VICTIM INFORMATION AND THE CRIMINAL JUSTICE SYSTEM: ADVERSARIAL OR TECHNOCRATIC REFORM?

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CHAPTER 1: THE RETURN OF THE VICTIM

1. The Cinderella Victim Goes To The Ball

In 1960, Schafer described the victim as the Cinderella of the criminal justice system (1960: 8). However, as we know, Cinderellas ultimately become princesses. The plight of victims now occupies a central place in the critique of the criminal justice system by both the Left and the Right.[1] "What about the victim?" has been the Right's catchcry for the extension of police powers and introduction of more punitive sentencing regimes[2] (Smith and Huff, 1992: 213; Corns, 1990: 116). But victims have also become important for the Left. Evidence of victimisation of the working class in urban areas, for example, was the catalyst for the reassessment of the political agenda of Left Realists (Brown and Hogg, 1992: 199-201)[3] and the need to accommodate victims has also underscored much of the critique of formal justice processes by Abolitionists (Christie, 1981: 93-98).[4]

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[1] As a practical illustration of this, see the debates on the Victorian *Sentencing (Victim Impact Statement) Bill*: Victoria. Legislative Assembly (1994: 778-9, 977-9, 992-1013, 1018-48); Victoria. Legislative Council (1994: 318-9, 437-52). While some ALP speakers were ambivalent towards the bill, fearing that it might encourage retributive sentencing and distract attention from doing something about the "real causes" of crime, even ALP speakers seemed to consider that sentences sometimes failed to reflect the severity of the impact of crimes on victims. Moreover the only matter which the ALP wished to change was the Bill's provision for cross-examination of the makers of VIS.

[2] Some victimologists however have cautioned that harsher penalties, introduced under the banner of "victims' rights" may be counterproductive and do not necessarily improve the lot of victims (Yasurat, 1989: 241).

[3] Note, however, the concerns of Brown and Hogg (1992: 219) to reorient the debate about the needs of victims. Discussing crime victim surveys, they write:

> Some, including a small sample, victim survey in inner-suburban Sydney currently being conducted by a research team including the authors, will be more explicitly concerned to connect fear of crime to the local social and economic organisation of particular communities and the quality of the local environment, as well as attempting to reconstitute the growing debate over the needs of victims of crime away from individual responses and towards the social structural aspects of victimisation.

[4] Christie's claim the conflicts are 'stolen' from the victim by the state is surely hyperbole. It is rank heresy in the context of family violence - a field in which the State is an extremely tentative thief and where those conflicts of which it is seized are typically thrust

Political activism by victim groups, supported by empirical research, highlighted the practical and personal needs of victims of crime. The response has been the development of specialist services, such as counselling, victim support schemes[5] and the provision of "no fault" State-funded crimes compensation schemes (e.g. Grabosky, 1989: 25; Sumner, 1987: 197).[6]

It is the formal processes of the criminal justice system which have been most vulnerable to critique from the perspective of victims. The experience of the majority of victims is that they are largely "forgotten or abandoned" in the process (Erez, 1991). They perceive the criminal justice system as alienating and frustrating (Shapland, Willmore and Duff, 1985). Victims face a variety of problems. In those cases which go to trial, victims may well be placed in a position in which they may feel that their interests are largely subordinated to those of the defendant. The strict onus of proof which lies on the prosecution means that factually guilty defendants must periodically be acquitted, even in face of incriminating evidence from their victims. Victims may be required to submit to gruelling cross-examination, while the defendant is not required to reciprocate. The devastating effect of these procedures in rape cases is now notorious, but it is not only rape victims who find

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upon it rather than grabbed. However, Christie was writing at a time when the progressive criminological agenda was differently constituted, and his real complaint seems to be that the State refuses to provide a public forum for a no-holds-barred debate between the victim and the offender about the merits of the incident in question. Perhaps VIS could help contribute to the performance of this function.

[5] Some of these schemes are designed for special categories of victims, e.g. the CASA centres to meet the needs of victims of sexual assault while others are more universal and provide support and assistance to victims, their relatives (and offenders) assisting them through their involvement with the criminal justice system (e.g. the Victorian Court Networking Service is a State-funded voluntary organisation which is increasingly moving into provision of specialist services for victims of crime and their families.

[6] The *Criminal Injuries Compensation Act* 1983 awards compensation on the basis of expenses incurred, pecuniary loss (through total or partial incapacity for work, as well as some limited amount for pain and suffering. The current cap on award of damages is $50,000 for expenses and incapacity and $20,000 for pain and suffering. The maximum award therefore is $120,000 with 81 per cent of awards being for less than $7,500. The average totalling $6,353 in 1990-1991 (Crimes Compensation Tribunal 1991). Such compensation schemes have been criticised as being inadequate (Mawby and Gill, 1987; McShane and Williams, 1992) and they are often only available at considerable time after the crime has occurred (Grabosky, 1989).

criminal trials unpleasant (Brereton, 1994). The net effect is "secondary victimisation" for victims of crime (Greenberg and Ruback, 1985: 611).

There has been some recognition of the legitimate concerns of the victim - especially in relation to rape trials. This has led to the development of alternative procedures, such as restrictions on the nature and extent of cross-examination of victims of sexual assault, the use of technology for presentation of victim evidence without the need for direct eye contact between victim and the alleged offender, as well as development of abbreviated procedural mechanisms for limiting the tactical and strategic manipulations of criminal justice procedure to intimidate or dissuade victims from giving evidence.[7] These reforms, however, are of little assistance to the majority of victims since most cases are resolved by plea rather than contest: more than 70% in the Higher Courts, and more than 90% in the lower courts. In uncontested cases, the victim faces a rather different problem: neglect.

For centuries, the criminal justice system has been predicated upon the assumption that crime was largely a matter between the State and the defendant. Criminal justice procedures were designed specifically to have the State "take over" and eliminate the victim thereby allegedly avoiding the blood feuds and the need for private remedies pursued by the victim and/or his or her family (Baker, 1971: 4; Pointing and Maguire, 1988: 10). Victims are meant to be content with a "rational" system of punishment with "objective" rules of evidence and formal constraints on any abuse by the power of the State. As good citizens, victims are

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[7] The *Crimes Sexual Offences Act* 1991 amended a number of Acts including the *Crimes Act* 1958 and the *Evidence Act* 1958. Procedurally it forbade judges from suggesting to jurors that complainants in sexual cases constituted an unreliable class of witnesses, and required that in the event of a complainant's delay in reporting a sexual offence being drawn attention to in the course of a trial, the judge was to warn the jury that delay did not necessarily make the allegations false and that the might well be good reason for the delay. The Act also amended the *Evidence Act* to facilitate the giving of evidence by people aged less than 18 and people with impaired mental functioning, and forbade judges from suggesting to jurors that the law regarded such people as an unreliable class of witness. The *Evidence Act* amendments extended to cover both sexual offence cases and indictable assault cases. The Act also forbade the identification of victims in sexual offence cases, except in a restricted range of circumstances, and provided for closing Court proceedings to the public in certain situations.

meant to accept a system which has deprived them the right to use the Criminal Justice system to offset the hurt and injury they have suffered and a process in which they take no part (Mawby and Gill, 1987: 36).[8]

Victims' alienation from the criminal justice system in recent times may have been further exacerbated by the shift from adversarial practice to a new ideology of "technocratic" justice (O'Malley, 1984).

> Under the double impact of increasing demand for services and limited fiscal and organisational resources, the administration of justice is rationalised. Courts are changing from professionally and collegially controlled, semi-feudal domains of judges, to modern business-like, administrative agencies concerned with speed, efficiency, productivity, simplification and cost-effectiveness in the delivery of services (Heydebrand and Seron, 1990: 3).

Technocratic justice is in some ways a response to the expansion of defendants' rights. As the procedural rights of defendants have expanded, the costs of running the judicial system have increased.[9] The advantage of technocratic justice is that it supports mechanisms which reduce defendants' capacity to assert their rights and which eliminate the need for recourse to adversarial justice's truth certifying procedure - trial by jury. Defendants are persuaded through a mixture of coercive and subtle mechanisms to plead guilty where the only matter

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[8] One reason for this is that victims do, of course, have the right to use the civil justice system as an avenue for seeking redress - and in many ways this system is far superior from the victim's standpoint. Burdens of proof are relaxed and defendants enjoy few of the protections enjoyed by criminal defendants (they are, for example, often under a positive duty to incriminate themselves in the course of the discovery and interrogation processes). However, civil actions normally make sense only when the defendant is worth suing - and the typical criminal defendant enjoys that most powerful of defences to a civil claim: poverty. (This is probably because victims of affluent defendants will often find the civil system sufficient and forebear from mobilising its less efficient alternative).

[9] More defendants have been able to plead not guilty, and trials have become longer as increasing resources have been made available for the defence of the indigent. Greater protection of the rights of defendants has probably increased the potential complexity of cases, by providing an increased range of defences. In the light of this, and in the light of the growing fiscal crisis of the legal aid agencies and the growing willingness of states to rejoice in their inability to fund state activities, states have explored a variety of means of discouraging the over-exercise of legal rights.

required to be determined is the appropriate sentence.

In one sense, technocratic justice might be expected to assist victims: it saves them from the unpleasantness of having to participate in trials. However, this advantage comes at a price: the victim becomes redundant. For victims, technocratic justice means that the system no longer requires their assistance beyond the reporting of the crime (Christie, 1977: 3; Abrahamson, 1985: 523). Cases have become "units" to be processed as expeditiously as possible. If victim involvement in any part of the process interferes with the dictates of efficient case-flow, it is likely to encounter considerable resistance.

The evidence of the force of technocratic ideology can be seen at all levels of the justice system. At Commonwealth and State level, sentencing laws have been explicitly developed to penalise those who are convicted after having pleaded not guilty - and even those who postpone their decision to plead guilty.[10] Higher courts are succumbing to pressure to improve their productivity (Sallman and Church, 1991; Shorter Trials Committee, 1985) but the most noticeable influence of the new ideology can be seen in the courts of summary jurisdiction which handle about 95 per cent of the work of the criminal jurisdiction.

