Recommendations for Government Action

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The United States is a nation of laws. If laws are to be obeyed, they must be respected; to be respected, they must be just. A system that fails to be equitable cannot survive. The system was designed to be the fairest in history, but it has lost the balance that has been the cornerstone of its wisdom.

Proposed Executive and Legislative Action at the Federal and State Levels

The legislative and executive branches, at both the state and federal level, must pass and enforce laws that protect all citizens and that recognize society's interest in assisting the innocent to recover from victimization. The recommendations that follow comprise proposals for action by both federal and state executives and legislatures.

Recommendations for Federal and State Action

1. Legislation should be proposed and enacted to ensure that addresses of victims and witnesses are not made public or available to the defense, absent a clear need as determined by the court.
2. Legislation should be proposed and enacted to ensure that designated victim counseling is legally privileged and not subject to defense discovery or subpoena.
3. Legislation should be proposed and enacted to ensure that hearsay is admissible and sufficient in preliminary hearings, so that victims need not testify in person.
4. Legislation should be proposed and enacted to amend the bail laws to accomplish the following:
   a. Allow courts to deny bail to persons found by clear and convincing evidence to present a danger to the community;
   b. Give the prosecution the right to expedited appeal of adverse bail determinations, analogous to the right presently held by the defendant;
   c. Codify existing case law defining the authority of the court to detain defendants as to whom no conditions of release are adequate to ensure appearance at trial;
   d. Reverse, in the case of serious crimes, any standard that presumptively favors release of convicted persons awaiting sentence or appealing their convictions;
   e. Require defendants to refrain from criminal activity as a mandatory condition of release; and
   f. Provide penalties for failing to appear while released on bond or personal recognizance that are more closely proportionate to the penalties for the offense with which the defendant was originally charged.
5. Legislation should be proposed and enacted to abolish the exclusionary rule as it applies to Fourth Amendment issues.

6. Legislation should be proposed and enacted to open parole release hearings to the public.
7. Legislation should be proposed and enacted to abolish parole and limit judicial discretion in sentencing.
8. Legislation should be proposed and enacted to require that school officials report violent offenses against students or teachers, or the possession of weapons or narcotics on school grounds. The knowing failure to make such a report to the police, or deterring others from doing so, should be designated a misdemeanor.
9. Legislation should be proposed and enacted to make available to businesses and organizations the sexual assault, child molestation, and pornography arrest records of prospective and present employees whose work will bring them in regular contact with children.
10. Legislation should be proposed and enacted to accomplish the following:
    a. Require victim impact statements at sentencing;
    b. Provide for the protection of victims and witnesses from intimidation;
    c. Require restitution in all cases, unless the court provides specific reasons for failing to require it;
    d. Develop and implement guidelines for the fair treatment of crime victims and witnesses; and
    e. Prohibit a criminal from making any profit from the sale of the story of his crime. Any proceeds should be used to provide full restitution to his victims, pay the expenses of his prosecution, and finally, assist the crime victim compensation fund.
11. Legislation should be proposed and enacted to establish or expand employee assistance programs for victims of crime employed by government.
12. Legislation should be proposed and enacted to ensure that sexual assault victims are not requried to assume the cost of physical examinations and materials used to obtain evidence.

Commentary

Executive and Legislative Recommendation 1:
Legislation should be proposed and enacted to ensure that addresses of victims and witnesses are not made public or available to the defense, absent a clear need as determined by the court.

Victims and witnesses share a common, often justified apprehension that they and members of their family will be threatened or harassed as a result of their testimony against a violent criminal. This fear is quite understandable. Victims and witnesses have seen personally what the defendant is capable of doing. In addition, threats and actual retaliation are not uncommon.

Seniors don't report crimes to the police because they are afraid that the defendants who mugged them the first time will come back and beat them up even more seriously because they went to the police.—a victim

Fear of defendant reprisal manifests itself in a number of ways, all of which are extremely detrimental to the safety of the community. First, it is a factor in the decision of many victims not to report a crime. Second, it may cause many victims and witnesses to choose not to cooperate in the investigation or trial of a case. It is unfair to subject those courageous enough to appear and testify truthfully to months or even years of living in fear for their own safety or that of their family.

Although this fear cannot be eliminated, it can be mitigated by keeping the home addresses and phone numbers of victims and witnesses private. At the outset, there is no reason why police or prosecutors should release this information to the news media. Both agencies should take steps to ensure that this release does not occur. If jurisdictions require that certain police reports be open to the public, they should either amend their statutes or redesign their forms so that this information is not available for publication.

The next morning there was another account in the paper, this time with not only my name, but my mother's and daughter's name as well as our ages, and our exact address.—a victim

Likewise, home addresses should not be given to the defense in the absence of judicial determination of a need that overrides the victim's need for security. This issue first arises when defense counsel demands pre-trial discovery of the victim's and witnesses' home addresses in order to interview them. In jurisdictions where defense counsel has the right to contact prosecution witnesses before trial, prosecutors should arrange for contact in government offices, rather than release the address of a witness. Current legislation that requires release of addresses should be amended.

I was upset when I was asked about my new location where I lived, and when I had to give my children's names, the man who had caused these problems was sitting in the courtroom and I was telling him how he or someone else could find me.—a victim

When victims or witnesses testify, they are frequently asked for their home address, sometimes by the prosecutor. Prosecutors should stop soliciting this sensitive information and should object to defense efforts to obtain it. Only when the defense is able to establish that the address is clearly relevant to credibility or to the facts of the case should the question be allowed.

Executive and Legislative Recommendation 2: Legislation should be proposed and enacted to ensure that designated victim counseling is legally privileged and not subject to defense discovery or subpoena.

A number of organizations and victim/witness units provide psychological crisis counseling to ease the real and profound psychological trauma of victimization. Since the development of rape crisis centers, the need for and benefits derived from counseling for rape victims has become well established. Testimony before the Task Force confirms that counseling is necessary for many violent crime victims as well as their families. Such counseling has proven extremely beneficial and should be strongly encouraged at all levels.

This experience brought me closer to death than one could ever imagine, not only because of the gun, but because of the rape itself. I felt ashamed, and I thought I wanted to die. My heart felt like it was going to burst. Crying and talking with people I could trust helped to relieve the pressures. I needed to share feelings with people who would keep my secret for however long I needed them to.—a victim

Although some centers have made psychiatrists or psychologists available, the vast majority of the work has been done by social workers, nurses, or by people who have been victims themselves. During the counseling process, victims speak of their fears and feelings arising from the crime; these reactions are often related to their personal history and psychological makeup.

Failure to extend confidentiality to crisis counseling incurs the risk of undermining the effectiveness of the counseling. Some victims who need this kind of help now fear to seek it. Without the protection of confidentiality, victims have found their files subpoenaed by the defense, and feel betrayed when thoughts and feelings that they considered private are opened to public scrutiny in a courtroom.

Statutes that were passed before the importance of victim counseling became recognized extend confidentiality only to counseling by psychologists and psychiatrists. These statutes protect only those who

can afford private treatment by these professionals; they do not shield the vast majority of victims.

At least one state has enacted a statute making rape victims' communications to counselors legally privileged.[1] While this is a step in the right direction, we believe that the privilege should encompass the counseling of all crime victims. Because of the responsibility of the prosecutor to afford discovery to the defendant, it is not contemplated that this counseling privilege extend to the prosecutor's office.

It was a great relief to have someone to talk to, who would in no way pass onto others what I thought, felt, or did at that confusing time.—a victim

Executive and Legislative Recommendation 3:
Legislation should be proposed and enacted to ensure that hearsay is admissible and sufficient in preliminary hearings, so that victims need not testify in person.

Victims of crime are frequently required to come to court time after time in connection with a single case. Separate appearances are often required for the initial charging of the case, preliminary hearing, and grand jury testimony, in addition to repeated appearances for pre-trial conferences and the trial itself. The penalty for the victim's failure to appear at any court proceeding is usually dismissal of the case.

Requiring the victim to appear and testify at a preliminary hearing is an enormous imposition that can be eliminated. A preliminary hearing, as used in this context, is an initial judicial examination into the facts and circumstances of a case to determine if sufficient evidence for further prosecution exists. It should not be a mini-trial, lasting hours, days, or even weeks, in which the victim has to relive his victimization. In some cases, the giving of such testimony is simply impossible within the time constraints imposed. Within a few days of the crime, some victims are still hospitalized or have been so traumatized that they are unable to speak about their experience. Because the victim cannot attend the hearing, it does not take place, and the defendant is often free to terrorize others.

