

## **Including The Victim In The Decision To Bring Environmental Prosecutions**

Alexandra Akre\*

|  |    |
|--|----|
| Introduction .....   | 1  |
| I. The Role of the Victim in Criminal Law .....                                | 4  |
| A. Rise of the Victims' Rights Movement and the Crime Victim's Rights Act..... | 4  |
| B. The Benefits of Criminal Prosecution Available to Victims .....             | 8  |
| II. Application of Victim Benefits to Environmental Crimes .....               | 16 |
| A. Easily Identifiable Victims .....   | 18 |
| B. Victims Identified via Statistical Probability .....                        | 20 |
| C. Non-conventional Victims or "Victimless" Crimes.....                        | 22 |
| III. Status Quo .....  | 24 |
| A. Easily Identifiable Victims .....   | 25 |
| B. Victims Identified via Statistical Probabilities.....                       | 27 |
| C. Non-conventional Victims or Victimless Crimes .....                         | 29 |
| IV. Recommendations.....   | 30 |
| V. Conclusion .....  | 33 |

### INTRODUCTION

Company X regularly pours gallons of highly toxic chemicals directly into a stream in violation of the Clean Water Act. In Scenario A, an individual swimming downstream splashes the contaminated water on her face and suffers from chemical burns and permanent blindness. In Scenario B, someone who lives next to the stream is regularly exposed to the chemical fumes and years later is diagnosed with lung cancer; although breathing these chemical fumes is a well-recognized cause of lung cancer, doctors cannot pinpoint the actual cause of an individual's cancer—only statistical probabilities are available. In Scenario C, the EPA intervenes before any human exposure, however the wildlife population in the area is significantly reduced as a result

---

\* J.D. Candidate, Florida State College of Law 2016. I am grateful to Professor Sam Wiseman for his invaluable comments and feedback.

of the dumping. In each of these scenarios there is a victim; the chief difference is whether or not the victim is easily identifiable. Scenario C, in particular, poses the greatest challenge when determining who is harmed by these “victimless” violations.<sup>1</sup> While many environmental crimes are unique—in that defining the victim is not always a straightforward task—environmental crimes are also similar to traditional crimes because there are victims with real harms and real interests.

Unlike modern traditional criminal enforcement, environmental crime enforcement places little emphasis on the interests of victims. When choosing whether or not to bring charges for environmental crimes, federal prosecutors are directed to consider a number of factors, including: (1) federal law enforcement priorities; (2) the nature and seriousness of the offense; (3) the deterrent effect of prosecution; (4) culpability; (5) history of criminal activity; (6) willingness to cooperate; (7) probable sentence; (8) voluntary disclosure; (9) preventive measures and compliance programs; (10) pervasiveness of noncompliance; (11) internal disciplinary action; and (12) subsequent compliance efforts<sup>2</sup>—to name a few. Noticeably absent from this list are the victim’s wishes, the potential benefits of prosecution for the victim, or any other reference to the role of the victim in environmental crime prosecutions.<sup>3</sup> Considering what role the victim plays in environmental crimes is important not only because victimology is a central theme in modern criminal law, but also because it can help guide limited prosecutorial resources toward more meaningful cases.

---

<sup>1</sup> While the environment is clearly harmed, it is not a “traditional” victim with discernible interests. Even so, there are arguably community stakeholders and individuals who enjoy recreational hunting and fishing near the stream who may suffer damages.

<sup>2</sup> U.S. Dep’t of Justice, *Factors in Decisions on Criminal Prosecution for Environmental Violations in the Context of Significant Voluntary Compliance* (1991), <http://www.justice.gov/enrd/selected-publications/factors-decisions-criminal-prosecutions>

<sup>3</sup> See George P. Fletcher, *The Place of Victims in the Theory of Retribution*, 3 *BUFF. CRIM. L. REV.* 51 (1999) (“Remarkably, the theory of criminal law has developed without paying much attention to the place of victims in the analysis of responsibility or in the rationale for punishment. You can read a first-rate book . . . and not find a single reference to the relevance of victims in imposing liability and punishment. In the last several decades we have witnessed notable strides toward attending to the rights and interests of crime victims, but these concerns have yet to intrude upon the discussion of the central issues of wrongdoing, blame, and punishment.”).

This article recommends that environmental law and policy, including the DOJ guidelines and the Crime Victim's Rights Act, should be revised to better represent the interests of environmental crime victims, perhaps even those victims who cannot be specifically identified at the time of prosecution. To do so, I examine the unique benefits criminal law can provide victims of environmental crimes, including whether and under what circumstances government attorneys should weigh these potential benefits in their decision to pursue civil or criminal enforcement. In instances where the victim is easily identifiable, government attorneys should seriously consider the potential benefits a victim could gain from seeing offenders prosecuted. In instances when the victim is only identifiable via statistical probabilities, government attorneys should still consider victims' interests, but pay particular attention to whether victims acting in a representative capacity will experience the same benefits. When environmental violations result in "victimless" crimes, there are fewer benefits available via criminal prosecution; however, government attorneys should consider the benefits to the community as contemplated in theories of restorative justice.

Part I explores the role of the victim in traditional criminal law by explaining the rise of the victims' rights movement to its culmination in the Crime Victim's Rights Act, and the theoretical underpinnings of the benefits available to victims via criminal prosecution. This Part will also look at compensatory remedies available to crime victims in both criminal and civil contexts and will explore the similarities and differences between the two. Part II considers the role of the victim in environmental crimes by defining the three types of victims in environmental crimes, and provides justifications as to why environmental crime victims' interests should be regarded in the same manner as traditional crime victims. Part III will examine the status quo of considering victims in environmental crimes, specifically by looking at agency and executive policy and judicial rulings. Finally, Part IV will make recommendations as to how the law can be improved to better represent victims' interests in environmental crimes.

## I. THE ROLE OF THE VICTIM IN CRIMINAL LAW

Up until the mid-twentieth century, victims' rights in America were an afterthought at best.<sup>4</sup> Traditionally, the demands of the victim were addressed by civil law, while the demands of society were addressed by the criminal law. As a result of the victims' rights movement however, there was a major shift in criminal law theory toward victim inclusion.<sup>5</sup> As victims gained more access to criminal proceedings, criminal law scholars began to recast traditional punishment justifications with an eye toward the benefits criminal prosecutions provided to victims. To begin, this Part will discuss the recent history and impact of the victims' rights movement and the Crime Victim's Rights Act (CVRA). Part I will then explore some of the theoretical explanations of the unique costs and benefits the criminal law presents to victims.

### A. Rise of the Victims' Rights Movement and the Crime Victim's Rights Act

Many factors contributed to the rise of the modern victims' rights movement, including public sentiment, advocacy groups, and state and federal action.<sup>6</sup> During the mid-20<sup>th</sup> century, a growing sense of victim marginalization and an ineffective criminal justice system struck the public consciousness.<sup>7</sup> The notion that victims of crimes were forgotten or neglected permeated the dialogue of criminal justice.<sup>8</sup> Driving this dialogue was the frustration of victims themselves,<sup>9</sup> in addition to higher crime rates nationally.<sup>10</sup>

---

<sup>4</sup> See generally George Nicholson, *Victims' Rights, Remedies, and Resources: A Maturing Presence in American Jurisprudence*, 23 PAC. L.J. 815 (1992).

<sup>5</sup> Alice Koskela, *Victim's Rights Amendments: An Irresistible Political Force Transforms the Criminal Justice System*, 34 IDAHO L. REV. 157, 158 (1997).

<sup>6</sup> See generally Nicholson, *supra* note 4.

<sup>7</sup> *Id.* at 815, 818-19. See also Abraham S. Goldstein, *Defining the Role of the Victim in Criminal Prosecution*, 52 MISS. L. J. 515, 518-20 (1982).

<sup>8</sup> Nicholson, *supra* note 4, at 815-16. See also Goldstein, *supra* note 7, at 518 ("This theme of alienation, which runs through the victims' movement, traces to a deeply held feeling that the victim has been so much separated from the crime against him that the crime is no longer his.")

<sup>9</sup> Charles F. Baird & Elizabeth E. McGinn, *Re-Victimizing the Victim: How Prosecutorial and Judicial Discretion Are Being Exercised to Silence Victims Who Oppose Capital Punishment*, 15 STAN. L. & POL'Y REV. 447, 449 (2004) ("Many local activists came from the middle class that by-and-large had faith in the legal system until they became part of it. They found that the crime against them did not matter much to insensitive insular bureaucrats...[T]he offender's rights were constitutionally protected...yet the prosecutor did not play the same role for the victim; the prosecutor instead is an advocate for the state, and the

Advocacy groups were also established to raise awareness and concern for victims and their families.<sup>11</sup> As Justice Scalia put it, “A public sense of justice . . . found [its] voice in a nationwide victims' rights movement.”<sup>12</sup>

Relatedly, several important Executive initiatives also brought victims' rights to the forefront: President Lyndon B. Johnson's Crime Commission and Law Enforcement Assistance Administration (LEAA), and President Ronald Reagan's Task Force on Victims of Crime.<sup>13</sup> President Johnson's Crime Commission published a report in 1967 that illustrated the widespread victimization within the United States, while the LEAA established the Crime Victim Initiative as a resource for victim programs in local prosecutor offices and law enforcement agencies.<sup>14</sup> Even more important to raising public cognizance was President Reagan's establishment of National Crime Victims' Rights Week in 1981 and creation of the Task Force on Victims of Crime in 1982.<sup>15</sup> In the opening Statement of the Task Force Report, the chairman condemned the marginalization of the victim in the criminal justice system: “Somewhere along the way the system began to serve lawyers and judges and defendants treating the victim with institutionalized disinterest.”<sup>16</sup> The Report went on to make recommendations to legislators, judges, prosecutors, and parole boards that included requiring victim impact statements, requiring restitution in all cases, and requiring prosecutors to take victims' interests into account.<sup>17</sup>

---

interests of the state may not correspond with the interests of the victim. . . [M]any . . . felt that there was an inherent conflict between the goals of prosecutors or law enforcement officers and the interests of victims.” (internal citations omitted).