2. Technocratic Reform of the Summary Jurisdiction: Victims of Efficiency?

In the last decade, Magistrates' Courts whose basic features had remained unchanged since their establishment in the mid-19th century was suddenly required to become "fair, economical and speedy" (Pegasus Task-Force Report, 1992: 9). Managerialist concerns have seen radical "technocratic" reform of the summary jurisdiction in its administration, procedure and personnel (Douglas and Laster, 1992).[11] However the most effective

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[10] Oddly enough, in the US, the land of the plea bargain, statutory sentencing schemes treat plea as a variable which may not be taken into account in the determination of sentence. However since statutory sentencing schemes often require that sentence be related to finely specified measures of charge seriousness, plea can be rewarded after all: by the prosecutor who determines the charge, and thereby, in effect, the sentence.

[11] Some of these have been explicitly aimed at discouraging not guilty pleas, and at rewarding those who indicate at an early stage of proceedings their intention to plead guilty: *Sentencing Act* 1991, s 5(2)(e) and its predecessor: the *Penalties and Sentencing Act* 1985,

innovation has come about through the seemingly innocuous change to the courts listing practice to provide an expedited procedure for the hearing of guilty pleas. The procedure known as the "Mention Court" allows defendants who intend to plead guilty to "appear" with their legal representatives (if any) on a nominated Mention court day for the quick disposal of their case through the imposition of a sentence. This proceeds on the basis of a short summary of the facts prepared by the police informant in the case and read out by the police prosecutor to the magistrate prior to sentence. In a typical case the entire process takes between 3.5 and 5 minutes (Bartholomew, 1991; Victorian Sentencing Committee, 1988).[12] The small number of defendants who wish to contest the police case (or whose cases involve complex sentencing issues) are set a future hearing date based on the anticipated time required for dealing with the matter.[13]

The Mention Court system replaced slow and cumbersome court practices which had required police informants, witnesses and defendants to attend court on a specified day and wait until the magistrate worked his way through the court list. Consistent with adversarial theory, there was no requirement for defendants to declare how they would plead in advance (although some did so in order to avoid orders that they pay witnesses' costs). As a result, all parties and witnesses (including victims) would normally need to attend so that the magistrate could ascertain "truth" after a full testing of the evidence in open court.[14]

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[12] A study prior to the introduction of the Mention court, recorded an average of 15 minutes for the hearing of a guilty plea (Douglas, 1988: 283).

[13] One effect of this is to raise the costs to defendants of pleading not guilty. A not guilty plea (unlike a guilty plea) requires a second appearance, and sometimes several subsequent appearances, since contests scheduled for a particular day do not always "get on" on the day for which they have been scheduled. This may be costly for defendants in terms of time, and in terms of the stress associated with uncertainty as to their fate. It may well be because of the mention system that the rate of not guilty pleading among defendants has declined sharply as compared with the position 10-15 years ago - on which see Douglas (1988).

[14] Needless to say, the system was haphazard and costly. Its survival is something of a mystery. Most lower courts seem to have adopted elements of the mention system well before Victoria's. One answer lies in the fact that the Courts themselves were under no pressure to become more efficient. Even with the pre-Mention court system in

The old system was of course inconvenient for victims who were required to attend (often on multiple occasions) in case they were needed to provide evidence. Then of course they might be subjected to cross-examination and all the other rigorous and allegedly unsympathetic procedures of adversarial justice. For victims however the system had one key advantage: the prosecution needed to cajole their effective participation in the process. The new expedited hearing of guilty pleas in the Mention Court system has now rendered the presence and the evidence of victim witnesses irrelevant to criminal justice process and outcome. One would therefore expect Victorian victims to feel the same kinds of grievances as those documented by research in other jurisdictions: - for example, complaints at rarely being briefed on the progress of a case (Shapland, 1985: 587); at not being informed of the charges laid, or when the matter will be heard in court, whether the offender was bailed, and indeed the sentence imposed (Maguire, 1985: 545). The most likely explanation for these failures of communication is not callousness but the pragmatic effect of technocratic justice: criminal justice personnel no longer have any incentive to involve victims.

Magistrates are keenly aware that the real "losers" under the new scheme were the victims of crime (Douglas and Laster, 1992: 55). While they recognise the Mention Court system is the "greatest thing that ever happened to the courts", "the greatest innovation since sliced bread or canned beer" (Douglas and Laster, 1992: 55), they are conscious that the new system often appears to be "conveyor-belt" or "sausage machine" justice (Douglas and Laster, 1992: 55). They know that the system operates on minimal information with both prosecution and police committed to bringing the matter to a speedy close within the lower penalty ranges available in the summary jurisdiction. Magistrates are aware that "there is more to a story than the two-minute summary"; "two punches to the eye" may be sanitised to "an open hand to the face" (Douglas and Laster, 1992: 55). The system sometimes leaves magistrates "feeling like a mushroom" (Douglas and Laster, 1992: 56) forced to

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operation,most courts had a light case load, and were able to rise for the day by lunch time. This leaves open the question of why successive state governments tolerated these inefficient procedures. Perhaps the answer lies in inertia, coupled with a political culture in which traditional ways of doing things were generally treated as non-problematic. For a discussion of the Magistrates' Court system before the introduction of the Mention Court, see La Trobe Study (1980).

second-guess the precise details of the crime and, implicitly, its impact on the victim.[15] The anecdotal evidence suggests that victims are justified in their claim that they are "forgotten" in criminal justice administration (Erez and Roeger, 1994).

Victims' groups have advocated two distinct strategies for reforms which, if not restoring the "golden age of the victim", (Schafer, 1968: 6; Abrahamson, 1985) at least make the criminal justice system more responsive to victim perspectives. One approach has been to provide qualified support for alternative dispute resolution mechanisms which involve victims in direct negotiations with their offenders, including specific remedies, such as apology, restitution, actual or in kind (Legal and Constitutional Committee, 1987: 43; Braithwaite, 1988).[16] In these "new" purpose designed forums victims believe they may have greater success in having their needs and wishes considered more directly.

The second strategy seeks procedural mechanisms to better integrate victims (or at least victim perspectives) within the existing system to make criminal justice administration more accountable. This includes forms of consultation before important decisions such as altering or dropping of charges are made by the prosecutor or the DPP (Shapland, 1985: 588; Abrahamson, 1985: 525). The more common demand however is for victims to be given a more active role in court to challenge a defendant's account of the crime and/or to provide information about the crime and its impact on them (Shapland et al, 1985). In some jurisdictions these demands have been met through a variety of forms of "victim participation" statutes. These guarantee victims of crime a voice when important decisions are made by criminal justice personnel (Hall, 1991). By far the greatest attention however has been focused on providing victim perspectives at the crucial stage of sentencing of

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[15] Erez and Roeger's evaluation of the South Australian VIS scheme also found that judges were forced to make assumptions about victim harm in the absence of VIS. Some assumed that no harm occurred, while others assumed a breakdown in the system and made attempts on their own to acquire necessary information (Erez and Roeger, 1994: 12).

[16] Such mechanisms obviously work best with relatively minor crimes, particularly those committed by juveniles. Some victim organisations maintain however that it is unsuitable for more serious crimes involving say, sexual offences. In addition, some writers however have been cynical about the import of such programs seeing them as a means of finding alternatives to deal with the large number of offenders no longer able to be accommodated in the prison system (Walklate, 1989: 129).

offenders. Victim Impact Statements (VIS) are the most popularly advocated means for incorporating the victim perspective at this stage.

3. Victim Impact Statements: Threat or Promise?

The demands for VIS are predicated on the assumption that judicial decision-making currently takes inadequate account of the effect of a crime on the victim (Corns, 1986: 206). Victim Impact Statements are statutorily mandated procedures for providing information about the physical, financial and psychological consequences of crime experienced by a victim (Australian Law Reform Commission, 1980: 44). Their form, content and means of implementation varies enormously. In the United States for example, some jurisdictions require a written VIS, attached either to the pre-sentence report or as an affidavit which becomes part of the court file. Responsibility for preparation of a Victim Impact Statement can rest with a variety of criminal justice personnel, including probation officers, prosecutors, police or even victim service specialists. Victims may also (or in some cases only) provide oral information in court prior to sentencing (McLeod, 1986: 503; McLeod, 1988; Kelly, 1990).[17] The form of the statement in some cases is a narrative, while in others is a mere check-list of the impact of the crime on the victim. VIS can include objective information or both objective as well as subjective evaluations of injury including psychological harm suffered by victims.

There has been a cautious approach to the introduction of Victim Impact Statements in Australia. The Australian Law Reform Commission and the Victorian Legal and Constitutional Committee supported the tendering of information about injuries and property loss where this was not readily ascertainable but remained unconvinced that use of VIS were

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[17] In New Zealand, Victim Impact Statements are provided for under the *Victims of Offences Act* 1987. Section 8 of the legislation requires that information about physical or emotional harm, loss or damage to property and any other effect on the victim of an offence should be "conveyed to a judge either by the prosecutor orally or by means of a written statement about the victim". The New Zealand scheme has been criticised on the grounds that victims are often unaware that a Victim Impact Statement has been prepared and there is often a long delay between the preparation of the Statement and its presentation in court (Wallace, 1989: 10).

the most effective means of doing this (Australian Law Reform Commission, 1988: 45; Legal and Constitutional Committee (Vic), 1987: 101). The National Committee on Violence, provided qualified support for the introduction of VIS stressing the need for measures to safeguard against abuse (National Committee on Violence, 1990). The New South Wales Task Force reserved its view recommending against the introduction of VIS until appropriate evaluation of the experience of other States was available (New South Wales Task Force on Services to Victims, 1987).

Until recently, only South Australia had been prepared to enact a legislative provision requiring that victim impact material must be put before the court prior to sentence: *Criminal Law (Sentencing) Act* 1988 (SA), s 7.[18] This provision allows for a written statement only providing no right of allocution or oral victim statement to be made in court.

