

VICTIM ASSISTANCE: EXTRAORDINARY TIMES AND CHALLENGES

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Introduction

These are extraordinary times. We face extraordinary challenges. Our strength as well as our convictions has imposed upon us the role of leaders in justice's cause – not only for Japan but for the world.

No role in history could be more difficult or more important. We stand for justice – victim justice. This is my conviction and hopefully yours. No friend, no bystanders, no hypocrites and no adversary should think otherwise. We should not be against any person – or any government – or any institution – except as it is hostile to victims and justice.

Injustice, suave, erect, and unconfined,
Sweeps the wide earth, and tramples o'er mankind –
While prayers to heal her wrongs move slow behind
Homer, *The Iliad*, c. 850 B.C.

Today almost 3,000 years later, injustice is still sweeping across the earth, characterized by violence, terrorism and war and the compounding second injuries caused by unresponsive institutions and the apathy or ignorance of individuals.

Each year more than one billion individuals across the globe are victimized by crime. Although crime has been on the decline in my country and many others, the human toll and the pure evil of some kinds of crime are astounding.

One billion women have been victimized by sexual violence in their lifetime.

In the United States, some 5690 young people are murdered each year – an average of 16 each day. And, for every young person killed by violence, an estimated 20-40 receive injuries that require treatment.

Violence, terrorism and war have become the coin of the realm. Many people in the United States mark the age of terrorism with the advent of the terrorist attacks of September 11, 2001. But that ignores the fact that terrorism in the modern age began in earnest for the United States with the explosion of Pan Am flight #103 in 1988. Domestic terrorism has been punctuated by the bombing of the Alfred P. Murrah building in Oklahoma City in 1995.

The current terrorist age is marked by its international context – the train bombing in Madrid which killed 191 and wounded 1755 in 2004; the sarin gas attack in Tokyo which killed 12 and poisoned 5000 in 2005; the London rail bombings in 2005; and most recently, the 3-day long attacks in Mumbai at the end of November, 2008. It is estimated that internationally almost 5,000 terrorist attacks occur each year.

There are 22 war zones throughout the world; 86 lower-intensity conflicts.

It is estimated that there are at least 25 million refugees in the world and another 25 million internationally-displaced persons – and that is without counting the refugees and displaced people in Iraq, Afghanistan, Sudan, Congo, or Palestine.

These injustices are too often exacerbated by the response that is given to the harm done. “...four billion people live in areas with dysfunctional justice systems – abusive police, entrenched bribery, mismanaged courts.” (Power, 2009)

Colleen Campbell has been involved in the criminal justice system for 23 years trying to get justice first for her son and then, her brother – both murdered.

I recently spoke to a rape victim who recounted a story of her forensic exam and her examination in a hospital emergency room – she told of waiting hours before she could be seen. Her clothes were then confiscated for evidence and she went home in a hospital gown after being told that she could call a taxi or phone a friend to pick her up.

The Pan Am surviving families waited twelve years before a prosecution and trial was mounted against some of the attackers.

In Toronto, Canada in 1986 a woman was raped when a serial rapist entered her apartment by way of her balcony. The police knew of the rapist’s modus operandi but did not warn any of the women in the area. The woman sued the police and won significant damages many years later after the Canadian Supreme Court decided that the police were responsible for informing potential victims of potential dangerous offenders. (Waller, 2006; see also: Doe, 2004)

Many of the survivors and victims of the September 11th attacks are caught up in a morass of bureaucracy as they try to obtain compensation, and still more will never receive compensation because they were not physically injured or did not survive the death of a loved one. That is not to say they were not injured – thousands lost their cars, their homes, their businesses, and far more suffered devastating trauma reactions – but that priorities were imposed and they lost out.

The progress towards addressing all these wrongs is indeed slow.

Fear is central to the study of criminology and victimology, but it is the least studied. Fear of death, destruction of identity, and destruction of values drives the search for safety and security both at an individual level and in the consolidation of individuals in communities and cultures. The human species is the only living organism that can conceive of things in the future and can understand that its own death, while unpredictable in its timing, is inevitable. This knowledge is at the root of existential terror in human beings as they confront their ultimate helplessness and possible meaninglessness.