<sup>10</sup> *Id.* at 450-51.

<sup>11</sup> Nicholson, *supra* note 4, at 819-20. Examples include: two mothers whom lost children to murder establishing Parents of Murdered Children; a mother whose daughter was a victim of drunk driving forming Mothers Against Drunk Driving, and numerous other groups raising awareness about domestic violence, sexual assault, college campus safety, and a plethora of other issues. *See* Koskela, *supra* note 5, at 163; Baird, *supra* note 9, at 451.

<sup>12</sup> *Payne v. Tennessee*, 501 U.S. 808, 834 (1991) (Scalia, J. concurring) (internal citations omitted).

<sup>13</sup> Baird, *supra* note 9, at 450-53.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> President's Task Force on Victims of Crime Final Report (Dec. 20 1982) at vi, *available at* <http://ojp.gov/ovc/publications/presdntstskforcrprt/87299.pdf>.

<sup>17</sup> *Id.*

Congress and state legislatures were receptive to public outcry and executive findings and responded with fervor.<sup>18</sup> Many states adopted victim rights amendments to their state constitutions with overwhelming public support.<sup>19</sup> Moreover, Congress passed key legislation, such as the Victim Witness Protection Act, Victims of Crime Act, and Victims' Bill of Rights, all of which were enacted to protect victims and encourage their participation in the criminal justice system.<sup>20</sup> Much of this legislation provided victims with the right to be informed, to be heard, and to participate in the process.<sup>21</sup>

One of the most important pieces of legislation to come out of the victims' rights movement is the Crime Victim's Rights Act (CVRA), enacted in 2004.<sup>22</sup> The CVRA confers a number of rights to crime victims:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.<sup>23</sup>

---

<sup>18</sup> Koskela, *supra* note 5, at 164 (“[B]etween 1975-1987 they approved some 1,500 statutes and programs directed towards victims' concerns.”) (internal citations omitted).

<sup>19</sup> *Id.* at 165.

<sup>20</sup> Baird, *supra* note 9, at 453-54.

<sup>21</sup> Mary L. Boland, Russell Butler, *Crime Victims' Rights: From Illusion to Reality*, 24 CRIM. JUST. 4, 6 (2009); Karyn Ellen Polito, *The Rights of Crime Victims in the Criminal Justice System: Is Justice Blind to the Victims of Crime?*, 16 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 241, 246-47 (1990).

<sup>22</sup> Paul G. Cassell, *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims' Rights Act*, 2005 B.Y.U. L. REV. 835, 850-51 (2005) (“The Crime Victims' Rights Act ultimately resulted from a decision by the victims' movement to seek a more comprehensive and enforceable federal statute rather than to continue pursuing the more ambitious goal of a federal constitutional amendment.”).

<sup>23</sup> 18 U.S.C. § 3771(a) (2004).

The Act defines a crime victim as “a person directly and proximately harmed as a result of the commission of a Federal offense,” and provides that a guardian or representative of a crime victim may assert the victim’s rights in the event he or she is incapacitated or deceased.<sup>24</sup> If a right provided for by the CVRA is asserted and denied in district court, the movant may petition the court of appeals for a writ of mandamus.<sup>25</sup> In instances “where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a),” the CVRA requires that the court fashion “a reasonable procedure” to effectuate the purpose of the statute.<sup>26</sup>

Central to the Crime Victim’s Rights Act is the right to be “reasonably heard.”<sup>27</sup> This language allows for victims to be full participants in the criminal justice system.<sup>28</sup> According to the Ninth Circuit, there is an “indefensible right to speak, similar to that of a defendant,” because “the CVRA gives victims the right to confront every defendant who has wronged them; [to] vindicate the right of the victims to look this defendant in the eye and let him know the suffering his misconduct has caused.”<sup>29</sup>

As a whole, the crime victims’ rights movement and the CVRA changed the face of criminal prosecution by creating rights for victims to have a voice in the proceedings.<sup>30</sup> In addition to being legislatively prescribed, these rights are demanded by the public—indicating that proper administration of justice includes consideration of crime victims.

---

<sup>24</sup> 18 U.S.C. § 3771(e) (2004).

<sup>25</sup> 18 U.S.C. § 3771(d)(3) (2004).

<sup>26</sup> 18 U.S.C. § 3771(d)(2) (2004).

<sup>27</sup> 18 U.S.C. § 3771(a)(4) (2004).

<sup>28</sup> *Kenna v. United States Dist. Court for the Cent. Dist. of Cal.*, 435 F.3d 1011, 1016 (9th Cir. 2006).

<sup>29</sup> *Id.* at 1017.

<sup>30</sup> While the victim’s rights movement and the CVRA has received a great deal of support, some scholars have criticized the broad inclusion of victims in the criminal process has lead to prosecutorial interference, and can be damaging to the criminal law. For an excellent discussion on some of the criticisms of the victim’s rights movement and a pro-victim rights response see Paul G. Cassell & Steven Joffe, *The Crime Victim's Expanding Role in A System of Public Prosecution: A Response to the Critics of the Crime Victims' Rights Act*, 105 NW. U.L. REV. Colloquy 164 (2011).

## B. The Benefits of Criminal Prosecution Available to Victims

The victims' rights movement also changed the face of criminal theory by forcing scholars to seriously consider the role of the victim in criminal law.<sup>31</sup> Central to this inquiry is the question of how victims' interests can be vindicated via traditional criminal punishment. Considering the interests of victims is important for many reasons, including the fact they parallel the ideologies of the victims' rights movement. What's more, considering the unique benefits criminal prosecutions offer victims provides additional factors that may help prosecutors decide whether or not to bring criminal charges. This subsection will briefly examine contemporary punishment theory, paying close attention to the potential benefits available to victims via criminal prosecution.<sup>32</sup> This subsection will also consider the criminal law's ability to compensate the victim, and whether civil suits are better suited to do so.

### 1. Traditional Punishment Theory

Victims' rights advocates demand that the government, "engage with victims—to restore their dignity, ensure their satisfaction, and value them."<sup>33</sup> As one scholar points out, "studies do suggest that, in general, the more participation a jurisdiction affords crime victims, the greater the victims' levels of satisfaction and sense of resolution of the matter."<sup>34</sup> Victims of crimes have many issues and needs that go beyond monetary restoration, including loss of trust, loss of control, loss of faith, sense of isolation,

---

<sup>31</sup> "A notable feature of developments in the thinking on criminal law during recent years is the increase in the emphasis being placed on the victim. Not only has there been a change of focus from the purely technical approach to the sociological approach, but there has been a realization that the criminal law does not perform its role adequately, if it does not pay attention to the needs of the victim." Timothy K. Kuhner, *The Status of the Victim in the Enforcement of International Criminal Law*, 6 OR. REV. INT'L L. 95, 134 (2004), (quoting P.M. Bakshi, *Victims and the Criminal Law*, in HUMAN RIGHTS AND VICTIMOLOGY 82 (V.V. Devasia & Leelamma Devasia eds., 1998)).

<sup>32</sup> While there is extensive scholarship on the intersection of traditional criminal theory and victimology, this Note only purports to examine some of the benefits that are available to victims via traditional criminal punishment.

<sup>33</sup> Aya Gruber, *A Distributive Theory of Criminal Law*, 52 WM. & MARY L. REV. 1, 44 (2010).

<sup>34</sup> Jayne W. Barnard, *Allocution for Victims of Economic Crimes*, 77 NOTRE DAME L. REV. 39, 75 (2001).



disbelief in experience, cognitive shock, indignation, and fear.<sup>35</sup> As consideration of victims' rights came to the forefront of criminal law, numerous strains of punishment theory began to identify and explain some of the unique benefits the criminal law and criminal punishment can provide to victims.<sup>36</sup> This subsection will examine two benefits in particular, through the lens of different contemporary punishment theories: victim satisfaction and psychological benefits.

*a. Victim Satisfaction*

Attached to the criminal law are blame and consequence, two deeply satisfying ideals for victims of crime. Oftentimes, victims seek revenge and social condemnation of the offender.<sup>37</sup> The criminal law is uniquely able to provide both of these as it has the power to punish and to stigmatize.<sup>38</sup> Allowing victims to participate in the criminal process increases satisfaction because participation allows them to, "restore the unequal balance between themselves and the offender."<sup>39</sup> Two theories of criminal law best explain the promotion of victim satisfaction: distributivism and retributivism.