It should be sufficient for this determination that the police officer or detective assigned to the case testify as to the facts, with the defendant possessing the right of cross-examination. The defendant's right to pre-trial discovery of the government's case outside the courtroom and pursuant to local rules would

remain intact. The sufficiency of hearsay at a preliminary hearing is firmly established in the federal courts, as well as in a number of local jurisdictions.

Executive and Legislative Recommendation 4:
Legislation should be proposed and enacted to amend the bail laws to accomplish the following:

a. **Allow courts to deny bail to persons found by clear and convincing evidence to present a danger to the community;**
b. **Give the prosecution the right to expedited appeal of adverse bail determinations, analogous to the right presently held by the defendant;**
c. **Codify existing case law defining the authority of the court to detain defendants as to whom no conditions of release are adequate to ensure appearance at trial;**
d. **Reverse, in the case of serious crimes, any standard that presumptively favors release of convicted persons awaiting sentence or appealing their convictions;**
e. **Require defendants to refrain from criminal activity as a mandatory condition of release; and**
f. **Provide penalties for failing to appear while released on bond or personal recognizance that are more closely proportionate to the penalties for the offense with which the defendant was orginally charged.**

The imbalance between the legitimate and necessary interest of the victim in protection and the interest of the accused in procedural safeguards is most apparent in the area of bail. A substantial proportion of the crimes committed in this country are committed by defendants who have beeen released on bail or their own recognizance.[2]

The legal system exists to protect both the accused and the community. However, the bail system, as it currently operates in many jurisdictions, addresses only the protection of the defendant, and completely ignores the victims. To be just, a system must be devised that serves the rightful needs of both.

Victims of violent crime have expressed with outrage and indignation their dissatisfaction with bail laws in many jurisdictions. Victims who have been robbed or raped, and the families of those murdered

by persons who were released on bail while facing serious charges and possessing a prior record of violence, simply cannot understand why these persons were free to harm them. When that same person is again released and returns to threaten or intimidate, these victims frequently lose all faith in a justice system so obviously unable to protect them.

In deciding issues of bail, the court must have the authority to balance the defendant's interest in remaining free on a charge of which he is presumed innocent with the reality that many defendants have proven, by their conviction records, that they have committed and are likely to commit crimes while at large. The authority for such consideration does not now exist in many jurisdictions. In federal courts and in many state courts, the only question that can be addressed at a bail hearing is whether the defendant will appear for his court dates.[3] Such a policy is both foolish and shortsighted.

A man was convicted in 1974 of sexually assaulting a child. He repeated the offense, and in 1980 was convicted again, and sentenced to 18 months. He served seven months. After that conviction, he was arrested again for molesting a 7-year-old. He was released on bail, and while out on bail, he molested yet another child.—Bea McPherson

This Task Force is not alone in its recommendation that the danger that a defendant poses must be considered in ruling on bail decisions. The U.S. Congress, the American Bar Association, the National Conference on Commissioners on Uniform State Laws, and the Attorney General's Task Force on Violent Crime have all reached a similar conclusion.

Several of the recommendations set forth above are self-explanatory. Two of them, however, *c* and *e*, require further elaboration.

c. Each defendant must be evaluated individually in terms of the threat he poses and the likelihood of his returning to court. In most jurisdictions a body of case law has arisen that mandates the consideration of such factors as a defendant's ties to the community in terms of family, housing, employment, and other responsibilities. Another noteworthy factor is the defendant's access to wealth, alternative residence sites, and long-range transportation. An accused drug dealer who has foreign bank accounts and owns both his own plane and a villa in a country that will not extradite him would not appear to be a good bail risk even on a relatively high bond. Codification of case law authorizing consideration of such factors would ensure consistency in their application.

e. Courts must require that defendants not commit new crimes while on bail. To do otherwise creates a

revolving-door approach to crime. Any new arrest, with a finding of probable cause, should result in the swift revocation of bail or personal recognizance release on the original charge.

Court orders that are not enforced are meaningless. Not only do they fail in attaining their goals, they also teach that lawful orders can be violated with impunity. Such an attitude cannot be tolerated. Courts should not reinforce it by failing to take effective action.

Our recommendations on bail are, with some modifications, a reaffirmation of the recommendations of the Attorney General's Task Force on Violent Crime. Because those earlier recommendations have not yet been enacted into law, we wish to add the often-forgotten but eloquent voices of victims to the demand for needed change. The Task Force on Violent Crime limited its bail recommendations to federal law, noting that pre-trial delays in some states were too long to keep defendants incarcerated without an adjudication of guilt. We share their concern, but we do intend our recommendations to apply to states because of the cost to victims, who suffer long pre-trial delays before they can finally attempt to put the ordeal of their victimization behind them and resume a normal life with the knowledge that justice has been achieved. This is one of the reasons for our recommendation, presented elsewhere in this report, that the problem of multiple continuances and pre-trial delay, and the reasons for that delay, be remedied.

Executive and Legislative Recommendation 5:
Legislation should be proposed and enacted to abolish the exclusionary rule as it applies to Fourth Amendment issues.

It should be reiterated that this Task Force in no way seeks to diminish the important protections extended to all citizens by the Fourth Amendment. The right to freedom from unreasonable search and seizure is one of the pillars of American liberty. It is not this goal of liberty that must be reexamined, but the detrimental way the system has sought to pursue it.

There is no right stated in the Constitution to the exclusion of seized evidence, any more than there is a right to break the law with impunity. Anyone evalu-

ating the exclusionary rule must constantly keep this basic premise in mind. The framers of the Constitution did not create the exclusionary rule for violations of the Fourth Amendment. They could have done so. They did in the Fifth Amendment, which clearly provides that information forcefully taken from a suspect cannot be used against him. This constitutional adoption of the exclusionary principle was specifically not relied upon in setting out the Fourth Amendment. The exclusionary rule is instead a judicially created rule of procedure that fails to serve the goals it seeks, and fails at a tremendous cost.

The rule is an idea that began with a lofty and necessary premise, the protection of citizens from improper state action. The rule provides, essentially, that any evidence discovered as a result of improper police action will be inadmissible at trial. The idea is that punishing the police will curb misconduct. But the experience of almost 70 years at the federal level and more than 20 years at the state level has shown that courts are not at all clear on what they consider to be misconduct; the rule does not deter police—instead, the rule punishes the innocent victim and all law-abiding citizens by preventing effective prosecution; and the court decisions interpreting the Fourth Amendment have created an incredibly complex body of law, and it is unfair to punish a victim because a police officer acting under exigent circumstances made the wrong decision. If all the bases for the rule are unfounded, why then does it remain in effect?

Relying on the exclusionary rule is like curing disease by shooting the patient. Worse, it is like curing A's disease by shooting B. The policeman takes action, apprehends a suspect, and turns him over to the court system. Suppressing evidence months later does not affect him. Instead, by suppressing what is often the best evidence available, it makes prosecution difficult if not impossible.— Carol Corrigan

Great emotion is generated in any discussion of the rule because its proponents treat the rule itself with the same sanctity as the rights it purports to protect. Unlawful government intrusion is like disease; no one is in favor of it. It must be remembered that the exclusionary rule is a remedy only, and not a very good one. It thus rewards the criminal and punishes, not the police, but the innocent victim of the crime and society at large for conduct they may not condone and over which they have little or no control.

Another major failing of the rule is that it has no flexibility, no sense of proportion. It imposes the punishment of evidentiary exclusion for every police misstep, whether malicious or merely mistaken.

In fact, evidence acquired by officers acting with absolute propriety can still be excluded. If an officer

acts perfectly in accordance with every statute and every case on January 1, but a court decision changes the accepted procedure on February 1, the evidence offered on March 1 will be thrown out, even though everything was done with complete propriety, because the rules were changed long after the game was played. No defendant could be punished in this way; such punishment would constitute an ex post facto application of the law. Yet the courts of this country seek to punish the police, and do actually punish the citizens they serve daily, in just this way, by a retroactive application of the exclusionary rule.

Courts have created an incredibly complex body of Fourth Amendment law. Cases turn on minute factual distinctions, and courts, including the Supreme Court, will frequently disagree on what the requirements actually are. Indeed, judges within the same court often disagree. This intricate, extensive, and ever-changing set of rules must be digested and applied by a police officer, who is not a lawyer, and who must decide in the confusion and danger of the moment if he can detain a suspect, look into his car, or pat-search him for weapons in an attempt to avoid being shot.

