in trying to reduce the likelihood of victimisation. It talks about measures to reduce opportunity.

The UN declaration is very, very broad, but I think those principles are vital to criminal justice in the next ten years and the next century and, hopefully, in the centuries to come.

The Council of Europe has adopted three instruments that relate to victims and I would like to mention them briefly. There is a draft of a convention on compensation, which, by the way, Australia could apply to be a signatory to. Australia would not be in the same category as the European States, but it could apply. That would mean that when an Australian is a tourist in France and is robbed or is a victim of some offence against a person in England, then there would be a reciprocal arrangement between the compensation programmes in Australia and in England. So I think it would be important for your government or your governments to look at the convention and see if they want to become a party to it.

A second instrument is one that states the position or the recommended position of the victim in criminal procedure. Again, I will not go into detail except to mention that it gives primacy to reparation and says amongst other things that, when a reparation order is made, when a judge or magistrate orders an offender to pay reparation to the victim, then the enforcement of that order should be made before the fine. So, the Queen may have to lose out on her fine because victims are going to be given the reparation that the courts order.

A third document that the Council of Europe is about to adopt is one on services, basically recommending that there should be substantially more research looking at the needs of victims. There should be research looking at the effectiveness of services to meet those needs and particularly the establishment of comprehensive services in a State and with money going to those services as a direct clear priority.

So that is the chapter on the international instruments. I think they are ones that you in South Australia are very familiar with, but I hope that the governments in other Australian States will look at those instruments and take the necessary steps to bring their services, their approach to criminal justice, up to date with the basic standards that have been enunciated internationally.

NOW, I would like to move to a second chapter and tell you just something, briefly, about what is going on in some other countries. South Australia is clearly one of the countries, or one of the jurisdictions I should say, trail-blazing better recognition of victims. There are many people in many other countries who are inspired by what you are doing here and wanting to copy and wanting to implement and wanting to learn from you.

Let me tell you something about some of the other countries. Let me start with France. France for more than a century has enabled the victim to be part of the criminal process. Through a procedure basically called the civil party the victim can join the criminal prosecution and have their concerns with reparation dealt with at the same time as the court decides what should happen about the criminal aspects. About 15 years ago,

France decided to provide legal aid to victims. That means that the victim who did not have sufficient funds could get the State to pay a lawyer to look after their interest in reparation. By the way, that lawyer results in the victim knowing where the police investigation has got and being able to comment in various ways upon what is going on in the trial.

Some of you may have watched in your newspapers the terrorist trial in France in January, 1988 where the State Prosecutor asked for 10 years for a person involved in the organisation of some of the bombings in France. I am not sure if your newspapers reported this, but the North American newspapers pointed out that the victims came along and said that they wanted a life sentence imposed. Actually, in France they do not have a right to ask for a specific sentence, but they managed to get it across to the judge that they thought 10 years for terrorist bombing was not an adequate sentence. The judge followed the recommendation coming from the victims. Now that is a fairly extreme example, a headline catching example, but if you went into a French courtroom you would see victims and their lawyers sitting there just as you would see the accused or the convicted person sitting there with their lawyers.

I think it makes basic commonsense that there are really three parties to a crime. There is a wrongdoer, there is the State whose interest is in the public and there is an interest in forcing certain standards in that jurisdiction, and then there is the person who suffered as a result of that crime. It seems to me that basic natural justice calls for our courts to recognise that reality and to have the victim, offender and the State active in the courtroom and in the procedures that precede the courtroom.

Now France was not happy with what they had done in relation to the victim in criminal procedure. At about the same time as South Australia was pioneering task forces to look into

the needs of victims, France also set up a task force and the result of that task force has been a number of things to improve the way the victim is treated in France. Let me mention just one of those. They decided that information for the victims was a very important priority and they produced a book on rights for victims. It sold over 100,000 copies and the profits went to pay for victims' services in France. This is a book with cartoons that you can pick up and read and see what you should do if you are a victim of a robbery, or a break in, or a consumer fraud or a number of other things like that.

