

Legal Rights Forum

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I. Background

II. Objective

III. Issues

I. Background

Victim support and victims' rights during litigation have long been neglected by the public. It was not until the recent bombshell in the legal field of a call to abolish death penalty that the focus slightly finally shifted from defendant's human rights to victim support. In addition, delays often occur due to flaws during forensic investigation and investigative procedures. The Legislative Yuan has passed the third reading for the Criminal Speedy Trial Act, but the legislature did not give careful consideration to victim's rights during litigation. Close monitoring re-

mains necessary to see if there will be further supporting measures and whether amendment to the Code of Criminal Procedure would truly guarantee victim's legal rights.

Victim support must be integrated across different disciplines. In addition to the Ministry of Justice, Department of Prevention, Rehabilitation and Protection, as well as Association for Victims Support (AVS), assistance and research is also needed from other disciplines including law, social work, psychology, medicine and police administration.

II. Objective

To ensure human rights and establish a litigation system that facilitates speedy investigation, trial and verdict, we hope to build consensus among the litigants,

1. Authored by the Assistant Secretary of Association for Victims Support Taipei Branch.



11 Jun., 2010, The Criminal Speedy Trial and Victim's Legal Rights Seminar

practitioners, government entities and academics in the legal field by sharing experiences in order to make modifications that provides victims and their families the support they need. This will help minimize controversies, disputes and conflicts during the legal procedure, ensure the success of trial proceeding, and help victims regain trust in social justice.

III. Issues

1. Victims' Legal Rights (I) – Forum on Speedy Criminal Trials and Victims' Legal Rights

AVS Taipei Branch attaches great importance to providing legal aids and legal counsel for victims and their families. This forum was held at 2pm, June 11, 2010 at National Taiwan University

Alumni Hall with the assistance of Pai Hsieh-Yen Cultural and Education Foundation, Chiang Education Foundation and Taiwan Law Society. Administrative Deputy Minister of Justice Wu Chen-Huan, Director of Department of Prevention, Rehabilitation and Protection Fei Ling-Ling, and Chief Prosecutor of Taipei District Prosecutors Office Lin Ling-Yu were among the distinguished guests invited and they expressed their concerns and reaffirmed the importance of such discussions.

On April 23, 2010, the Legislative Yuan passed the third reading of the Criminal Speedy Trial Act, which was welcomed by the judicial branch. However, the prosecutorial and investigation agencies felt their hands are tied with the decision to place limitations upon

the prosecutor's right to appeal. This is not the only reason causing delays in the review of legal cases. There is a lack of consistency between the opinions of the judges as well as the prosecutorial and investigative agencies. Both entities are responsible for the delays in criminal proceedings. Human factors should be considered in judicial issues. The solution lies in judiciary reform and self-review. Emphasizing speed alone may lead to loopholes in the judicial system, resolving the symptoms but not the root cause. Without identifying the cause, the problem remains.

The Administrative Deputy Minister of Justice Wu Chen-Huan was invited to be the moderator for the first panel discussion on "Examination on Criminal Procedure in Taiwan through the Criminal Speedy Trial Act". The panelists included judge and Director of Criminal Department, Judicial Yuan, Lin Jiun-Yi, Prosecutor Ge Guang-Hui from the Department of Prosecutorial Affairs, as well as Professor Chen Tze-Lung and Attorney Greg Yo from National Taiwan University College of Law. Issues discussed included the influence of the approval of Criminal Speedy Trial Act

on criminal procedures in Taiwan, the improvement of court judges, introduction of the lay judge system and the quality of court rulings.

The second panel discussion was on "The Criminal Speedy Trial Act and Victim's Rights". The moderator was Fei Ling-Ling, the Director of Department of Prevention, Rehabilitation and Protection of the Ministry of Justice. The panelists were Judge Su Su-E from the Criminal Department, Head Prosecutor Cai Bi-Yu of Taiwan High Prosecutors Office, Professor Hsu Fu-Shen from Central Police University and attorney Wellington Koo from Taiwan Law Society. Issues discussed included the high number of court cases, remand, victim promotion task force, and whether the victims have independent rights to appeal and participate in criminal trials, which allows the victims to express themselves. Discussions on relevant issues target victims' legal rights and rights to litigate. The hope was to build consensus among the litigants, practitioners, government entities and academics in the legal field by sharing experiences in order to make modifications that provide victims and their families with the support they need.