Societies are constructed through the development of mutually-acknowledged, reciprocal obligations, responsibilities and social support among individuals, with protection from threats from an opposing force. Social, religious and legal structures evolve, among other reasons, to protect individuals in their day-to-day lives as well as to help acutely-distressed individuals.

The innate fears of the individual result in the need for emotional attachment to others, which leads to the building of societies and cultures. Societies become a critical reference for feelings of safety and security. The communal dynamics are a source both of protection and assistance as individuals negotiate the dangers of existence.

Within this context, crime, violence, war and terrorism may be viewed as a violation of not only a legal framework but also of individuals' mental and physical well-being, of individual rights, and of society as a whole.

Violence prevention at any level should be seen as a primordial obligation of governments to protect and support the individuals and the societies they govern. Whenever protections fail, assistance to the victims is inherently demanded. Violence prevention promotes and sustains safety and security. The reparative mission of the justice system should be to enforce the order of law and to restore a sense of safety and security to victims and the general community. Providing victims rights and services does more than give humane treatment to people who deserve it; it should be seen as an essential component of the whole justice enterprise.

Background

Early surveys in the U.S. revealed that the fear of crime was much higher and more widespread than the actual risk of being victimized. "Moral panic abounds – particularly about mugging, sexual assault and violence – which are out of touch with reality." (Young, J. 1988, p. 165).

Both victimology and traumatology focus on the psychological impact of individual and social catastrophes. Fear is a defining feature of crisis and traumatization. The definition of "victim" needs to be expanded. It should be based on the extent to which a victim is traumatized rather than type of event that caused the psychological reactions. It

needs to look beyond the direct victim of an event to others who, by virtue of what they witnessed or how they were related to the victim, were themselves injured and deserving of help. The new emphasis also compels a re-examination of the nature of victimization to expand beyond conventional crime to include other catastrophic events, such as natural disasters and accidents, economic melt-downs, abuse of power, acts of terrorism, genocide and war. To one degree or another, major financial disruption begets fear and trauma, loss and grief as much as injury and death.

The new understanding of “victims” should alter our concepts of justice. “Justice” should not be limited to the response to violation of state law but also violations of human rights. Justice should not be limited to conventional justice systems that focused on the treatment of offenders, but rather must include the centrality of the victim and the social/cultural context of the victimization. The doing of justice should address both the needs of society and the restoration of the victim. This means rethinking the role of the victim in conventional systems as well as considering alternative systems of justice, such as transitional justice or restorative justice.

There is a need to understand the impact of victimization on communities as a whole. Attacks on cultural values and institutions through hate crimes, terrorism or genocide raise inherent fears about the survival of the social network. The impact of trauma is increased when collective populations are harmed by the very institutions to which their members turn to when they are in need. This is a betrayal that often occurs in cases of abuse of power.

All these changes are reflected in the development of a new framework for establishing services in response to victimization.

Education of victims on the kinds of reactions that may affect them over time can be exceedingly helpful. That education may involve a range of information on trauma, emotional responses to grief, coping with death and dying, and other subjects that affect their circumstances.

When I visited Japan after the Great Han Shin earthquake in Kobe, I was amazed with how useful the simple description of potential traumatic reactions was for many of the victims and survivors. They seemed to need to better understand the roller-coaster of emotions and physical reactions they were undergoing. As a result, one of the simple things that we did was to distribute a paraphrased copy of PTSD as described in the Diagnostic and Statistic Manual IV(TR) of the American Psychiatric Association. The copy focused on the three primary elements of PTSD (re-experiencing the event, avoidance and numbing, and increased arousal and hypervigilance) and emphasized that these symptoms were not necessarily signs of PTSD but were usually signs of acute or ongoing stress. This was understandable and helpful to the victims and survivors. In putting words to an emotional experience that was bewildering and frightening helped to extract some of the terror and free the mind to attend to coping needs.

Counseling should involve helping victims regain physical well-being. Physical health often deteriorates as people try to deal with the stress of victimization. Victims should be encouraged to consult with a health care provider during the aftermath of trauma. Significant health changes should be noted and referral or simple suggestions can help.