Distributive justice holds that punishment exists to ensure victim welfare.<sup>40</sup> In other words, the offender is punished in order to distribute pleasure and pain between the offender and victim.<sup>41</sup> Distributive justice seeks to offset the pleasure gained by the offender through the infliction of punishment, thereby increasing the satisfaction of the victim.<sup>42</sup> Punishment increases victim satisfaction in numerous ways, such as the

---

<sup>35</sup> Zvi D. Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White-Collar Crime*, 8 CARDOZO J. CONFLICT RESOL. 421, 465 (2007).

<sup>36</sup> This Note recognizes that victims' needs are not uniform, and thus speaks only to the potential benefits the criminal law can offer. See generally Susan Bandes, *When Victims Seek Closure: Forgiveness, Vengeance and the Role of Government*, 27 FORDHAM URB. L.J. 1599 (2000); Edna Erez, *Victim Participation in Sentencing: And the Debate Goes On*, 3 INT'L REV. VICTIMOLOGY 17, 21 (1994).

<sup>37</sup> Erin Ann O'Hara, *Victim Participation in the Criminal Process*, 13 J.L. & POL'Y 229, 234 (2005).

<sup>38</sup> Goldstein, *supra* note 7, at 531. ("[A]ll other things being equal, the criminal sanction is plainly more stigmatizing.")

<sup>39</sup> Barnard, *supra* note 34, at 75.

<sup>40</sup> Gruber, *supra* note 33, at 1.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 19.

humiliation of the offender<sup>43</sup> and allowing for the expression of anger,<sup>44</sup> and more basically satisfies a primal instinct for revenge.<sup>45</sup> This theory is almost tort-like in nature, although the redistribution of pain and pleasure does not necessarily need to be financial.<sup>46</sup>

Traditional retributivism holds that wrongdoers should be punished only because and to the extent they deserve it.<sup>47</sup> Many theories of retributivism fail to take into account the needs of society or the needs of the victim, and focus instead on the offender's culpability alone.<sup>48</sup> However, some scholars argue that retributive justice demands victim-centric ideals.<sup>49</sup> Under this theory, retributive justice seeks equality between the offender and the victim by subjecting the offender to punishment.<sup>50</sup> Part of the harm, according to retributivists, is that the offender has placed himself above the law since criminal conduct is a form of dominion over the victim.<sup>51</sup> Punishment then neutralizes this dominion and reestablishes equality between the offender and the victim.<sup>52</sup> The wrongdoer must make amends to the victim in order to acknowledge the victim's value.<sup>53</sup> This, in turn, vindicates the moral injury to the victim and restores his or her dignity—resulting in satisfaction.<sup>54</sup> Moreover, some retributive scholars discuss the expressive function of a decision not to punish; it communicates to the victim and to society such action is appropriate. Such a decision, especially in instances where the crime is particularly heinous, almost undoubtedly provokes anger from the victim and perhaps

---

<sup>43</sup> Guyora Binder, *Victims and the Significance of Causing Harm*, 28 PACE L. REV. 713, 735-36 (2008) (noting that “humiliation of the offender” vindicates victims).

<sup>44</sup> See generally Jennifer Gerarda Brown, *The Use of Mediation to Resolve Criminal Cases: A Procedural Critique*, 43 EMORY L.J. 1247, 1274 (1994) (discussing the need of victims to express anger).

<sup>45</sup> O'Hara, *supra* note 37, at 243 (“Deeply embedded in our human psyche is an instinct to act [with vengeance] when others harm us in a way that threatens our status in our social communities.”).

<sup>46</sup> Gruber, *supra* note 33, at 5.

<sup>47</sup> See Stephen P. Garvey, *Punishment as Atonement*, 46 UCLA L. REV. 1801, 1835-38 (1999).

<sup>48</sup> Gruber, *supra* note 33, at 16.

<sup>49</sup> Fletcher, *supra* note 3, at 58; Jean Hampton, *Correcting Harms Versus Righting Wrongs: The Goal of Retribution*, 39 UCLA L. REV. 1659, 1697 (1992).

<sup>50</sup> Fletcher, *supra* note 3, at 59.

<sup>51</sup> *Id.* at 62-63.

<sup>52</sup> *Id.*

<sup>53</sup> Hampton, *supra* note 49, at 1696-97.

<sup>54</sup> Fletcher, *supra* note 3, at 58.

society as a whole.<sup>55</sup> This illustrates a victim's desire to see the offender pay, or a desire for retribution, and thus demonstrates the satisfaction gained from punishment.<sup>56</sup>

Both distributivism and retributivism explain how the criminal law can, and should, bring about victim satisfaction through punishment. Although they have fundamental differences, both seek to restore equilibrium between the victim and the offender. Because punishment is unique to criminal law, the benefits are also unique. Notions of revenge and restoring dignity are best addressed through penal sanctions—particularly because of the existence of moral condemnation. These theories suggest that including victims in the criminal process increases victim satisfaction.

#### *b. Psychological Benefits*

Similarly, the criminal law can also provide forgiveness, closure, and healing for victims. When victims are given a voice in the proceedings, the experience can be positive and empowering. The criminal law is unique in that it allows society to recognize the victim and his or her suffering.<sup>57</sup> Moreover, by allowing the victim to participate in the criminal proceedings, they may regain a sense of control. Two theories help explain the therapeutic benefits the criminal law can offer to a victim: the rite-based theory and the restorative justice theory.

One distinct advantage that criminal law provides victims is the opportunity to be heard in an official forum.<sup>58</sup> The rite-based theory explains the benefits of this prospect.<sup>59</sup> The theory seeks to empower victims, and change the relationship between the victim and the offender—originally created by the criminal act—through the ritual of the victim speaking before the court.<sup>60</sup> The ceremonial and ritualistic aspects of criminal court, such as the “all rise” statement, the judge's black robes, and the formal titles, “create a time

---

<sup>55</sup> Hampton, *supra* note 49, at 1684.

<sup>56</sup> *Id.*

<sup>57</sup> Paul G. Cassell, *In Defense of Victim Impact Statements*, 6 OHIO ST. J. CRIM. L. 611, 621 (2009)

<sup>58</sup> Mary Margaret Giannini, *Equal Rights for Equal Rites?: Victim Allocation, Defendant Allocation, and the Crime Victims' Rights Act*, 26 YALE L. & POL'Y REV. 431, 433 (2008).

<sup>59</sup> *Id.* at 450-54.

<sup>60</sup> *Id.*

and space which is, if not quite sacred, at the very least emotionally charged.”<sup>61</sup> Through this ritual, the victim is able to transform from victim to survivor, and restore the moral and social imbalance between themselves and the offender.<sup>62</sup> While civil court has similar formalities, the act of sentencing and allowing victims to participate, particularly at this moment, provides more profound relief.<sup>63</sup>

Restorative justice is similar in that it highlights the victim’s need to be heard, and the therapeutic benefits of having a voice in the process.<sup>64</sup> The theory “concentrates on the effect of the crime on relationships and the opportunity for reconciliation of conflict in a community as a result of the offender's behavior.”<sup>65</sup> Emphasis is placed on the needs of the victim, and one of the central goals is to provide the victim with opportunities to heal, forgive, and obtain closure. This goal is attained chiefly through victim-offender mediation programs where victims have the opportunity to ask questions about the offense and why it happened, express their feelings, and control the outcome of the ultimate solution.<sup>66</sup> Restorative justice is different from other criminal law theories, and more like civil proceedings, in that it deemphasizes the role of punishment and instead seeks to repair damages. However, it is very unlike civil proceedings in that it encourages the participation of the community, and recognizes that the impact of criminal actions reverberate beyond the victim.<sup>67</sup>

Both principles of restorative justice and rite-based theory emphasize the need of the victim to be heard. Victims often seek to “communicate the impact of the offense to the offender,” or “remind judges of the fact that behind the crime is a real person who is a

---

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 452.

<sup>63</sup> *Id.* at 452 (“The moment of sentencing is among the most public, formalized, and ritualistic parts of a criminal case. By giving victims a clear and uninterrupted voice at this moment on par with that of defendants and prosecutors, a right to allocute signals both society's recognition of victims' suffering and their importance to the criminal process.”).

<sup>64</sup> Kathy Elton & Michelle M. Roybal, *Restoration, A Component of Justice*, 2003 UTAH L. REV. 43, 45 (2003).

<sup>65</sup> *Id.* at 50.

<sup>66</sup> *Id.* at 52.

<sup>67</sup> *Id.* at 49.

victim.”<sup>68</sup> These theories suggest that giving victims a voice in the criminal process is essential, and those victims who are included receive many therapeutic benefits.

## 2. Compensation

Victims also have a desire to be compensated for their harms. Another consequence of the victims’ rights movement is increased overlap between civil and criminal law.<sup>69</sup> Of particular interest is the emphasis placed on compensating the victim for losses suffered via the criminal system. Conventionally, any fine against the offender was money paid to the state; victims could only receive compensation if he or she brought a civil suit.<sup>70</sup> However, with laws such as the CVRA, victim compensation through criminal sanctions has gained popularity.<sup>71</sup> Although criminal compensatory options are generally available, civil remedies are structured in a way that may do a better job at compensating the victim.

While these civil and criminal compensatory remedies have significant overlap, there are numerous differences that affect the choice of the victim to proceed down either avenue. As civil suits have historically existed as a means of compensation, they are generally better at doing such.<sup>72</sup> First, in civil suits the standard of proof is preponderance of the evidence, which is significantly easier to satisfy than the beyond a reasonable doubt standard in criminal law.<sup>73</sup> While both civil and environmental criminal proceedings have their own set of evidentiary issues, having a lower burden of proof generally makes it easier for individual plaintiffs.<sup>74</sup> Second, many of the constitutional safeguards present in criminal prosecutions are not available to defendants in civil

---

<sup>68</sup> Barnard, *supra* note 34, at 75.