This Victorian legislation, passed this year, provides a slightly different procedure. The *Sentencing (Victim Impact Statement) Act* 1994 ("the Act") amends the *Sentencing Act* and the *Children and Young Persons Act* 1989 in a number of ways. The sentencing guidelines provided by the Act have been expanded to include the personal circumstances of any victim of the offence, and any injury, loss or damage resulting directly from the offence: ss 5,8. The Act also provides for victims to provide Victim Impact Statements which may be in writing, or partly in writing and partly oral. The Statements may include particulars of any injury, loss or damage suffered as a direct result of the offence. Copies of these statements are to be made available to the court, the prosecutor, and the defendant. The Court may call on the maker of the statement to attend to give evidence, and the maker of the statement may be cross-examined and otherwise questioned. The maker of the statement may call witnesses to support the matters in the statement: ss 7, 9.

It is difficult to evaluate the arguments for and against the introduction of Victim Impact Statements. Commentators are rarely explicit about the precise nature of the mechanism they have in mind. More importantly, their arguments implicitly rely on different understandings

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[18] An evaluation of the South Australian scheme suggests that there are logistical difficulties in implementing this scheme, including gaining the acceptance by police, lawyers and judges of Victim Impact Statements (Erez and Roeger, 1994).

about the nature of the criminal justice system both in theory and in practice. Those for and against the introduction of Victim Impact Statements, however, have two focal concerns - the effect of VIS in shifting the balance of power between victims and offenders and secondly, a related or a discrete concern about their efficacy.

Those advocates of VIS who still see the justice system in adversarial terms argue that VIS is a useful mechanism for according to victims rights enjoyed by defendants but denied to victims, such as a right to legal representation, as well as the right to allocution in the form of statements which can be denied or challenged by a victim (Van Dijk, 1988: 359; Karmen, 1990: 202). According to this view, victims and the community have a right to a mechanism which allows courts to be aware of the "truth" (Sumner, 1987) by taking account of the victim's experiences (Corns, 1988: 206).

The concern of course is that the effect of this will be to impinge upon the rights of the defendant to a fair and unbiased trial (Abrahamson, 1985). Traditional adversarial principles are based on culpability of the offender with sentencing based on objective information about the offence, rather than subjective evaluations of harm suffered by the victim (Victorian Sentencing Committee, 1988). Victim impact in individual cases may vary according to level of the of social and other supports available for victims. The communication skills of the victim may also prove to be a significant variable (Talbert, 1988: 210), as well as the resiliency or vindictiveness of individual victims (Grabosky, 1987). There is concern that victims might use the relative safety of the VIS to make "unfounded or excessive allegations" which are difficult for defendants to challenge or disprove (Ashworth, 1993: 507). At the very least, it may subject judges to emotional pressure from the victims, their families and the media (Ranish and Shichor, 1985: 55; Rubel, 1986). The evaluation of the South Australian Victim Impact Statement Scheme found that judges and prosecutors believed that victims seldom exaggerate and VIS rarely include inflammatory, prejudicial or other objectionable statements (Erez and Roeger, 1994). Nevertheless, the fear is that over time, the effect of VIS might be to increase disparity between sentences in like cases (Abrahamson, 1985: 547).

The persistence of concerns about VIS (whether or not empirically justified) has caused

advocates of VIS to argue the "weak" case for their introduction - they are important symbolically but will have no significant impact on sentencing practice. While the Victorian Attorney-General when introducing VIS legislation maintained that might sometimes mean increased sentences (Victoria. Legislative Assembly, 1994: 778 and see at 1043), opposition supporters of the bill doubted this (e.g. Cole at 980, 992-4). This scepticism is supported by research findings on the operation of VIS in the United States which found that sentencing is still mediated by legally relevant variables such as seriousness of the offence, plea and other legally relevant variables (Walsh, 1986: 1139; Erez and Tontodonato, 1990: 455).[19] The justification for VIS remains, according to this line of argument, "feel good reform" - victims' satisfaction with justice, psychological healing and restoration (Erez, 1990).

Not all victims' rights advocates however are convinced of the benefits for victims in participating in the preparation of a VIS. Studies of victims suggest that they are much more reluctant to participate in trials and the preparation of VIS than is usually suggested (Elias, 1990; Rubel, 1986). There is also the danger that participation through VIS creates unrealistic expectations so that victims are more disenchanted when the system fails to take account of their views (Benjamin, The Age, 27/05/94; Fattah, 1986; Henderson, 1985; Erez and Roeger, 1994). Many see them as mere "band-aid law" taking the place of more meaningful reforms of the substantive law and in the provision of services (Mcarthy, The Age, 27/05/94).[20] The net effect of all these concerns is that VIS seems to be a questionable political solution for shifting the focus of the criminal justice system to take better account of victim perspectives.

The most telling critique of VIS is that it is inconsistent with the new technocratic ideology of criminal justice administration. In a system which values efficiency, there is little place for a resource-intensive process which has little or no demonstrable effect. This was the

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[19] There is some indication however that a VIS may influence a judge's decision to choose incarceration over probation. The length of a sentence however remains unaffected (Erez and Tontodonato, 1990: 468).

[20] This is a newspaper account of a special seminar on the Introduction of Victim Impact Statements held at Monash University on Friday 27 May 1994. The speaker was the coordinator of the Legal Action Against Sexual Assault.

thinking of the Australian Law Reform Commission in its rejection of VIS on pragmatic grounds, "Preparing a VIS would add to an already heavy workload" experienced throughout the criminal justice system (Australian Law Reform Commission, 1988: 45). This is particularly important in evaluating the necessity for VIS in the high volume summary jurisdiction.

This project empirically tests the claim that the criminal justice system currently makes decisions on the basis of inadequate information about the impact of crime on victims. It examines the degree to which information about victim injuries is recorded by police and presented to the courts. It provides the basis for evaluating arguments both for and against the introduction of VIS in the context of the operation of busy lower courts committed to efficient disposal of their case-loads.

CHAPTER 2: TRACKING VICTIM INFORMATION THROUGH THE SYSTEM

There has been some conjecture and a deal of anecdotal evidence suggesting that currently courts only have scant regard for the impact of a crime on a victim. Victim-rights advocates have argued courts should know more about the effects of crime on victims. Missing from the debate however is empirical data about the nature of victim harm currently collected and processed by the criminal justice system. This study examines how victim information is gathered, recorded and processed in the busy summary jurisdiction.

Specifically the study aimed to:

(i) examine the way in which information about victim harm in assault cases is processed through the criminal justice system by both police and the courts;

(ii) note the effect of discretionary decisions such as charge and plea on the processing of information about victim harm;

(iii) assess the effect of victim impact information on court outcome/sentence.

Assault cases were chosen for the study because assaults are serious crimes attracting relatively heavy penalties[21] with clearly identifiable victims who are more likely to have a

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[21] The maximum penalty for indictable offences such as causing serious injury intentionally is 12.5 years' imprisonment. For recklessly causing serious injury the penalty is ten years' imprisonment. Intentional causing injury carries a maximum of 7.5 years, and recklessly causing injury a maximum of five years. In the summary jurisdiction of course the maximum prison sentence able to be imposed is two years for a single offence or five years for multiple charges. The upper limit on Magistrates' Court sentences will occasionally serve as an incentive for defendants to agree to relatively serious matters being brought within the jurisdiction of the summary courts.

However, these maxima need to be kept in perspective. Imprisonment, even for assault, is a sentence of last resort. In 1993, only 15% of defendants summarily charged with indictable assaults received prison terms. For those charged with summary assaults, the figure was 7% (Victoria (1994). In 1993, the prison sentences imposed in relation to assaults were as follows:

personal stake in the outcome.[22]

The findings allow us to assess two important claims of victims' rights advocates: first that victim information is not adequately considered in the decision-making processes, and second, it allows for evaluation of the likely effectiveness of various proposed mechanisms for providing more/better information to decision-makers. The findings provide a unique opportunity to study information flow within the constraints imposed by existing criminal justice practice and procedure. They throw light on whether modifications to existing criminal justice procedures might be able to better satisfy the demands of victim groups than introduction of additional procedures such as VIS.

Charge	Max. sent.	75% were <	Mean	Mode	% Cust	% Adj
CA s 16	9	8	5.44	6	18	23
CA s 17	24	8	5.90	4	25	5
CA s 18	30	5	3.69	3	14	15
CA s 31	6	2	1.81	2	20	None
SOA s 23	12	3	1.85	1	5	27
SOA s 24	18	3	2.60	2	15	15
SOA s 52	24	2	1.63	1	7	11

Source: Victoria (1994). % prison and % bonds are based on number of defendants receiving these sentences when charge in question was the most serious charge of which they were convicted; other statistics are based on charge as unit of analysis. All prison sentences are months of imprisonment. Keen readers of these tables will note that magistrates appear to have exceeded the jurisdictional limits and/or the statutory maxima in several instances. There are several possible explanations for this: data entry errors resulting in sentences which were in fact correct being attributed to the wrong offence; laziness - as when the sentencer imposes a valid aggregate sentence and chooses to treat this as a series of concurrent, equal length sentences, rather than the result of the aggregated effect of a series of sentences, each tailored to the particular aspects of the charge to which it is attributed; typing errors, as when a 3 month sentence becomes a 30 month sentence (one would expect these to be picked up by defendants); and of course, jurisdictional error or error of law.

[22] Victims of assault are more likely to request and receive crimes compensation than victims of any other crime. Approximately 50 per cent of all crimes compensation applications granted in Victoria in 1990-91 were for crimes of assault (Crimes Compensation Tribunal 1991).

1. Method

The principal data source was the Victoria Police Summary and Result of Charge form (form 209) (Appendix A). This is a standard form completed by police informants after the defendant has been charged and forwarded to the police prosecutions office who then record court outcome. The form requires informants to record the name, date of birth, age, priors, address, gender of the defendant, and provides space for the name and address of the victim. The form also notes all the offences with which the defendant is charged, together with the name, rank and number of the informant. Of particular relevance for this study was the 8cm x 16cm rectangular square box where informants are required to provide an account of the relevant features of the crime. The information may be modified or varied at any time before court to take account of fact or plea-bargaining or other extraneous matters which bear upon the case. The information contained in this box is read out in court and is the main source of sentencing information available to assist the magistrate.

