



Judicial Proceedings Panel
March 13, 2015 Panel

Testimony of: Bridgette Harwood
Co-Executive Director and Director of Legal Services
Network for Victim Recovery of DC

My name is Bridgette Harwood and I am the Co-Executive Director and Director of Legal Services at Network for Victim Recovery of DC (NVRDC). I would like to thank the Panel and their staff for addressing this important issue and inviting me to inform the recommendations.

I'll open by offering some perspective on my experience related to litigating restitution and compensation issues for crime victims. NVRDC offers comprehensive advocacy and legal assistance for all survivors of crime in the District. Additionally, we run the 24-hour Sexual Assault Crisis Response Project for the city—responding when any survivor of sexual assault seeks forensic evidence collection—roughly 400 people a year (approximately 40% of whom do not report to the police).

I have spent my entire legal career as a crime victims' rights attorney in the civilian context. Prior to co-founding NVRDC in 2012, I served as a staff attorney at Maryland Crime Victims' Resource Center. Since coming to NVRDC my work has shifted to a heavy focus on sexual assault survivors and their legal rights. Of the 600 clients we serve a year, 75% of them are survivors of sexual violence. While at NVRDC, I have also offered expert consulting to civilian attorneys representing military survivors of sexual assault in asserting and enforcing their rights to dignity and privacy. From conversations with these attorneys it seems that restitution has not been a remedy that survivors often seek through the military justice system. I assure you this is not because there are no out-of-pocket losses.

Today, I hope to offer a snapshot of restitution within the civilian context—addressing some former cases and unique issues that have come up in the state of Maryland, local DC prosecutions, and in the federal courts. My goal is that these examples provide insight related to possible challenges and important considerations for implementing the recommendations.

While at MCVRC, I had the opportunity to represent several victims of crime related to restitution requests in both state and federal courts and compensation appeals within the state of Maryland. While few of these cases were specific to sexual assault, the legal advocacy I will discuss has continued to shape the national narrative regarding restitution for crime victims across the country.

There are a few themes that I would like mention. First, as the military addresses the right to restitution for survivors you will most likely consider appropriate limits on restitution in regards to the causation required. In local DC cases, and other federal courts, pursuant to the Crime Victims' Rights Act, Mandatory Victims Restitution Act and the Victim Witness Protection Act, crime victims are defined as those directly



and proximately harmed by the commission of an offense. At NVRDC, we have somewhat successfully challenged the debate over injuries being “too attenuated”. Recently, one of our clients received permanent injury to her nose when her former partner punched her in the face. Following an assault charge and a court ordered no-contact, the defendant continued to text our client. Ultimately, the USAO plead the charge down from an assault to a criminal contempt for the no-contact order violation. The prosecutor opposed our request for restitution under their interpretation of the direct and proximate cause connection to the injuries. The court allowed for restitution of loss wages related to our client’s fear of the defendant which was a direct result of the violation of the no contact order in conjunction with the prior assault.

This case is interesting for two reasons: 1. Had the prosecutors considered the medical costs as part of the plea negotiation, the victim could have potentially received all of the requested amount; and 2. When crafting procedures for the issuance of restitution, it is important to consider how the causation required will impact the Convening Authority’s ability to order restitution at sentencing.

The causation issue is one that I have confronted throughout my career. Back in 2007, we requested restitution in a Fourth Circuit case against a pharmaceutical company that pled guilty to false advertising. Our client was a woman who had become addicted to Oxycotin and sought treatment at an expensive in-patient recovery center. The court, relying heavily on *US v. Blake*, which required that the direct and proximate cause come from the underlying offense of the conviction denied the request. Similarly, the same argument was lost in the Maryland when the Court of Appeals held that restitution could not be ordered for alleged crimes that have been *nolle prossed*, unless the defendant knowingly and explicitly agrees to pay such restitution as part of a valid and enforceable plea agreement.

The take away here is two-fold: 1. If creating MVRA and VWPA equivalents within the military, the definition of victim and the cause required is important to address and has a real impact on limiting survivors restitution rights; and 2. While including restitution in plea agreements is helpful, it doesn’t always happen. Survivors must be meaningfully included in plea discussions and given ample time to articulate losses prior to the agreement (unless future amendments to the amount ordered are allowed).

In my opinion, the future of restitution is future restitution. The entire purpose—to make survivors whole again—implies a forward-looking approach.

State and federal courts tackling this have taken many approaches around the country. In a Baltimore City case, I successfully advocated for a 19-year-old man to receive future restitution from a shooting that left him a paraplegic. Alaska, Colorado, and Wyoming state courts have also allowed for this, along with some federal circuits, like the Ninth Circuit, affirming an order for future counseling and future STD testing costs.



There are also future costs that are not known at the time of sentencing. While federal courts considered this in the VWPA—the victim still only has 90 days to capture the entire mosaic of what their losses from the defendant’s conduct will be. This is particularly challenging when one considers the research around delayed-onset of PTSD related to a traumatic event (new research suggesting this can be the case for nearly a quarter of all those diagnosed with PTSD). A survivor who experienced this could clearly not know at the time of sentencing, or even 90 days out, the costs related to their injuries. I encourage the Panel to consider this issue when developing guidelines around the allowable timeline to request restitution and the broad discretion of the Convening Authority to amend a restitution obligations post-sentencing.

I cannot stress enough how critical it is for Special Victims Counsel, Convening Authorities and military judges to understand the breadth of costs related to sexual violence. At first glance, one may think military survivors and dependents don’t have medical and mental health out-of-pocket losses. There are some important gaps to consider—the exemption within TRICARE, and the treatments that are actually available through coverage providers. For example, how easily can survivors access mental health services that offer Eye Movement Desensitization and Reprocessing (EMDR) to treat PTSD? It is rare for providers to offer this treatment, however, EMDR is a therapy that is listed in the Department of Veterans Affairs & Department of Defense Practice Guidelines as "highly recommended" for the treatment of trauma. If this treatment isn’t provided through covered providers then survivors will have costs when seeking private providers for treatment.

Additionally, I strongly encourage the process of creating a mechanism to divert forfeited wages to survivors who have been ordered restitution and compensation. Without getting into the complexities of enforcement of restitution within the civilian context, the assurance of actual payments made is something the military is well-designed to be able to mandate.

The Convening Authority having discretion to order restitution broadly as part of a sentence or a condition of the military equivalent of probation is pivotal. Additionally, while the ability to include restitution in the pre-trial agreement exists, best practices suggest mandating prosecutors to confer with survivors and consider and include their requests for losses prior to acceptance of the plea.

The civilian courts have clearly not perfected the right to restitution and issuance procedures. After all, for the first time ever the Supreme Court addressed a case related to restitution just last year in *Paroline*. I predict that attorneys and advocates in the crime victims’ rights movement will more consistently seek future costs and unconventional out-of-pocket losses until these statutes and splits across the federal courts are clarified. The military has a unique opportunity to create a forward-thinking approach where the Convening Authority’s direction is broad enough to capture all of the survivor’s losses related to the offender’s conduct.

If I could wave the magic wand of a survivor-centered approach to restitution within the military, I envision survivors having independent rights to participate in



restitution requests in every sentencing hearing whether the result of a pre-trial agreement or contested trial and the Convening Authority having broad discretion to order restitution for future costs—even post-sentencing—in a way that brings survivors as close to whole again as possible.

Thank you for your time today.