The situation has been likened to an inverted pyramid. At the broadest part is the Supreme Court, which often takes months to analyze the problem and even then the justices may not agree. Before the case arrives at that level a court of appeals will have considered it for weeks or months. Before that, lawyers will have spent days or weeks marshalling arguments and writing briefs for preliminary hearing and trial court judges. In the course of this scrutiny, each reviewer looks with calm contemplation over the shoulder of the officer in the field, who, at the point of the pyramid, is expected to make the right decision instantly.

Justice does not bring one's son back, but it is the closest thing to what is right.—a victim's father.

The judicial system purports to be based on the truth. A trial is defined as a search for the truth; and by relying on the truth, it is said, justice will be found. However, the exclusionary rule results in lies. Evidence that has been seized and is highly probative of the defendant's guilt is excluded. From that point on everyone must pretend that it does not exist. The jury is deceived. Facts are ignored or presented misleadingly at judicial direction. The jury is asked to

return a just verdict and yet is denied the most telling evidence. It is a delusion to claim that this deception serves justice.

Proponents of the rule claim it protects all citizens, but this assertion is untrue—the exclusionary rule is never an available remedy for the innocent. If the police arrest or search a law-abiding citizen, that citizen has no remedy under the exclusionary rule. By definition, the rule serves only to shield those caught in the commission of a crime or its concealment, because it is only when there is evidence that can be suppressed that the rule comes into play.

Not only does the exclusionary rule benefit the guilty while failing to protect the innocent, the existence and operation of the rule has a disabling effect on the entire justice system. It is sometimes argued that the rule can be tolerated because motions to suppress are granted in only a small proportion of cases. Such an analysis attempts to reveal the size of the iceberg by measuring its tip. However, even when suppression motions are not granted, the provision for them hobbles honest and effective law enforcement at every step and imposes an enormous burden on an already overtaxed system.

Studies relying on the relative infrequency of exclusion fail to take into account any of the following situations created by the exclusionary rule. Cases are not brought to the prosecutor for charging because an officer or his supervisor will realize that the conduct that produced the essential evidence has been barred by a new court decision. If the case is presented, a prosecutor will refuse to file a charge for the same reason. If charges are filed, they may be dismissed or a plea bargain may be entered into rather than take the time and expense to litigate the search issue.

The litigation of these issues is phenomenally costly. The circumstances surrounding the seizure of evidence must be thoroughly investigated by both sides. Extensive witness interviews are conducted. Complete analysis of complex case law is engaged in and often lengthy briefs are filed. Protracted hearings are held during which officers must be taken away from their regular duties or paid overtime for their appearance. The court may take the issue under advisement, often engaging in its own research of the issues. Some rulings can be appealed before the trial is

held. If evidence is suppressed, the case is often dismissed or may be so compromised that a plea bargain becomes inevitable. Even if no evidence is suppressed and the defendant is found guilty, search and seizure issues can be raised on post-conviction appeals. Again, appellate lawyers and judges spend vast numbers of hours rebriefing, relitigating, and reevaluating these issues. If the appellate courts reverse the conviction by overturning a search and seizure ruling, the trial of the case must be repeated. Because the appellate process is often time-consuming, such a reversal may mean a case must be retried many years after the crime, when witnesses are no longer available. This delay almost always works to the benefit of the defense. Again, plea bargaining is a frequent result.

I just couldn't believe that the judge could actually suppress this evidence. It's like it really didn't happen . . . it just seems very unfair that something so crucial could be just eliminated.—a victim

The time and effort expended in this process is a major factor in delay and court congestion. Victims are adversely affected by the rule's operation at every turn. When the police fail to solve the crime because of inaction, the victim suffers. When cases are not charged or are dismissed and the "criminal goes free because the constable blundered," [4] the victim is denied justice. When the case is continued interminably or must be retried, the victim is hurt time and time again. The operation of the exclusionary rule is one of the major factors in the public's loss of confidence in the criminal justice system.

The Task Force has concluded that the exclusionary rule does not work, severely compromises the truth-finding process, imposes an intolerable burden on the system, and prevents the court from doing justice. Accordingly, we recommend that the exclusionary rule as it applies to Fourth Amendment issues be abolished.

Alternative methods of deterring police from wrongful actions and methods by which those responsible for the misconduct are held accountable have been suggested.[5] The selection of specific methods is best left to local jurisdictions. However, any of these methods would be more effective in deterring Fourth Amendment violations than the exclusionary rule. They allow for a punishment that is proportionate to the violation. In addition, some are remedies that would be available to all citizens, not just the guilty.

Executive and Legislative Recommendation 6: Legislation should be proposed and enacted to open parole release hearings to the public.

The requirement that the proceedings of the adult criminal justice system be open to the public has been integral to that system since this nation was founded. Time and again the principle that public scrutiny produces accountability has been reaffirmed. Only the most compelling of reasons can justify the closing of criminal justice proceedings in a free society.

Despite this principle, parole hearings have historically been conducted in secret. Although this was done to protect the parolee, the result has been to insulate parole boards from accountability. Their decisions to release on an unsuspecting public individuals with extensive histories of violence are made in secret. Their reasons for early release are secret. They do not have to justify their conclusions. The public cannot test the validity of their actions or know whether the board is fulfilling its statutory obligation to protect the community.

Every citizen has a vital interest in the proper functioning of the parole board, for its conduct directly affects the safety of the community. Victims of crime hold this general concern even more strongly, for they know from personal experience the danger that the parolee can pose; their safety may be threatened by his release. This Task Force has elsewhere recommended that parole be abolished (see Executive and Legislative Recommendation 7). Until this needed reform is accomplished, however, the parolee's interest in maintaining the current secrecy of parole board proceedings must, on balance, give way to the concern of victims and potential victims for their own safety and the integrity of the system. Opening to public scrutiny the operation of parole boards will go far in helping to restore public confidence in the criminal justice system.

Executive and Legislative Recommendation 7: Legislation should be proposed and enacted to abolish parole and limit judicial discretion in sentencing.

Victims consistently express anger and frustration with the sentencing and parole systems. As noted ear-

We have truth in advertising and truth in packaging; what is needed is truth in sentencing. Why continue to play this game of giving long sentences that cannot even legally be served?—Thomas Amberg

lier, victims have a vital and entirely legitimate interest in the sentence that is given to and served by the offender. Their own sense of justice dictates that the person who directly caused them so much agony receive a fair punishment. In addition, they legitimately hope that the offender whom they know is dangerous will be placed where he cannot cause the innocent to suffer.

The interest of victims in seeing their offenders fairly punished and society protected is what enables them to endure the extreme hardships that cooperation with the criminal justice system imposes. When these ends are not accomplished, the victims are justifiably outraged.

When judges have virtually unlimited discretion in imposing sentences, the actual sentence that an offender receives is more a product of the individual philosophy and predilections of the judge than an even-handed analysis of the seriousness of the offense, the harm done the victim, and the history of the offender.

Our daughter's killer will be eligible for parole when he's 29. For us there is no parole. Our family has been given—with no due process of law—a life sentence of loss and grief.—a victim's parents

It is equally important that the victim and the community know what the sentence actually means—how long the defendant will be incarcerated. When victims hear the judge impose a life sentence, then meet the offender on the street a few years later because of his release on parole, they lose all faith in the system. The fact is that there is no "truth in sentencing." The system has become so complicated with its various provisions for early release, liberal allowance for "good time," and work and study furloughs, that even practitioners, including judges, have little idea as to when the offender actually will be released.

The system of sentencing that allows for unlimited judicial discretion and parole is deplorable and must be changed. The National Commission on Reform of Federal Criminal Law, the U.S. Department of Justice, the Judiciary Committees of the 93rd through the 96th Congresses, and most recently, the Attorney General's Task Force on Violent Crime, have all strongly expressed dissatisfaction with the current system.

Legislation that abolishes parole and limits judicial discretion in sentencing should be enacted. Legislatures should create sentencing commissions that would establish a set of sentencing guidelines, taking

into account variations in types of offenses, the degree of harm caused victims, and the prior convictions and background of the defendant.

We found real bitterness among victims of crime who later discovered their assailant free after what amounted to a token punishment. I don't think these victims are asking for a pound of flesh. I think they're asking for a measure of justice.—Thomas Amberg

With abolition of parole, the sentence imposed would be the sentence served. It should be expected that a prisioner will conform to prison regulations; good time awards should not be required to assist in prison discipline. If some allowances for good time provisions appear to be necessary for maintenance of prison discipline, such allowances should be rigidly controlled; they should be actually earned by the prisoner, not awarded in advance, and should be subject to revocation in the event of prisoner misconduct.