<sup>69</sup> Alan T. Harland, *Monetary Remedies for the Victims of Crime: Assessing the Role of the Criminal Courts*, 30 UCLA L. REV. 52, 58 (1982).

<sup>70</sup> Goldstein, *supra* note 7, at 530.

<sup>71</sup> See, e.g., 18 U.S.C. § 3771(a)(6) (2004) (requiring restitution for crime victims).

<sup>72</sup> Goldstein, *supra* note 7, at 530.

<sup>73</sup> Laura J. Kerrigan et. al., *Project: The Decriminalization of Administrative Law Penalties, Civil Remedies, Alternatives, Policy, and Constitutional Implications*, 45 ADMIN. L. REV. 367, 374 (1993).

<sup>74</sup> See generally, Steven L. Humphreys, *An Enemy of the People: Prosecuting the Corporate Polluter As A Common Law Criminal*, 39 AM. U. L. REV. 311, 348 (1990); *Tort Actions for Cancer: Deterrence, Compensation, and Environmental Carcinogenesis*, 90 YALE L.J. 840 (1981).

proceedings.<sup>75</sup> This again makes civil proceedings easier for plaintiffs. Finally, the amount awarded in civil damages is likely to be significantly larger due to the fact that restitution is based on actual loss while civil damages can include punitive damages, and loss of consortium.<sup>76</sup> There are several disadvantages of the civil suit, including cost of litigation (although this can be alleviated through the class action), and certain evidentiary issues, which the criminal system can resolve through statute.<sup>77</sup>

Restitution is essentially the criminal version of civil damages.<sup>78</sup> Although restitution in the civil context is understood to mean disgorgement from unlawful gains, restitution in the criminal context is roughly equated to victim compensation.<sup>79</sup> The Court considers “the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant.”<sup>80</sup> Similar to civil suits, restitution can be paid directly to crime victims.<sup>81</sup> Some scholars argue that restitution should not be classified as purely compensatory because it serves traditional roles of criminal punishment, such as deterrence, rehabilitation, and incapacitation.<sup>82</sup> The fact that the victim has no control over the amount of restitution awarded, and that “the decision to impose restitution generally does not turn on the victim's injury, but on the

---

<sup>75</sup> Kerrigan, *supra* note 73, at 374-75 (“The Constitution expressly provides defendants in criminal proceedings with: the privilege against self-incrimination; the right to a speedy and public trial; the right of confrontation; the right of compulsory process of obtaining witnesses in his favor; and the right to have the assistance of counsel. The Constitution also provides criminal defendants, though not expressly limited to criminal defendants, with: protection against unreasonable searches and seizures; protection against double jeopardy; the right to not be deprived of life, liberty or property without due process of law; and protection against excessive bail, fines, or cruel and unusual punishment. Defendants in civil proceedings are not necessarily provided these protections...”).

<sup>76</sup> Bridgett N. Shephard, *Classifying Crime Victim Restitution: The Theoretical Arguments and Practical Consequences of Labeling Restitution As Either A Criminal or Civil Law Concept*, 18 LEWIS & CLARK L. REV. 801, 814 (2014) (citing to a Seventh Circuit case that describes restitution as “A measure of relief [that] is less generous than common law damages, since it does not extend to consequences beyond the diminution of the value of the property stolen or damaged.”) (internal citations omitted).

<sup>77</sup> ENVIRONMENTAL CRIMES AND ITS PERSPECTIVES WITHIN GREEN CRIMINOLOGY 106 (Toine Spapens et. al eds., 2014).

<sup>78</sup> Cortney E. Lollar, *What Is Criminal Restitution?*, 100 IOWA L. REV. 93, 100 (2014).

<sup>79</sup> *Id.*

<sup>80</sup> 18 U.S.C. § 3664(a) (2011)

<sup>81</sup> 18 U.S.C. § 3664 (2011)

<sup>82</sup> Shephard, *supra* note 76, at 810.

penal goals of the State and the situation of the defendant,” bolster their argument.<sup>83</sup> Additionally, by casting restitution as a form of punishment, victim compensation is essentially limited by theories of proportionality—the amount of restitution available must match the offense of conviction.<sup>84</sup> Moreover, the fact that a victim is only quasi-involved (via the CVRA and actual losses) in determining the amount of restitution sought is a disadvantage of the criminal system because it may not actually meet the victim’s needs or expectations.<sup>85</sup> All of these limitations reflect the notion that if compensation is the chief interest of the victim, civil remedies may better serve that need.

In sum, it is clear that victim rights are a central issue of modern criminal law—thanks, in part, to the rise of the victims’ rights movement.<sup>86</sup> In comportsing with this trend, the role of the victim in environmental crimes should also be considered, as some of the same matters (such as increased advocacy, and application of the CVRA) equally affect traditional criminal law and environmental criminal law. While the civil law is generally better at compensating the victim, the criminal law is able to provide unique benefits to victims that civil suits simply cannot. Whether it is the satisfaction of harsh criminal punishment, or the healing benefits of being acknowledged by society in a formal proceeding, a traditional tort suit does not allow for these opportunities. This is important because it provides prosecutors with additional considerations when deciding to move forward with a criminal trial. If a victim is chiefly interested in monetary compensation, perhaps a civil suit is best and prosecutors can use limited government resources elsewhere. On the other hand, if a victim seeks closure or retribution, a prosecutor should factor in these interests when deciding whether or not to bring criminal charges.

---

<sup>83</sup> *Id.*

<sup>84</sup> Goldstein, *supra* note 7, at 536.

<sup>85</sup> For example, 18 U.S.C.A. § 3664(4) (West 2002) allows for payment in the form of return of property or replacement of property. While this may account for the actual monetary loss suffered by the victim, it doesn’t allow for some of the more nuanced damages available in a civil suit.

<sup>86</sup> O’Hara, *supra* note 37, at 233 (“[V]ictim involvement in the criminal process is becoming and will continue to be a reality of our criminal justice process.”).

---

## II. APPLICATION OF VICTIM BENEFITS TO ENVIRONMENTAL CRIMES

Before engaging in a micro-level analysis of the unique aspects of environmental law, it is important to expand upon the arguments and justifications for treating victims of environmental crimes similarly to victims of traditional crimes. First, victims of environmental crimes often suffer real harms, and are thus deserving of inclusion in the criminal process—much like victims of traditional crimes, such as robbery, rape, or murder.<sup>87</sup> As Professor Lazarus points out, “Just because the wrongdoer has [caused harm] by way of an environmental medium—such as air or water—does not make that conduct any less deserving of criminal sanction.”<sup>88</sup> The harms resulting from environmental crimes can be indistinguishable from harms resulting from the commission of traditional or violent crimes.<sup>89</sup>

Whether a sewer system is blown up by a terrorist or by a company’s discharge of flammable waster into the system . . . the resulting harm is precisely the same. Similarly, a town resident who contracts a fatal form of cancer after drinking contaminated water from the town well . . . is no less dead than a robbery victim who is shot and killed by the robber.<sup>90</sup>

Furthermore, public beliefs and Congressional intent indicate that victims of environmental crimes are just as deserving of being included in the criminal process as victims of traditional or violent crimes. Not only has Congress enacted numerous statutes in favor off criminal enforcement for environmental crimes, with increasing sanctions,<sup>91</sup>

---

<sup>87</sup> Melissa L. Jarrell & Joshua Ozymy, *Real Crime, Real Victims: Environmental Crimes and the Crime Victims’ Rights Act (CVRA)*, 58 CRIME LAW SOC. CHANGE 373, 381 (2012). See also Kathleen F. Brickey, *Environmental Crime at the Crossroads: The Intersection of Environmental and Criminal Law Theory*, 71 TUL. L. REV. 487 (1996).

<sup>88</sup> KATHLEEN F. BRICKEY, ENVIRONMENTAL CRIME LAW, POLICY, PROSECUTION 1 (2008).

<sup>89</sup> One possible difference between traditional crimes and environmental crimes is many environmental criminal actors don’t intend to harm individuals, and are instead motivated by financial considerations. Scholars have suggested that intentional harms are more damaging than those caused unintentionally. See Daniel L. Ames & Susan T. Fiske, *Intentional Harms Are Worse, Even When They’re Not*, 24 PSYCHOLOGICAL SCIENCE 1755 (2013) (“Across a series of studies, people saw intended harms as worse than unintended harms, even though the two harms were identical.”).

<sup>90</sup> Brickey, *supra* note 88, at 17.

