

**Remarks of Susan Herman,
Vermont National Crime Victims Rights Week Ceremony
(April 2006)**

I am deeply honored to be here with you on this important day. I have always had great admiration for the many ways Vermont has found to respond humanely to victims of crime. You lead the nation with a wide range of victim services, and a very progressive criminal justice system. You have broken new ground developing a model system of restitution for victims. You have created a network of coordinated victim services way ahead of most states—and by removing time limits for filing claims—you encourage victims to seek victim compensation more than any other state in the country. So, I am humbled by the invitation to speak to you today.

We gather together to celebrate National Crime Victims' Rights Week, because how we respond to victims matters, how we treat those among us who have suffered, those who need our help, and whose voices we need to hear-- matters.

The name of this week, National Crime Victims RIGHTS Week, also serves to guide our thinking a bit. At these occasions, in addition to honoring the experience of victims, we typically celebrate the progress we've made passing legislation that codifies victims' rights within the criminal justice system. And today we should celebrate this progress.

But, because I am particularly pleased to see many elected leaders and government officials with us today, I hope you will understand that I want to take advantage of this opportunity, and develop some new policy directions for you in my remarks.

In that spirit, I would like to offer some reflections on the evolution of victims' rights in America-- with the hope that it will add a different perspective on your work and the challenges you face providing justice to victims of crime.

Over the past thirty years, victim advocates and government leaders all over America have helped create a remarkable body of policies, statutes, and state constitutional amendments that provide victims rights within the criminal justice system.

During these three decades, the American criminal justice system began to treat victims as more than just pieces of evidence in a trial. Victims were given access to information about the criminal justice process - when certain decisions were made, what the process was all about, where the defendant was at any given time, etc. At the heart of these reforms was the notion that if victims had more information about how the system functioned, they would be more likely to "cooperate" and therefore more prosecutions would be successful.

For many advocates, however, merely informing victims about the criminal justice system was not enough, so beginning in the 1970s a number of advocates began to argue that victims had a right to meaningful participation in the decisions made about the crime they experienced - the right to be present and be heard.

Together, victim advocates and government officials developed a new legal role for victims in the criminal justice system. New legislation created the right to consultation before plea agreements, the right to provide victim impact statements, the right to be heard at sentencing, the right to participate in parole hearings and in pardon or commutation proceedings. Now, 32 of the 50 American states have amended their constitutions to include these and many other victims' rights.

As we review this history, however, we should make a sober assessment of the outcomes. Even with hundreds of victims' rights established by law, victims in America are still unsatisfied with their actual access to information and actual level of participation.

A study conducted at the National Center for Victims of Crime found that even in states with strong legal rights for crime victims, nearly two-thirds of victims were not informed of the pretrial release of the accused, half of all victims in cases resulting in plea agreements were not given an opportunity to consult with the prosecutor prior to the plea agreement, and nearly half were never notified of the sentencing hearing at all. And these are states with strong legal rights for crime victims.

As a nation, our collective conscience tells us to vigorously uphold due process guarantees for offenders (Miranda rights, the right to counsel, the right to remain silent) not only because it's good for individual offenders—but also because these rights reflect a higher value—that this is how we as a society want to treat our citizens. It's fair; it's the right thing to do.

We must uphold these values of fairness and justice for victims as well. We need to create a similar national expectation that victims will be treated fairly in the criminal justice system. That means that while we celebrate our legislative successes, we must remember that basic victim rights still need to be implemented and enforced.

I also draw a deeper lesson from this history.

This movement to secure rights for victims in criminal proceedings can also be traced to a time in the early 1970s when American criminal justice officials were very concerned with the low level of participation by victims and witnesses in the criminal justice system. In 1973, the Justice Department published our first national victimization survey, showing for the first time that half of all crime victims did not report their crimes to the police. Other surveys showed that many victims did not come to court to participate in criminal prosecutions. The implication was clear: criminals were going free, and cases were being lost, because without victims serving as witnesses, many cases could not proceed.

Just as the victims' movement argued for more sensitive treatment of victims in the courtroom, more attention to victims' needs, and greater accountability of offenders through restitution, the government was beginning to look for ways to keep victims in court.

