COMPENSATING CRIME VICTIMS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

H.R. 1899

COMPENSATING CRIME VICTIMS

FEBRUARY 28 AND APRIL 3, 1979

Serial No. 79

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

CONTENTS

HEARINGS HELD

WITNESSES

ADDITIONAL MATERIALS

APPENDIX

COMPENSATING CRIME VICTIMS

WEDNESDAY, FEBRUARY 28, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 1:10 p.m., in room 2237, Rayburn House Office Building, Hon. Robert F. Drinan (chairman of the subcommittee) presiding.

Present: Representatives Drinan, Conyers, Hall, Synar, Shelby, Kindness, Sawyer, and Lungren.

Staff present: Thomas W. Hutchison, counsel, and Raymond V. Smietanka, associate counsel.

Mr. DRINAN. The subject of today's hearing is compensating innocent victims of crime. Some 26 States presently operate programs to assist people who sustain physical injuries from criminal acts by helping them with medical expenses and lost wages. Compensation is paid only when such expenses and losses are not met from other sources, such as insurance, worker's compensation, or restitution. A survey by the Congressional Research Service indicates that the 20 State programs for which there is complete data spent $19.25 million to compensate crime victims during their most recent fiscal years.

There are three possible Federal solutions. The first response would be to do nothing. I believe that doing nothing would be a mistake. The second response would be for the Federal Government to run its own crime victim compensation program. I believe that this would be unwise. The third response would be for the Federal Government to assist the States in the operation of their programs. I believe that this is the best course of action.

For the Federal Government to do nothing in this area would be a mistake. States should be encouraged to establish crime victim compensation programs, for such programs are a compassionate and humane response to the needs of those among us who, through no fault of their own, become victims of crime. As we know, the hardships of crime seem to fall disproportionately upon the elderly, the poor, and members of minority groups. If the Federal Government is to encourage crime victim compensation programs, it must take some sort of action.

On a more philosophical level, the failure of the Federal Government to act would constitute a claim that the Federal Government bears absolutely no responsibility for helping States to deal with the problems of crime. This claim is, of course, belied by the vast sums of money that the Federal Government spends annually to help State criminal justice systems, and there is good reason for the Federal Government to help.

What the Federal Government does—or fails to do—affects the crime problem faced by States. The Federal Government's failure to stem the flow of illicit drugs into this country, for example, affects the crime rate in the States. Since employment levels affect the crime rate, what the Federal Government does—or does not do—to decrease unemployment nationwide affects the level of crime in the States. In short, the Federal Government bears a share of the responsibility for permitting conditions to exist that lead to crime. It would be dishonest for the Federal Government to refuse to play a role in helping the victims of crime.

The real issue is what sort of role the Federal Government should play. The Federal Government could operate its own victim compensation program, either one limited to victims of crimes occurring within exclusive Federal jurisdiction or one for victims of all crimes. The former program was investigated by the subcommittee and was found, on the basis of a Congressional Budget Office analysis, to be cost inefficient. There are so few exclusively Federal crimes that it would be several years before the program would spend more on victims than on administrative costs. A Federal program for victims of exclusively Federal crimes is just not a meaningful or cost-efficient program and would therefore be unwise.

A Federal program for victims of all crimes would also be unwise. There is no need to establish a new Federal agency when State agencies can be used to deliver the services. Moreover, if the Federal Government were to be made responsible for compensating all crime victims, it would imply that the Federal Government alone is responsible for permitting conditions to exist that result in crime. While the Federal Government cannot be absolved of responsibility for permitting such conditions to exist, neither can it be saddled with full responsibility. The Federal Government shares that responsibility with the States. Therefore, I believe that a Federal program for all victims of crime would be inappropriate.

The most appropriate course of action is for the Federal Government to share with the States the responsibility for assisting crime victims. Such an approach recognizes the shared responsibility for permitting to exist those conditions that lead to crime. Such an approach is cost-efficient, for it permits the Federal Government to utilize State agencies to deliver services to crime victims. Such an approach, properly established, will permit States flexibility in the shaping and the administration of their victim compensation programs, while at the same time ensuring that certain standards are met.

The legislation before us today is similar to legislation which this subcommittee has reported favorably in the past. A State would be eligible for Federal financial assistance for its victim compensation program if it met certain criteria. Under the formula in H.R. 1899, which I cosponsored with Chairman Rodino and others, the assistance would be roughly 50 percent of the compensation actually paid to crime victims.

Our hearing will examine this legislation. We will hear from its principal sponsor, Chairman Rodino, as well as from Judge Eric Younger on behalf of the American Bar Association and Prof. Paul F. Rothstein of Georgetown University.

As a member of the Select Committee on Aging, I became acutely aware of the impact that crime has upon elderly citizens. We will

hear from several witnesses about the particular needs of elderly crime victims and how this legislation will affect them. Our distinguished colleague from Florida, the chairman of the Select Committee on Aging, Representative Claude Pepper, will address this matter, as will our distinguished colleague from California, Representative Edward Roybal, who chairs the Aging Committee's Subcommittee on Housing and Consumer Interests, and our distinguished colleague from New York, Representative Mario Biaggi, who chairs the Aging Committee's Subcommittee on Human Services. Finally, we will hear from David Marlin, Director of the National Council of Senior Citizens' Legal Research and Services for the Elderly program.

I am certain that all of our witnesses will be most helpful to us in our work on this important legislation, and I appreciate their taking the time to come here today and testify.

