



UNIVERSITY OF MINNESOTA
TWIN CITIES

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July 2, 1986

Mr. William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
Suite 1400
1331 Pennsylvania Avenue N. W.
Washington, D. C. 20004

Dear Chairman Wilkins:

I am pleased to accept the invitation to present a statement to the Commission on July 15. Enclosed is a copy of my statement along with some supporting documents.

A limited available time and my heavy summer commitments have made it impossible for me to develop as comprehensive or integrated statement as I would like. My thinking is expanded, however, in the documents attached to the statement should the Commission Members desire additional background material.

Sincerely,

A handwritten signature in cursive script, reading "Burt Galaway".

BURT GALAWAY
Director of Graduate Studies

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Enclosure

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TO: United States Sentencing Commission

FROM: Burt Galaway, Ph.D.
University of Minnesota
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DATE: July 15, 1986

I have been asked to respond to three questions:

1. Under what conditions should restitution be ordered?
2. How should a hearing be structured to efficiently determine the appropriate amount of restitution without unduly complicating or prolonging sentencing?
3. Are there ways in which restitution could be effectively combined with imprisonment or community service?

My response to these questions is based on the position that restitution should be considered as a sentence available to the court for use either alone or in combination with other non-incarceration sentences. I have dealt with some of the objections to this concept of restitution as a sentence in the attached article (1985) but will briefly try to dispatch two of the objections before moving to the questions.

One objection is that restitution is inherently a civil law concept and that victims should not be able to use the criminal process for their own gain. Introducing restitution as a sentence does not deny the fundamental notion of the crime as a wrong against the state but, rather, respects the unique and symbolic position of the victim in both the crime and the sentencing. While the crime is a wrong against the state, the victim has borne the brunt of this wrong and has stood as every person. Since the victim has symbolized all of us in bearing the harm of the wrong, it is reasonable that the victim, as every person, may symbolize all of us in receiving benefits from the sentencing of offenders.

A second objection to restitution as a sentence is that it may create inequities and markedly different sentences for offenders who have been convicted of the same offense. Legal definitions of offenses, however, are abstractions which apply to very differing sets of circumstances. Harm done is a reasonable element in determining the seriousness of an offense; therefore a burglary which results in a one-hundred dollar loss to the victim is a less serious offense,

other things being equal, than a burglary resulting in a one-thousand dollar loss to the victim. Restitution, because it relates to damages which are a reasonable element of seriousness, may increase equity and fairness in sentencing.

Conditions Under Which Restitution Should be Ordered. Restitution is the preferred penalty for property offenders because it logically relates to the offense, holds the offender directly accountable, and results in the restoration of victim losses. The question then becomes, under what circumstances should other penalties be combined with restitution for property offenders. Other non-incarceration penalties (fines, community service, or probation supervision) may be used with restitution when the offense is considered so serious that restitution is an insufficient penalty. Restitution is the basic penalty with other non-incarceration penalties used to secure proportionality between seriousness of offense and severity of penalty.

Determining the Appropriate Amount of Restitution. If restitution is considered a sentence, then determining the appropriate quantity of this sentence will no more unduly complicate or prolong sentencing than determining the appropriate quantity of any other sentence. The issue, however, usually hinges on the question of arriving at a fair estimate of the damages done. The experience of restitution programs to date indicate that this is a fairly straightforward undertaking and can be done, probably as a part of the pre-sentence investigation, before sentencing. Gathering information from victims, information from offenders, and mediating any differences is generally sufficient to arrive at a restitution figure acceptable to both victim and offenders. A number of pilot projects around the country (Galaway, 1986) are using face-to-face victim offender meetings as a mechanism for arriving at an acceptable restitution figure. The experience to date suggests that issues of determining restitution amounts are not as difficult as might be feared, although the necessary investigations and mediation efforts need to be undertaken prior to the sentencing hearing and with a specific recommendation made available to the court.

Can Restitution be Effectively Combined with Imprisonment or Community Service? Restitution can be combined with community service where the restitution obligation alone would be an insufficient severe sanction given the seriousness of the offense. Community service is also a restorative sentence in-as-much as the offender is required to engage in activities which bring about an improvement or restoration to the community. Thus, there is some logic in combining these two sentences. The sentences, however, are different in nature and community service should not be substituted for restitution. Restitution is to be the first choice penalty and community service added under circumstances where restitution is not sufficiently severe.

Restitution can not be effectively combined with a sentence of imprisonment. Imprisonment impedes the ability of the offender to make restitution and delays the process for restoring victim losses. Imprisonment does not serve the interest of offenders or victims and should be reserved for the relatively few offenders whose acts are so serious that the interests of the state in removing the offender from society must take precedence over other interests.

ATTACHMENTS:

Galaway, Burt (1986). Implementing a penal-corrective process with juvenile penal-corrective process with juvenile burglary offenders and their victims. Paper prepared for the Second World Congress for Victimology, Orlando, Florida, July 1986.

Galaway, Burt (1985). Victim participation in the Penal-Corrective Process
Victimology: An International Journal 10:1-4, C17-C30.

Hudson, Joe, Galaway, Burt, and Novack, Steve (1980). Chapter VIII: Towards a
model monetary restitution project, Natural Assessment of Adult Restitution
Programs First Report. School of Social Development, University of
Minnesota, Duluth.

Galaway (1977). Is restitution practical? Federal Probation 41:3, 3-8

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PLEASE NOTE:

I have the above mentioned
documents on file if anyone
is interested in seeing them.

Thanks.
Cathy