The victim's need for restitution is the same whether or not a period of incarceration is imposed. Therefore, restitution is not obviated by elimination of parole. Court-ordered accountability of the criminal should not end the minute he leaves prison.

If adopted, these provisions would substantially reduce sentencing disparity, establish "truth in sentencing," and meet the needs of victims and society as a whole.

Executive and Legislation Recommendation 8: Legislation should be proposed and enacted to require that school officials report violent offenses against students or teachers, or the possession of weapons or narcotics on school grounds. The knowing failure to make such a report to the police, or deterring others from doing so, should be designated a misdemeanor.

Studies of crime in our nation's schools have shown an intolerably high level of violence directed at both teachers and students;[6] yet relatively few such offenses are reported to police. Many school officials, motivated at least in part by fear of reprisal and by a desire to give the appearance of a safe and well-run institution, minimize or completely deny conduct that occurs there. Problems cannot be solved when they are underestimated or ignored. While these occurrences go unaddressed, students and teachers continue to be assaulted and robbed, and education suffers.

Serious acts of violence and possession of weapons, drugs and other contraband must be reported to the police. To ensure that this is accomplished, school officials should be placed under statutory obligation to

report such occurrences, as medical personnel are required to report gunshot wounds or child abuse victims to law enforcement officials. Violation of the duty to report should be made a misdemeanor.

Executive and Legislative Recommendation 9: Legislation should be proposed and enacted to make available to businesses and organizations the sexual assault, child molestation, and pornography arrest records of prospective and present employees whose work will bring them in regular contact with children.

Can't we change the privacy laws so that places of employment can be responsible to those they serve? Here we had a known child molester working with children. Surely we can do better than that.—a victim's mother

Pedophiles and others who prey on children frequently seek employment in or volunteer for positions that give them ready access to youngsters. Although the vast majority who work with the young are dedicated and law-abiding citizens, there are a dangerous few who choose occupations such as recreation director, bus driver, teacher, and coach to have ready access to those they seek to victimize. Many of these individuals have records of violent or exploitative acts against children, but because of privacy laws protecting arrest records, their employers remain ignorant of the danger they impose.

As discussed elsewhere in this report, child molesters have a sexual preference that manifests itself in repeated criminal acts and that is highly resistant to treatment (see Prosecutors Recommendation 8 and Judiciary Recommendation 10). For them, any child might be a potential victim and thus their access to children must be restricted. It is a profound disservice to children to fail to take reasonable and necessary steps for their protection.

A true pedophile, whose sexual preference is the child, is a danger to children all his life, and at least should not be allowed around them.—Irving Prager

Relying on the firmly established and commendable presumption of innocence until guilt is proven, there are laws of privacy that protect arrest records. Difficulty arises, however, in applying this principle to child molestation, in which laws relating to child testimony, institutional disinterest in prosecuting difficult cases, and parental desire to spare children the ordeals of testifying have all combined to produce an abundance of arrests for child molestation, but precious few convictions. As a result, if jurisdictionally permitted, the checking on records of convictions only has

failed to adequately safeguard those who need it most: children.

The recommended response to this urgent need by governments is the enactment of legislation that would carve out a narrowly defined exception to laws of privacy by making sexual assault, child molestation and pornography arrest records of prospective and present employees available to businesses and organizations who hire persons whose employment will bring them into regular contact with children.[7]

Our current system ensures that brokers, and bank tellers are not convicted embezzlers, yet we entrust our children to people operating under the labels of day-care without any sure way of knowing if they have ever been convicted of child molestation. Are our children any less valuable than our money or our other material possessions?—Bea McPherson

Executive and Legislative Recommendation 10:
Legislation should be proposed and enacted that would:

- **a. Require victim impact statements at sentencing;**
- **b. Provide for the protection of victims and witnesses from intimidation;**
- **c. Require restitution in all cases, unless the court provides specific reasons for failing to require it;**
- **d. Develop and implement guidelines for the fair treatment of crime victims and witnesses; and**
- **e. Prohibit a criminal from making any profit from the sale of the story of his crime. Any proceeds should be used to provide full restitution to his victims, pay the expenses of his prosecution, and finally, assist the crime victim compensation fund.**

Many of the above recommendations have recently been enacted into law on the federal level through the passage of the Omnibus Victims Protection Act of 1982. It is the most comprehensive piece of federal victim legislation to date. Some states have already enacted provisions similar to the Omnibus Victims Protection Act, and those efforts are highly commendable. They are also sources of models for legislation.[8]

The recommended provisions of the Omnibus Victims Protection Act represent a major step in ensuring more humane treatment of victims by a system that is expected to serve them. The recommended provisions provide as follows:

a. The victim impact statement provision requires that the pre-sentence report that is prepared for the judge contain verified information concerning all financial, social, psychological, and medical effects on the crime victim.

b. The protection from intimidation provision expands the definition of who qualifies as a witness in a criminal proceeding and makes any retaliation or intimidation of such a witness illegal. In addition to this statutory protection, however, victims have a strong need for physical security. The Witness Protection Program in the federal government is primarily available to witnesses in organized crime cases; it should be expanded to include innocent victims of violent crime. State and local governments should make a thorough review of the security needs of victims of violent crime in their jurisdictions, and take whatever steps are necessary, including funding provisions, to enable them to meet those needs.

c. The restitution provision requires that the sentencing judge order restitution for property loss and personal injury, unless the court explicitly finds that restitution is not appropriate. This order of restitution can be a condition of probation or parole (see also Judiciary Recommendation 7).

Are we asking too much if we ask to be told when and where the trial will take place? Are we asking too much if we want to be notified of plea bargaining before we read it in the paper?— a victim

d. The guidelines for the fair treatment of crime victims and witnesses seek to mitigate the problems that these citizens encounter in the criminal justice system. The guidelines address nine specific objectives:

(1) The provision of services to victims of crime, including information on compensation for out-of-pocket losses, medical and psychological treatment programs, case status information, and protection from intimidation;

(2) Prompt notification to victims and witnesses of scheduling changes in court proceedings;

(3) Prompt notification to victims of violent crime concerning their cases, including the arrest and bond status of the defendant, and the eventual outcome of the case;

(4) Consultation with the victim during the various stages of the prosecution;

(5) Separate waiting areas for defense and prosecution witnesses awaiting court proceedings;

(6) Prompt return of property seized as evidence or recovered during an investigation;

(7) Contacting a victim's employer and creditors to seek their cooperation, by explaining the situation of the victim after the crime, the necessity of

court appearances, and his temporary inability to meet outstanding debts (see also Private Sector Recommendations 1 and 3);

(8) Training law enforcement personnel in victim assistance; and

(9) The provision of general victim assistance in a variety of areas, such as transportation, parking, and translators.

e. The provision prohibiting a felon from profiting from the sale of the story of his crime ensures that no felon profits financially as the result of publicity resulting from his criminal conduct.

Shouldn't we be notified if the killer is out on bond, or if he is about to come up for a parole hearing? Had my son lived through the assault on him, would he not be entitled to this information? He didn't live through this, and I think that I am entitled to ask it for him and for all the victims who don't survive.—a victim's mother

Executive and Legislative Recommendation 11: Legislation should be proposed and enacted to establish or expand employee assistance programs for victims of crime employed by the government.

Victims of crime and the problems that they face are so numerous that it requires the coordinated effort of many organizations and individuals, in both the government and the private sector, to help them recover from the crime and contribute to a successful prosecution (see Private Sector Recommendation 2). Even an excellently staffed and operated victim/witness assistance unit depends on the cooperation and good will of other sources. Employee assistance programs are an excellent resource.

Agencies in the federal government are mandated to establish and operate employee assistance programs.[9] These programs were established to assist employees whose job performance has been jeopardized by mental health problems or drug or alcohol abuse. The psychological trauma that violent crime produces can frequently affect work performance. A comprehensive program to assist victims of crime benefits both the employee and the government. Government will ultimately benefit by improved job performance.

Examination of jurisdictions that have victim/witness assistance units has shown that many victims are unaware of the existence of such units. An individual is more likely to be aware of a service provided through his employment than he is of a unit associated with the criminal justice system.

