

FUTURE DIRECTIONS FOR VICIM ASSISTANCE: VICTIM ADVOCATES OR GUARDIANS OF THE SYSTEM?

By Hazel J. Magnussen

When my brother was murdered over five years ago, my family began a journey that will never end. While we have moved out from the experience, the aftermath of the violence and the sense of betrayal by the justice system remains. I hope that these reflections will offer some insight into victims' needs and experiences-- and ultimately make some difference in how the system views and treats victims of crime.

In the case to which I refer, police investigations led to an arrest and first-degree murder charge. A preliminary inquiry concluded that there was enough evidence to support a conviction even though the victim's body has never been found.

In the trial, in spite of strong forensic DNA evidence (that is, blood at the crime scene, in the defendants' car and on his clothes) that the defendant was guilty, his lawyer fabricated a story that the victim was desperate enough to stage his own death and disappear. This position enabled the defendant, through his lawyer, to continue his vindictive attacks by making false and exaggerated claims about the victim's character and motives. Meanwhile, the character and history of defiance, disruptive behavior and vindictiveness of the man on trial was ruled inadmissible

The jury didn't buy the argument that the victim was still alive but apparently not all jurors believed that the offender was capable of planning the murder. The jury convicted the defendant of the lesser charge of manslaughter. The defense's appeal of the conviction was dismissed in October 2002. The Crown's appeal of the sentence was dismissed in July 2003, seven months after the appeal hearing. A request by the offender for a hearing at the Supreme Court of Canada was dismissed in August 2003. The offender is due for statutory release in September 2005.

Rather than dwell on the horror of this crime, my purpose here is to call for support in advocating for crime victims who can all too easily be silenced and forgotten. I invite you to think beyond the early moments of a crime scene when victims, in shock, need support and direction. But once the numbness wears off and they face the criminal process, where do victims of crime go for help? And when they are violated by the double standard in the system that places the rights of the accused above the dignity of the victim, whom can they trust with their outrage and disillusionment?

All service professionals face the dilemma of choosing between defending the system and advocating for the client. During my forty-year nursing career, I witnessed a philosophical shift from obedience and loyalty to the system to advocacy for the patient or client. The nurse patient relationship -- the context in which nurses get to know and listen to their patients' questions and fears—is an essential component of effective patient advocacy. The nurse reassures the patient, explains how the system works and ensures that the patient's rights to dignity, information and choice are honored.

If patients are unable to comprehend or express their wishes or if family members are not available, able or willing to play that role, who will pay attention? Nurses and/or other health professionals have a responsibility to be there and to intervene on the client's behalf.

But when the system (or representatives of the system) chooses not to listen and is unwilling to look at itself, who will point out the problem and advocate for change? The system and funding source may have its own agenda and have lost sight of the needs of the persons it is meant to serve. Advocating for reform in the best interests of those whom the system serves can then be risky.

Can you see the parallel to the criminal justice system? Who better to point out the inequity and injustice in the system than those who know and, hopefully, empathize with the victim? Weaving one's way through the system, where the federal government enacts criminal law and the provinces administer justice, can be confusing. A broad perspective and understanding of the criminal justice process is necessary for effective advocacy.

I am not suggesting more layers of bureaucracy and paperwork nor do I mean to undermine the good work already being done by some victim advocates. Rather, I am calling for a review of the effectiveness of existing services and the willingness to listen to those who know best what it means to be a victim of crime. Various government jurisdictions have conducted such reviews but do they have the political will to review the law and revamp the system? Or will we continue to study the matter without any decisive action or change?

Victim assistance professionals and volunteers have an opportunity and duty to ensure that the voice of the victim is heard and taken seriously. Those who work with victims need to have sufficient training and backing to enable them to be present to victims in crisis, to provide information and support to the victim in preparing for the criminal justice proceedings, and to encourage and direct victims, who are trying to come to terms with the crime and its aftermath, to appropriate counseling and resource services.

The general public and yes, even victim service personnel find it difficult to face the horror and to understand the ongoing and far reaching effects of murder or other forms of crime. Nor are many professionals in the justice system able to see or willing to confront the double standard for perpetrators and victims of crime. I did not know or understand these issues until I was forced to face them myself.