Now they also said that providing books is not enough. They changed the procedures that the police have to follow. If you were a victim in France and you reported a crime to the police, you would be given a form which gives your case number on it, some of the information you gave the police and on the back in very simple, basic language, it outlines your rights. So it says how to go and get a lawyer so that you can become the civil party. It tells you how to go about getting compensation. It tells you where to go and get services if there are any services in your area. It has proved a very effective way of ensuring that victims are informed of basic rights and a very effective way of getting the police to change their procedures to recognise the victim.

NOW let me move from France to the United States. In the last five years in the United States, there has been nothing short of a quiet revolution to change the way that the victim is dealt with by police and particularly by courts. At the federal level there have been two major pieces of legislation — one that promoted restitution or compensation orders and a variety of protections for witnesses and then a later one that set a levy involving \$50 and \$75, fairly significant amounts (and those are US dollars) compared to the amounts that I understand that are being instituted here. That money is being used, firstly, to get States to institute compensation where they do not have it, and improve it where it was not adequate and, secondly, to institute services to meet the needs of victims. Now those are just two of more than 1,000 pieces of legislation.

I give you an example. If you were to go to Massachusetts, I think one of the more civilised States, you would find that in every prosecutor's office there is a victim assistance worker. Sort of probation officer/social worker type person whose job it is to explain to victims what criminal justice is about, to get a statement from them about their needs for reparation and, if necessary, to go with them to court and help ensure that the prosecutor introduces the right information on the harm done to them.

I could spend a long time on the various innovative ideas that have come up in the United States. I am sure, also, that I could find some good examples to ridicule. Like so often happens in the United States, there are some rather crazy extremes. I think it is important to see however, that there are many basic standards that have been put in practice by the United States' governments and, in terms of what police and what prosecutors and what judges are doing, I think it is beginning to be a different world for victims in the United States. I think slowly the United States is moving towards the sort of system that we have seen in France for some time. By the way, it is not a system where every victim comes to court and asks for blood. It is true that some of the families of murder victims may be very vengeful and they come to court and may in some States deliver an opinion statement on the sentence, but the typical type of involvement of the victim in a US court is that of asking for sensible justice; maybe for some reparation payment; maybe for some sort of protections in the probation order or the bail order that is being made. But primarily what they seek is some sort of recognition of their concerns by the court.

We move quickly to England. The fastest-growing volunteer



movement in England is the National Association of Victim Support Schemes. Today more than 7,000 ordinary citizens, volunteers, are involved in the 350 victim support schemes across the British Isles. Though Ireland is separate, there are similar programmes now being established in Ireland.

The British Government this year chose to devote more than £9,000,000, that is a fraction of what it costs to build a prison in the British Isles, but it is a significant amount of money to try and provide one professional worker in each of those victim support schemes. The British for some time have had compensation orders and for some time have said that there should be priority in payment of compensation orders before fines if the offender does not have enough money. The British, 20 years later, are going to put into law their compensation programme which does not have any maximum. I think that is very important for the exceptional paraplegic type incident where it is important that adequate funds are made available.

Now, of course, I am not going to let you leave this room without hearing just something about Canada! Canada is probably the country you should come to if you want to see how it is done best. Unfortunately, Canada, with one exception, has not yet established the sort of universal services that you see in some US States or in England or in France.

The province of Manitoba has actually legislated the UN principles into its national legislation. It is similar to what has been done in South Australia, but they have actually taken the wording from the UN principles which makes them rather broader and therefore more powerful in terms of helping victims. They have included the statement on mediation and reconciliation as being an important priority for justice for victims. They have set up a central committee whose sole job it is to implement those principles and they have set up a levy to try and provide funding for that.

Outside of Manitoba, which is probably the most progressive jurisdiction in Canada, the way that Canada has made progress for victims is much more through experimentation. Most of the major cities in Canada have had a look at what the needs are of victims through surveys. They have set up a committee to look at the results and then they have set up the services to fill the gaps. Or they have got the police to change their ways of delivering services. Or they have got the health services, the hospitals to provide better training for the people in emergency rooms. There are many very exciting examples in Canada of the ways that needs for victims can be met.