This will help minimize controversies, disputes and conflicts during the legal proceedings, ensure that the trial proceeds successfully, and assist victims to regain trust in social justice.

2. Victims' Legal Rights (II) - Forensic Science and Victim Support - Keynote Speech by Dr. Henry Lee

AVS Taipei Branch is highly concerned about the legal support and counseling for victims and their families. This forum was held at 9 am on August 14, 2010 at the 4th floor of Jihui Hall in the Minsheng Community. Guests invited included the President of Central Police University, Hou You-Yi as the moderator and senior officials from various sectors. They expressed concerns and emphasized the importance of these issues.

The basic principle in the pursuit of

truth after a crime is committed is the pursuit of concrete evidence and procedural justice, which protects the judicial and criminal justice. Therefore, collecting evidence and victim's participation in criminal trials are the two pillars of victim support. When a crime is committed, victims are always eager to seek the truth. However, truth is not given, but earned. As Francis Bacon once said, "Knowledge is power." Exploring forensic science from the perspective of victim support is meaningful to the pursuit of substantial justice, essentially finding the facts, and procedural justice, essentially identifying the evidence. Therefore, the purpose of this forum is to educate and inform the entire society about acquiring and valuing information related to the protection of victim's rights.

Dr. Henry Lee's speech was highly captivating. He has always believed in victim support. Many victims are unidentified and it is necessary to rely on the forensics to help justice prevail. Victim support and forensic science allow the use of evidence to identify suspects and witnesses, pinpoint criminal acts from the evidence, protect human rights, prove innocence, name the un-

named victims, and solve the unsolved mystery. The idea is to "Let the evidence speak and ensure accountability in the face of history".

Though governmental resources are limited, efforts from the private sector are limitless. The forum on Victim's Legal Rights II was jointly held by AVS Taipei Branch, Taipei District Prosecutors Office and Songshan District Office with the assistance of non-profit organizations such as Pai Hsieh-Yen Cultural and Educational Foundation and Taiwan Law Society. Dr. Henry Lee discussed victim support and related issues, using famous cases around the world and forensic science, to express passion and hope toward life. He called for the public to pay attention to victims' journey through mental rehabilitation. In addition, it was a call for the public to devote manpower and resources to care for the victims and serve as a stronghold for victim support groups.

3. Victims' Legal Rights (III) - Civil Compensation and Victim Support - Keynote Speech by Judge Zheng Li-Yan

Whenever a crime is committed, the



victimised family becomes in need of counseling and rehabilitation. In addition, they need to face a litigation process that spans anywhere from one year or two to over 10 years. This is a torturous process for them. Often-times, the family ended up with merely a certificate of the obligatory claim when the process finishes. Therefore, this forum features civil claim for compensation to bring awareness to and educate the public about how to protect victims' rights.

The keynote speaker on October 29, 2010 was Judge Zheng Li-Yan. She has extensive experience in dealing with criminal, civil and domestic cases while working on compulsory enforcement. She is also experienced in the legal procedure and fulfillment of debt from the victims' perspective. She used many actual cases as examples during her



speech and provided insightful answers to questions from the audience. Her insistence on justice and care for the disadvantaged earned her great recognition and reverence. The followings are highlights from her speech:

- (1) How can a victim seek restoration to status quo ante or claims for damages?
- (2) Types and fulfillment of civil compulsory execution?
- (3) Models of civil compulsory execution
 - A.Payment order;
 - B.Promissory note;
 - C.Collateral auction ruling;
 - D. Court decision;
 - E.Mediation and settlement records;
 - F. Provisional attachment and provisional injunction.
- (4) How to investigate the debtor's property and file for court seizure?
- (5) The procedure and effects of court seizure on real estate and moveable

properties?

(6) How to request for seizure of debtor's salary and savings?

A.How to conduct land registration?

B.How to file a request for handing over a child and execute visitation rights?

The speech focused on the protection of victims' rights and procedural system as the foundation for discourse. In addition, the spread of knowledge will allow the victims' families or general public to be aware of issues such as protecting their own rights, legal procedure and time limitations. With her expertise as a civil judge, she taught the public the step-by-step process on requesting compensation. Fully protecting the victims' rights will allow them to regain trust in social justice.

4. Victims' Legal Rights (IV) – Forum on Medical Forensics and Victim Support – Keynote Speech by Forensic Doctor Shaw Kai-Ping

Behind each criminal case are families in need of counseling and rehabilitation. In addition, they often are helpless after the crime has occurred. Since they are not involved in the treatment and forensic examination, they often do not understand what the process en-

tails. In the case where the victims have died, their survivors do not understand how the forensic doctor determined the cause of death. All they would know is the result. Therefore, this forum discussed “forensic medicine and the medical treatment process” in order to educate and bring awareness to the public about protecting victims’ rights.