<sup>91</sup> *Id.* at 8.



but public sentiments associate environmental violations with human suffering and victimization.<sup>92</sup>

Although the focus of this Note is from the perspective of how criminal law can benefit the environmental crime victim, it would be imprudent to ignore the positive effects victim inclusion can have on environmental law as a whole. Encouraging victim participation in environmental prosecutions can help reinforce social norms and strengthen environmental law.<sup>93</sup> As mentioned earlier, criminal law has “its unique ability to give force and symbolic representation to moral values by conveying condemnation and disgrace.”<sup>94</sup> According to many scholars, “most people obey the law only because they are responding to an ‘internalized moral belief’ that an activity is ‘wrong.’”<sup>95</sup> Publicizing environmental crime victims and their stories—particularly through the inclusion of the criminal process—can enhance moral outrage, and further demonstrate to potential offenders why their conduct is wrong. Additionally, including victims of environmental crimes in the criminal process may assist the judicial process, particularly during the sentencing phase, by allowing judges to evaluate the somewhat abstract environmental crime in terms of real human suffering.<sup>96</sup>

Although there are basic similarities between victims of environmental crimes and victims of traditional crimes, typical environmental crime prosecutions are different from traditional criminal law in many respects. For one, many scholars point out that environmental criminal statutes differ from traditional criminal statutes because of aspirational qualities, evolutionary nature, and high degree of complexity.<sup>97</sup> Moreover, prosecutions are typically not brought against individual “midnight dumpers,” but instead

---

<sup>92</sup> *Id.* at 2 (explaining the well-known community of Love Canal, NY where Hooker Chemical disposed of hazardous chemicals resulting in more than 1000 houses being declared uninhabitable).

<sup>93</sup> Using social norms to strengthen environmental law is not a new idea. See Susan Hedman, *Expressive Functions of Criminal Sanctions in Environmental Law*, 59 GEO. WASH. L. REV. 889, 892 (1991) (“The history of environmental policy in the United States clearly demonstrates the reciprocal relationship between law and social norms.”) However, using victims in that process is under-considered.

<sup>94</sup> *Id.* at 896.

<sup>95</sup> *Id.* at 898.

<sup>96</sup> Barnard, *supra* note 34, at 59 (“Requiring that victim impact testimony be heard in open court will materially assist the sentencing judge in determining an appropriate sentence.”).

<sup>97</sup> Andrew Atkins, *A Complicated Environment: The Problem With Extending Victims’ Rights To Victims of Environmental Crimes*, 67 WASH. & LEE L. REV. 1623, 1628 (2010).

sophisticated, usually industrial, parties with a history of repeated non-compliance.<sup>98</sup> It follows then that the victims of environmental crimes will often look different than those of traditional or violent crimes. As such, questions arise about whether the same potential benefits available to victims of traditional offenses via criminal prosecution are equally available to victims of environmental crimes. These questions bear directly on the factors government attorneys should consider when determining whether or not to seek criminal enforcement of environmental violations.

Another unique aspect of environmental criminal law is the challenge of defining who qualifies as a victim. Environmental crime victims can be considered in terms of “the nature of the wrongful act, nature of the harm to the victim, extent of damages suffered, scale of the crime, and perpetrator identifiability/relationship with the victim.”<sup>99</sup> Each of these factors reveal something important. However, for the purposes of this Note, it is more helpful to categorize victims by ease of identification—as the precise problem many government attorneys face with respect to environmental crime victims is how to identify and define them. This Part will discuss and apply the benefits framework<sup>100</sup> to three types of environmental crime victims: (1) easily identifiable victims, (2) victims identified via statistical probabilities, and (3) non-conventional victims or “victimless” crimes.

#### A. Easily Identifiable Victims

In instances where there is direct harm to an individual or group of individuals that appears relatively contemporaneously with the offender’s bad act, it is relatively easy to identify who the victim is. In such cases, the potential benefits traditional crime victims gain from prosecution are equally applicable. The satisfaction of seeing the offender punished, either through fines or jail time, and therapeutic benefits of having a voice and being acknowledged, would certainly have the same potential benefits for

---

<sup>98</sup> John F. Cooney, et al, *The Arc of Environmental Criminal Enforcement*, 25 NAT. RESOURCES & ENV’T, 7, 10 (2010).

<sup>99</sup> Eileen Skinnider, *Victims of Environmental Crimes—Mapping The Issues*, INTERNATIONAL CENTRE FOR CRIMINAL LAW REFORM AND CRIMINAL JUSTICE POLICY 31 (2011).

<sup>100</sup> Discussed in Part II *supra*.

someone who was injured during a robbery as it would for someone who was injured because of an explosion as the result of a company's environmental misconduct. The key elements supporting the benefits of criminal prosecution are present in both situations: a victim who was harmed, an offender that is blameworthy, a formal process in which society can recognize the victim, and an imbalance in the moral equilibrium between the victim and the offender. A study revealed that the main reason victims participated in restorative justice programs was to "to show offenders the human impact of their actions, and to tell the offenders their own story."<sup>101</sup> This desire does not discriminate between violent or environmental crimes. An example of an easily identifiable crime victim can be seen in *United States v. Rutana*, in which the defendant was convicted of dumping acidic wastewater into a city sewer line and badly burning two sewage treatment plant employees.<sup>102</sup> Here, there is no problem in defining who is a victim; thus, including them in the criminal process presents no major challenge to government attorneys. As such, when deciding whether or not to bring criminal charges, prosecutors should meaningfully involve victims to every extent practicable, not only in accordance with the CVRA, but also with the ideologies of the victims' rights movement as a whole.

One possible challenge in environmental prosecutions, even when there are easily identifiable victims, is the potential for hundreds, or even thousands of victims all seeking a voice in the criminal prosecution, thus making it inefficient or impractical. The statutory language of the CVRA alleviates this problem to a degree, as it prescribes that the court make "reasonable accommodations", but it is entirely possible some victims will be left out of the process and thus left unfulfilled. Moreover, one of the main desires of victims of traditional crimes is to be informed of the proceedings.<sup>103</sup> This may not ring true for victims of environmental criminal catastrophes that are highly publicized and

---

<sup>101</sup> Zvi D. Gabbay, *supra* note 35, at n. 203 (citing Mark S. Umbreit et al, *Executive Summary: Victim Offender Dialogue in Crimes of Severe Violence, A Multi-Site Study of Programs in Texas and Ohio*, 7 CENTER FOR RESTORATIVE JUSTICE & PEACEMAKING (2002)) (internal citations omitted).

<sup>102</sup> *United States v. Rutana*, 18 F.3d 363 (6th Cir. 1994).

<sup>103</sup> Gabbay, *supra* note 35, at 467.

covered by the media; in such instances the victim may already feel sufficiently informed.<sup>104</sup>

### B. Victims Identified via Statistical Probability

Many victims of environmental crimes are not as easily identified. Instead, their harms and injuries are identified via statistical probability. Rather than having a clear and direct causal link—e.g. an oil rig explosion and loss of life—harms caused by releases of toxic substances are not as certain.<sup>105</sup> Compounding the problem, these harms are often latent for many years, thus victims may not know they are victims for decades, and proving causation becomes even more difficult.<sup>106</sup>

If there is “virtual certainty” that the victim’s illness was caused by the offender’s environmental misconduct,<sup>107</sup> perhaps the benefits gained from criminal prosecution would parallel those gained in prosecutions of traditional crimes and environmental crimes when there is an easily identifiable victim. The suffering and blameworthiness is highly comparable—as is the potential for release of emotion, storytelling, and healing. The desire for victims to humanize the offender’s crime may be even more applicable. Also, in cases like *W.R. Grace*,<sup>108</sup> in which entire towns are impacted by the release of asbestos, principles of restorative justice and community involvement in the healing process are highly applicable.<sup>109</sup>

Similar problems occur with a large number of victims, and may actually be worse in instances of statistical victims. Again, the CVRA may account for some of these

---

<sup>104</sup> *Id.*

<sup>105</sup> Carrie C. Boyd, *Expanding the Arsenal for Sentencing Environmental Crimes: Would Therapeutic Jurisprudence and Restorative Justice Work?*, 32 WM. & MARY ENVTL. L. & POL’Y REV. 483, 500 (2008).

<sup>106</sup> *Tort Actions for Cancer*, *supra* note 74, at 90.

<sup>107</sup> See *United States v. Thorn*, 317 F.3d 107, 115 (2d. Cir. 2003) (“[I]ndividuals who work with asbestos in unprotected circumstances under conditions where large concentrations of dust are present in their breathing zone have a very clear risk of developing asbestos-related disease...[there is] virtual certainty...[that] workers...[will develop] asbestos-related disease...”).

<sup>108</sup> *United States v. Grace*, No. CR 05-07-M-DWM, 2009 WL 5697923 (D. Mont. Feb. 27, 2009) (vacated) (involving a company contaminating the entire town of Libby, Montana with asbestos).

<sup>109</sup> Darren Bush, *Law and Economics of Restorative Justice: Why Restorative Justice Cannot and Should Not Be Solely About Restoration*, 2003 UTAH L. REV. 439, 458 (2003) (discussing that a fundamental principle of restorative justice is the restoration of the community).

difficulties, but what happens in cases that include victims who never realize they have been victimized? In these situations, perhaps the needs of the victims are different and they don't seek retribution or recognition by society. However, the stigma and moral condemnation criminal law uniquely provides could result in greater media attention and thus alert them to their own victimization. Whether this is beneficial is unclear, but at the very least it could provide the victim with the possibility of receiving compensation in some form.