Exercise, humor, and tears are an appropriate and useful biological and psychological response to extraordinary stress.

Interveners should be aware of, and prepared to respond to, spiritual needs of victims. The most important of all social institutions that bind together communities are those with a spiritual basis. People who believe in an afterlife often do better because they don't worry as much that death is the end of things. Many turn to spiritual faiths to overcome despair and cling to hope. Most of the time faith is based on institutions of predominant religions but often it may be based on other orientations.

Often victims feel that the lack of assistance and understanding of social and criminal justice institutions is more harmful than the original victimization. The act of being engaged in social activities in a purposeful manner not only involves a commitment to restoring a social fabric but can provide victims a personal reason for living. Some traumatologists have indicated that, "Emotional attachment is probably the primary protection against feelings of helplessness and meaninglessness." (McFarlane and Van der Kolk, p. 24) They may want to become advocates in their own case or to work with others. Some choose to have someone represent them in public forums but many also become ardent participants in helping to define their issues.

Advocacy *by* the victim often helps – advocacy *for* the victim is essential. Victims may need help with victim compensation or private insurance applications. Intervention may be needed to sustain credit, maintain housing or employment, deal with medical institutions (particularly where a forensic examination is involved, or a concern about HIV infection exists, or where family violence is involved). Other needs for help may include finding shelter, dealing with media, getting documents replaced, and such practical problems.

If the victim was criminally attacked, law enforcement officers are almost always the first contact a victim has with the criminal justice system. How victims are treated at this stage can affect the way they feel about the entire criminal justice process as well as how quickly they are able to establish a new life. A colleague of mine, a retired police officer, put it in pragmatic terms: by the way the responding officer deals with that person, "the officer can help to turn a victim into an effective witness." (Ahrens, Stein, Young 1980, p 6)

Prosecutors and judges need to be understanding of victims' concerns as well. If a victim is in a courtroom, the environment is unknown and can be frightening. Allowing victims time to think and respond to questions is useful.

Many victims are not fully capable of comprehending their rights when they are informed because they are in a crisis. A portion of the prefrontal cortex shuts down during a traumatic event. High levels of arousal may interfere with both the ability to put one's feelings into words as well as the ability to discern incoming verbal messages. Repetition is necessary.

The perception of "evil" has only occasionally been addressed in traumatology and victimology. It is significant that some mental health professionals recently are referring to it: "...many trauma survivors, including rape and torture victims, have come face to face with human evil, witnessing people taking pleasure in inflicting humiliation and suffering." (Van der Kolk, 2002, p. 3)

The palpable presence of evil in another person is terrifying. It is common for victims to seek protection from criminal justice personnel and society at large to deflect it. Care and comfort by such caregivers can reassure victims of their safety and protection.

The Issue of Victimization Prevention

The first concern for the public and victims is safety. While neither crime nor other forms of victimization can be completely eliminated, the numbers of people victimized can be reduced and the consequences mitigated. There is a responsibility to promote victimization prevention for both the individual and the community.

Basic crime prevention such as target hardening, awareness and neighborhood watch is a first step in prevention but more in-depth efforts are also called for.

To reduce victimization it is important to address four things: first poverty, illiteracy, and homelessness; youth interventions; then community unity; and fourth, intolerance of violence – in the home and in the street.

Young people are often the violent offenders. In terror, war and crime, the young are recruited. Those recruits need to be shown some light at the end of the tunnel. Methods include education and understanding. They need to have someone to hold them when a loved one dies. They need to trust and love someone.

Children need consistent attention, rules and care. Street children or abused and neglected children often have none of these. They are rejects from society. They revert to the idea of "survival of the fittest." Early intervention with small children is essential.

Studies reveal that prevention information is the most sought-after kind of assistance by those recently-victimized and when provided, is considered among the most effective of services. (See: Davis, Taylor and Titus, 1997)

Education on prevention for crime, violence and disasters is essential for neighborhoods and communities. Every one should be informed about the consequences of crime, violence and disaster – natural or manmade, for an individual and his or her family and community.