Associate professor Shaw Kai-Ping was the keynote speaker on December 1, 2010. He holds a PhD degree in pharmacology from the University of Maryland School of Medicine in the U.S., and is currently the director of the Forensic Pathology Division in the Institute of Forensic Medicine, Ministry of Justice. He specializes in forensic pathology and is experienced in forensic medicine on crime victims. During the speech, he outlined many high profile cases that intrigued the public and responded to the public inquiries with insightfulness. His insistence on justice and care for the disadvantaged is amicable. The followings are the highlights from the speech:

Forensic identification and victims support:

(1) Training and education for forensic identification

(2) Daubert’s principles and the selection of forensic examiner

A. Structure and myth about the forensics system;

B. Fairness and credibility of forensic medicine ;

C. The role of forensic doctors in legal cases.

(3) Case study and discussion on seeking justice for the wrongfully accused

A. The roles of the victim and offender;

B. Fairness of the forensic doctor and evaluation;

C. Determination of accountability and accuracy;

D. Accountability and quantitative standards.

The forum aims to protect victims’ rights and share the knowledge to bring understanding to the victims’ families or the general public concerning their rights during forensic medicine , doctor’s diagnosis and the subsequent legal procedure. Case study and experience sharing by the medical and forensic doctors shed light on how to fully protecting victims’ rights, which will allow the victims to regain trust in



social justice.

5. Victims' legal rights (V) - Restorative Justice and Mediation in Criminal Cases

Victims and survivors often do not know what to do when a crime has just occurred. In addition to the lengthy legal procedure, they are often clueless when it comes to discussing settlement with the defendant during mediation. For the most part, the settlement is reached through the mediation committee or mediation court. However, the restorative justice approach stresses that the offender and the victim should seek solutions together. Mediation is not just about the victims reliving the crime, but also to receive the apology and compensation that they deserve, restoring the damage, and avoiding repeating conflicts. This approach brings victims more satisfaction. Studies also prove that restorative justice during mediation is beneficial for easing the emotional and mental distress and restoring damage to the victims. It also improves their satisfaction toward the procedure. In practice, restorative justice is not only beneficial to the victims but also allows the offender to actively and sincerely take responsibility for



their actions while facing the victims directly, and eventually be integrated into the society. This approach will also reduce the recidivism. Therefore, restorative justice creates a win-win-win situation that benefits the offender, the victim and the society.

The purpose of the May 14, 2011 "Forum on Restorative Justice and Mediation for Criminal Cases" is to educate and bring awareness to the public about protection of victims' rights.

The forum focuses on the protection of victims' rights and sharing information to allow the victims' families and the general public to understand their rights during mediation and the settlement process. They can also understand the subsequent legal procedures. Examples and experiences shared by the judges, doctors and social workers

shed light on victims' rights, allowing them to regain trust in social justice.

6. Victims' Legal Rights (VI) – The Spirit of Restorative Justice – Occupational Hazard and Labor Rights

In recent years, cases of overwork induced death are rising. A 29-year-old engineer named Hsu from Nanya Technology Corporation died suddenly from excessive overwork. The case caught public attention because the company refused to recognize the cause of death as overwork. Labor rights have for too long been ignored, and there are constant cases of occupational accidents. Corporations have the discretion of classifying employees as exempt and cut corners or completely ignore safety measures that protect the lives and health of workers. Workers are often unaware of the dire danger they are exposed to. It was not until this case happened that the definition of occupational hazard becomes more inclusive. To the victims' families, they suffer great emotional and psychological trauma and daily distress. When their loved ones worked hard to provide for the family but died suddenly due to oc-

cupational hazard, they were engulfed in sorrow and did not know what to do, not to mention protecting their own rights. Therefore, this forum focuses on occupational hazards and labor rights to educate and bring awareness to the public about labor rights and how to safeguard them.

The forum on July 25, 2011 focused on ensuring victims' rights and spreading the knowledge to increase awareness on labor rights among the victims' families and general public, focusing on administrative and legal procedures as well as other issues following unfortunate occupational accidents. The experiences and cases shared by the Minister of Labor and social workers may help victims regain trust in social justice by fully protecting victims' rights.