Another issue with statistical victims, particularly with respect to restorative justice, is the possibility of victims serving in a representative capacity. When victims cannot be identified with any measure of certainty, participants in restorative justice programs would essentially act as representatives for the unidentifiable. For example, if there is no dispute that the release of asbestos is the sole cause of mesothelioma, but there is no way to tell which asbestos release caused a specific individual's mesothelioma when he is exposed to multiple releases by different companies. It would be entirely possible to have a company, convicted of releasing asbestos, to engage in a restorative justice dialogue with someone diagnosed with mesothelioma—but having the *actual* victim speak to the *actual* offender seems to be a key component of the restorative justice paradigm.<sup>110</sup> The use of representatives defines traditional criminal proceedings—the prosecutor represents the victim and society—the restorative justice model focuses on the individual as just that.<sup>111</sup> Here, the offender may benefit from having a face connected to his or her criminal actions, and would be further deterred from committing the crime again, but is there any benefit for the victim? One explanation is that those who choose to participate in the process may find meaning in meeting with offenders and would experience the same benefits as someone who is certain of the cause of their harm.

Additionally, when only a statistical probability of future victims exists, perhaps the lower burden of proof makes use of civil suits preferable. While there can be parallel civil and criminal proceedings, given the limited prosecutorial resources, utilization of

---

<sup>110</sup> Gabbay, *supra* note 35, at 463-65

<sup>111</sup> *Id.* at 463 (“[S]takeholders affected by crime should be allowed to participate in the public response to crime themselves, personally, and not through representatives.”).

civil remedies can both relieve some of the strain on the criminal system and satisfy victims' compensatory needs. Civil remedies are particularly appealing in the environmental context because, although restitution can go towards things such as medical expenses, lost wages, or damaged property, civil damages could cover a broader variety of expenses, such as pain and suffering.<sup>112</sup> Also, restitution in environmental crimes is limited under Title 18.<sup>113</sup> While Title 18 makes restitution mandatory for certain crimes, such as embezzlement or conspiracy,<sup>114</sup> restitution for environmental crimes is discretionary and must be a condition of probation.<sup>115</sup>

When the identity of victims is available only through statistical probabilities, prosecutors may need to focus on the benefits to society as a whole when deciding to bring criminal prosecutions. Although the benefits may still be available to this class of victims, they may not be as strong or as clearly obtainable. Moreover, monetary compensation may be more accessible via civil remedies. However, stakeholders—whether they are defined with certainty or not—should still be given an opportunity to participate in order to include those who feel compelled to be part of the proceedings. This can be accomplished by effectively providing notification and opportunity for comment for all interested parties.

### C. Non-conventional Victims or “Victimless” Crimes

Many environmental crimes involve the victimization of “non-conventional victims (non-human species, the environment and future generations).”<sup>116</sup> In 2014, the most commonly cited environmental charges were illegally taking fish and wildlife and taking, killing, or possessing migratory birds.<sup>117</sup> Moreover, almost half of the cases listed in the February 2015 Department of Justice Environmental Crime Monthly Bulletin were

---

<sup>112</sup> Shephard, *supra* note 76, at 804.

<sup>113</sup> Kris Dighe & Lanna Pettus, *Environmental Justice in the Context of Environmental Crimes*, ST036 ALI-CLE 41, 52. (2012).

<sup>114</sup> 18 U.S.C.A. § 3563(6)(a) (West 2008).

<sup>115</sup> 18 U.S.C.A. § 3563(b)(2) (West 2008).

<sup>116</sup> Eileen Skinnider, *supra* note 99, at 2.

<sup>117</sup> Daniel Bloom, *The Prosecutions of Environmental Crimes Drop Sharply*, CQ Rollcall, Sept. 22 2014, available at 2014 WL 4669759.

related to illegally taking wildlife.<sup>118</sup> In these instances, the victim isn't anyone particular; instead, the victim is the environment or society as a whole. It is hard to argue that the benefits discussed could apply to such a broad category. Arguably, some of the principles of restorative justice are still applicable, particularly the emphasis placed on the inclusion of the community in the healing process. For example, a community who enjoyed using a reservoir now polluted by intentional dumping may derive some benefits from confronting the polluters. Generally, though, restorative justice theories envision a victim and the community's involvement—not necessarily the community as the sole victim.

Additionally, using the community or society as a proxy for an individual victim raises concerns about impracticality of inclusion in the process, and seems to be in conflict with the definition of a victim under the CVRA: “a *person* directly and proximately harmed as the result of the commission of a Federal offense.”<sup>119</sup> Moreover, both criminal and civil enforcement government attorneys act as a representative for society at large—including society as a “victim” might be unduly burdensome or duplicative.<sup>120</sup>

Another challenge of including victims in the environmental crime process is that the statutes are structured in a way to allow prosecution for violations before anyone is harmed. As one scholar notes, “[t]he wording of the Clean Air Act, Clean Water Act and the Resource Conservation and Recovery Act is unique in federal enforcement because if you get caught, you can get charged anywhere along the line.”<sup>121</sup> Offenders can be

---

<sup>118</sup> *Monthly Bulletin*, Department of Justice Environmental Crimes Section, Jan. 2015 (February 2015), [http://www.justice.gov/enrd/Environmental\\_Crimes\\_Bulletin\\_January\\_2015.pdf](http://www.justice.gov/enrd/Environmental_Crimes_Bulletin_January_2015.pdf).

<sup>119</sup> 18 U.S.C. § 3771(e) (2004) (emphasis added).

<sup>120</sup> See e.g., Danielle Levine, *Public Wrongs and Private Rights: Limiting the Victim's Role in A System of Public Prosecution*, 104 NW. U. L. REV. 335, 337 (2010) (“A public prosecution system must consider all interested parties: the victim, the defendant, and society. Allowing a victim [too great of a role] has serious practical consequences in the criminal justice system: it may infringe upon the prosecutor's ethical duty to the accused, inhibit the effective handling of a case, and overemphasize retributive considerations.”).

<sup>121</sup> Graham Kates, *Environmental Crime: The Prosecution Gap*, THE CRIME REPORT, (July 14, 2014), <http://www.thecrimereport.org/news/inside-criminal-justice/2014-07-environmental-crime-the-prosecution-gap>.

prosecuted for reporting violations, or tampering with monitoring devices, without causing any sort of harm to the environment, much less any individual.

As such, in instances when society is a victim or the crime was truly “victimless”, government attorneys should utilize traditional considerations when deciding whether or not to bring criminal charges. The justifications for including the undefined or totally absent victim’s interest in these situations are not compelling.

### III. STATUS QUO

An examination of existing environmental law and policy illuminates the problems government attorneys often face when considering environmental crime victims’ rights. A major issue that plagues many environmental crime prosecutors is defining who is a victim. For example, as noted above, the CVRA defines a victim as someone who is “directly and proximately harmed” as the result of a federal crime.<sup>122</sup> In traditional criminal prosecutions, oftentimes discerning who has been directly and proximately harm poses no great obstacle.<sup>123</sup> However, in many environmental crime prosecutions, the answer is not as readily apparent.<sup>124</sup> According to one Department of Justice report:

Responding to victims harmed by environmental crime is beyond the current reach and capacity of most in the victim services field, due largely to a pervasive lack of data about victims and the defining characteristics of such crimes, as well as the long-term unfolding of evidence about the criminal nature of some environmental “accidents.”

Overall, agencies and courts have not provided definitive guidance with respect to victims’ interests in environmental crimes. This Section will look at the three types of environmental crimes victims discussed earlier: identifiable, statistical probabilities, and non-conventional victims, and examine the current law and policy.

---

<sup>122</sup> 18 U.S.C. § 3771(e) (2004).

<sup>123</sup> *United States v. Grace*, 597 F. Supp. 2d 1157, 1160 (D. Mont. 2009), vacated, *United States v. Grace*, No. CR 05-07-M-DWM, 2009 WL 5697923 (D. Mont. Feb. 27, 2009) [In drug cases, cases involving child pornography, and allegations of robbery of a credit union or bank, individuals harmed as a result of the commission of these offenses are not difficult to identify.]

<sup>124</sup> *Id.*



### A. Easily Identifiable Victims

In instances of easily identifiable crime victims, the case law and policy is relatively straightforward and comparable to traditional criminal law. Inclusion of such victims in criminal proceedings presents less of a challenge for government attorneys. For example, the Fifth Circuit announced its direct and proximate cause standard for easily identifiable victims in *U.S. v. CITGO*.<sup>125</sup> CITGO was convicted of knowingly operating a new stationary source, an oil water separator that emitted the hazardous air pollutant benzene, without an emission control device. The community members in the surrounding area complained of smelling a noxious odor that resulted in “symptoms such as burning eyes, bad taste in the mouth, nose burning, sore throat, skin rashes, shortness of breath, vomiting, dizziness, nausea, fatigue, and headaches.”<sup>126</sup> The district court initially concluded that the witnesses were not victims under the CVRA because they could not demonstrate a causal connection between their alleged injuries and the offenses for which CITGO was convicted. Thus, the district court granted the defendant’s motion to exclude them.<sup>127</sup> On re-hearing, the district court reversed and concluded the witnesses were victims under the CVRA and therefore entitled to deliver oral impact statements at sentencing, have impact statements included in the Probation Office’s reports, and submit a written sentencing memorandum focusing on restitution.<sup>128</sup> The standard the court announced was whether the individuals would have suffered the aforementioned symptoms, which the court concluded to be harms, if CITGO had proper emission controls.<sup>129</sup> This but-for causal analysis appears to work well for identifiable victims who were directly injured via the offender’s violation of an environmental statute. However, the burden still falls on the victim to demonstrate such harm. In *CITGO*, 300 residents

---

<sup>125</sup> *United States v. CITGO Petroleum Corp.*, 893 F. Supp. 2d 848 (S.D. Tex. 2012).