These two interests came together to promote victim participation in the justice system. With police and prosecutors on the one hand, because they knew "no witness, no justice," and victim advocates on the other, because they believed victim participation was not only good for victims, but also made for better, more informed decisions, regardless of the outcome.

And what does the research tell us about these developments? The story of the Victim/Witness Assistance Project, or VWAP, an initiative of the Vera Institute of Justice in the early 1970s, tells an important story.

Essentially a lot of effort was made in one county in New York City to make it easier for victims to come to court. The project constructed a day care center so victims could drop their children off before going to court, offered counseling to those suffering from trauma, provided assistance with victim compensation, notified all victims and witnesses of their court dates by phone and computer-generated letters, and developed a program to allow victims and witnesses to stay at work on court dates, calling them only if their testimony was actually needed. **Yet, while victims appreciated the services, the evaluation found that the rate of appearances in court was exactly the same as before the program started.**

The Vera Institute took these disappointing research findings and developed two new initiatives - one providing mediation services in cases involving parties who knew each other before the criminal incident, and one offering victim advocates who would appear in court to ensure that the victim was heard when appropriate. These new initiatives, both creating more meaningful roles for victims, were somewhat more successful. In the first initiative, victims were more satisfied with the mediation process than with court proceedings; in the second, courtroom attendance went up.

While this research is narrow in scope and relatively old, these findings highlight an important lesson from the original project's failure to improve victim participation. Efforts to make the criminal justice system less burdensome for victims may make the system less burdensome, but without more, they don't change the central reality that the criminal justice system is about offenders, not victims. Without more, victims will continue to be disappointed in our system of criminal justice, and their level of participation is not going to increase significantly.

Thirty years later, the level of reporting crime in America has not changed much, and the level of attendance in court hasn't either. Clearly, participatory rights are extremely important, but we must do so much more.

Over the last 30 years, while some victim advocates and government officials were working hard to make victims' experience within the criminal justice system less burdensome and more meaningful, others were developing services to help victims recover from the trauma of crime. Just think, in 1976, we had one shelter for battered women in America, and now we have almost 2000.

Hospitals, community centers, social service agencies are beginning to focus on the trauma of crime, the need for coordinated, multi-disciplinary responses to victims. We see new and creative ways businesses have learned to help victims feel safe and move on with their lives.

This “service” response to victims is typically viewed as a helpful, perhaps even therapeutic endeavor, but not as a societal obligation, or part of our conception of justice.

So, as we celebrate National Crime Victims’ Rights Week, let’s imagine for a moment that instead of just tinkering with our offender-oriented criminal justice system to try to increase witness participation, and instead of providing only fragmented services to victims, let’s imagine we made helping victims rebuild their lives a national priority. Imagine redefining justice for victims of crime.

I call this vision of justice for victims "Parallel Justice."

Let me explain.

When offenders are brought to the bar of justice they are held accountable by the state for harms suffered by individuals. The state serves as our conscience. There is a societal response to the offender that says, "You violated the law, and we will hold you accountable, punish you if it is appropriate, isolate you if needed, and offer you services to help reintegrate you back into the community.

The individuals who have been harmed by crime - the victims of crime - should have a comparable experience of a societal response to them. Our collective conscience must respond to them as well. Under a system of Parallel Justice we would say to victims "What happened to you is wrong, and we will help you rebuild your life." And, for the most part, this can happen outside the context of the criminal justice system.

In this vision of Parallel Justice, society would continue to hold offenders accountable for the harms they have caused—but there would also be a separate social obligation to repair the harm caused by crime.

For me, Parallel Justice is an important guidepost for both victim advocates and government officials because it changes the conversations we’ve been having about responding to victims of crime. For the last 30 years, we have had two-- largely separate-- conversations, one focusing on social services for victims, the other focusing on making the criminal justice system more responsive to victims' needs - to make sure that victims are respected, are included, and are heard. Parallel Justice joins these efforts and provides a new framework for justice for victims of crime.