THE CONSEQUENCES OF TRAUMA AND VICTIMIZATION

The following five themes best summarize my experience as a victim or survivor of homicide. All sets of feelings are consequences of trauma and victimization and require different types of intervention and support.

Shock and fear

I will always remember the shock of that phone call at work telling me that Doug was missing...and as I went through the motions of waiting by the phone, booking a flight, traveling, gathering with family, talking to the media, writing a tribute for a celebration of my brother's life, returning home and to work, the numbness took over. The pain was too overwhelming and so I just didn't feel anything--a normal response to trauma.

In shock, I do remember wondering if the perpetrator would strike again. Along with the fear of being harmed, I was afraid of saying or doing something that might make the situation worse. I needed advice as to how to respond to inquiries from the media. Our family needed assurance that precautions were being taken to protect our safety.

Months and even years later, fear still surfaces. I experience anxiety when something triggers a memory or thought of the murder. For example, references to duct tape continue to remind me of the bloodstained roll that was found at the crime scene. Watching news reports of the September 11 terrorist attacks in 2001, I found myself reliving what might have happened when my brother was killed two and half years earlier.

I expect that these triggers will always be with me. I avoid scenes of trauma and try to be with family during the difficult times, such as the anniversary dates of the crime. But I cannot live my life in a bubble. I watch the news and when I hear reports of homicide and its aftermath, I pay attention and readily empathize with the victims and their families.

I did return to work after the crime but found it difficult to keep up with the demands of my job as a mental health nurse. I left my job less than a year later and have not returned.

Loss of control

Even after an arrest had been made, the offender still had control. We needed to ensure that he had a fair trial. Investigations were in the hands of the police and we had to trust them. As much as possible, the police did inform our family regarding the progress of the investigation.

In the months prior to the trial, a publication ban on evidence meant that the media was careful what they reported. Therefore, news stories were often limited to reports of how our family was coping. I grew tired of saying the same things and I expect the public grew tired of hearing them. The public did not hear the whole story. For the most part, the media has treated us with respect. While media rushed to get their story, we tried to maintain some control of our story by emphasizing points we believed were important.

At various stages of the process, a common question from the media and other curious onlookers is "Does this give your family closure?" I dislike the word and the question. Closure is not possible for victims of murder. I am attempting to take control now as I expose the facts surrounding our story and the realities of how the system works.

Isolation

After the initial deluge of attention given to crime victims, they may well find themselves alone. Some folk deny that something so horrific could happen and believing that “bad things don’t happen to good people,” shun or even blame the victim. Others grow impatient with the victim’s apparent inability to get on with life. Whatever the reasons, victims can easily be misunderstood and ignored.

At times, I choose to isolate myself rather than endure social interactions that seem trivial. I am guarded about talking about the crime but find it helpful and comforting when those with whom I have regular contact are aware of the story. I am grateful for those who are still available to listen, who understand and encourage me now in my advocacy work.

Prolonged and Interrupted Grief

Grieving enables the bereaved to heal and move on with life. That process is complicated and prolonged by the abnormal circumstances of a violent death, especially when it is at the hand of another human being. The family’s loss is a public news story. But grieving is an intimate experience that takes time. I find support and comfort with family members and close friends who knew my brother or are well acquainted with my family. As with any loss, we need to share our memories but need to do so with someone we trust.

The ongoing legal proceedings, unanswered questions and the reopening of wounds prolong the process. Depending on our personal and spiritual resources, responsibilities in life, and relationship with the victim, we each deal with trauma and loss differently. The circumstances surrounding the crime also make a difference. For example, our family still wonders about the whereabouts of my brother’s body. Each time a body is found, we are reminded of our own loss and wonder if, just maybe, it could be Doug. It would, no doubt, be easier to forgive and move on if the offender took responsibility and revealed his secret.

The search for meaning and a way to make a difference

When we experience a loss or catastrophe, finding meaning and discovering a way to make a difference is part of healing. I am advocating for change in order to prevent similar atrocities in the future.

I have moved on from the horror of the events of May 1999 to see the bigger picture of a world and a society where violence is all too prevalent--to see how our Canadian society and justice system allows innocent victims of violence to be victimized further and then ignores the consequences. I have engaged in my own advocacy work with politicians, lawyers, judges and victim service workers to raise awareness regarding this injustice. I have read books, consulted experts and written letters.