The Larger Policy Agenda

While there are a number of publications that address this issue through recommendations and curricula, I cite only one published by the U.S. Department of Justice: *New Directions from the Field* which offers these five global challenges to guide those who respond to victims in the 21st century:

- “To enact and enforce consistent, fundamental rights for crime victims in federal, State, juvenile, military, and tribal justice systems, and administrative proceedings.
- To provide crime victims with access to comprehensive, quality services regardless of the nature of their victimization, age, race, religion, gender, ethnicity, sexual orientation, capability, or geographic location.
- To integrate crime victims’ issues into all levels of the nation’s educational system to ensure that justice and allied professionals and other service providers receive comprehensive training on victims’ issues as a part of their academic education and continuing training in the field.
- To support, improve, and replicate promising practices in victims’ rights and services built upon sound research, advanced technology, and multidisciplinary partnerships.
- To ensure that the voices of crime victims play a central role in the nation’s response to violence and those victimized by crime.”

These are ambitious goals. But, they have resonance for the structure of victim service programs on a national and international level.

The Issue of Victims’ Rights

The development of victim rights in the United States was based on efforts to rethink ideas of criminal justice. The predominant philosophy in most large societies in modern times has been that those systems address criminals in terms of the harm done to society rather than to the individual victim. Within that conceptual framework, victims served in

peripheral roles as witnesses. In the new conceptual framework justice, victims are seen to be the most important injured parties in crime. They should have a central role as participants in justice systems that should seek to address the harm done to them. Since loss of control and fear are primary harms brought on by victimization, justice should involve restoring control and mitigating fears of revictimization.

Restoration of a sense of control means that victims are given opportunities to be involved in the dispensation and decision-making with regard to what happened to them. Mitigation of fear may be accomplished by re-establishing a sense of safety through holding offenders accountable for the action, providing victims reassurance of society's concern for them, as well as redressing their financial, physical and emotional needs.

This redefinition of the purpose of the justice system resulted in the following five key principles of victim rights, most of which are pursued as legal rights within the criminal justice system but are also reflected in the services outlined above.

Right to Protection

There are two primary issues to be considered under rights to protection. The first is the general issue of protection prior to victimization that could be claimed by any member of society – the right to be safe from crime. This would entail an obligation by society to “take reasonable measures to pursue the safety and security of persons and property.” (Waller, 1996, p. 94) Most countries have attempted to address this issue through reactive, retributive or prevention policies, but few have articulated this as a basic right. Victim rights in the United States have never included safety prior to victimization as a right, and, crime prevention is rarely an integrated service within victim assistance programs.

The need for this right is reflected in the comprehensive *Guidelines for the Prevention of Crime* that were accepted by the United Nations Economic and Social Council in 2002. It is significant that these guidelines explicitly bring victim issues into their conceptual framework. In summarizing the wide range of approaches to crime prevention, the guidelines emphasize “focusing on the risk and protective factors associated with crime and victimization” or “social crime prevention” and by “providing assistance and information to potential and actual victims” or “situational crime prevention.” (*Promoting the Prevention of Crime*, 2004, pp. 10-11)

Professor Waller suggests five kinds of prevention:

1. Investing to keep at-risk youth in the community away from crime
2. Stopping violence against women and children
3. Helping to prevent crime by getting to work together...
4. Tackling risk factors with both prevention and enforcement
5. Doing justice...for victims. (Waller, 2006, p.129)

Rights to protection in the United States are confined to the second issue, that is, rights in the aftermath of crime. There is the right to protection against intimidation or harassment from the accused or his or her relatives and associates. Laws to implement this right generally include recognizing intimidation and harassment as crimes that enhance penalties to be imposed on the underlying offense; the provision and enforcement of protective orders restraining the accused and others from contact with victims; and the establishment of waiting areas in court houses that separate victims and prosecution witnesses from defendants or defense witnesses.

Many laws provide special protections for vulnerable victim populations. Some of them enhance penalties when a crime is committed against particularly vulnerable groups, such as children or elderly people. Some laws enhance the penalties in what are called hate or bias crimes that target specific populations, such as racial, ethnic or religious minorities and homosexuals.

