

Symposium on Economic Crime – What do Victims Want?

Prospective of Crime Victims Stakeholders

Victims Advisory Group

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What do victims want? One size does not fit all.

- ▶ 18 U.S.C. 3553 factors

- ▶ Victims may want the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just **punishment** for the offense;

(B) to afford adequate **deterrence** to criminal conduct;

(C) to **protect** the public from further crimes of the defendant; and


(D) to provide the defendant with **rehabilitation** so others do not become a victim.

(7) the need to provide **restitution** to any victims of the offense.

What do victims want? One size does not fit all.

Restorative justice

- Victims want their views to be considered (not ignored)
- Make the victim whole
- Meaningful consequences to the offender
- Restitution helps restore the harm caused by the offender; Restitution is not just punishment to offender; Makes offender better understand the consequences of the crime; It is rehabilitative.



If there were only two options - Restitution Paid (Restorative) v. Jail Time (Punishment) – How to decide?

➔ What do victims want? – Some possibilities
e.g. –Both – Restitution and Incarceration

Priority of Restitution

Priority of Incarceration

How does court balance restitution v. incarceration?

Does a court know individual victim's position on restitution v. incarceration?

What weight does or should a court give to a victim's position?

Some Economic Crime is Not Prosecuted

What do victims want?: Some victims may want crime prosecuted, others may not. While victims may have some rights, they are not parties and they cannot control whether a case is prosecuted or how a case is charged and prosecuted.

Some factors to consider:

- ➔ Defendant may not be identified or apprehended
- ➔ Victim(s) may not report/cooperate (e.g. Industry feels theft is a cost of doing business which is passed on to consumers; embarrassment.)
- ➔ Dollar thresholds by U.S. Attorneys

Some persons who are truly victims may not be considered as legal victims – Some victims want to be victims

- Guidelines should count actual victims if substantial harm occurs
- Victim definition needs to encompass more than financial loss, but other harms for the offense

e.g. – Bank Fraud – there is one victim and that is the bank

- Mortgage scam where individuals suffered monetary and non-monetary harm
 - Refinance charges
 - Higher interest rates
 - Used savings/retirement accounts/credit card
 - Lost equity/Lost homes
 - Depression/mental health consequences/medical costs
 - Credit problems



Some victims feel that the amount of loss is important to harm, but it is not an exclusive factor that should be considered

Consider a \$1 million dollar loss and the following three examples. Is the harm in each example the same? If not, which example has the greatest harm?

- Defendant steals \$1 million from a billionaire
- Defendant steals \$1 dollar from 1 million individuals
- Defendant steals \$100,000 from each of 10 retired individuals depleting each victims life savings, destroying each victim's credit, and making each victim homeless

In each case, the defendant may have gained \$1 million dollars, but the impact of the harm is different.

Some victims want to know why harm to them is not considered.
e.g. Departure Considerations

(A) There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether an upward departure is warranted:

- A primary objective of the offense was an aggravating, non-monetary objective. For example, a primary objective of the offense was to inflict emotional harm.
- **The offense caused or risked substantial non-monetary harm.** For example, the offense caused physical harm, psychological harm, or severe emotional trauma, or resulted in a substantial invasion of a privacy interest (through, for example, the theft of personal information such as medical, educational, or financial records).
- (vi) ***In a case involving access devices or unlawfully produced or unlawfully obtained means of identification:***

The offense caused **substantial harm to the victim's reputation or credit record, or the victim suffered a substantial inconvenience related to repairing the victim's reputation or a damaged credit record.**

Why is harm to reputation or credit for identity theft a departure factor, but not for other crimes where the same damages occur to victims?

Restitution(R)/Fine(F) Tables 15/51 – Fiscal Year 2012 – Victims want to know why they did not receive restitution

Primary Offense	T	No F or R		Only R		Only F		Both F and R		No R	
		N	%	N	%	N	%	N	%	N	%
Larceny	1,396	184	13.2	858	61.5	234	16.8	120	8.6	n 418	30.0
Fraud(I)	8,627	2,273	26.3	5,493	63.7	494	5.7	367	4.3	2,767	31.0
Fraud(O)	26	3	11.5	10	38.5	8	30.8	5	19.2	11	42.3
Embezzlement	325	21	6.5	255	78.5	21	6.5	28	8.6	42	13.0
Forgery/ Counterfeiting	876	275	31.5	520	59.4	48	5.5	33	3.8	323	37.0

Victims want to know why there is not a linkage of restitution to consequences

- ▶ Acceptance of responsibility type reduction or downward departure for full or substantial restitution payment(s) prior to sentencing
- ▶ Obstruction of justice type increase or upward departure for hiding or dissipating assets
- ▶ Data to show restitution collected (Not just what was ordered)
- ▶ Data to show violations of supervised release and probation for failure to pay restitution
- ▶ Data to compare incarceration length, supervised release length, probation length, etc. compared to whether restitution being ordered or not ordered as well as collected or not collected

Victims want to know how restitution can become a reality

- ▶ Number of identifiable victims so large as to make restitution impracticable
- ▶ Too complicate or calculation would prolong the sentencing process

A defendant who did more harm than another defendant may not pay restitution. Not a good policy result.

- ▶ Go out and make it complicated so the court doesn't order restitution and the defendant can keep the proceeds of the crime

It is restitution that is collected that is important.

Pennsylvania Restitution Report –

http://www.pachiefprobationofficers.org/docs/Restitution%20Taskforce_Final%20Report%200713.pdf

Hawaii – Justice reinvestment - <http://csgjusticecenter.org/jr/hi/>

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