The 'victim lobby': Lynch mobs take over America's courtrooms

by Leo F. Scanlon

The 1994 crime bill, which passed the U.S. Senate on Aug. 25 after months of bitter controversy, was the product of a lengthy process of judicial "reform" set into motion by the Department of Justice long before President Clinton—or many congressmen—came into office. It reflects the pressures generated by the fastest-growing political constituency in America today: The Victim. The victim of what? Just name it. Behind all the populist rhetoric marshalled to support the various draconian measures of the crime bill—from gun control to the death penalty—stands the new image of the citizen as "victim."

This is not to say that there are not real victims of the ferocious criminality which plagues the country today. What is ominous, is the effort of the government and powerful private foundations to cultivate a *victim mentality,* and then to mobilize these victims *in support of measures which threaten the Constitution,* and do nothing to thwart criminality.

The victim lobby was cultivated by the Justice Department, long before the recently celebrated crime bill was first thrown into the legislative hopper, and it is now the central organizing force supporting extremist judicial reforms and the reintroduction of the death penalty.

Any discussion of stemming crime in America must begin with the source: the international drug trade. This, and not the victims of crime, is the proper focus of a crime bill. Unfortunately, the measures advocated in the current crime bill will do nothing to improve the poor record of recent administrations in dealing with the international marketing and financing of the drug trade.

While drugs have become available on every street corner, there has been a marked deterioration in the effectiveness of local police over the past decades. This is partly due to the fact that there are at least five times as many reported crimes per police officer today than there were 20 years ago. Those officers are further burdened by the legacy of reforms initiated with the formation of the Law Enforcement Assistance Administration (LEAA) in the late 1960s.

The LEAA used control over federal grant monies to reorganize local law enforcement practices along the lines advocated by sociologists, criminologists, and prosecutors associated with the Ford Foundation and other establishment think-tanks which influence the Justice Department. The basic idea of the reforms was to shift the front line of anti-crime combat away from the street, and into the courtroom. "The cop on the beat" was replaced by mobile cruisers and "response teams"—measures that were popular with administrators looking to cut city budgets.

The LEAA reforms also hit at the ability of the officer to *prevent* crime by eliminating the enforcement of vagrancy and loitering laws. In general, the law enforcement measures that were strengthened in these years were those that involved *post crime* actions: trial procedures, bail and sentencing matters, and increased terms of incarceration.

Eventually, it was the protections offered by the Bill of Rights, and not the actions of criminals, which became the target of federal law enforcement theorists. By the mid-1980s, the Department of Justice's Office of Legal Policy (OLP) took this approach to an extreme, with the publication of a 1,000-plus-page blueprint for the destruction of the Bill of Rights (see *EIR,* Sept. 13, 1991, p. 29).

Wrecking the Constitution

The 1960s reform effort was accompanied by the growth of social service programs, especially psychological counseling services, heavily funded by LEAA and foundation grants. The very law enforcement theorists who had engineered this deterrence/punishment strategy of crime control fostered the growth of "victim of crime" services.

The Reagan administration convened a blue ribbon commission, the President's Task Force on Victims of Crime, which included veterans of the LEAA reforms. The commission's final report, issued in 1982, proposed altering the Constitution in dangerous ways in order to carve out a special relationship between "victims" and the law enforcement community. These proposals came to form a central pillar of the strategies pursued by the Bush administration Justice Department under Richard Thornburgh and William Barr.

An examination of the proposals of the blue ribbon commission shows that once one legitimizes the notion of a class

of "victims" with a special relationship to the state, the constitutional basis for existing American law is swiftly undermined. There is no better illustration of this than the panel's prime recommendation—a simple one-line addition to the Sixth Amendment—which turns the Constitution topsy-turvy (the proposed addition is printed in italics):

"We propose that the Amendment be modified to read as follows: 'In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the Assistance of Counsel for his defense. *Likewise, the victim, in every criminal prosecution, shall have the right to be present and to be heard at all critical stages of judicial proceedings.*' "

The fact is, that the victim already has the right to be present at every critical stage of judicial proceeding, and is only "excluded" from the plea-bargaining process, (which usurps the function of a trial). The wording of the proposed addition to the amendment implies that the victim has some special relationship to the prosecution which goes beyond the lawful process of objective discovery of the facts pertinent to the crime charged.

Dissenting opinions to the majority ruling in the Supreme Court case of *Payne v. Tennessee* (the case which allowed victim-impact testimony at sentencing hearings) pointed out that one mischievous effect this practice has, among others, is that it encourages vengeance to be brought into a proceeding which should be free from such an emotion. Worse, it creates different classes of victims, since the very premise of "victim impact testimony" is that circumstances of the victim's life—not the nature of the crime—should influence the punishment. The proposed addition to the amendment would extend those evils, and worse, throughout the entire judicial process.