<sup>126</sup> *Id.* at 853.

<sup>127</sup> *Id.* at 850 (“Because many of the alleged victims were either elderly persons who struggled with a number of common ailments, had serious medical conditions, and/or admitted to smoking cigarettes, and because all the alleged victims also lived near a group of oil refineries in Corpus Christi, the Court concluded that the evidence offered could not establish that the alleged victims’ ailments were caused by [the violations] and not by one or more of these myriad of other factors.”).

<sup>128</sup> *Id.* at 854.

<sup>129</sup> *Id.* at 853.

exposed to the noxious fumes submitted victim impact statements to the Court under the CVRA. However, only fifteen were classified as victims and thus entitled to rights under the Act.<sup>130</sup>

Although defining who qualifies as a victim presents less of a challenge with respect to easily identifiable victims, questions about adequacy of harm in order to qualify as a victim present a significant challenge.<sup>131</sup> Case law involving embezzlement or fraud is similar to environmental crime in many respects and reveals a variety of approaches taken by the courts.<sup>132</sup> However, in the environmental context, there is little guidance in determining a sufficient level of harm to be considered a victim under the CVRA.

Despite some of these challenges, environmental prosecutors are eager to bring cases involving easily identifiable victims.<sup>133</sup> Professor Uhlman, an environmental prosecutor at the Justice Department who worked on *U.S. v. Elias*, described his experience as “rare.”<sup>134</sup> The case involved a twenty-year old man who was trapped in a storage tank at a fertilizer manufacturing plant and ultimately suffered permanent brain damage from cyanide exposure.<sup>135</sup> The owner of the facility did not disclose to firefighters that he had used the tank for a cyanide-leaching operation—resulting in the

---

<sup>130</sup> Kates, *supra* note 121 (“[The Court] basically said you are not a victim of environmental crime unless you can definitively show that you are harmed through exposure.”).

<sup>131</sup> Andrew Nash, *Victims by Definition*, 85 Wash. U.L. Rev. 1419, 1439 (2008).

<sup>132</sup> *Id.* at 1441 (“The Sixth Circuit’s interpretation is based on the premise that a party has suffered an injury, and thus qualifies as a victim, if there is a quantifiable, dollars-and-cents impact at the time of sentencing. In contrast, the Eleventh Circuit’s approach reflects a crime scene conception of victimhood: a party has suffered an injury, and thus qualifies as a victim, if an injury was identifiable at the moment when the crime occurred, notwithstanding later remedial developments.”).

<sup>133</sup> David M. Uhlmann, *Prosecutorial Discretion and Environmental Crime*, 38 Harv. Envtl. L. Rev. 159, 195 (2014) (“Cases involving significant environmental harm and public health effects often receive attention from investigators and prosecutors... Prosecutors also focus on these cases for a practical reason--they are more compelling for judges and juries. In white collar cases generally and environmental cases in particular, prosecutors worry that jury nullification may occur if they prove only the elements of the charged offenses without providing juries with a narrative that allows them to view the conduct as morally culpable.”).

<sup>134</sup> David M. Uhlmann, *Environmental Law, Public Health, and the Values Conundrum*, 3 Mich. J. Envtl. & ADMIN. L. 231, 232 (2014) (“I wanted to prosecute the case because of what had happened to Mr. Dominguez. Most environmental crimes are victimless crimes; this was the rare environmental crime where someone was badly injured.”).

<sup>135</sup> *Id.* (citing *United States v. Elias*, 269 F.3d 1003, 1007 (9th Cir.), as modified (Dec. 21, 2001), supplemented, 27 F. App’x 750 (9th Cir. 2001)).

young man being trapped for over an hour before he could be rescued.<sup>136</sup> Including victims' interests in cases like these would be simple; prosecutors would probably encourage their participation in order to tell a coherent story. The problem lies in the fact that cases in which there are easily identifiable victims "are more the exception than the rule in most environmental prosecutions."<sup>137</sup> This suggests that while the status quo can accommodate easily identifiable victims of environmental crimes, there may not be that many victims to include.<sup>138</sup>

### B. Victims Identified via Statistical Probabilities

Victims of environmental crimes who are identified via statistic probabilities present a greater challenge for government attorneys. The district court in *U.S. v. W.R. Grace* highlights two problems with respect to these types victims of environmental crimes identified: the statute of limitations and the definition of "victims" under the CVRA. The case involved mine operators who were charged with, among other things, knowing endangerment under the Clean Air Act in connection with the alleged release of vermiculite.<sup>139</sup> In response to the Court granting the defendant's motion to exclude lay witnesses, the government argued that some of the witnesses were victims and therefore afforded rights and protections under the CVRA.<sup>140</sup> The court held that the witnesses were not victims under the CVRA, and thus had no rights.<sup>141</sup> First, the court concluded, "If there are victims of the federal offenses the government alleges, they must have been imminently endangered after [the earliest date within the statute of limitations period]."<sup>142</sup> This is problematic, chiefly because victims may not feel the effects of environmental crimes, such as the release of asbestos, until decades after the incident occurs, thus running against the statute of limitations.

---

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 233.

<sup>138</sup> Uhlmann, *supra* note 133, at 197 ("The smallest subcategory [of prosecutions was] serious bodily injuries or deaths, which were caused by just under 2% of all defendants (17 defendants out of 864).").

<sup>139</sup> *United States v. Grace*, 597 F. Supp. 2d 1157, 1166 (D.Mont. 2009).

<sup>140</sup> *Id.* at 1158-59.

<sup>141</sup> *Id.* at 1166.

<sup>142</sup> *Id.* at 1164.

Moreover, the court concluded that victims of knowing endangerment are not “directly and proximately” harmed under the CVRA, and thus do not qualify as victims under the Act.<sup>143</sup> This conclusion poses even more challenges in the environmental crime context, as knowing endangerment prosecutions are relatively common in environmental crime prosecutions and identifiable victims are not always available.<sup>144</sup> On appeal, the Ninth Circuit vacated the district court’s opinion, requiring the lower court to make particularized findings with respect to each victim-witness. However, the district court’s reasoning still raises critical questions.<sup>145</sup>

Outside the environmental crime context, other courts have applied tort-like analysis by weighing factors, such as foreseeability and intervening causes, in determining whether an individual is a victim under the CVRA.<sup>146</sup> Such analysis may be useful in the environmental crime context when victims are only identifiable via statistical probabilities, as it leaves room for creative advocacy. Applied to a factual situation like *W.R. Grace*, the release of asbestos is arguably a foreseeable cause of a variety of ills, so those exposed could be classified as victims under the CVRA.<sup>147</sup> Moreover, tort law allows for several other causal test alternatives, such as aggregate causation.<sup>148</sup> Such alternatives would make it even easier for victims of environmental crimes to garner rights under statutes such as the CVRA. But, as the Supreme Court

---

<sup>143</sup> *Id.* at 1165. (“[A] victim of the offense is another person exposed to an imminent risk of harm. The Criminal Victim’s Rights Act, on the other hand, defines a crime victim as “a person directly and proximately harmed. . . .” Count III seems to allege that the sale of the property exposed the Parker family to an imminent risk of harm. It does not allege the Parkers were directly and proximately harmed as the result of the commission of the offense of knowing endangerment.”).

<sup>144</sup> See discussion *infra* Part IV.

<sup>145</sup> *In re Parker*, 2009 WL 5609734, at \*1 (9th Cir. Feb. 27, 2009) (“ The district court erred in denying petitioners’ motions to accord rights to victim-witnesses based on its finding that the 34 victim-witnesses identified by the United States as prospective victims do not meet the meaning of “crime victim” set forth in the Crime Victims’ Rights Act.”).

<sup>146</sup> *In re Antrobus*, 519 F.3d 1123, 1125 (10th Cir. 2008) (holding that a murder victim’s parents were not a victim under the CVRA because the conviction, transferring a handgun to a juvenile, was not directly related to the murder of their daughter).

<sup>147</sup> *Asbestos Health Risks*, EPA, <http://www2.epa.gov/region8/asbestos-health-risks> (last accessed February 20<sup>th</sup>, 2015) (listing the risks of asbestos exposure including asbestosis, lung cancer, and mesothelioma).

<sup>148</sup> See generally *Paroline v. United States*, 134 S. Ct. 1710 (2014) (discussing the application of tort law causal analysis in the context of restitution under the CVRA). See also §2.03 Model Penal Code (stating conduct is the cause of a result when it is the actual *and* proximate cause).

notes, “[Alternative causal tests] should not be adopted in an incautious manner in the context of criminal restitution, which differs from tort law in numerous respects.”<sup>149</sup>

Examination of the Federal Sentencing Guidelines also reveals challenges government attorneys face when defining who is a victim. The Guidelines imposes additional penalties when there are aggravating factors involving victims; however, it fails to define victim in any certain terms.<sup>150</sup> Some courts have required that the offense be a proximate cause of the injury in order to qualify as a victim, some have held that the injury need not be foreseeable, while others have held that the Guidelines allowed for the consideration of both direct and indirect victims as long they had some nexus or proximity to the offense.<sup>151</sup> With respect to victims identified via statistical probabilities, broader tests would allow for more victims to garner rights under statutes like the CVRA or the Guidelines—however, in the environmental context no clear guidance has been provided.