WHAT I HAVE LEARNED

I am told that I should be proud that, in our democratic country, those charged with a crime are entitled to due process. Lawyers repeat that response almost by rote. I am

politely reminded that the court tries to balance the rights of the accused and the victim. I hear less talk or concern from the legal professionals and the justice system about the plight of victims who can be treated like intruders even though it is victims who live with the long-term effects of the crime.

Of course, innocent people should be protected from a wrongful conviction. But guilty persons can remain silent and do not have to admit to their crime. Perpetrators of crime can abuse their due process rights to further victimize their victims. Too often, the innocent victim is put on trial. The victim and the victim's family are revictimized, all apparently in the name of justice.

The Charter of Rights and Freedoms

The imbalance between the rights of defendants and victims can be attributed to the Canadian Charter of Rights and Freedoms, which, since it became law in 1982, has upheld the rights of the accused as paramount. The Charter does not mention the rights of victims of crime.

Would the inclusion of victims' rights in the Charter make a difference? Not likely, according to Alan Young, law professor at Osgoode Hall Law School and author of Justice Defiled. In a panel presentation at the National Victims Conference in November 2003, Young stated that constitutional changes would make a difference for victims of crime only after there is change in the legal culture. He noted that law schools do not teach students about the role of victims. Is this a role for victims' advocates?

Is it time to review and update the Charter in the context of the twenty-first century? Using the Charter to defend the rights of special individuals, such as those accused of a crime, may mean that the rights and interests of the average citizen or society at large are ignored or violated. Many do not recognize or wish to acknowledge that paradox.

Alex Macdonald, a former Attorney General for the province of British Columbia begins his book, Outrage; Canada's Justice System on Trial (1999) this way:

“Canada's legal system is heading for disaster, so preoccupied with protecting individual's rights that it fails to protect the rights of society. More than fair to a few, the legal system is less than fair to the majority of Canadians, sacrificing time-honored concepts such as Truth and Justice to an unhealthy fascination with process.”, v preface.

The Canadian Statement of Basic Principles of Justice for Victims of Crime

Victims' rights are addressed in the 1985 United Nations Declaration of the Basic Principles of Justice for Victims of Crimes and Abuse of Power. This document became the basis for a Canadian document, “The Canadian Statement of Basic Principles of Justice for Victims of Crime” originally written in 1988 and revised in 2003.

The principles emphasize courtesy, compassion, respect, sharing of information and protection of victims from intimidation and retaliation. The statement is not law so it cannot be enforced.

Principle 8 states: “The views, concerns and representations of victims are an important consideration in criminal justice processes and should be considered in accordance with prevailing law, policies and procedures.”

This principle describes the double standard and gives the answer to any possible dilemma; that is, while victims’ views should be considered, the prevailing law still rules. Our family learned that our concerns about the unfair and false attack on our loved one had no weight in the court. The process ran according to the rule of law and did not allow for anyone to advocate for the victim’s interests.

Victim Impact Statements

Amendments to the *Criminal Code* in 1999 gave victims the right to read an impact statement describing the effects of the crime on their lives. Victims are told that their statements will not affect the verdict but may influence the sentence and the offender’s eligibility for parole. They are to speak only about their own experience and not to say anything negative about the offender.

A ruling in the Alberta Court of Queen’s Bench in January 2004 is an example of effective victim advocacy. The Honorable Justice Brian Burrows, responding to a challenge of the practice of disclosing victim impact statements to the defense in advance of the trial, ruled that impact statements need not be disclosed until after a conviction.

Authorities claim that Victim Impact Statements are a breakthrough for victims’ rights. But legal professionals, who routinely objectify and rationalize their arguments and rulings, distance themselves from victims’ pain. Is the court really ready and able to hear emotional expressions without being inclined to discount or dismiss them?

Is Restorative Justice the answer?