The advantage of using the form 209 was that it allowed us to track information flow. By comparing the form 209 with the full police file we were able to ascertain the degree to which information finds its way into the summary. Particular attention was focused on the provision of information about the nature of injuries sustained by victims and the impact of these upon them.

(a) Sample

All assault cases heard over a five-month period in two of the twenty-three metropolitan Magistrates' Courts constituted the sample. The two courts chosen were two of the busiest metropolitan courts with a daily Mention Court list. Their catchment area represented two quite distinct socio-economic populations.[23] While a broader range of courts might have

[23] The first court is located in an older area bordering Melbourne's central business district. This area has changed significantly over the last decade with light industry giving way to rapid gentrification. There is a socially heterogeneous population, including low to high income earners With the closure of many suburban courts, this court now serves most of Melbourne's more affluent municipalities (this affluence is now, however, an affluence shared by its defendants). The second court on the city's outer fringe serves a newer area

been desirable, it appears that Victoria's courts are sufficiently centralised to ensure that the impact of regional differences is, at most, weak and subtle (Douglas, 1992). [24]

For the purposes of this study, assault was defined to include charges brought under provisions of the *Crimes Act* 1958 (Vic)[25] and the *Summary Offences* Act 1966 (Vic) (for the wording of these offences, see Appendix B).

Crimes Act 1958:

Section 16 - Causing Serious Injury Intentionally.
Section 17 - Causing Serious Injury Recklessly.
Section 18 - Intentionally or Recklessly Causing Injury.
Section 31 - Assaults.

Summary Offences Act 1966:

Section 23 - Common Assault.
Section 24 - Aggravated Assault.

In addition, we studied Assault Police cases falling under the *Crimes Act* (s 31)[26] and the *Summary Offences Act* (s 52). This enabled us to assess whether the status of the victim affects the recording and processing of information. The hypothesis here was that police may have more ready access to information about victim impact in crimes against their colleagues

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with a largely working class population with a high rate of unemployment and a significant proportion of the population on some form of government benefit.

[24] Moreover, as we shall see, there is little evidence to suggest that case outcomes varied in any obvious ways between the two courts.

[25] Charges under the *Crimes Act* are indictable offences. However charges under ss 17, 18 and 31 can be heard by the Magistrates' Courts if the prosecutor, the defendant and the Magistrate agree. (Our sample includes one case which included a section 16 charge: this was withdrawn prior to the hearing). Magistrates may refuse to hear cases if they consider that the offence may call for a higher sentence than that which it is within their jurisdiction to impose and several magistrates have expressed concern about the problems this creates (Douglas and Laster, 1992: 54).

[26] It is extremely rare for defendants to be charged under this section. Typically charges of assaulting police are brought under the *Summary Offences Act.*

and may have a greater interest in ensuring that such details are included and provided to courts for the purpose of sentencing.

During the study period, the courts heard 332 assault cases, involving more than 700 charges. The most common charges were: common assault: 262 (36.5% of all charges); assault police (summary): 130 (18.2%). There were 88 charges of intentionally causing injury (12.3%); 72 of recklessly causing injury (10.7%); 54 of assault by kicking (7.6%); 54 of assault with a weapon (6.3%) and 57 of assault with an instrument (8.0%).

(b) Procedure

Three distinct procedures were used in the study. Firstly, information contained in the police forms 209 was collected and analysed. The second procedure involved tracing back a third of these cases (N=109) to the full police file and comparing information on file with information contained in the form 209.[27] The third procedure involved following ten of the assault cases through to court hearing and comparing the information presented in court with the information contained in the Summary. These procedures allowed us to establish the extent of information change and loss from original recording to its presentation in court.

Procedure 1

Both qualitative and quantitative data were extracted from a total of 332 police Summary and

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[27] This was a time-consuming process which involved considerable demands on police resources, as well as one the researcher's time. For this reason, we decided to follow back only a third of the summaries.

Result of Charge forms, including:

- offender characteristics (e.g. details of the offence, whether weapon used, crime committed in company and number of co-offenders, prior convictions, demographic variables);
- demographic and other details about the victim (e.g. age, sex, postal district, relationship to offender);
- impact of the crime on the victim (e.g. nature of physical or psychological injury sustained, economic and other loss suffered by the victim);

Qualitative data (such as any explanation offered by the defendant for committing the offence including any information about "victim provocation") were noted in full, including the recording of information such as fear felt by the victim during or after the assault, as well as any changes in behaviour as a result of the assault.

Finally, court disposition of the case was recorded. Details recorded included withdrawal of cases or charges, plea, verdict and sentence.[28]

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[28] In assault cases magistrates have the option to -
(a) record a conviction and order a term of imprisonment;
(b) record a conviction and order imprisonment by way of an intensive correction order;
(c) record a conviction and order imprisonment wholly or partly suspended. Under a conditional suspended sentence an offender with a history of alcohol or drug abuse must accept treatment for this abuse;
(d) record a conviction and order detention in a Youth Training Centre;
(e) with or without recording a conviction, make a Community Based Order. Under a CBO the offender is supervised in community-based activities;
(f) with or without recording a conviction, order the offender to pay a fine;
(g) with or without recording a conviction, order the release of the offender on adjournment of the hearing on conditions;
(h) record a conviction and order the discharge of the offender;
(i) without recording a conviction order the dismissal of the charges.
Qualitative information about the impact of the crime on the victim was also noted in full, including fear felt by the victim during or after the assault, as well as any changes to behaviour as a result of the assault.

Procedure 2: Comparing victim data with information on police file

A sample of 109 (33 per cent) police summaries was tracked back to the original police file. Typically, the full police file contained witness statements and transcripts of interview. The information in this second data source was compared with that recorded on the form 209. This procedure enabled us to compare the information in the file with that in the forms and note any information available in the file but not recorded in the summary. Qualitative data about the impact of the crime on the victim, including whether medical treatment or hospitalisation was required and reporting of any psychological harm, as well as specific injury variables such as pain, cuts, bruising and stitches were used to assess "loss" of victim impact information.

Procedure 3: Tracking form 209 through to court hearing

An exploratory study of ten randomly selected cases were tracked through to court hearing. Three of these cases were resolved by a guilty plea immediately prior to the scheduled hearing, leaving seven to be determined by way of a contested hearing. Attendance at court allowed comparison of information provided in the form 209 with the oral evidence from the victim in open court.[29]

2. Analysis

[29] Even in a full hearing, evidence of victimisation may not emerge. The information which emerges will depend on how the victim gives evidence and this will usually depend heavily on the kind of questions asked by the prosecutor and the defence.

For the purposes of our analysis, the contents of the files and forms were coded for computer analysis. (The codebook is set out in Appendix C). For the purposes of assessing the degree of information loss, simple frequency counts are used. For the purposes of exploring the correlates of information loss, we used multiple regression analysis, on the grounds that the variables were continuous and arguably interval level variables. In the analyses of court outcomes (in which we examine the degree to which information about victimisation affected outcomes) the dependent variables were dichotomous, and we analysed their correlates using logistic regression analysis.[30]

The research design sought to match the method with the dynamic nature of our criminal justice system. Agencies develop their own procedures based on their perceived requirements. Yet criminal justice outcomes are the product of the inter-dependence of the various parties in the criminal justice system - including police, lawyers and magistrates, as well as defendants and victims. Tracinn vicim information through the system is a useful way of highlighting some of the ideological and pragmatic perspectives of the criminal justice system.

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[30] In logistic regression analysis, the dependent variable is the logged odds ratio for a given outcome i.e. log ((p/(1-p)/(1-p)/p)) where p is the likelihood of that outcome. Conceptualising the dependent variable thus has several advantages over using multiple regression analysis in conjunction with a simple dichotomous measure. First, the measure constrains the range of possible probability levels so that they must fall between 0 and 1. Use of dichotomous dependent variables creates the possibility that the model will produce estimated values which lie outside the logically possible range. Second, use of the logged odds measure yields models which build in the plausible assumption that the degree to which a given variable increases the likelihood of a given outcome will vary according to what would otherwise be the likelihood of that outcome. Third, use of the logged odds measure avoids the danger of violation of assumptions which can arise when ordinary least squares multiple regression analysis is used in conjunction with skewed dichotomous dependent variables (and each of the dependent variables in this analysis is skewed). The cost of using logistic regression analysis is that the meaning of the coefficients is not as immediately apparent as is the case for those in multiple regression analyses.

CHAPTER 3: FINDINGS: INFORMATION LOST, SENTENCES SAVED

Despite significant gains by victims over the last decade, formal criminal justice processing in the summary jurisdiction appears to take very little account of victims and the impact of crime on them. Comparison between files and summaries confirms the worst fears of those concerned at the marginalisation of victims of crime: even when police record details of the impact of crime on victims (as they appear to do with considerable thoroughness), a great deal of this information "gets lost" between the file and the form 209. However, this loss of information may be far less detrimental to the delivery of justice than one might expect. While victims might regret the skeletal accounts of their experiences, the quality of sentencing does not appear to be affected by the lack of such information.[31] These findings should allay concern that increasing victim impact information will cause defendants to be treated more harshly. On the other hand, suggesting that victim information has no effect of sentencing undermines claims about the importance of providing better victim impact information.

1. Victim/Offender Information Compared

The police Summary and Result of Charge form is designed for a defendant-oriented criminal justice system. Short answer questions provide demographic and criminological data about defendants. The form does not direct the attention of informants to the need to record information about victims. The "open" commentary section of the form - a mere 8cm -

[31] Moreover loss of information between file and form appears to be more pronounced when defendants plead *not guilty*. In these contested cases, however, victims provide information during the course of giving oral evidence in court.

seems to be interpreted as requiring provision of legally relevant details of the defendant and offence. It is therefore not surprising that demographic details about defendants and their explanations for the crime are preferentially recorded over victim-related details.

Comprehensive demographic data about the defendant was almost always recorded on the form. For example, in only one case did the police fail to record the age of the defendant. By contrast, the age of the victim was only noted in exceptional cases - six cases of which four involved young children, and one, an 84 year old woman. The gender of victims is usually but not invariably recorded (in 10% of cases it wasn't). For obvious reasons, the postal address of defendants was clearly identified as critical. It was recorded in 98% of cases. In a significant minority of cases however (28 per cent) police failed to note the victim's postal address.[32] In cases involving assault of police, the police station was invariably recorded.