The examples of how this would work are found in the Executive and Legislative Recommendations of the commission. The recommendations cover three main areas, all of which involve limiting or destroying constitutional protections of the rights of the accused, as though this somehow reverses the wrong done to the victim.

First, the commission proposed measures to keep the identity of the victim secret, and to prevent the defense from having access to records of counseling provided by victim support organizations. The courts have rejected this proposal, and rightly so, since this counseling, which is under the influence of the prosecutor's office that runs the victim program, is also being conducted by amateurs—often other "victims." The business of keeping the victim's identity secret is also dangerous, since the pre-trial investigations often make or break the defense, especially in death penalty cases.

Next, the commission advocated the standard Justice Department demands that the exclusionary rule be abolished so that tainted evidence be allowed at trial, that parole be abolished, and that sentencing discretion on the part of judges be limited. These measures are popular, because of the perception that so many criminals walk away from punishment—ironically, the real purpose of these proposals is to make the plea bargain (which is the real abuse of justice) a more powerful tool in the hand of the prosecutor.

Finally, the commission proposed that *arrest records* in the case of child abuse, pornography, and sexual assault be made public. This is a particularly nasty piece of hypocrisy, which trades on the horror of sexual crimes committed against children. But an *arrest* is not a *conviction,* even though that is what most prosecutors would like people to believe. Also, in such cases, as with the domestic abuse prosecutions which depend very much on the testimony of the victim, accusations are often false.

In summary, these victim protection measures are all flawed by the fact that they propose to sacrifice or compromise the *principle of truth* in order to provide emotional security to the victim. The congressionally mandated funding apparatus which is pouring money into the victim network is backing a legal theory which is opposed to core concepts of the republican system of justice. This movement is orchestrating a lynch mob environment, and proposes to destroy the search for truth in the trial process in order to secure convictions. Fundamentally, this outlook is supplanting, in the hearts of the victims themselves, the Christian hope for redemption and rehabilitation, with the desire for revenge.

It is not surprising, then, that the commission justifies its approach with the naked Benthamite calculus: "It is expensive to arrest someone and prosecute him in court . . . victim/witness assistance units . . . can produce substantial savings in witness fees and police overtime pay."

The Justice Department apparatus

Despite all the shouting from the Republican side of the aisle in Congress this summer about excessive "social spending" allegedly associated with various versions of the crime bill, it was a Republican-run Justice Department, under William Barr, which advocated a program called "Weed and Seed" which proposed to coordinate programs ranging from law enforcement to public housing administration and put them under the direction of the Office of Justice Programs (OJP), the division of the Department of Justice which administers the very large "social spending" programs which that agency maintains. None of the congressional opponents of "social spending" mentioned these programs.

In recent years, one element of the OJP, the Office of Victims of Crime, has grown to an enormous size, adminis-

tering over $137 million in grants in fiscal year 1992. This figure includes $17.8 million in discretionary funds to support victims programs, including funding for training law enforcement officers and prosecutors, and $119.5 million in formula grants to state programs which support over 7,000 victims groups and programs nationwide. The formidable network which this kind of money can create is being mobilized by Barr today in support of his showcase project of parole elimination and privatization of the prisons in Virginia.

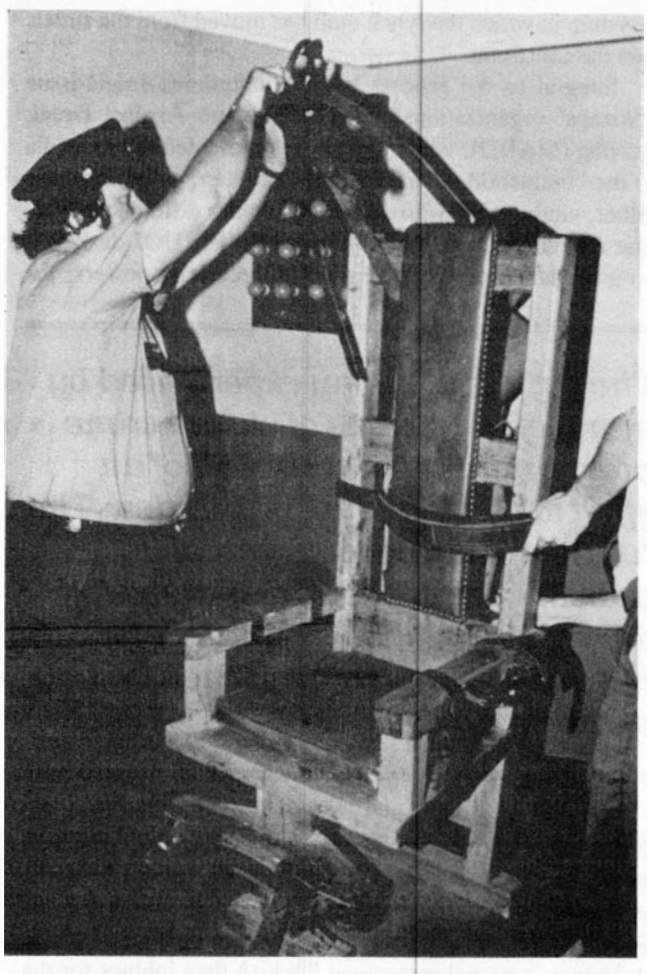
The means by which the agenda of the Department of Justice's Office of Legal Policy gets transmitted to the "grassroots" victims' movement are varied, and involve federal monies dispensed directly by the DOJ to local and national organizations, as well as block grants built into the authorization bills which implement the omnibus crime legislation. The block grant machinery mandates states to set up programs with certain specifications which must be met if the states are to receive the money allocated for various law enforcement purposes.