Employee assistance programs can perform many services. Trained counselors can both advise the em-

When one has been brutally attacked and injured, even a friendly and understanding voice on the phone can help overcome some of the sense of physical and psychological helplessness brought on by being a victim.—a victim

ployee and explain his situation to his supervisor. They can maintain a list of mental health practitioners qualified to assist victims. They can help the victim with any difficulties that arise with creditors, and can refer them to needed social service and victim compensation programs. The existence of such a program conveys to the employee that his employer is concerned about his welfare and supports his willingness to assist the criminal justice system.

A number of states have also set up programs for their employees. The beneficial aspects of governmental programs are twofold: first, their employees receive direct assistance at the workplace, and second, they serve as a role model for organizations in the private sector. Federal, state, and local governments should fully support and expand employee assistance programs, with additional emphasis on assisting victims of crime.

Executive and Legislative Recommendation 12: Legislation should be proposed and enacted to ensure that sexual assault victims are not required to assume the cost of physical examinations and materials used to obtain evidence.

A primary purpose of the physical examination of rape victims by doctors and emergency room personnel is the collection of evidence. Effective prosecution may be impossible without the results of a timely examination of the victim.

When the police were notified, they immediately took my daughter to the hospital for examination and treatment. But to add insult to injury, we were required to pay nearly $200 for the rape kit and emergency room treatment.—a victim's mother

Although the physical exam is essentially an investigative process, rape victims are routinely required to pay for the examination themselves. Victims of other crimes, such as burglary or robbery, are not charged when the police examine their homes for latent fingerprints and it is unfair and inappropriate to assess rape victims for the cost of evidence collection.

To rectify this injustice, the budget of police departments, prosecutors' offices, or public hospitals should be increased to cover the cost of physical examinations and materials used to obtain evidence from rape victims. These funds would not cover the cost of any additional medical treatment that the victim requires as a result of physical injuries. These latter costs are best covered by victim compensation (see Federal Executive and Legislative Recommendation 1).

Proposed Federal Action

The foregoing recommendations of this Task Force are meant for consideration at both the federal and state levels. Those that follow are concerned specifically with efforts most properly undertaken by the federal government; they include recommendations for Congressionally directed funding of certain types of programs and of selected areas for further study.

Recommendations

1. **Congress should enact legislation to provide federal funding to assist state crime victim compensation programs.**
2. **Congress should enact legislation to provide federal funding, reasonably matched by local revenues, to assist in the operation of federal, state, local, and private nonprofit victim/witness assistance agencies that make comprehensive assistance available to all victims of crime.**
3. **The federal government should establish a federally based resource center for victim and witness assistance.**
4. **The President should establish a task force to study the serious problem of violence within the family, including violence against children, spouse abuse, and abuse of the elderly, and to review and evaluate national, state, and local efforts to address this problem.**
5. **A study should be commissioned at the federal level to evaluate the juvenile justice system from the perspective of the victim.**
6. **The Task Force endorses the principle of accountability for gross negligence of parole board officials in releasing into the community dangerous criminals who then injure others. A study should be commissioned at the federal level to determine how, and under what circumstances, this principle of accountability should be implemented.**

Commentary

Federal Executive and Legislative Recommendation 1: Congress should enact legislation to provide federal funding to assist state crime victim compensation programs.

We've had to borrow from our life insurance just to live. We will have to heat our home this winter by burning wood from a nearby lot. We've sold everything we owned, including some family heirlooms. My husband and I are hard-working people. We aren't looking for any free ride. But we're being completely devastated by this criminal who reached in and destroyed our lives.—a victim

This Task Force believes that financial compensation for losses that victims sustain as a result of violent crime must be an integral part of both federal and state governments' response to assisting these innocent citizens. No amount of money can erase the tragedy and trauma imposed on them; however, some financial redress can be an important first step in helping people begin the often lengthy process of recovery. For some, this modest financial assistance can be the lifeline that preserves not only some modicum of stability and dignity but also life itself. As indicated elsewhere in this report, the financial and nonfinancial losses that victims suffer are severalfold: exorbitant and unanticipated medical costs, lost wages, altered careers, and prolonged psychological trauma.

The financial impact of crime can be severe. There is a tendency to believe that insurance will cover most costs and losses. While some victims are made whole through adequate coverage, many others are not. The poor and the elderly often have no insurance. Even those victims who have coverage discover that recovery is made difficult or impossible by high deductible clauses, problems with market value assessment for unique items, and limited or precluded payment for such expenses as lost wages and psychological counseling.

Ordering the offender to pay restitution is a laudable goal that should be actively pursued, but its limitations must be recognized. A restitution order cannot even be made unless the criminal is caught and successfully prosecuted. Even when such an order is imposed, it does not help the victim if the defendant is without resources or if the ordering court does not enforce its order. In addition, even if complete restitution is made, it may take years to be accomplished. In the interim, the victim is left to bear the cost as well as he is able.

The state paid for both the defense and the prosecution. I had to find a way to pay the $12,000 this crime cost us.—a victim

The problem is not just one of payment; it may be an issue of feeding the family or not losing the house while waiting for payment to be made. A victim compensation fund has an obvious function in such cases. Certainly, if monies are eventually recovered from insurance or restitution payments, such amounts can be repaid into the compensation fund. This Task Force examined the efficacy of some existing state compen-

sation funds and has developed suggestions for federal participation.

State Compensation Programs

Thirty-six states and the District of Columbia now have crime victim compensation programs.[10] The philosophical basis for these programs varies from a legal tort theory, whereby the state is seen to have failed to protect its citizens adequately, to a humanitarian rationale through which all citizens should receive assistance for their compelling needs, to a by-products theory that recognizes victim satisfaction as a benefit to the criminal justice system. In reality, most programs represent a mixture of these rationales.

Whatever the basis for their adoption, state programs now share a common concern, the acquisition of adequate funding.[11] In many states, program availability is not advertised for fear of depleting available resources or overtaxing a numerically inadequate staff. Victim claims may have to wait months until sufficient fines have been collected or until a new fiscal year begins and the budgetary fund is replenished. Creditors are seldom patient. While waiting for funding that will eventually come, victims can be sued civilly, harassed continually, or forced to watch their credit rating vanish. Not only is compensation important, its payment also must be timely to save victims inconvenience, embarrassment and substantial, long-term financial hardship.

The availability of unencumbered emergency assistance is also critical to many victims of violence. Immediate needs for food, shelter, and medical assistance cannot be deferred for the weeks or months it may take to process paper work. While many states provide emergency funds in theory, their failure to adequately fund these programs means that little actual relief is available in practice. Not many programs have been able to generate true emergency assistance where needed.[12] It is cold comfort to a hungry or homeless victim to learn that his state had thought about helping him but, unfortunately, emergency funds ran out three months ago.

In order to apply, a victim virtually needs an attorney. The process is still then quite lengthy and provides no immediate assistance for the victim whose children are hungry or whose gas has been disconnected because her money was stolen and she had no way to pay her bill.—Fern Ferguson

Funding constraints also discourage programs from eliminating or raising the maximum allowable award.

Available data suggest, however, that the number of claims approaching the maximum are few.[13] A blanket maximum can severely disadvantage those most needy and worthy of assistance. One example is that of a young man who had just finished college and had no medical insurance when he became the victim of a brutal assault. Now in a body cast and blind in one eye, he has amassed medical bills of $30,000. He still needs extensive treatment and therapy. The maximum compensation award in his state is $10,000. At the age of 22 he is permanently disabled, may have to forego medical care he needs but cannot afford, and faces debts that it may take a lifetime to repay.[14]

Whether the compensation funds come from general revenues, fines and penalties, or a combination of these, states should aggressively track their own progress in meeting victim needs. If the number of eligible applications is increasing, legislatures should be prepared to increase fund contributions accordingly. When offender fines are not being adequately collected, steps must be taken to identify problem areas and take appropriate action. Noncollection may stem from judicial apathy, local hesitancy to divert money to state coffers, or the inefficiency or disinterest of prosecutors and probation officers. At least one state employs a full-time court monitor to audit court records and verify that appropriate fine revenues are being submitted to the victim compensation program.[15] Furthermore, states should periodically examine the administrative burden that has developed around the evaluation of claims to ensure that administrative costs do not divert a disproportionate share of the budget away from the meeting of victim needs.