Certainly, it is important to make the criminal justice system more responsive to victims. If we expect victims to perform a civic duty by testifying, we must protect them from further harm, we must respect and hear their voice, and we must make their participation as comfortable and burden free as possible.

But the idea of Parallel Justice requires us to decouple the pursuit of justice for victims from the administration of justice for offenders. We seek more than victims' rights to participate in the criminal justice system. And we seek services that are more than charity. We seek a separate path to justice for victims.

What does that mean? It means that when we consider justice for victims, we must always begin and end by asking what is it victims need to rebuild their lives, and what is our obligation to them?

In answering these questions, we should not be limited by the framework of the criminal justice system. For instance, most prosecutors in America would say that the most significant problem that impedes successful prosecution of cases is witness intimidation. Yet, we continue to limit our focus to system-centric remedies - such as relocating victims and witnesses during the life of a trial.

The system may only need witnesses to be safe during that period, but the witnesses usually need permanent relocation or other ways of staying safe for a much longer time. Is it any wonder many victims still don't want to testify?

Almost 5 year later, I still find myself thinking of the September 11 victims in this context. After the attacks, our response to the victims did **not** begin by asking, "What is the appropriate role for victims in the investigation, prosecution, adjudication, and sentencing of offenders?"

Rather, we asked, "What do these victims need?" As a result, we saw an unprecedented array of creative and helpful responses.

We must remember that the vast majority of victims, like the September 11 victims, have no involvement in the criminal justice system; they never see a courtroom, and their offender is never arrested. So, we must develop ways to provide justice to all crime victims, not just those in the system.

The concept of Parallel Justice changes the paradigm. Instead of asking victims to seek justice solely through the criminal justice process, we instead ask victims to define the problems they face - and then we do our best to address them. In this new world, there would be a victim-oriented justice process that would kick in with the occurrence of a crime and attend to the needs of victims of all crime, violent and non-violent. Offenders, communities, and society-at-large would be asked to help victims rebuild their lives - to help reintegrate victims back into productive community life.

Offenders who are apprehended can make restitution, and, if they acknowledge responsibility for the crime, they can contribute to a victim's well-being in ways nobody else can.

Along these lines, I believe the restorative and reparative justice programs in Vermont have much to offer victims who want to participate in them. Unlike the traditional criminal justice system, restorative justice, like the mediation programs I mentioned earlier, offers victims a highly participatory process. Restorative justice gives victims an opportunity to:

- Tell their story and be heard, to reconnect with their community;
- Rebuild their relationship with the offender, if one exists;
- Sometimes, victims experience empathy from the offender, the community, or both.

But victims often need much more.

We know that some victims move on with their lives fairly easily, but many suffer continuing trauma without the services and support they need. Victims often suffer lowered academic performance, decreased work productivity, and severe loss of confidence.

Mental illness, suicide, and drug and alcohol abuse are far more common among crime victims than the general public. Research comparing battered women to women who haven't been abused shows they are 5 times more likely to attempt suicide, 15 times more likely to abuse alcohol, 4 times more likely to abuse drugs, and 3 times more likely to be diagnosed as depressed or psychotic.

The data is similar for victims of sexual assault. We also know that victimization during adolescence can be particularly harmful. Abused and victimized adolescents are more likely to suffer from physical and emotional problems than non-victimized youth.

The National Center's recent report, "Our Vulnerable Teenagers" also shows that the single greatest factor in predicting criminal behavior on the part of teenagers is not teenage pregnancy, drug use, or truancy, but whether they have been a victim of crime.

It is clear that although we tend to think of the damage caused by crime in terms of individual victims, there is also an enormous toll on families, communities, and society-at-large. When a significant portion of the 23 million Americans who become victims of crime each year remain psychologically, physically, and financially unstable, there are real consequences. We all suffer.

Many victims' needs cannot be met by individual offenders or small communities because there is only so much they can do. The extent to which a victim can be "restored" should not be limited by the capacity of the offender and the community. When victims need more than empathy, restitution, and relationship building, restorative justice, like the traditional criminal justice system, falls short. Again, this is not to say

that restorative justice does not offer victims something of value. Like the criminal justice system, it is simply of limited value.