Legally relevant details about the offence (e.g. use of weapon, type of weapon, whether the crime was committed in company and if so, how many persons were involved) were almost invariably recorded (Table 1), as was the relationship between the defendant and the victim. The most common victim was a police officer (28 per cent), with workmates constituting 10 per cent and "strangers", 22 per cent of the sample. Eighteen percent of cases involved "friends"; another 12% involved spouses, 2% siblings, and 2% boyfriends or girlfriends.[33] (The remainder were "other" (2%) and "not recorded" (5%)).

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[32] Overall the figure was 45% - but this was inflated by the fact that with police victims, postal address was rarely recorded: they were identified by their station.

[33] The processing of assaults involving intimates will be the subject of a subsequent, further, report.

Table 1: % of cases where "summaries" recorded details of assaults.

Variable	% of cases where details were provided
Was a weapon used?	97.9
Type of weapon (if weapon)	98.1
Whether assault was in company	97.9
No involved (if assault in company)	100.0

Police almost invariably recorded whether or not defendants gave any explanation or excuse for their behaviour.[34] Some of these would scarcely have helped the defendant's cause: "if I did assault him, I don't remember", "she's my wife" or, in the case of an assault on a parking officer, "she's an ugly tart, what can I say?"

The method of assault (open hand, clenched fist, weapon) was recorded in 70 per cent of the cases. The forms also recorded that victims required medical attention (7 per cent of cases), hospitalisation (6 per cent), and the fact that victims suffered psychological harm (8 per cent).[35] The latter included statements to the effect that the victim was "in fear and anguish during the attack", "being very frightened" and, in the case of an assault on a stranger, "in considerable fear of well-being".

The data suggest, however, that there may be significant under-recording of victim injury.

[34] It is police practice to question offenders and ask them for an explanation of their actions. In our sample 54 per cent of offenders refused, with 46 per cent volunteering an explanation.

[35] In 1% of cases, the summary noted that the victim did not require medical attention. there were no notes to the effect that victims had not been hospitalised or had not suffered psychological harm.

It is hard to imagine that there were no injuries when, for example, the assault involved the victim having been "hit with a gemmy", or "struck with a full can of beer in the head". There is good reason to suspect that the low rate of injury recorded does not reflect the seriousness of injuries sustained by victims. In only one case did the summary note that a victim had been unable to attend work and surprisingly there were only two references to financial loss suffered by the victim as a result of the assault. (In both these cases, the losses were of less than $5,000 and related to damage to cars occasioned during the course of the assault.)

Police were careful to record victim-related information which gave rise to specific defences such as provocation. In 73 per cent of cases, they noted whether or not the victim appeared to have provoked the assault. (In 20% of cases police interpreted the actions of the victim as amounting to "provocation".)

The lack of adequate information about injuries suffered by victims may be an indication of the time-frame for the preparation of these documents. Data from victims is collected on a once-off basis very soon after the assault has taken place. Some injuries, such as bruising or pain may not be apparent until some time later. There is no routine follow-up required of police and, where the defendant is pleading guilty, no incentive for further contact between police informants and prosecutors and victims. The perceived dictates of court processing are a significant factor in the way in which police resources are utilised to record and process information about victim harm.

2. Information Loss

Procedure 2 allowed comparison of information contained in police form 209 with the more extensive information obtained by police documented in the police file. Presumably information regarded by the informant as most significant would find its way into the "open" section of the form ("the summary"). Details of information available in the file and in the summaries are presented in Table 2.

Table 2: Loss of information between original file and Form 209

Nature of information	Reports in files	%	Reports in Form 209	%	Loss %
Physical injury	85	77.1	58	53.2	31.0
To head	68	62.4	47	43.1	30.9
To arm	23	21.1	17	15.6	26.1
To leg	16	14.7	7	6.4	56.3
To body	26	23.9	14	12.8	46.2
Med. treat't needed	38	34.9	7	6.4	81.6
Hospitalisation	13	11.9	9	8.3	30.1
Victim off work	4	3.7	1	0.9	(75.0)
Psychol. harm	20	18.3	5	4.6	75.0
Provocation	24	22.0	12	11.0	50.0
No provocation	57	52.3	55	50.5	3.5
Permanent injury	7	6.4	2	1.8	(71.4)

The data indicate that a great deal of information about victim harm got "lost" between the file and the summary. Some of this might be explicable in terms of the intangible nature of the injuries: this might explain why 75% of the recorded reports of psychological harm were not included in the summary. However, the more striking omission is the loss of information about physical harm. This occurred in 31 per cent of cases where there had been a report of physical injury. Although details of the nature of their injuries were initially recorded by police, important details, such as whether injuries were to the head (31 per cent loss), arm

(26 per cent loss), legs (56 per cent loss) or body (50 per cent loss) were not subsequently disclosed in the summaries. In 82% of cases where the victim had required medical treatment this information was not recorded in the summary. There is, in short, abundant evidence to suggest that information about the effect of the assault on the victim is not reported to the Court, even when that information has been communicated to the police. However, this cannot be explained in terms of indifference to the interests of victims: the same data also indicate that the summaries eliminate half the reports of provocation which appear in the original file.

Our analysis sought to identify patterns in the loss of information. We measured information loss in several ways: number of lost pieces of information (LOST); the logarithm of 1 plus number of pieces of lost information (LOGLOST); proportion of pieces of information lost (PROPLOST); log of 1 plus proportion of pieces of information lost (LOGPROPLOST); ratio of pieces of information available to pieces of information lost (AV/LOST); log of 1 plus that ratio (LOGRATIO). These variables were regressed against measures of hypothetically relevant independent variables, along with a number of measures of case attributes. The correlates of information loss vary sharply according to how loss is measured. There does not appear to be any obvious pattern underlying the "loss" of information. Moreover, in many ways the correlates of loss are contrary to what one might reasonably have expected.

- We explored the relationship between information loss and charge seriousness. The evidence throws no light on the relationship between case seriousness and loss of information. LOSS and LOGLOSS were greater when defendants had been charged with indictable offences. However AV/LOST and LOSSRATIO

were smaller when defendants faced charges of common assault or assaulting police. AV/LOST and LOSSRATIO (but none of the other loss measures) were greater where defendants had prior records.

We also explored the relationship between information and plea, with a view to assessing the degree to which information loss might be explicable in terms of "fact-bargaining". The analyses indicated that LOST and LOGLOST were greater where defendants pleaded *not guilty*. This finding is the opposite of what one would have expected if information loss had been a response to a "fact-bargaining" process in which defendants agreed to plead guilty in exchange for an agreement to present "the facts" in a way more favourable to the defendant. Why information loss should be associated with not guilty pleas[36] is unclear. One possible explanation is that if police have reason to believe that there is to be a not guilty plea, they have less incentive to prepare a comprehensive summary.[37] However, given the relatively small sample sizes, the low r^2 values the wisest course seems to be to admit puzzlement and to content ourselves with the observation that it is far from clear when information is likely to be "lost".

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[36] While plea was related only to LOST and LOGLOST, other loss measures were related to variables which - as we shall see- are correlated with plea. These include: whether the victim was an acquaintance, whether the defendant gave an explanation, and whether the charges included one of assaulting police.

[37] Another possibility is that a foreshadowed not guilty plea means the preparation of a summary designed to make pleading guilty more attractive - but if that was the case, one would expect that this would prove a sufficiently successful strategy to blur the plea-information loss relationship.

. Examination of the question of whether information loss was greater in "domestic" cases, or greater in the case of female victims and female offenders yielded a limited amount of evidence suggesting that this was the case. LOST and LOGLOST were greater when the case was a "domestic" assault. (LOGLOST, PROPLOST, and LOGPROPLOST were greater when the victim was an acquaintance). PROPLOST and LOGPROPLOST were greater in cases involving male defendants and AV/LOST was greater in cases where involving male victims. While this might be regarded as evidence of police misogyny, this conclusion is unsustainable. While information loss was greater in "domestic" cases, the available:lost ratio is smaller in assault police cases. Moreover, as we shall see below, there is no evidence of misogyny in the context of pre-trial charge withdrawals, or sentencing.

. One might also expect that where defendants had given explanations for their behaviour, police would record more information about the offence. The evidence suggests, however, that explanations were associated with a *greater* level of lost information. PROPLOST and LOGPROPLOST were greater when defendants had given explanations; similarly, AV/LOST and LOGRATIO were lower in these circumstances. One reason for this relationship may be that where there are explanations for the offence, police do indeed record more information about the offence - but in order to do this within the psychological constraints imposed by the form, they need to reduce the amount of information supplied about harm to the victim.

Procedure 3 afforded an opportunity to compare the victim's version of events presented in seven contested cases with the documentary information contained in the form 209. Not surprisingly, significant further information was provided by victim witnesses during their testimony which was not disclosed in the form. This included information of physical injuries (3 cases), evidence of medical treatment (4 cases, one of which involved hospitalisation). Physical injuries revealed by victims in court but not available in the summary included evidence of bruising and cuts to the head, bruising to the body and pain in the legs. Even where victim witnesses were recorded as having had no medical treatment, in evidence they were able to provide personal details of their injuries notwithstanding the absence of medical treatment. In one case for example, a victim reported that he had suffered "cuts and bruises to the face, a black eye and bruising to the chest". In two cases, there was evidence, not mentioned in the form, of psychological harm sustained by the victim. These findings tend to support those who believe that the mention system has contributed to loss of information about victimisation. However the findings also suggest that insofar as information gets lost between file and form in what turn out to be not guilty plea cases, there is a tendency for such information to find its way back again, once the case is tried.

It is likely that traditional legal considerations are the paramount influence on police and court procedures notwithstanding the dramatic changes wrought by the mention court system, and the ideology of efficiency. Victim harm is still of minimal relevance to sentencing. The nature of a"summary" requires that some choices be made about what is to be included,

given the constraints imposed by the small "open" space"[38] and the pace of mention court hearings. Thus *mens rea* issues including the harm which the defendant would have anticipated rather than the harm which the defendant actually caused may be more pressing concerns. There is always the undisclosed variable - the capacity of participants in the system to infer intelligent guesswork on the part of each other. Just as magistrates will make inferences about probable victim harm from the limited information presented in the "summaries", so too informants make guesses as to the inferences which magistrates are likely to draw from their "summaries".