Finally, some states are now using additional revenue sources for compensation funds, particularly since the level of available general revenues is shrinking. In some states a compensation award is made, and if the victim later receives restitution payments from the offender, the payments are returned to the compensation fund. Several states divert to the fund a small percentage of the salaries earned by offenders on work release or in prison.[16] Other states have ordered that a defendant's profits from the sale of books or films based on his criminal activity must go to the compensation fund. Still other states provide that bail bond forfeitures be paid into the fund. Some of these

new funding mechanisms have yet to prove their effectiveness; however, it behooves compensation programs to explore a multiplicity of funding sources, as many victim services programs have done, to improve their ability to provide assistance.

Funding problems are the most dramatic and the most visible for compensation programs because their survival is contingent on solving them. At the same time, economics should not overshadow other less pervasive but nonetheless important issues with which state programs must come to grips. The testimony of both crime victims and experts appearing before the Task Force points to several other areas that warrant particular attention.

Those who administer compensation programs must remember that they are working in an area of government service to citizens whose lives have been altered by tragedy and subjected to hardship. One woman who suffered extensive nerve damage when she was forced to fall to the floor at gunpoint by an armed robber saw her life and that of her family drastically changed. Medical bills and the loss of a job that she was no longer physically able to perform created a desperate financial situation. When she first applied for compensation, she was inaccurately told that her claim was disqualified as untimely. When she reapplied, she received a form letter reading: "It is not clear whether you can be considered a victim of a violent crime . . . as you were never physically touched by any of the suspects." [17]

Another issue is whether victims who are related to, or are living with, the offender should be excluded from payment eligibility. The states' desire to minimize fraud is laudable; however, many innocent victims of violence in the home are being unfairly ignored. Some states have successfully experimented with allowing flexibility in this area as long as the award will not unjustly benefit the offender. A blanket exclusion can be particularly devastating to child victims of intra-family abuse who, as a result, are denied adequate treatment.

Crime victims and those who serve them repeatedly voiced concern over minimum loss requirements enacted by legislatures to contain costs. In practice, this exclusion places the elderly and low-income victims at a distinct disadvantage; a threshold of $100 or $250

represents to them a substantial loss that they cannot absorb. These limits also prevent rape victims from receiving compensation for the cost of rape examination and evidence collection procedures (see Executive and Legislative Recommendation 12). States are beginning to exclude elderly and fixed-income victims from these requirements and some are considering the exclusion of rape victims as well.[18]

Similarly, most programs will not compensate for property losses—although for the elderly, for example, the loss of a television set or a hearing aid may result in the loss of contact with the outside world. Victim services directors testified repeatedly that greater flexibility is needed. Rather than attempting to list the classes of victims or kinds of expenses exempted from minimum or property loss requirements, the better practice seems to be the drafting of legislation allowing compensation for "other reasonable expenses" as may be determined by the administrator of the fund.

Finally, programs differ greatly in their residency requirements. Some states will only compensate residents who are victimized within their boundaries. Others will compensate their residents regardless of where they are victimized but will not compensate nonresidents who are victimized within the state. States that attract large numbers of tourists have been hesitant to offer coverage to nonresidents for fear of depleting the compensation fund. One man interviewed by the Task Force, a resident of state A, had been brutally stabbed while vacationing in state B. He was told that state A would compensate him only if he had been stabbed at home, while state B would not compensate out-of-state residents. Though he was no less a victim, there was no provision for his compensation.

At least 15 states have entered into reciprocal agreements. Although this policy is a first step toward an equitable approach, it is limited. To address the problem fully, states should agree either to compensate all eligible individuals victimized within a state, regardless of residency, or to compensate their own residents wherever they are victimized.

The Task Force's inquiry has shown that substantial progress has been made by many states in their attempts to compensate crime victims. The Task Force commends these states for their pioneering efforts to

begin to meet victims' needs. However, the states' inability to fully address the problems that persist suggest that there is an important role for the federal government to play in this area.

Federal Involvement

At the time of my husband's murder, I was about seven months pregnant. When my husband died, we were totally without income to purchase the bare necessities. Eventually social security assisted me, but that was not for nearly five months when I had a small infant at home.—a victim's wife

Any discussion of federal funding for victim compensation revolves around two issues: propriety of federal involvement and cost. There are at least two sound bases for federal participation in victim compensation. First, most state programs currently compensate federal crime victims; however, because of the financial exigencies outlined above, they may be unwilling or unable to continue doing so. If state programs stop helping victims of federal crimes and no federal efforts are made, then either there would be no help available for such victims, or victims of crimes over which federal and state governments share jurisdiction would find that their eligibility for assistance depends on a bureaucratic decision as to which jurisdiction will prosecute. These decisions are based on considerations that have nothing whatever to do with the condition of the victim. Furthermore, such a victim would be in a state of perpetual limbo if no one was apprehended for the crime and thus no charging decision was ever made.

The federal government could, of course, commit itself to aiding victims of federal crimes. If this course is chosen, a new bureaucracy covering 50 states would have to be created. The start-up and continued administrative costs would be substantial. The duplication of state and federal effort would not only be inefficient but also would be confusing to the victims both entities seek to serve. The most unfortunate result of this course would be that large sums would be expended unnecessarily on administration rather than made available to those victims who need assistance.

Second, the federal government has made substantial sums of money available to states for state prisons as well as for the education and rehabilitation of state prisoners who have committed state crimes. If the federal government will step in to assist state prisoners, it seems only just that the same federal government not shrink from aiding the innocent taxpaying

citizens victimized by those very prisoners the government is assisting.

It should also be noted that, beyond the compensation issue, the federal government, like local governments, needs victim/witness programs to assist those who become involved with federal prosecutions. The distinction between these two areas should be clear. Victim compensation boards currently operate at the state level and make money available to reimburse victims for out-of-pocket costs they incur as a result of medical bills, therapy costs, funeral expenses, etc. Victim/witness assistance programs operate at the municipal or county level and help victims in a number of ways, including explaining the justice system, accompanying them to court, arranging transportation, interceding with creditors, referring them to counselors, and assisting them in applying for victim compensation and emergency services.

It is possible to address the issue of costs in such a way that imprecise figures need not be relied upon and the potential for cost overruns is eliminated. The Task Force suggests that a Crime Victim's Assistance Fund be created and that it rely in part on federal criminal fines, penalties, and forfeitures that currently are paid directly into the general fund. Not only is it appropriate that these monies collected as a result of criminal activity be used to help victims, but this method of funding also ensures a program that is both administratively efficient and self-sufficient, requiring no funding from tax revenues.

It is proposed that the fund be administered in the following fashion. The first step is the acquisition of monies. There are six measures that can be relied upon to produce revenues. First, the Task Force endorses the recommendation proposed by the Criminal Code Revision that fines and penalties for violations of Title 18 and Title 21 of the United States Code be doubled or tripled. Second, in those cases in which the criminal realizes a gain or the victim suffers a loss that exceeds the maximum fine, the judge should be empowered to impose a fine that is double the gain or loss. Many federal crimes result in tremendous losses to victims and gains to criminals. If the criminal knows he can realize an enormous benefit while risking only a fine that represents a miniscule fraction of what he may acquire, there is no incentive for him to

refrain from committing the crime. Not only will such provision result in penalties that are more appropriate to the crime, but they will also substantially increase the monies available to the fund. Third, efforts by the U.S. Department of Justice should be intensified to improve current fine collection and accounting procedures. Fourth, the fund should be augmented by a fee assessed in addition to any fine or other penalty on all those convicted of federal offenses. The fee would be paid at the time of sentencing and would range from $10 to $100 for misdemeanants and from $25 to $500 for felons. Fifth, a percentage of all federal forfeitures should be earmarked for the fund. Sixth, revenues collected through the excise tax on the sale of handguns could be diverted into the fund. This tax money currently is placed in the Pittman-Robertson Fund, which supports the maintenance of hunting preserves, certain wildlife studies, and a hunter education program. When initiated in 1937, the Pittman-Robertson Fund was supported solely by taxes on the sale of hunting rifles; the fund today continues to inure primarily to the benefit of hunting enthusiasts. In 1970, new legislation added the revenues from handgun taxes to the fund. There is little if any relation between handguns and hunting or wildlife activity. There is a substantial relationship, however, between handguns and the commission of violent crime. It should be noted that the diversion of these monies into the Crime Victim's Assistance Fund will only reduce the Pittman-Robertson Fund by about 25 percent of its total every year. The Task Force suggests that Congress reevaluate its priorities with regard to the use of these funds. It appears that the implementation of this suggestion will not unduly impede the contribution made to hunters and wildlife protection by the Pittman-Robertson Fund, will substantially assist victims whose pressing needs are not now being met, and will direct the proceeds of this tax to a goal more closely related to the items that give rise to the revenue.