The states then mandate local prosecutors and police departments to create clones of the federal program, as a precondition for receiving their local share of the money trickling down from the Congress. The program established by the local police or prosecutor's office is tailored to interface with a "grassroots" organization which is being funded at the national level by the OJP itself. The Drug Abuse Resistance Education (DARE) program is one example of this mechanism at work (see *EIR*, March 5, 1993, "DARE: 'Brave New World' Comes to Your Local Police Department").

There are innumerable commissions on the state and local level which are built by the National Crime Prevention Council, and its organization illustrates the breadth of the OJP apparatus. The NCPC receives Justice Department grants which match over $1.1 million in funds raised from sources like the Florence V. Burden and Fred Maytag Family Foundations, corporations like ADT Security, General Mills, and Bristol-Meyers Squibb, and private foundations like the Lilly Endowment and the W.K. Kellogg Foundation. This is seed money to unite all sorts of local (DOJ-funded) organizations behind the programmatic initiatives of the Justice Department. The Advertising Council, which has a seat on the NCPC board, provides the thematic expertise for these campaigns.

The amounts of money involved are sometimes astounding, and indeed the OJP machinery, in its extended form, is one of the best-organized and best-funded lobbies on Capitol Hill. It is also one of the most powerful political and electoral forces in the country today.

The case of "McGruff the Crime Dog" has brought to national attention the lavish funding available to the "crime lobby." McGruff is a cartoon character developed by advertising executives to market the DOJ agenda to school children



The so-called grassroots movements demanding the death penalty are being organized out of the Justice Department itself, playing on the "victim" mentality.

and community organiztions. The character, the logo, and all manner of paraphernalia (T-shirts, coloring books, dolls) are "franchised" to local "citizen's organizations," which market the material to school districts and others as part of the local "anti-crime program" associated with the police or prosecutor's office.

The head of this marketing apparatus maintains an office in Washington, D.C. and draws a six-figure salary, employs a highly compensated "director of franchising," and a lobbyist. The lobbyist's function is to see to it that the McGruff budget, which is a "line item" (i.e., it is automatically renewed unless it is specifically cut by an act of Congress) is renewed annually.

The McGruff case may seem to be a benign fraud, carried out by a group of sharpies who have found a good means to milk the federal cash-cow; but it is a cog in the machinery that is turning a justice system based upon natural law, into

a system in which the lynch mob has moved from the streets into the courtroom.

Integral to the process are the ubiquitous single-issue "citizens' organizations" such as Mothers Against Drunk Driving (MADD), which are always presented in the media as the "brainchild of one outraged (mother, sister, brother, father, victim . . .) who decided to make a difference. . . ." The real story is usually quite simple: The DOJ designs a program aimed at increasing its prosecutorial powers; the

The pain and agony experienced by many of the victims of violent crime are manipulated in support of an effort to weaken the Constitution. The "victims" then become part of a traveling freak show, displayed to the public whenever a prosecutor needs to railroad a conviction or a death sentence.

OJP finds a "perfect case" and recruits the victim, who then leads the (DOJ-inspired) "grassroots movement." Media coverage, training, networking through similar organizations—all set up under law enforcement auspices—create an instant "national movement," which then lobbies for the legislative reforms which just happen to be embodied in the latest version of the crime bill being presented to the Congress.