Protective strategies and laws aimed at assisting and protecting domestic violence victims include immediate safe shelter or removal of the offender from the home, law enforcement response to calls for help, mandatory arrest and “no-drop” policies in prosecution. Child victims may receive extra care when they are witnesses in cases through special courtroom accommodations such as the use of videotaped testimony, closed-circuit cameras, the use of one-way mirrors such that children do not have to see the accused, or the allowance of a support person to accompany a child in the witness stand. Rape shield laws have been enacted to protect sexual assault victims from the intrusive and intimidating explorations by defense attorneys into their past sexual history.

Legal reforms in the standards for release on bail have been enacted to provide protection for victims. Whereas previously in the United States, the general standard for such release was whether the accused would return to attend a trial or hearing, many laws now include a consideration of whether the accused poses a threat to the victim or the community at large.

Right to Information

The right to information about the status of a case has been recognized throughout the world as critical to meeting victim needs. Every victims’ bill of rights in the United States includes this right as does the 1985 *UN Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power* and the 2001 Council of Europe’s *Framework Decision on the Standing of Victims in Criminal Proceedings*.

What was missing in some of the original laws on this issue was the types of information that were required, the necessity for the information to be accurate, and the timeliness of the provision of information. Today most laws include words to the effect of the right to

“timely notification” and of “accurate and appropriate information.” They specify the following critical events for which timely information should be given to victims. As appropriate, each event deserving of notice includes both the public hearing on the issue as well as the decision reached.

1. Court schedule changes
2. Pre-trial release
3. Bail release
4. Plea agreements
5. Sentencing
6. Final disposition
7. Probation revocation decisions
8. Parole decisions
9. Pardon or clemency decisions
10. Work release
11. Prison release
12. Escape

Right to Participation

The most contentious issue in the field of victim rights in the United States has been the assertion of a right to participate in the justice process. Participation in a meaningful way there has been resisted

An unsettled issue concerns what independent right a victim may have to “standing” or to be recognized as a party to assert their rights when they have been violated. Some have argued that the *UN Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power* calls for the right to “standing” for victims (Waller, 1996 p.82) and some nations have accorded such status for victims. In the United States, victims’ rights have been enacted in all 50 states, but the very right of victims to assert their rights has not yet been fully recognized in most jurisdictions. That is changing with the enactment of the Crime Victims Rights Act of 2004 (18 U.S.C. § 3771), establishing specific procedures for the enforcement of victims’ rights in the Federal criminal justice system. The CVRA, as it is called, has served as an influential model, and more and more states are acting on the proposition that rights without remedies for their violation are nullities, and the trend to accord victims standing to bring these claims is now a strong one.

Paradoxically, the case for enforceable rights was strengthened by the failure of the federal courts to honor the procedures Congress gave victims under the CVRA to get their complaints resolved quickly. One such appeal sat in an appeals court for months, and when the court finally ruled on the merits of the petition – in the victim’s favor – the court added this comment (now widely publicized in the U.S.):

“Finally, we recognize that under [the Act], we were required to ‘take up and decide [this] application forthwith within 72 hours after the petition [had] been filed.’ We acknowledge our regrettable failure to consider the petition within the time limits of the statute, and apologize to the petitioner for this inexcusable delay. It may serve as a small comfort for petitioner to know that, largely because of this case, we are in the process of promulgating procedures for expeditious handling of CVRA’s mandamus petitions to ensure that we comply with the statutes strict time limits in future cases. As victim participation in the criminal justice system becomes more common, we expect CVRA claims to become more frequent, and thus encourage district courts to modify their own procedures so as to give full effect to the CVRA.” (*Kenna v. US Dist. Court for the Central Dist. of California*, US Ninth Circuit Court of Appeals, 2006).

Right to Reparations

As Criminologist Marvin Wolfgang noted in 1965, “The victim of a crime has historically and almost universally enjoyed the right to reparations. This right was confiscated by the state in the form of fines without due consideration for the victim.” (Wolfgang, 1965, p.334).

In the forty-plus years since this observation was made, all 50 States have passed state crime victim compensation laws (for a listing, go to www.nacvcb.org). Although the programs vary widely in terms of victim eligibility and benefits, there seem to be a universal acknowledgment that state compensation is a necessary component of an effective response from society to victims. It serves two legitimate goals: to serve as a source of symbolic social recognition for victim suffering and to respond to victims in a just, expeditious, and equitable manner.