3. Effect of Victim Information on Court Disposition

Our findings support the conclusions of Erez and Tontodonato (1990) and Myers (1979) that greater information about the nature of victimisation makes little difference to sentence outcome. The key determinants of sentence remain such legally relevant variables as prior record and offence seriousness.

We analysed the correlates of a series of outcomes and outcome-relevant decisions: whether all charges were dropped; whether any charges were dropped; plea to the remaining charges; whether the defendant was convicted; and sentence. Sentence was tapped by two dummy variables, tapping whether the defendant received an adjournment or a prison sentence. These two variables represent the polar ends of the Victorian sentencing continuum.

[38] Informants can currently overcome the constraint by attaching an additional page. This option is rarely exercised.

The results are shown in Table 3 (below). The findings suggest that the dropping of all charges was most likely to be withdrawn when they were least serious and when the defendant had no priors. The dropping of some charges was most likely where the offence was relatively serious. Not guilty pleas were most likely where the victim was a stranger or a police officer (who would also normally have been a stranger), or a woman. Not guilty pleas were more likely where explanations had been given. Conviction was most likely where defendants had prior records and where defendants had needed medical attention. Prior record and the fact of multiple victims influenced both sentence measures, but otherwise the correlates of sentence varied according to the dependent variable. Prison sentences were associated with offence seriousness and were more likely where the victim had not been an acquaintance, and had suffered psychological harm. Prison was also more likely when the defendant had given an explanation to the police for his behaviour, and where the case was decided by the outer suburban court. Adjournments were more likely when the defendant was female and (for some reason) when the victim had needed medical attention. Plea was not relevant to sentence.[39]

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[39] There is one slightly unexpected finding: plea appears to be irrelevant to sentence, notwithstanding that the *Sentencing Act* 1991 requires that courts take account of the defendant's having pleaded guilty as a potentially mitigating circumstance. Analysis of a data-set of 1992 Magistrates' Court cases collected by Bronwyn Naylor of Monash University disclosed a similar set of results. This raises the interesting question of whether Victorian courts act extra-legally by failing to take account of plea, while US courts act extra-legally by taking plea into account. The courts' failure to attach much weight to plea is consistent with what has been observed in lower courts generally (Douglas, 1988), and probably reflects a number of considerations: the ability of lower courts to handle contests expeditiously; the fact that procedures such as the mention system encourage defendants to plead guilty (as a means of getting cases resolved quickly); the use of contests to establish mitigating circumstances (although our data suggest that they may also draw the courts' attention to harm to the victim); and possibly a slight compensatory sentencing discount to compensate for the possibility that the defendant might have been innocent.

Table 3: Logistic regression analyses of the relationship between decisions and assault case characteristics.

	Dependent variable					
Independent variables	All chs w'drawn	Some chs w'drawn	Plead NG	Conv.	Adj'd	Prison
Assault police charge/conv.	-1.55d (.43)		1.43d (.43)			-1.58c (.54)
Indictable charge	-.67a (.38)	3.05e (.54)				
Common Assault conviction						-2.66e (.61)
No of victims	-.95b (.48)				-1.98a (1.09)	.60a (.31)
Assault in company		1.20b (.51)				
Defendant had prior record	-.75b (.31)			.71c (.26)	-.84b (.37)	2.05d (.53)
Info about physical injury				-.41 (.27)		
Victim needed medical treat't	-7.11 (11.79)			7.23 (12.13)	1.28b (.51)	
Victim suffered psychol. harm	.82a (.49)	-1.18a (.70)		-.97b (.44)		1.60a (.92)
V a stranger	-1.17c (.42)		1.87e (.42)			
V an acquaintance	-1.13b (.55)		1.41c (.54)			-7.70 (18.92)
D gave explanation	-.69b (.31)		1.03c (.32)			.76 (.46)
Female victim			.83a (.43)			
Female defendant					1.26b (.56)	
Outer suburban court						.70 (.45)
Intercept	1.93b (.83)	-.35b (.16)	-3.85e (.68)	.67d (.20)	-.56 (1.28)	-4.78e (1.27)
N	332	260	260	332	230	230

Notes:
Table reports coefficients with their standard errors in parentheses below. Significance levels: a: $p<.1$; b: $p<.05$; c: $p<.01$; d:$p<.001$; e: $p<.0001$.

What is of interest in these findings is that they suggest that there is little or no use made of information about victim harm. Information about the need for medical treatment was associated with both unfavourable outcomes (no case withdrawal, conviction) and with a favourable outcome (adjournment). Information that the defendant had suffered psychological harm was likewise associated with favourable outcomes (case withdrawal) and with unfavourable outcomes (no charge withdrawal, prison). Information about whether or not the victim had suffered physical injury was associated with an increased likelihood of acquittals. There is, in short, no evidence to suggest that information about victim injuries means that defendants fare worse. Consistent with this is some evidence to suggest that women might be more likely to "suffer" from information about their victimisation being lost. There is, however, no evidence to suggest that substantive outcomes are affected either by whether an assault was a "domestic" assault, or by whether the victim was female. This is not to say that information about victimisation might not sometimes be relevant. All we are suggesting is that the net effect of information loss on outcomes seems to be negligible.

Moreover, it is also important to recognise that the limited impact of victimisation information may in part reflect the limited availability of such information. One possibility is that magistrates' views of relevance are influenced by the kind of material presented to them. If information about victimisation is often not provided, does this accustom magistrates to the idea that what matters is defendant information? Or, given that many magistrates are aware of the paucity of information about the impact of offences on victims, are they wary of attaching weight to that information on those occasions when it is available, mindful of the likelihood that there will be other cases with similar levels of victim harm where there is no corresponding information? On the absence of our interviews with magistrates, we are

inclined to believe that magistrates, like higher court judges, are wary of basing sentences on the harm to the victim as opposed to the harm which the defendant expected (or might reasonably have expected)[40] to flow from his or her behaviour.

The findings support contentions that the criminal justice system has not yet developed adequate mechanisms for the detailing of victim impact information even in serious cases such as assault. At the very least, information about victim harm is treated as only of secondary importance compared with defendant-related information.

Much more can be done to systematise the recording and provision of relevant victim information to assist magistrates in sentencing. On the other hand, there is the paradox that this study also supports findings that victim information has no effect on sentence. Such a result may well allay concern that increasing victim impact information will cause defendants to be treated more harshly in the criminal justice system. At the same time, it strengthens arguments against the introduction of special mechanisms to include greater victim impact information on the grounds that this is an "unnecessary" development, particularly in the light of the criminal justice system's newly-found commitment to efficiency. There may be a more resource-sensitive approach which provides better victim impact information but which is more consistent with existing criminal justice procedures and ideology.

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[40] While application of the mens rea principle might mean that courts ought not proceed on the basis of what defendants might reasonably have been expected to anticipate (as opposed to what they did anticipate), there will be many cases where there will be no direct evidence of what the defendant anticipated, and the only evidence bearing on this will be what could reasonably have been anticipated, given the other features of the defendant's behaviour.

CHAPTER 4: BETTER PROVISION OF VICTIM IMPACT INFORMATION: A SYSTEMIC APPROACH

The study supports the claims of the victim rights movement that important information about the impact of a crime on a victim is often not available to decision-makers prior to sentence. This appears to be an unintended effect of the documentary procedures and practices adopted by criminal justice personnel. In the current political climate this problem needs to be rectified. The real debate is over the best means of achieving this.

Most arguments about increasing victim impact information inevitably become bogged down in victim/offender dualism. Such a dichotomy no longer reflect the realities of criminal justice practice. For better or worse, "technocratic justice" has added a third important player: the efficiency of the criminal justice system itself. Successful reform will need to balance the needs of all three, recognising that "efficiency" considerations will often trump abstract (and sometimes vaguely defined) "rights".

1. The Parameters of Reform

An ideal reform package to better provide victim impact information should satisfy (or at least not offend against) the perceived needs of victims, defendants *and* the interests of criminal justice system itself.

(a) Integrating Victims

For victims, ideal reform will be achieved through a mechanism which recognises victims' dignity (Henderson, 1985) and reduces their feelings of helplessness and lack of control (Kilpatrick and Otto, 1987). Specifically, this should include:

- raising the awareness of, and consideration for, victims by both police and court officials. It should serve to remind them that while the typical criminal case is presented as a conflict between a representative of the State (or the Crown itself) and a defendant, the victim is a real person with an interest in how the case is resolved (Kelly, 1987). In practice, this requires mechanisms which make victims feel that they have been paid due attention (Blake, 1988: 16).

- allowing victims opportunities for recovery from the trauma of the crime (Ranish and Shichor, 1985: 56), including "psychological healing and restoration" (Erez, 1990). Care must be taken to develop a scheme which will not adversely affect victims' health and welfare. The right of victims *not to participate* needs to be respected (Elias, 1990: 240).

- satisfying abstract concepts of "fairness" reflected in proportionality and accuracy in sentencing (Erez, 1990). The mechanism however needs to be careful not to raise false expectations which would leave victims dissatisfied if the sentence did not live up to their expectations (Erez and Roeger, 1994).[41]

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[41] Victims have not been found to be more punitive than general members of the public (e.g. Indermaur, 1990 - for a summary, see Erez, 1991). In the survey of victims carried out by Erez and Roeger, victims often thought that a sentence handed down to an offender was "too lenient". In some cases they would have preferred that more prison sentences be meted out and many victims objected to suspended prison sentences. On the other hand, their views

The difficulty is devising a scheme which will satisfy victims while preserving the rights of defendants.

(b) Preserving Defendants' Rights

From the perspective of defendants, the primary concern is to ensure that better integration of victims will not bias or inflate the sentencing outcome. (Our findings suggest that there is little cause for alarm on this count). Defendants therefore could tolerate, and perhaps even favour, a mechanism which:

- kept the nature of the information within the traditional "objective" or rational fact-finding objectives of criminal justice procedure. Thus, information about "facts" of injury suffered by a victim would be more acceptable than subjective (and potentially emotive) evaluations of harm (Australian Law Reform Commission, 1988).