Others support the restorative model of justice as a response to the tension between due process rights of the accused and the rights of victims (Kent Roach, Due Process and Victims’ Rights, 1999)

I am skeptical of the benefit of restorative justice initiatives for victims of crime. Restorative justice caters to the offender, not the victim. Victims may be expected to engage in the process without an advocate. Perpetrators of crime are given the opportunity to make amends for their crime when they hear about its impact on the victim? But not all offenders can or will genuinely take responsibility for their actions. A restorative approach can only be effective when the offender is capable of empathy and willing to be accountable.

WHAT ARE OTHER VICTIMS OF CRIME SAYING?

I refer to two provincial reviews of the experiences of victims of crime in the two provinces I know best. Summary comments in the reports are strikingly similar. I expect that they reflect the experiences of victims of crime across the country.

Quotes from the 2002 report of the Alberta Victims of Crime Consultation

- Often victims of crime do not understand the justice system process, their rights and role in it. (p. 10)
- The criminal justice system appears to focus more on the rights of the offender than the rights of the victim.
- Victims' privacy is not always respected. (p. 12)
- Funding for victims is inequitable in comparison to funding for offenders.
- Victims programs and services cannot be sustained without long term funding. (p.14)
- Training that is provided is inconsistent and in need of standardization. (p.15)
- Advocates must be able to provide local knowledge and culturally sensitive service to their communities. (p.16)
- Victims sometimes feel unsafe and they caution that the restorative justice process is more offender-oriented than victim-oriented. (p.18)

Quotes from the 2002 BC consultation with surviving family members in cases where there has been a death due to a homicide, vehicle or air crash.

- Advocating for change or being involved in the legal system was very important for some families and helped focus energy as well as honour the life of the deceased. (p.20)
- The majority of families felt that the criminal justice system was seriously imbalanced and had let them down in fundamental ways. Family members described themselves feeling disillusioned, betrayed, abandoned, cheated, victimized and cynical. This was despite many having had some contact with supportive service providers. (p.51)
- Often families found it very difficult to find information on what options for counseling were available. Few service providers appeared to have this information. (p.59)
- Many times, systems can be accommodated to address family needs but are not--because of this lack of awareness and sympathy and because of system lethargy and unnecessary bureaucracy. (p.73)
- Families are shocked, exhausted and depleted after experiencing the violent death of a loved one. For most families the death is not the end but the beginning of a long, exhausting and painful struggle—often at every stage of the process and often lasting their entire lives. Families are shocked to find that in the period of their lowest energy they must fight for considerations they think should have been theirs by right. (p. 74)

These statements speak for themselves. I conclude with my own summary of what I have learned.

WHAT I HAVE LEARNED ABOUT THE CRIMINAL JUSTICE PROCESS

- 1) Our criminal justice system is more about the interpretation of the law than it is about truth and justice
- 2) The Crown prosecutor represents the state--not the victim. The victim does not have an advocate in the criminal trial.
- 3) The accused is innocent until proven guilty beyond a reasonable doubt.
- 4) While many in the system treat the victim with respect, the mindset of the court is that the victim is an outsider.
- 5) The due process rights of the accused override the rights and dignity of the victim—the defense lawyer is given great latitude in exercising those rights even if it means revictimizing and putting the victim on trial.
- 6) The court process is an adversarial/ hierarchical system that gives attention to reasoned arguments or legal wrangling. It can be likened to a game with each party competing to win, except that one side (the defense) is given the advantage.
- 7) The formality and ritual of the courtroom can be intimidating. Respect is to be shown to the judge and order is to be maintained at all times. Observers are expected to remain silent and without emotion even when shaken by the proceedings.
- 8) Our system upholds the independence of the judiciary from the influence of elected officials. However, judicial appointments, new legislation and government policies reflect the political values and priorities of the government in power.
- 9) The effects of crime are long-term. Most victim services are designed to support victims in the short term.
- 10) Victims need to take responsibility for their own healing and recovery. It helps to have the support of family and friends, and to know persons who understand the effects of trauma, crime and victimization.
- 11) For the most part, victims need to rely on their own resources to learn how the system works and to connect with resource and support networks.
- 12) Victims need to share their stories and find innovative ways of doing that without adding to their own trauma or the vicarious traumatization of innocent bystanders.

13) Victims and victim advocates are the ones who can best raise awareness and advocate for change in how the system views and treats victims. Most other folk don't understand the issues.