

Criminal conduct has many costs, some of which are obvious and some of which are not. Certainly, most people are generally aware of the economic cost of criminality to society. The mere monetary cost of operating our criminal justice and penal institutions is staggering. It is disheartening to contemplate the good that could be accomplished with those

resources if they were devoted to other needs or left in the hands of taxpayers.

We are also keenly aware of the economic and emotional impact of criminal conduct on the victims of crime. Our legitimate concern for these victims has been enshrined in our constitution as follows:

*It is the unequivocal intention of the People of the State of*

*California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.* [Cal. Const. art. 1, sec. 28]

In recent years California courts have made huge strides in effectively implementing this policy by imposing upon those convicted of crimes an enforceable obligation to make

restitution to those injured by their conduct (see *California Penal Code* § 1202.4). For example, during the period from July 1, 1998, through June 30, 1999, restitution payments to crime victims in Orange County alone exceeded \$3 million. Significantly, these payments do not come from the public fisc, but rather from restitution orders imposed on the actual offender or from



the restitution fund, which is underwritten by restitution fines imposed upon virtually every person convicted of a misdemeanor or felony.

Our systems are less capable, however, of offering redress for the emotional impact of crime on its victims. Tragically, many of the direct consequences of criminal conduct cannot be remedied by writing out a check. Our human insti-

result he received several hundred dollars in welfare benefits to which he was not entitled. Because the amount exceeded \$400, the district attorney was prosecuting the case as a felony under *Welfare & Institutions Code* § 10980. The potential consequences to Mr. Bradshaw of any felony conviction: 25 years to life in state prison. The potential consequences to Tarah: unimaginable.

of his church. Many of his supporters had submitted letters describing Mr. Bradshaw's current life and his complete devotion to his young children. His attorney also gave a persuasive plea in his behalf. But the most indelible memory of that case is not the packed courtroom or the eloquent argument. Rather, it is the letter submitted to me by nine-year-old Tarah. It read:

also reminds me of the unseen victims present in virtually every case. Tarah had very little in the way of material things, but she did have that which meant the most to her—her family. And now, her father's criminal conduct was threatening to take that from her too.

Ironically, the law does not consider Tarah to be a victim. *Penal Code* § 1202.4(k) defines a "victim" as a person or entity

# THE HIDDEN VICTIMS

by Clay M. Smith

*This article was published in the March 2000 issue of the Orange County Lawyer.*

tutions simply do not have the power to turn back the hands of time and restore the loss of a loved one, a battered body or psyche, or even a sense of security and well-being.

There is, however, another and less apparent category of "victims." This is a group upon which the cost of crime also lands with both feet. These victims are the innocent children, spouses, and other family members of criminals. A case I recently handled illustrates my point.

The case was *People v. Bradshaw*. Mr. Bradshaw was a single father working to support himself and his children, one of whom was a nine-year-old daughter named Tarah. At some point in his distant past he had suffered two felony convictions for serious or violent crimes. In other words, Mr. Bradshaw had two "strikes." In the current case, Mr. Bradshaw, who was receiving public assistance, had found a part-time, temporary job and did not report the income to the county welfare officials. As a

Shortly after Mr. Bradshaw's arraignment, a bail review hearing was held. Mr. Bradshaw was seeking an own-recognizance release so he could work and care for his children. His goal was to make reimbursement and attempt to persuade the district attorney to reduce the charge to a misdemeanor. The district attorney opposed such a release, because Mr. Bradshaw was technically a three-strikes defendant. The stakes at that hearing seemed remarkably higher than most bail review hearings. If released, Mr. Bradshaw might be able to make restitution, and if so, it would not be uncommon for the district attorney to reduce the charge to a misdemeanor, thereby eliminating three-strikes exposure. On the other hand, it would be extraordinary to release a three-strikes defendant on his own recognizance.

At the hearing, the courtroom was literally full of supporters of Mr. Bradshaw, many of whom were fellow members

*My father has been gone for over a week and I miss him dearly. I am nine and I have been living with my father for four years now and they have been the best years of my life. He helps me with my homework and we say the Lord's prayer before I go to bed. My father is a great father and I love him very much. My dad is a handsome man and I miss him sitting next to me and saying I love you Tarah and never forget that and he would say you're always with me in my heart. Please let my father come back please because I do not want this family to fall apart. I'm starting to feel really lonely without my dad being around. Did you take my dad because he had to pay rent for us? I am writing this letter because he means a lot to me. I hope you understand this letter. I really hope you do. PLEASE let my dad come back HOME.*

I occasionally take a copy of this letter out of a file and read it. I read it to remind myself of just how much fathers mean to daughters, mothers mean to sons, and so on. But it

that is a "direct victim of a crime." The statutory requirement that the person be a "direct" victim has been interpreted to mean that the person (or entity) must be the "object of a crime" (*People v. Valdez*, 24 Cal. App. 4th 1194 [1994]). Thus, while an insurance company (*People v. Foster*, 14 Cal. App. 4th 939 [1993]) or a governmental agency (*People v. Crow*, 6 Cal. App. 4th 952 [1993]) can be deemed a victim and entitled to restitution, Tarah cannot because she was not the object of the crime.

My purpose here is not to suggest that the laws pertaining to restitution be broadened to allow an offender's family to be compensated from the restitution fund, but rather to point out that there are often (or perhaps always) hidden victims of crime. They too are worthy of our concern.

*Clay M. Smith is a judge of the Superior Court of California, Orange County. His articles are frequently published in the Orange County Lawyer.*