The unique feature of the Victims of Crime Act, which enabled the creation of the victims services programs, is that it has a self-funding component, the Victims of Crime Fund in the U.S. Treasury. Deposits come from fines and penalties assessed on convicted federal criminals, and are distributed the following fiscal year. According to an OJP annual report for FY 1992, deposits from FY 1985 through 1992 exceeded $931.1 million. In 1992, the DOJ's Office of Victims of Crime awarded over $62 million to support 2,500 of the 7,000 existing victim service programs.

OJP budget reports explain that these programs are "located in prosecutors' offices, domestic violence shelters, mental health agencies, rape crisis centers, churches, law enforcement departments, hospitals, child treatment centers, etc." The OJP itself highlights the point that "these programs provide a vital link between the victim and the criminal justice system [which is] often critical to a victim's psychological well-being and ability to stabilize his or her life after a victimization."

The danger here is not that services are provided to crime victims—this is the proper function of churches and social service agencies—but that a victim/witness would be dependent on the prosecutorial apparatus for such potentially sensitive, and inherently influential, services. The apparatus expands the role of the Justice Department beyond any recognizable constitutional boundary.

Crime lobby shapes legislative debate

The media have been filled this year with analytical pieces attempting to explain the political pressures being brought on lawmakers to push anti-crime measures—which measures, most legislators and leading law enforcement officials admit, are variously useless and dangerous. Even more confusing, is the apparent discrepancy between the level of anti-crime hysteria in the population and the statistical indices of actual crime.

FBI and DOJ figures confirm the observations of criminologists and other specialists that actual crime rates have been flat or dropping over a one-to-ten-year period (with the exception of those crimes, such as rape or hate crimes, which are up, due primarily to more aggressive reporting techniques). These figures also illustrate the curious fact that crime is increasingly violent in the areas where populations are most victimized—notably the inner city—while the suburban and wealthier areas provide the support base for the most extreme legislative measures, especially those providing for the application of the death penalty.

The spread of drug-based criminality has certainly sensitized all layers of society to the social disintegration which is evidenced by violent crime in America. It is also true that this violence is increasingly random and vicious. But that is an *image*, not the whole story. An innocent three-year-old child may be a "random" victim of a shoot-out between drug gangs, but the existence of the drug trade and the gang marketing apparatus is not random at all. The various groups administered by the OJP help shape, and in turn feed from, this image-driven process.

The most aggressive support for radical prosecutorial innovations, and the death penalty in particular, is centered in organizations which are under the umbrella of a DOJ program called the National Organization for Victim Assistance. NOVA and its local offshoots are organized on the apparently innocuous premise that victims of violent crime should receive as much help and assistance as society can render in the wake of a crime. One such therapy organization, recently formed, is called "Parents of Murdered Children." Numerous other organizations for "survivors" or "witnesses" to scenes of death and destruction are being aggressively funded as well. These unfortunate "victims" are then organized into a political force which is calling for revenge and retribution.

Participants in the victims groups are encouraged to relive the trauma of their experience, *so that they may be effective*

witnesses for the prosecution, and, when appropriate, powerful champions of the implementation of the death penalty as a device of revenge.

Press accounts are full of the statements of "victims" who insist on the application of the death penalty for no other reason than it will make them "feel better." In one recent case, the father of a murdered child actually parrotted the lingo of the prosecutors when he told the press that the death penalty would provide "finality" and "closure" for him emotionally.

In Texas, a "victims' group" composed of people who have been through such programs, is on hand to fill the news media with emotional calls for the execution of Gary Graham every time his attorneys present new evidence of his innocence. In Virginia, William Barr and former U.S. Attorney for the Eastern District of Virginia Henry Hudson depended on these "victims" to provide media sound bytes at the public hearings they stage to build support for their scheme to eliminate parole in the state prisons.

The leaders of these victims' groups, which are typically organized directly out of the prosecutor's office, present themselves to local legislative bodies and press outlets as "individuals," with no other connections. This image is enhanced by the often gruesome circumstances of the crimes they were victimized by, and the "sincerely felt emotions" (cultivated in the group therapy sessions) which motivate their calls for revenge and vengeance.

In this way, the authentic pain and agony experienced by many of these individuals are manipulated in support of an effort to weaken the Constitution. The "victims" then become part of a traveling freak show, displayed to the public whenever a prosecutor needs to railroad a conviction or a death sentence.

This condition of being "victimized" mandates the intervention by the state's social work apparatus. In criminal matters, the victim ultimately depends on the actions of the prosecutor to effect an emotional "recovery." A close look at this relationship, when it involves witnesses who will testify at trial, can only lead one to label the process as witness tampering.

These "victims" are induced to believe that it is only the powers of the state—particularly the prosecutor, jail, or electric chair—that can solve their problems. A population which adopts this outlook will quickly lose the capacity to address the problems which are causing crime—and that is the worst form of victimization of all.