Once the monies have been acquired, the fund will be divided in two equal parts. The first half of the fund would be designated the Federal Victim Compensation Fund, monies from which will be disbursed to existing state compensation programs that meet the guidelines set out below. The decision to give money

I called Social Services after the molestations and I felt that they were more interested in the defendants than in my daughter. They advised the defendants to get into voluntary treatment because it would go better for them in court. This counseling was paid for by us, the taxpayers. Social Services told me where I could find treatment for my daughter, but they also said that I would have to pay for it.—a victim's mother

to existing programs rather than to provide seed money for new programs rests on two bases. Programs already in existence are currently giving service and need financial help; they are currently meeting the needs of victims and should not be disadvantaged. Further, requiring that local government assume the initial cost of starting the program and the primary responsibility for continued funding assures the existence of a genuine local commitment rather than the initiation of a proposal simply to put a claim in for available federal funds. No state program should be eligible for a portion of the compensation fund unless it provides compensation for anyone victimized within its borders, regardless of the victim's state of residency; provides compensation regardless of whether the crime violates state or federal law; and provides compensation for psychological counseling required as a result of victimization.

Monies from the compensation fund would be awarded among the states as follows: all states would report the total amount of compensation awarded in the previous year, and those figures would be totaled to give the total compensation awarded nationally. Each state's award would be figured in terms of its percentage of the national total. Each state would be awarded that percentage of the compensation fund for the ensuing year with the limitation that it could not receive more than 10 percent of its total awards for the previous year. The 10 percent limitation will guard against depletion of the compensation fund and against larger states drawing off too large a segment of the fund. Any monies not dispersed would shift to the Federal Victim/Witness Assistance Fund.

The second half of the Crime Victim's Assistance Fund would be denoted the Federal Victim/Witness Assistance Fund; the monies allotted thereto would be used to support victim/witness assistance programs throughout the federal, state, and local system. (This proposal is discussed more fully in Federal Executive and Legislative Recommendation 2.)

The Task Force suggests that a sunset clause be added to the legislation proposed above whereby, in three years, the Attorney General would be required to reevaluate the effectiveness of this legislation and report to Congress as to whether it is the most efficient, effective, and fair way for the government to

assist state compensation and victim/witness assistance programs. If, at the end of four years, Congress has not taken action on the Attorney General's report, this legislation would cease to remain in effect.

Federal Executive and Legislative Recommendation 2: Congress should enact legislation to provide federal funding, reasonably matched by local revenues, to assist in the operation of federal, state, local, and private nonprofit victim/witness agencies that make comprehensive assistance available to all victims of crime.

A unit composed solely of persons dedicated to helping both victims and witnesses is essential to meeting their needs (see Appendix 2). The efforts of those individuals, often provided on a volunteer basis, shine brightly in the otherwise dim landscape of general institutional neglect of those on whom the criminal justice system relies.

At the preliminary hearing I finally was put in contact with the victim/witness staff and their help has been tremendous. I only wish it had come sooner.—a victim

In spite of their good record of performance, victim/witness assistance units have recently encountered serious financial difficulties as governments across the nation have been forced to make budget cuts. Some units have ceased functioning; others have had to seriously curtail their services because of reductions in staff and operating funds.

From a fiscal standpoint, it is indeed unfortunate that the very existence of victim/witness assistance units is in doubt in many jurisdictions. A well-run unit can be extremely cost effective. It is expensive to arrest someone and prosecute him in court. When the case is dismissed because the witnesses were not notified or failed to appear out of frustration with the criminal justice system, that money is simply wasted. Meanwhile, the freed defendant may commit more crimes. In addition, victim/witness assistance units that use an effective on-call system can produce substantial savings in witness fees and police overtime pay.[19]

Waiting for the compensation to clear was very difficult. The hospital was very concerned about the payment of the bills; I even had a civil action filed against me. The victim/witness coordinator went into court with me, helped me to file some responses, and helped to get the hospital to wait for the funds to be approved.—a victim

Composed of people who are dedicated to helping victims, many units have done all they can to continue services on reduced budgets. It is clear, however, that they need additional revenues to continue their operation and expand their services as recommended elsewhere in this report. The view of the

Task Force is that although the federal government should not fully subsidize such units, their praiseworthy efforts must be encouraged, both by assisting units already in existence and by providing incentives for the initiation of new programs. There are many jurisdictions in this country in which victims of violent crime receive little or no help. This failure to assist those whom the system exists to serve and on whom it depends is unacceptable.

I was put in touch with a woman in the victim/witness unit who had recently lost a daughter in a brutal homicide. She talked with me, got me out of my shell, and gave me strength.—a victim

This Task Force does not make lightly a recommendation that the federal government expend funds for what is primarily a state and local responsibility. In this case, however, the need is great and the benefits are evident; furthermore, a failure to recognize both the federal obligation and the federal interest to be served could result in a serious disservice to honest citizens who seek nothing more than fair and courteous treatment from their government.

Even though the person who brutally beat my husband was never caught, and we wish he had been, the help we received from the victim/witness unit was essential to my husband's recovery and our survival.—a victim

Accordingly, this Task Force recommends that the second half of the Federal Crime Victims Assistance Fund be designated the Federal Victim/Witness Assistance Fund (see Federal Executive and Legislative Recommendation 1), and that monies from that fund be made available to state and local victim/witness assistance units. Consistent with the view that the location of the unit is best left to local determination, the funds should be dispersed to units whether they are established within the criminal justice system or in the private sector, including units operating in hospitals. High priority should be given to units that utilize community volunteers and receive other support from the private sector.

If I have learned anything that this Task Force should understand, it is that there is a need for some kind of victim assistance programs that reach out and seek to help people who are too emotionally involved in cases to seek help themselves.—a victim

Most U.S. Attorneys' Offices have not yet established victim/witness assistance units.[20] The federal government should provide a role model for other jurisdictions. It is essential that federal victims' and witnesses' needs be met. Because the majority of violent crime is prosecuted at the state level, federal prosecutors deal with proportionately fewer civilian victims and witnesses. Accordingly, we recommend that 20 percent of the Federal Victim/Witness Assistance Fund be reserved to assist federal victims and witnesses, with the balance made available to the states.

Federal Executive and Legislative Recommendation 3: The federal government should establish a federally based resource center for victim and witness assistance.

This proposed resource center would serve as a national clearinghouse of information concerning victim and witness assistance programs, victim compensation programs, and organizations from the private sector that seek to assist victims and witnesses. It should establish liaison with national, state, local, and private sector organizations whose activities are directed toward improved services for victims and witnesses. It should monitor the status of compensation programs and victim/witness legislation. In addition, the center should maintain a directory of state, local, and private sector programs and experts in the field to facilitate communication and the transfer of expertise.

This center is essential because the sources of information in this area are many, and they are found at all levels in the public and private sector. In addition, these sources are located throughout the country. With increased attention in this area, many different groups need information to augment or implement programs to help victims. Because resources are precious, it is essential that these new and existing groups benefit from the work that has preceded them as well as from new insights acquired through the successful provision of services.

Federal Executive and Legislative Recommendation 4: The President should establish a Task Force to study the serious problem of violence within the family, including violence against children, spouse abuse, and abuse of the elderly, and to review and evaluate national, state, and local efforts to address this problem.

Family violence is often much more complex in both its causes and its solutions than nonfamily violence. Violence within a home can be directed at children, at spouses, or at elderly family members, and for those who live in a home where violence occurs, the

pressures are tremendous. The assaults affect everyone in the house, not only the immediate victim, because of the ever-present quality of the threat of violence.

The decision to report this type of conduct to authorities is agonizing. The victim wrestles with feelings of fear, loyalty, love, guilt, and shame; often there is a sense of responsibility for other victims in the household. The victim also knows that reporting is a risk. All too often police or prosecutors minimize or ignore the problem and the victim is left alone to face an attacker who will respond with anger at being reported or incarcerated.

Because of the differences in the causes, manifestations, and effects of family violence, the system must be flexible in its response. Unlike the victims of other crimes, family violence victims often do not want their attacker punished; they simply want the violence to stop. Especially, in those cases in which violence is episodic or alcohol-related, the victim wishes to preserve the more positive aspects of family life. Putting the attacker in jail can also punish the victim and others in the family when a job is lost or bail money and fines are taken from the family budget. In addition, incarceration does not resolve the underlying problems that lead to violence and may only exacerbate the situation upon the assailant's release. However, when the pattern of violence has been long-standing or the injuries severe, conventional prosecution is called for.