- formally preserve the right of defendants to challenge all information provided in court, including details of the impact of the crime on a victim. (This right however may be illusory if it means risking the tactical disadvantage of challenging a victim's account of events through, say, aggressive cross-examination (Erez and Roeger, 1994)).

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were not necessarily ill-considered calls for greater punitiveness - they appeared to want better use of a wider range of sentencing options, including licence revocations, more community service orders and far more restitution and compensation orders (Erez and Roeger, 1994).

Victim information which facilitates "the re-integration of the offender" (Braithwaite, 1988) may be seen as supporting rather than undermining the interests of defendants. In the evaluation of the South Australian Victim Impact Scheme, the major reason that professionals gave for the lack of increase in sentence severity, despite the introduction of the Scheme, is that VIS may allow more lenient sentencing just as often as the imposition of a harsher penalty. Better victim information may disclose attempts at reconciliation and injury which was less severe than might have been expected (Erez and Roeger, 1994).

The needs of both victims and defendants can be accommodated in various mechanisms to provide better victim impact information. These, however, need to be married with the concern of the justice system with the efficient and equitable disposal of cases.

(c) The interests of the Justice System

The resourcing imperatives faced by police, prosecutorial agencies and the courts demand that better victim integration mechanisms come at minimum cost, including time, personnel and money. Ideally, the preferred mechanism would:

- streamline the provision of information to make it more accessible and provide the basis of confident, quick and informed decision-making. There is, for example, every justification for eliminating the pressure on magistrates to "second-guess" the effects of crime. Better information will also enable magistrates to make more informed decisions about the exercise of their discretion under s 53(1)(a) of the *Magistrates' Court Act* 1989 to waive their jurisdiction in cases where they

believe their sentencing powers are inadequate to deal with the case.[42] The mechanism should not take up extra court time and, in particular, should not lend itself to "mini trials" over the facts at the sentencing stage of proceedings.[43]

. satisfy the Courts' sense of responsibility to the community. Despite the commitment to efficiency, the courts also have a sense of public or community accountability for the administration of justice. At least for magistrates, there is a need for the court process to satisfy "the customer" and to assure the community that the Courts are providing "an effective and fair system of justice for the State" (Douglas and Laster, 1992: 37). Procedures which can convince victims that they are being given an adequate hearing are likely to contribute to that goal.

. contribute to public confidence in the judiciary. This consideration is closely related to the previous one, except insofar as it treats satisfying the community as not only an end but a means towards another important goal. Recognition of the harm to victims is, in the current political climate, an important prerequisite for maintaining community respect for the justice system.

It should be possible to evaluate proposed and existing mechanisms for better provision of victim information according to the criteria outlined above. In some cases, appropriately devised VIS mechanisms might be profitably employed. In the Higher Courts, VIS may be

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[42] On the difficulties to which this can give rise, see Douglas and Laster (1992: 54).

[43] Erez and Roeger (1994) found that the Victim Impact Scheme in South Australia did not result in delays or additional expense or mini trials on VIS content. In fact, the experience of legal professionals was that VIS actually saved court time (page 10).

the most appropriate way of symbolically integrating victim perspectives. Publicity about these serious cases and apparent community unease about sentencing outcomes may be one justification for a special additional procedure such as VIS.[44] In the high volume summary jurisdiction, a simpler mechanism may be preferable.

2. Systematising Police Summaries: Victim Impact Statements Through the Back Door?

Traditional criminal justice procedures placed a premium on information about defendants, probably at the expense of important details about the impact of crime on the victim. Police documentation merely reflects the actual (and perceived) priorities of adversarial justice. It is, however, timely to consider reform measures which take account of the criminal justice system's changing values. Consideration of both victim needs and system efficiency are now both important.

The study has established that police already collect significant information about victim impact during the course of their investigations. The difficulty appears to be that frequently this information does not make its way through the system to be considered by the court at the sentencing stage.

VIS are purpose-designed "add-on" processes to force criminal justice personnel to routinely take into account harm suffered by victims. Such a process is the easiest and most obvious

[44] Whether VIS will have this effect is an empirical question. One danger is that VIS may raise public expectations which cannot easily be fulfilled. Increased publicity for the plight of victims may stimulate increased fear of crime while making no difference to the capacity of the social system to control crime.

method for systematically gathering information about victim harm and ensuring that this comes before the decision-maker prior to sentencing. There is however no guarantee that such a mechanism will in fact achieve its desired end. The documentation may be ignored (see, for example, Texas Crime Victims Clearing House, 1987) or may prove counter-effective if criminal justice personnel resent the special attention required to be given by them to a special group.[45] For victims too, a properly administered VIS scheme which makes them aware of the purpose and nature of their contribution may well, among some victims, raise expectations that victim impact information will influence sentencing outcome.[46] Given these concerns, a less resource intensive option may be preferable.

One option suggested by our research would have been to re-design the Police Form 209, and particularly the "open summary" section prepared for reading out in court.[47] This reform has significant benefits for police, victims and magistrates.

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[45] By analogy, consider Chan's finding that despite the worthy objectives of cultural sensitivity training, it produced this reaction among some police who saw visible minority groups as being "specially favoured" through such attention (Chan, 1992).

[46] Erez and Roeger found that half the sample of victims who had in fact completed a VIS did not realise that they had done so. The majority of victims who did provide VIS information (71 per cent) expected it to have an impact on sentence and, as a consequence, a third declared that these expectations went unfulfilled (Erez and Roeger, 1994: 14).

[47] The discussion which follows is complicated by the imminent proclamation of the *Sentencing (Victim Impact Statements) Act* 1994 (Vic). The coexistence of VIS and the measures we propose might well give rise to difficulties and involve unnecessary and inefficient duplication. We offer our proposals on the basis that they might prove of assistance in jurisdictions which are contemplating the introduction of a VIS-type system. Subsequent evaluation of the Victorian VIS scheme may well suggest that modifications to form 209 might produce a more efficient and effective alternative - at least in the Magistrates' Courts.

Our information is that, for a variety of reasons, the police themselves have already proposed modifications to the form. Some of these changes may incorporate the suggestions we make below.

For police, the major advantage of a redesigned form 209 is that imposes no "new" or additional paper work obligations on them.[48] The researchers evaluating the South Australian VIS scheme, for example, found that,

> The police perceive themselves as the true "victims" of the movement to improve the victims' [sic] lot, and as the government's "dumping ground" in its attempt to win political gains with minimum investment (Erez and Roeger, 1994).

From the perspective of victims, requiring police to routinely consider victim impact information may have the indirect benefit of sensitising them to the victims' needs and experiences.[49]

Both prosecution and defence have much to gain from ready access to more detailed information regarding the offence, including its impact on the victim. If the parties have a common information source, they are more likely to be able to assess the relative strengths of the case prior to hearing thereby possibly reducing the need for contests to test the information.

Even the least resource intensive types of VIS create additional work for the courts. The VIS must be filed. Consideration of an additional document at the sentencing stage is one further demand on an already busy court.[50] At the very least there is much to commend an economical mechanism which promotes consistency in sentencing decision-making. Systematising the provision of victim information through police documentation also gives

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[48] The Victorian VIS scheme makes fewer demands on the police. The model adopted basically places the responsibility for the preparation of statements on the victim rather than on the police.

[49] It may overcome the finding that many victims feel they are treated in a "tactless and insensitive manner" (Grabosky, 1989: 25).

[50] It is likely that periodic mistakes in filing VIS will mean that cases will sometimes have to be adjourned while inquiries are made as to the existence of these statements, or in order to give defendants a chance to consider their response to their contents. The sentencing process may sometimes be extended when defendants exercise their right to challenge the content of these reports.

magistrates greater control of cases. The limitations of the current "police summary" is that magistrates are left to second-guess the reasons for any omissions about the impact of crime on a victim. Failure to disclose important victim information may be just as easily due to oversight, inexperience or hard-nosed negotiations between defence counsel and the prosecutor to bring a crime within the jurisdiction of the lower courts. Magistrates find this experience "very frustrating" and resent a scheme which makes them "feel like a mushroom" (Douglas and Laster, 1992: 56).

Some forms of VIS may also satisfy some of these objectives. The major advantage of systematising police summaries over VIS is that routine provision of victim impact statements is made the responsibility of the system itself. This is preferable to schemes which leave often vulnerable victims having to take the initiative and assume the burden of bringing their interests to the attention of the courts. Embedding victim impact information within existing procedures may both symbolically and in practice have a more pronounced effect on changing "process values" (Summers, 1974). Consideration of victims and victim information would become a standard (rather than special) part of police practice and court determination. Finally, a system which allows criminal justice personnel to rationalise and streamline the provision of information is consistent with their own needs. It is therefore likely to command greater support and succeed where imposed solutions might not.

CHAPTER 5: CONCLUSION: DECENTRING CRIMINAL JUSTICE: THE VICTIM PERSPECTIVE

Our criminal justice tradition has been predicated on a firm formal distinction between the role of the state and the role of the victim. Crime is the business of the state and the criminal justice system. Criminal procedures reflect the need to protect the defendant against the powerful state - at least on the surface. Sentencing is based on evil intent rather than harm done. The criminal justice system has little interest in the feelings of the victim or in harm done to them. If victims want relief for harm suffered they are expected to do so via the civil system.

The distinction between the object of civil and criminal systems has a conceptual neatness.[51] It also facilitates the operation of the two systems. Victim third parties would complicate trials. Conceptual elegance and pragmatic ease, though, is not enough to justify the distinction. The rigid criminal/civil dichotomy is tenable only so long as justice is largely in the hands of specialists. Once justice becomes politicised neat distinctions will not necessarily appeal to the public.