By contrast, beyond the offender and the community, in a system of Parallel Justice, there is also a role for society-at-large, represented by the state, in repairing the harm.

Let's think about how this might work.

What should we do for the woman who has been mugged, now too afraid to leave her home to buy food or go to work? Should she be offered counseling, should we try to organize transportation for her? I think so.

How about the teller who was held up and can no longer face going to work in a bank? Should we help her learn how to earn a living a new way? I think so.

What can we say to the elderly victim of a telemarketing scam who lost his entire life savings and can't earn it back? Should we offer emergency financial assistance? I think so.

What can we offer the battered woman who wants desperately to leave her violent home but will need a job, day care, and new housing to do it? Can we make her a priority? Yes.

What do we say to the young victim of sexual assault, incest or child abuse, who has begun to use drugs to numb the pain? Can we give him priority access to drug treatment? I think we should.

In Parallel Justice, every effort should be made to help victims feel safe and get back on track. Crime harms everyone involved and we need to reintegrate victims, as well as offenders, back into productive community life.

Only the government can marshal the many resources needed to address victims' long-term, complicated problems. The health care, the job training, or the relocation needs of victims—usually cannot be addressed by offenders and neighbors alone. So, society as a whole should be asked to play a role.

Parallel Justice requires attention to the impact of crime on individuals, on families, and on communities. All victims should be attended to right after the crime occurs. All victims should be offered a variety of services from supportive counseling and psychotherapy to very practical assistance such as new locks for smashed doors and new glass for broken windows.

And services should be offered beyond crisis intervention, they should be available on an ongoing basis to meet victims' long term needs. Parallel Justice recognizes that a crime may last only a moment, but its impact can be felt for a lifetime.

I am often asked why I speak of Parallel Justice and not victims' justice - or, for that matter, why don't I talk about this as a fuller, more complete vision of justice.

For me, the term Parallel Justice does two things. First, it underscores the need to create a separate path to justice for victims - apart from the criminal justice system, but relating to it. Second, it highlights the contemporaneous nature of these paths.

We must respond to and reintegrate both victim and offender, and much of the work can take place at the same time, with options for connections or interactions. If you like, you can visualize a ladder - two paths to justice that are connected by rungs, opportunities to interact.

There are many ways to promote Parallel Justice for victims. Providing comprehensive emergency and long-term services to crime victims is a part of Parallel Justice. Implementing and enforcing the full body of victims' rights is a part of Parallel Justice. Making victims' safety a higher priority is part of Parallel Justice. Being honest with victims about what the criminal justice system can and cannot do is a part of Parallel Justice. Marshaling every possible resource to help victims rebuild their lives is Parallel Justice.

I want to be completely clear, particularly during National Crime Victims' Rights Week, that even as we build this separate path to justice, we should still advocate for fair and respectful treatment of victims when they do interact with the traditional criminal justice system. We should do this for at least two reasons: First, victims and the public at large will have greater confidence and trust in the criminal justice system if victims' views are heard, regardless of the outcomes. Second, participation and fair treatment in the process of determining what happens to an offender is often a part of what victims need as a result of a crime.

I also believe that if we spent more time providing justice to victims - helping victims rebuild their lives - they would be more likely to participate in the criminal justice system. If we provide Parallel Justice to victims, it will be easier for victims to understand and accept some of the limitations of the criminal justice system.

This vision of Parallel Justice extends beyond the criminal justice system. It requires us to provide support to our fellow citizens who have been harmed by crime, to listen to their needs, and to help them rebuild their lives.

During National Crime Victims' Rights Week, we are reminded that crime has potentially life-changing impact on individual victims, which in turn has profound negative consequences for communities. We understand the strong link between victimization and poor mental health, teenage pregnancy, alcohol and drug abuse, homelessness, unemployment, suicide, delinquency, and crime. We also recognize the connection between victimization, social isolation, and alienation—all problems which tear at the fabric of our communities.

Creating the public will and commitment to help victims rebuild their lives is essential to Parallel Justice. We should do this not only because it is good for individual victims, but because it is good for all of us.

Thank you.