It is the strong sense of this Task Force that the cries of family violence victims can no longer go unheeded. Because of the complexities of the problem and the significant ways in which the phenomenon differs from crime imposed by those outside the family, it was impossible for this Task Force to address this issue in the manner and depth it requires. Accordingly, we recommend that a new Presidential task force thoroughly study the problem of family violence, paying particular attention to the integration of government and other community resources to assist these victims.

Federal Executive and Legislative Recommendation 5: A study should be commissioned at the federal level to evaluate the juvenile justice system from the perspective of the victim.

The criminal justice system is disturbingly inconsistent in the way it treats juvenile victims and juvenile victimizers. This divergence exists, in part, because society has developed two independent systems based on widely divergent presuppositions. If a child is a victim, that child is expected to come to an adult court, open to the public, and behave like an adult, speak like an adult, comprehend like an adult, and meet adult standards. The motivation underlying this treatment is the protection of adult suspects against the testimony of children, who are considered less trustworthy or accurate than adults.

Child victims of crime are specially handicapped. First, the criminal justice system distrusts them, and puts special barriers in their path of prosecuting their claims to justice. Second, the criminal justice system seems indifferent to the legitimate special needs that arise from their participation. — David Lloyd

The juvenile justice system, on the other hand, begins with the premise that those who have not reached adulthood cannot be truly held accountable for their actions; they do not intend to do harm and will reform if shown the error of their ways. As a result, in many jurisdictions even violent and frequent dangerous conduct is not considered criminal, and is evaluated behind closed doors. Society is paying a tremendous price for this system. The Task Force suggests that the different treatment of juvenile victims and juvenile victimizers be carefully reevaluated.

Those who undertake the study of the juvenile justice system should be charged to consider the needs of the innocent victims and the society as a whole. Too often in the past, analyses of this area have focused solely on the benefits to be extended to offenders while ignoring the needs of a society burdened by their offenses. The existing inequities and the policies that contribute to them should be closely examined.

There will always be instances in which youngsters, because of a youthful tendency to excess or a lack of experience and insight, commit acts that are more harmful than they anticipated or intended. The existing juvenile justice system was established, basically, to address these kinds of offenses. However, many juvenile offenses drastically exceed this type of conduct. Armed robbery, rape, and murder cannot be laid at the door of mere immaturity or youthful exuberance. The victims of these crimes are no less traumatized because the offender was under age. A substantial

proportion of the violent crime in this country is committed by juveniles, who are becoming more violent at an increasingly early age. Both the reasons and suitable correctives for this are unknown. Are there rational corrections for these offenders that provide a deterrent? Is there a decline in the teaching of moral values in schools and the home that serves as a contributing factor? Does violence in television programs and movies and ready access to pornography exacerbate the problem?

The Task Force is cognizant of many studies in the juvenile area; none, however, focuses on the accountability and the responsibility of the juvenile criminal to his victim.

Juveniles too often are not held accountable for their conduct, and the system perpetuates this lack of accountability. When juveniles cause financial harm they are seldom required to make restitution. If they or their parents cannot or will not pay for reimbursement of the victim, often none is made. Thus, the juvenile is not required to face the consequences of his behavior; others—his parents or the victim—must bear the consequences for him.

The judge found him guilty in juvenile court of shooting my son in the back and killing him and sentenced him to 5 years in the detention center. He'll only do one and a half years and then he'll be free. For killing my son he only does one and a half years!—a victim's mother

The subject of juvenile punishment as a whole should be reexamined. It is unacceptable for a juvenile who commits murder to serve only a year in custody. Imposing such a sentence implies to both the killer and the victim's family that expiation for the life taken can be accomplished in 12 months. It must be faced that some juvenile offenders are more sophisticated about crime, the way in which the system operates, and how they can avoid being held culpable than are many adults. The method of punishment for those juveniles who have documented criminal histories or who have committed serious violent crimes should be critically reevaluated. The current policies of many jurisdictions neither reform nor punish; they only teach juveniles that they can act with relative impunity if they learn how to take advantage of the system. Ways to deal effectively with the juvenile who has graduated to committing adult violent offenses must be devised.

The Task Force suggests that the juvenile justice system be modified to provide that youths, 15 years of age or older, who commit murder, rape, armed robbery, armed burglary, or assault with the intent to commit

these crimes be tried as an adult. These are adult crimes and those who commit them should be held accountable as adults. Under such a modification, the prosecutor would retain the option of bringing charges against such an offender in the existing juvenile system. The Task Force is of the opinion that existing waiver provisions have been inadequate and recommends reserving this option to the prosecutor, leaving open the possibility of juvenile treatment if the particular circumstances of the case warrant such treatment.

After sentencing, no individual tried as an adult should be placed in a juvenile facility. In some jurisdictions, defendants who are over the statutory age for treatment as juveniles and who are convicted in adult courts may still be sentenced to juvenile facilities. In many instances, the adult sentence imposed can be modified by youth authorities with the result that an armed robber may serve only a few months in custody, rather than the term of years prescribed in the sentence. Further, the placement in such facilities of those 15 years of age and older who commit violent crimes makes those institutions far more dangerous for the nonviolent juveniles who are appropriately being housed there.

Policies supporting the sealing of juvenile records should be studied. The theory that an individual should not be disadvantaged for life because of an isolated mistake as a youngster is one that has merit. The premise supporting such a policy is that the juvenile crime is a not very serious aberration in an otherwise responsible life. The juvenile who commits serious offenses presents a different case entirely. If such a person continues to commit crimes as an adult, serious consideration should be given to allowing the admission of his juvenile record at adult trials and sentencing hearings. The sealing of records should be a safeguard for those who correct their conduct; it should not be a screen behind which the demonstrably dangerous can hide.

The issue of safety in the schools should also be addressed. Students should enjoy the right to go to school without the risk of being stabbed, robbed, approached by drug dealers, or harmed by persons under the influence of drugs. School administrators must regain the capacity for supervision that is neces-

sary to restore safety to the environment in which children spend so many hours daily.

Federal Executive and Legislative Recommendation 6: The Task Force endorses the principle of accountability for gross negligence of parole board officials in releasing into the community dangerous criminals who then injure others. A study should be commissioned at the federal level to determine how, and under what circumstances, this principle of accountability should be implemented.

The Parole Board that let him out did an awful, ignorant, foolish thing. They just turned their back on society, they just didn't care about the public. They knew about him and what he might do and they let him out anyway.— a victim

Every day, individuals with long records of violence are released from prisons on parole. Although parole boards are generally required to consider the degree of danger that a prospective parolee represents before ordering his return to the community, there are many cases in which obviously dangerous prisoners are precipitously released. These criminals are then free to commit new crimes. The innocent victims of these crimes, and their families, soon learn that parole boards operate in secrecy and are not accountable to anyone for their decisions.

Because of this lack of accountability and many other problems identified by this Task Force, we have recommended that the current parole system be abolished (see Executive and Legislative Recommendation 7). Until such abolition takes place, this Task Force endorses the principle that parole board officials should be held accountable for acts of gross negligence.

A number of methods have been proposed for implementing this principle. One of those allows suits against the government by persons or their families who are injured by obviously dangerous parolees who have been released through gross negligence. A number of lawsuits have already attempted to utilize this relatively new theory of liability, with varying results.[21] The principal barrier to this litigation has been that the doctrine of sovereign immunity has not been waived in actions challenging "discretionary functions" of government officials.[22] It has been proposed that sovereign immunity be restricted to allow for challenging the discretionary decisions of parole boards if they are grossly negligent. However, important questions remain; the fiscal effect of such action

is not clear, nor is the likelihood that such action will deter future gross negligence by parole officials. Also uncertain is how the Federal Tort Claims Act or similar state provisions should be amended to permit such suits.

Another way to hold parole boards accountable is to create an effective method of disciplinary action for parole board members. Although this method does not offer any financial assistance to injured victims, it should serve as an effective deterrent to grossly negligent releases, and therefore obviate the need for financial assistance to victims of violent parolees. Whether the deterrent effect will be sufficient to accomplish this goal is open to debate.

A thorough study of these and other possible implementation strategies should be undertaken. Careful consideration should be given to the questions raised above as well as any other related issues.