I actually expect by the time I get back to Canada that there will be legislation on a federal level that will be introducing a funding system to move money from the Federal Government to the provinces to improve compensation and establish universal services in each of the provinces. I hope that we will also see legislation to direct those police forces that have not already done it, to establish directives on how the police should respond to victims when called to the scene of a crime.

I could tell you much more about those countries and I think I could also wax eloquent about what is going on in South Australia and I certainly can wax eloquent about what is going on in South Australia outside of your country. But I would like to move to my final chapter and say something about what it is that I hope we will see in criminal justice in the 21st century if we are going to see victims as the lynch pin of our justice system; as the people that we justify our justice system by; if we are going to see them given the dignity and compassion and justice that they deserve.

Now, in the first place, I hope we will see change in the police. You are very lucky in Australia to have centralised police forces State by State. You do not have, as we have in Canada, more than 4,000 different police forces, or as in the United States, I believe, 40,000 different police forces. You also have a

Minister of Police, who while I am not quite clear on what powers he or she has, but presumably the politician who is concerned about victims will have the opportunity to provide directives to those Police Commissioners who need them and I gather in South Australia that this is not necessary, but in other States it may be to ensure that the patrol officer who responds to the victim is going to do so in a way that does not increase that trauma, but helps link that victim to services that already exist in the community; that has that police officer working sometimes on a day by day basis in patrol cars with mental health workers, social workers, thinking particularly of domestic violence be it child abuse, sexual abuse, wife battering; but not only those, to try and ensure that you not only have the police come in to catch the guy, but you have somebody coming in with the threat of the law to ensure that something is done about the problem so that it does not happen again in the future. That is the most important thing in terms of victims. Getting retributive sentences of a certain severity may be what the newspapers want to talk about, and may be what is exciting in vicious murders as people sit in their living rooms reading those newspapers, but in terms of the largest quantity of victims, what is important is that something is done to make sure that event does not happen in the future. So what happens at the police level and what happens in terms of prevention are vital to victims.

Our second area, is services. Yes, you do have good welfare and health services in Australia, but I am sure that if you look at the results, if you have done surveys as some of your task forces have done, if you have done surveys to look at the needs of victims, then you would see that there are gaps and there is a need to establish specialised services for victims, specialised services in police departments but also out in the community. I hope you will come up with the money to ensure the services in the community, because it is when they are out in the community that they can raise hell; that they can tell your Attorney-General that they are not doing enough to get their prosecutors to look after victims. They can say to the judges, *"Isn't it time that you allowed victims into the courtroom, that you explained your sentence to victims and that you thought about reparation?"* They can go off to the doctors and say, *"Yes, you believe in being a caring profession, but what are you doing about the battered wife who comes to your emergency room or the rape victim who comes to your emergency room? What are you doing in terms of the pain and the problems that they are going through?"*

The third area, that I think is vital, is the way that the victims are treated in the courts. The first place to start is for the judges themselves to come together as they have done in the United States and look at what it is they can do within present legislation to listen to victims and to care. They have, I am sure, the common law rights to allow the victim to be heard if they wanted to at the sentencing level; to hear what harm was done to the victim; what their needs for reparation were; to hear if they have concerns about their own safety. Those are I think the two clearest examples. It seems to me, we may also unfortunately need to legislate to encourage judges further to give victims the sort of justice that they deserve.

I have left with you a concern that we need to think about victims in criminal justice in the 21st century. No longer can we talk in conferences like this about offenders and police and courts and prisons and legislators. We have to give priority to thinking about victims, about how police can respond to them, about what services should be established in the community, about the way that they are dealt with in courts and about what can be done to prevent further harm to them. I hope that we will see, well before the 21st century, that every one of the Australian States, and New Zealand, will have profited from the initiatives in South Australia or in other parts of the world to ensure that justice is not just for the offender, for the accused, but also for the victim.