If offenders were normally people with means, the distinction would probably be acceptable because victims could seek redress for their harm via the civil system. Notoriously, of course, criminal defendants are not people of means - and it is no doubt this which helps explain why historically victims have allowed the state to mobilise the criminal justice system rather than rely on alternative means of social control and redress. What is surprising is that the traditional distinction has lasted as long as it has. However, whatever the reasons for its survival, it is now under threat from a host of directions. Faced with ever increasing expectations, the State can no longer afford to claim exclusive responsibility for crime control - and one means of blurring state responsibility for crime control is the privatisation and

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[51] The distinction has always been somewhat misleading: the way irresponsible driving is treated by the courts is dependent not only on the degree of irresponsibility manifested by the driver, but also on whether the driver has the misfortune to cause someone's death. The gradation of assaults involves defining offences in terms of harm actually caused in addition to intent. Provision for restitution as part of a penalty introduces a civil element into criminal proceedings.

decentralisation of crime and criminal justice. If victims can be given a greater role in the system, they can also be given greater responsibility for it.

The old distinction is also politically vulnerable for other reasons. Institutions have largely lost their ability to withstand demands for external supervision and evaluation, and, exposed to public scrutiny, the criminal justice system is hard-pressed to defend its traditions. While the ideology of defendants' rights makes sense in the light of the traditional distinction, it is hard to defend to a public which is sympathetic to a conceptualisation of crime as a matter involving defendants and victims.[52] While wrongdoers now find few apologists (apart from makers of pleas in mitigation and a declining body of well-meaning criminologists), the plight of the victim is one which can readily arouse empathy from most members of the public. Concern with victims may sometimes be used expediently, but one reason it can be used expediently is that anger at the plight of victims is widespread, deep-felt, and sincere. Attempts to justify the exclusion of victims from the criminal process are therefore politically hazardous. The problem for the criminal justice system has now become how to accommodate this new interest.

The operation of the system is limited by the resources at its command. Given this constraint, the best the system can usually hope to achieve is symbolic change. Victim involvement measures may prove of largely symbolic importance. This does not necessarily matter. Their purpose is to cater for emotions, and symbols can be a wonderfully effective means of providing emotional reassurance. However, even the provision of symbolic reassurance may involve costs, which inevitably comes at the expense of the system's ability to deliver other services.[53] We believe that it is possible to devise effective procedures which are resource-

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[52] The fact that the ideology bears little relation to reality is beside the point: pone rarely finds the state arguing that defendants' rights should be respected in theory, because in practice they are rarely taken particularly seriously. As a result, occasional observers of the system may be far more struck by the highly publicised cases where apparently guilty people are able to escape conviction, than by the fact that the vast majority of defendants are effortlessly convicted.

[53] Space does not permit detailed examination of one important relevant consideration. One argument in favour of recognising victims' interests is that greater victim satisfaction with the criminal justice system may generate more resources for that system. Satisfied victims might be expected to be more sympathetic to the system, and therefore more willing

sensitive by taking current practice as the starting point. We have noted that information about victimisation tends to "get lost", but its "loss" indicates that it was there in the first place, collected but not used. We have suggested that something as simple as changing a form may prove more effective than more elaborate procedures such as VIS in routinely providing comprehensive information about victimisation to the courts. Less efficient procedures may appear more attractive - but either they will be undermined, or their costs will be reflected elsewhere in the system. Victims may well have been "victims of efficiency". The challenge is to reconcile the potential conflict between the criminal justice system's newly found commitment to both victims and efficiency.

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to provide information to the police, and to support calls for increased funding for the criminal justice system. Whether this will be the case will depend on whether providing increased opportunities for victim participation will generate victim expectations which may outstrip the capacity of the system to fulfil those expectations.

Appendix A: Police Summary and Result of Charge form (VP form 209)

SUMMARY AND RESULT OF CHARGE

(I.B.R. Copy)

V.P. Form 209

I.B.R. COPY

DEFENDANT DETAILS	DATE PROCESSED / /	CORRO No. (I.B.R. use only)
Family Name: Given Names:		I.B.R. Name
Address:		Phone:
Date of Birth	Age Male ☐ Female ☐	I.B.R. Ref
Vehicle Reg. No. Exp. State		Licence No. Exp. State
VICTIMS: Name and Address (as per Crime Report)		

COURT	ACTUAL DATE OF HEARING
OFFENCE/S (indicate date of offence for traffic matters) DATE	PLEA / RESULT

Informant Rank/No. Station

SUMMARY OF OFFENCE (See instructions on rear) Prior Convictions: YES ☐ NO ☐

ADMISSIONS: YES ☐ NO ☐ (Cross box) TAPE: ☐ and/or CONFESSION ☐ STATEMENT: RECORD OF ☐ INTERVIEW: STATEMENT ☐ INTERVIEW:

FORFEITURE/COURT ORDERS REQUIRED YES ☐ NO ☐
(If yes, give details)

WITNESS/COMPENSATION COSTS
(Form attached) YES ☐ NO ☐

PROSECUTOR TO COMPLETE

DEFENCES OR ALLEGATIONS RAISED . . .

DEFENDANT ADMITS YES ☐ NO ☐
PRIORS ATTACHED

Magistrate	Defence Counsel	Prosecutor Rank/No.
DID DEFENDANT APPEAR? YES ☐ NO ☐	EX PARTE HEARING YES ☐ NO ☐	WAS AN APPEAL LODGED? YES ☐ NO ☐

WAS PERMISSION TO CONTINUE DRIVING GRANTED? YES ☐ NO ☐ IF SO TO WHAT DATE / /

I.B.R. COPY

Appendix B: Statutory definitions of assault.

Crimes Act, 1958:

Section 16 - Causing Serious Injury Intentionally.

Any person who, without lawful excuse, intentionally causes serious injury to another person is guilty of an indictable offence.[54]

Section 17 - Causing Serious Injury Recklessly.

Any person who, without lawful excuse, recklessly causes serious injury to another person is guilty of an indictable offence.

Section 18 - Intentionally or Recklessly Causing Injury.

Any person who, without lawful excuse, intentionally or recklessly causes injury to another person, is guilty of an indictable offence.

Section 31 - Assaults.

(i) A person who -

(a) assaults or threatens to assault another person with intent to commit an indictable offence

is guilty of an indictable offence.

Summary Offences Act 1966:

Section 23 - Common Assault.

Any person who unlawfully assaults or beats another person shall be guilty of an offence

Section 24 - Aggravated Assault.

(ii) Any person who in company with any other person or persons assaults another person shall be liable to imprisonment for twelve months and any person who by kicking or with any weapon or instrument whatsoever assaults another person shall be liable to imprisonment for two years.

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[54] Magistrates can refuse to hear such cases if they deem them to be outside of their sentencing powers.

Assaults against police: Crimes Act 1958:

Section 31 - Assaults,

(i) A person who -

(b) assaults or threatens to assault, resists or intentionally obstructs -

(i) a member of the police force in the due execution of duty: or

(ii) a person acting in aid of a member of the police force -

knowing that the member or person is such a member or person: or

(c) assaults or threatens to assault a person with intent to resist or prevent the lawful apprehension or detention of a person -

is guilty of an indictable offence.

Summary Offences Act 1966:

Section 52. Assaulting or Resisting Police Officers

(1) Any person who assaults, resists, obstructs, hinders or delays or incites or encourages any other person to assault, resist, obstruct, hinder or delay any member of the police force in the execution of his duty under this Act or otherwise, or any person lawfully assisting such members in the execution of his duty under this Act, or any members of the staff of the local authority in the execution of his duty under this Act shall be guilty of an offence.

(1A) Any person who together with others wilfully and without lawful authority besets any premises whether public or private, for the purpose of obstructing, hindering or impeding by an assemblage of persons the exercise of any person of any lawful right to enter, use or leave such premises shall be guilty of an offence.

Appendix C: Codebook

DATA
Office: Prahran=1 Broadmeadows=2 Data: summary=1 file=2 court=3
Number of victims: 1-6, 7+=7, police=8, not stated=9

DEMOGRAPHICS
Age: in years not stated=00 Post code: in numbers
Gender: male=1 female=2 male & female=3 Priors: yes=1 no=2 NS=9

CHARGE
Charges: serious assault=1
assault=2
assault police=3
intentionally causing injury=4
recklessly causing injury=5
assault by kicking=6
assault with a weapon=7
assault in company=8
assault with an instrument=9
other=0
Convictions: as above
Other charges: struck out=1 other=4
withdrawn=2 not stated=9
dismissed=3
Sentences: imprisonment=1
CBO with conviction=2
CBO without conviction=3
fine with conviction=4
fine without conviction=5
Good Behaviour Bond=6
community work=7
other=8
Defendant plea: not guilty=1 guilty=2 other=3 not stated=9

OFFENCE
Weapon used: yes=1 no=2 not stated=9
What: kicking=1 other=2 not stated=9
Offence in company: 1= yes 2= no 9= not stated
number: 1-7, 8+=8

DESCRIPTION OF OFFENCE
How assaulted: punched=1 kicked=2 struck=3 slapped=4 pushed=5 threatened=6 other=7 hit=8 not stated=9
Assaulted with: open hand=1 clenched fist=2 weapon=3 foot=4 other=5 arm=6 not stated=9
Number of times assaulted: 1-7, 8+=8, not stated=9

PHYSICAL INJURIES TO VICTIM
Physical injuries sustained: 1= yes 2= no 9= not stated
What: redness=1 bruising=2 abrasions=3 cuts/lacerations=4 stitches=5 breaks=6 pain=7 other=8
Medical attention sought: yes=1 no=2 not stated=9
Hospitalisation required: yes=1 no=2 not stated=9
Permanent injuries sustained: yes=1 no=2 not stated=9
Time off work required: yes=1 no=2 not stated=9

PSYCHOLOGICAL INJURIES TO VICTIM
Psychological injuries sustained: yes=1 no=2 not stated=9

ECONOMIC INJURIES
Financial loss suffered: yes=1 no=2 not stated=9

CIRCUMSTANCES OF OFFENCE
Relationship between defendant and victim:
spouse/defacto=1 sibling=2 police=3 work acquaintance=4 known/friend=5 stranger=6 boy/girl friend=7 other=8 not stated=9
Evidence of victim provocation: yes=1 no=2 not stated=9
Explanation / excuse: yes=1 no=2 not stated=9

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