### C. Non-conventional Victims or Victimless Crimes

Even less guidance exists when the victim of the crime is non-conventional, or the offense results in a “victimless” crime. Indeed, considering anything other than the specific individual(s) harmed by an environmental offense seems to directly contradict the CVRA’s use of the word “person” when defining who is a victim. Perhaps a proxy for considering the interests of the victims is the fact that the Department of Justice, the Environmental Protection Agency, and other local environmental investigative units consider the potential for harm or death. As noted above, among the factors the Department of Justice considers when deciding whether or not to bring criminal environmental prosecutions is “the nature and seriousness of the offense.”<sup>152</sup> Similarly, the Environmental Protection Agency automatically considers threat to human health a

---

<sup>149</sup> *Id.* at 1714.

<sup>150</sup> Nash, *supra* note 131, at 1435-37.

<sup>151</sup> *Id.* at 1445 (citing *U.S. v. Terry*, 142 F.3d 702 (4th Cir. 1998); *U.S. v. Mitchell*, 366 F.3d 376 (5th Cir. 2004); *U.S. v. Morehouse*, 345 F. Supp. 2d 3 (D. Me. 2004).

<sup>152</sup> U.S. Atty’s Manual, *supra* at note 2.

Tier-1 violation, and thus more likely to involve criminal prosecution.<sup>153</sup> Moreover, evidence suggests that local investigators are fully cognizant of the impact environmental crimes have on individuals.<sup>154</sup>

[Y]ou've got something that's very insidious. You got something that is out there and the only difference between a major violator in the environmental area and the current murderer, or rapist, or robber is the impact of what they do. In order to commit a homicide in the state of California a person has to die within a year from the results of the injury or [precipitating] event. In environmental crime, a person may well die, but it's probably not going to be within that one year from an exposure from a contamination from a working environment, which is really a criminally negligent occurrence. Something that somebody deliberately made the decision to continue, a particular practice which is illegal because it's been found to be detrimental to people's health as well as to the environment, as well as to everything around.

Although the benefits for the victims, espoused earlier, clearly are not present here, it may be that the consideration of the impacts on individuals and seeking justice through traditional prosecutorial means is the best solution when there are non-conventional or “victimless” victims of environmental crimes.

#### IV. RECOMMENDATIONS

Over the past several decades, the traditional criminal law has placed emphasis on the importance of victims' rights. Criminal prosecutions of environmental crimes should follow this trend by incorporating victim concerns into factors prosecutors consider when bringing criminal charges. My chief recommendation is simply to include victims' interests as another factor to consider when deciding whether or not to bring criminal prosecutions for environmental offenses. Part II and Part III, *supra*, outline how those factors should be weighed, specifically with respect to the identity of the victim. Second, I recommend that revised legislation and policy can be utilized to include victims who

---

<sup>153</sup> Environmental Protection Agency, *Criminal Enforcement Program* (Oct. 2011).

<sup>154</sup> Michael L. Benson, *Investigating Corporate Crime: Local Responses to Fraud And Environmental Offenses*, 28 W. St. U. L. Rev. 87, 112 (2001) (quoting an investigator from the Los Angeles Police Department's Hazardous Materials Unit).

deserve, or seek, inclusion in the criminal process—but otherwise are barred from participation because of narrow definitions of victims. Finally, I suggest what victim inclusion in the environmental crimes process might look like.

First, as discussed, there are numerous benefits that victims of environmental crimes might receive if they participated in the criminal prosecution process. The availability of these benefits is limited by the identification of the victim. Easily identifiable victims of environmental crimes are very similar to traditional crime victims, and thus benefit the most from inclusion in the criminal process. Easily identifiable victims' interests should weigh heavily in a government attorney's decision whether or not to bring criminal charges for environmental violations. It is less clear that environmental crime victims identified via statistical probabilities have the same benefits available to them. However, the fact that some of these victims seek to participate in the process may serve as a proxy for this determination. Government attorneys should provide notice to statistically probable victims about any proceedings, allow for comment in order to understand these victims' interests, and weigh these considerations against other factors, already listed, when deciding whether or not to bring criminal charges.

In instances where the victim is non-conventional, or the environmental offense is truly "victimless," government attorneys should perhaps consider the benefits of community participation, but ultimately should weigh other competing factors more heavily when determining whether or not to pursue a criminal case. Limiting the participation for these non-conventional victims makes sense for a number of reasons, particularly because of the importance of conserving limited prosecutorial and judicial resources.<sup>155</sup> In order to reinforce the important of weighing victims' interests, the Department of Justice and Environmental Protection Agency should revise its criminal enforcement policy considerations to include factors such as a victim's potential benefits received, victim's preference, and victim's interest/need for compensation.

---

<sup>155</sup> See Atkins, *supra* note 97, at 1649-50 ("Difficulty in identifying who qualifies as a victim in turn results in significant delays in the prosecution. Mini-trials must be held to decide who qualifies as a victim under the CVRA, placing a substantial financial and time burden on the DOJ.").

Second, while the Crime Victim's Rights Act doesn't explicitly exclude victims of non-violent crimes, the Act should be redrafted to unambiguously include non-traditional crime victims. Arguments that support the victim's rights for traditional violent crime victims apply equally to victims of non-traditional crimes.<sup>156</sup> Congress could express its intention to include victims of environmental crimes by simply adding a few words to its definition of crime victim: a person . . . harmed as a result of the commission of a Federal offense, *including, but not limited to, environmental crimes*.<sup>157</sup> Such language would signal the significance of victim interests in all federal criminal prosecutions to agency heads, government attorneys, and judges. Although the CVRA has already been utilized in environmental crime proceedings, expressly including victims of environmental crimes in the Act's definition of a victim will strengthen the legitimacy of environmental crime victims' rights.

Finally, policy should be drafted to clearly outline what environmental crime victim participation entails. Some Courts have held that the CVRA's "right to be reasonably heard" includes the right to speak.<sup>158</sup> Given that the potential number of victims of environmental crimes can exceed several thousands, allowing each individual to speak might unduly burden the courts and judicial resources. The CVRA allows judges

---

<sup>156</sup> Julie Kaster, *The Voices of Victims: Debating the Appropriate Role of Fraud Victim Allocation Under the Crime Victims' Rights Act*, 94 Minn. L. Rev. 1682, 1699 (2010) ("Victim allocation provides information to the sentencer, benefits the victim by providing an outlet for anger and grief, gives the defendant an opportunity to understand the impact of his crime, and improves society's perception of sentencing. Additionally, allocation is a tool to (1) empower the victim, (2) educate the defendant, and (3) inform the court. These arguments for a victim's right to allocation apply just as forcefully to fraud victims as to victims of violent crimes."); *see also* Jayne Barnard, *supra* note 34, at 57-58 ("The existing limitation [on non-violent crimes] may be a function of legislative triage (in which those victims whose circumstances seemed most compelling--or whose advocacy was the most politically appealing-- were addressed first). Or, it may be a matter of resource conservation. (Barely 5% of federal prosecutions involve violent crimes.)... In short, there is no obvious correlation between the fact of violence and the fact (or magnitude) of social harm. It therefore does not make sense to have a rule governing sentencing procedures in felony cases involving physical violence that differs in significant ways from the rule governing sentencing procedures in non-violent felony cases.").

<sup>157</sup> Other statutory offenses should also be included in this list.

<sup>158</sup> Judson W. Starr, et. al, *A New Intersection: Environmental Crimes and Victims' Rights*, NAT. RESOURCES & ENV'T, at 48 (Winter 2009) ("The Third and Ninth Circuits have held that the right to be heard confers on the victim a right to speak at any proceeding described in this provision of the CVRA....[One] district court held that the "right to be reasonably heard" not only refers to a right to speak in open court but also to the fact that the right is "mandatory" and not subject to the discretion of the court.").



to fashion reasonable procedures when the number of victims is impractical,<sup>159</sup> but there should be more specificity in order to ensure victims are entitled to the maximum benefits inclusion in the criminal process allows. When there are an “impractical” number of victims, thus preventing each individual from speaking, written victim impact testimony may be the best solution. Written victim impact statements are less costly and less time consuming, but can provide victim satisfaction by allowing cathartic release and official recognition by the courts.<sup>160</sup>

## V. CONCLUSION

While the role of the victim has gained increasing attention in traditional criminal law, the role of the victim in environmental crime has remained relatively undervalued. Because victims of environmental crimes are similar to victims of traditional crimes in many respects, they are entitled to equal consideration. Government attorneys should factor in victims’ interests when deciding whether or not to bring criminal charges for environmental offenses, making special considerations based on the type of victim involved. The Department of Justice and Environmental Protection Agency should draft policy to reflect the importance attached to victims of environmental crimes.

---

<sup>159</sup> 18 U.S.C. § 3771(d)(2) (2004).

<sup>160</sup> Barnard, *supra* note 34, at 74-75 (citing one study that suggests “62% of the victims given the opportunity to present an oral victim impact statement were satisfied with their experience with the criminal justice system, while 66% of the victims given the opportunity to present a written victim impact statement reported satisfaction.” (*Impact Statements: A Victim’s Right To Speak, A Nation’s Responsibility To Listen* (Ellen K. Alexander & Janice Harris Lord eds., 1994), available at [https://www.ncjrs.gov/ovc\\_archives/reports/impact/welcome.html](https://www.ncjrs.gov/ovc_archives/reports/impact/welcome.html)).