In the United States, state compensation programs’ financial assistance is usually limited to payments for health, mental health, or funeral expenses. It is always the benefit of last resort, discounting any insurance, restitution or other form of compensation – and offers only token compensation for some property losses, like the replacement of eyeglasses.

This does not discredit the value of recognizing rights of victims to recover their losses, but does emphasize the complexity of relying upon state compensation as anything like a complete response.

The other major form of reparations is the right to restitution. In the United States, restitution is defined as repayment of a victim’s losses by the offender. In all states and in the federal justice system, restitution is a sentencing option, is generally declared a right, and in a growing number of jurisdictions, including the federal system, a judicial order for full restitution for the victim’s monetary losses is mandatory.

Right to Dignity and Compassion

“Dignity and compassion” is probably the most difficult concept to consider but it is significant that the first articulation of victim rights in the United States included the “right to be treated with dignity and compassion” and most of the bills of rights in the United States include reference to a right to be treated with dignity and compassion or respect. It is echoed in key international documents.

The *UN Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power* begins with the statement, “Victims should be treated with compassion and respect for their dignity.” The *UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* states as its first principle, “Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected.” The Council of Europe’s *Framework Decision on the Standing of Victims in Criminal Proceedings* includes in its preamble, “The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity...”.

The *Statute of Rome* adopted in 1999 and with its establishment of the International Criminal Court with Rules of Procedure and Evidence addresses not only compassionate treatment of victims but provide implementation guidelines. This one of the most comprehensive listing of rights and remedies and sets international standards.

The two key components to these rights are services – compassion in action, one could say – in response to financial, physical, emotional and social needs provided by trained personnel both within and outside of the criminal justice system, and the right to be treated with sensitivity and compassion by those with whom they have contact with in any social or justice institution. The primary factor in implementing these rights is the allocation of resources for education, training and performance evaluation of service providers as well as funding for establishment and maintenance of service components.

I have already noted the important influence of the federal Crime Victims’ Rights Act. Its litany of eight victim rights (a slight expansion on those listed in this paper) are found in most of our bills of victims’ rights, but its enforcement provisions has set a new standard in the United States and it also authorized funding to create free legal clinics, seeking to make sure the new law is fully implemented. Such clinics are now operating in eight states, and five more are in the planning stage.

That statute and its ripple effects give hope that victim rights on the books may be fully honored in practice.

Another remarkable event of recent years was the adoption of the *Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and*

Criminal Justice (2005) adopted at the high-level segment of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice. Paragraph 17 of the Declaration reads as follows:

“ ... We recognize the importance of giving special attention to the need to protect witnesses and victims of crime and terrorism, and we commit ourselves to strengthening, where needed, the legal and financial framework for providing support to such victims, taking into account, inter alia, the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.”

The emphasis on providing a financial framework for victims is as important as the reference in the *European Framework Decision* that suggests the “recognition and funding of victim support organizations” (Official Journal of the European Communities, p. L 82/4) by each Member State.

Conclusion

The last thirty years in the United States has produced nothing less than a revolution in the way victims are understood and how responses to their needs are constructed – a revolution, it should be stressed, that is underway all over the globe, perhaps nowhere more spectacularly in recent years than in Japan.

That revolution has been accompanied by rapid, complex, turbulent and unpredictable change on all fronts – change that will dramatically transform our world once again, and not necessarily in ways that prevent victimization or alleviate the suffering of victims. Competition for dwindling resources, rapidly expanding populations, and the effects of globalization may expand the numbers of victims and their needs. The goals and structure of justice may need to be re-examined. New definitions of crime will emerge. New insights into the effects of traumatization and its transmission both intergenerationally and cross-culturally will be articulated. New responses to crime and violence will be driven by international forces that transcend national barriers.

The United States has served as a laboratory for experiments in victim rights and services in recent decades. The experience of its victims’ movement can provide lessons, for good or ill, that may help others seeking to accomplish similar goals or to invent new ones. In turn, the experiments and experiences of other countries will help the United States reinvent its own ways of meeting the onslaught of change. The challenge of change is to overcome our fears of the unknown and to face them head on with as much knowledge as we can.

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