Our leadoff witness is the distinguished chairman of the Committee on the Judiciary, Representative Peter W. Rodino, Jr. Chairman Rodino has for several years been a leader in the effort to enact Federal crime victim compensation legislation. He is principal sponsor of H.R. 1899, the Victims of Crime Act of 1979.

Welcome to the hearing, Mr. Chairman. We have received your prepared statements and, without objection, it will be made a part of our hearing record. Please proceed as you see fit.

[The complete statement follows:]

STATEMENT OF HON. PETER W. RODINO, JR.

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you and testify in support of H.R. 1899, the "Victims of Crime Act of 1979". I am glad that the subcommittee is giving prompt attention to this legislation, and I hope that you will mark it up and bring it before the full committee at an early date.

H.R. 1899 has evolved from the work of this subcommittee and is quite similar to legislation it has previously reported. I believe that there is general agreement that, if there is to be Federal legislation, H.R. 1899 and the previous legislation coming from this subcommittee embody the most appropriate and meaningful approach. Therefore, I will not describe in detail the mechanics of the legislation; that is done in a section-by-section analysis of the bill which I have appended to my statement.

I will also not discuss in detail the various State crime victim compensation programs and the philosophy behind them. Any questions you have along those lines might better be directed at Professor Paul Rothstein or Judge Eric Younger, who are scheduled to testify a little later. What I would like to do today is to outline the situation in the States that have crime victim compensation programs, describe briefly how the legislation would work, and then discuss some of the issues that have been raised in the past and that might be raised again this year.

There are some 26 States that have enacted statutes establishing programs to assist innocent victims of crime. These States are: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Virginia, Washington, and Wisconsin.

While these States numerically are only one more than half of the States in the Union, together they account for three-quarters of the reported crime in the Nation.

What are the features of the crime victim compensation programs in these 26 States? While no two programs are identical, and while there may be exceptions to each generalization, there are some common themes. First, the individual must have suffered personal injury as the result of a crime. Second, the individual must be an "innocent" victim—that is, neither a participant in, nor a provoker of, the crime. Third, a victim will be compensated only for those expenses that are

not reimbursable from other sources (such as insurance). Fourth, an individual may not recover for stolen property, such as an automobile. Fifth, a victim must have promptly reported the crime to the police and must cooperate with law enforcement agencies in the apprehension and prosecution of the offender.

H.R. 1899 provides that a State may receive Federal financial assistance for the operation of its crime victim compensation program if it meets 9 criteria. These criteria have been developed with the close cooperation of the various State programs, and I am not aware of any objection to them on grounds of undue Federal interference with a State's ability to shape and control its own program. At the same time, however, these criteria ensure that certain basic standards are met. Under the formula in the bill, States will receive approximately 50 percent of the amounts that they award to victims. H.R. 1899 reimburses States only for money they actually spend on victims; it does not reimburse them for any of their administrative and overhead expenses.

During the course of the debate on this legislation, several issues have arisen, and I would like to discuss some of them.

It has been suggested by some opponents of the legislation that crime victim compensation somehow will detract from our efforts to combat crime. This is just plain wrong, and the best evidence that it is wrong comes from the law enforcement community, which has strongly backed victim compensation. Last Congress, for example, the legislation recommended by this subcommittee was supported by law enforcement people at all levels. It was supported by police officers and officials—the Fraternal Order of Police and International Association of Chiefs of Police both supported the legislation. The legislation was also endorsed by local prosecutors—such as the National District Attorney Association, represented by Montgomery County, Ohio, prosecuting attorney Lee C. Falke, and individual prosecutors like Alameda County, California, District Attorney Lowell Jensen. The legislation was endorsed by State Attorney General—such as California's then Attorney General, Evelle Younger; Illinois Attorney General William J. Scott; Alaska Attorney General Avrum Gross; and the Attorney General of my home State, William Hyland. The law enforcement community views victim compensation as an aid to law enforcement. Montgomery County, Ohio Prosecuting Attorney Lee. C. Falke, testifying before this subcommittee last Congress on behalf of the National District Attorney Association, put it this way:

> We think that any mechanism, including victim compensation, which serves the needs and interests of victims will increase the likelihood that citizens will be willing to assist prosecution agencies in bringing offenders to the bar of Justice. There are those who say that compensation of victims will diminish the likelihood of effective prosecution. Your bill wolud certainly not do so for it requires prompt reporting to appropriate police agencies and it requires cooperation with law enforcement agencies.[1]

I am certain that the law enforcement community would not support victim compensation legislation if such legislation would detract from our efforts to deal with crime.

It has also been suggested by some opponents of the legislation that crime victim compensation legislation should not be enacted because the offender, not the taxpayer, should compensate the victim. In other words, they believe that we should rely on restitution to help victims. I happen to agree with the sentiment that criminal wrongdoeers are responsible to make good the losses that they cause to their victims, and I think that judges should be encouraged to impose the penalty of restitution wherever appropriate. This philosophy is embodied in H.R. 1899, which requires that a State, in order to qualify for assistance under the legislation, be able to impose a restitution penalty upon convicted offenders.

The unfortunate fact about restitution is that, while it may help a few crime victims, it will not help the vast majority of them. Not all offenders are caught, so for their victims restitution, as a practical matter, is not a realistic source of compensation. Further, many of those offenders who are caught and convicted are financially unable to pay restitution. For their victims, restitution is again not a realistic source of compensation.

State victim compensation programs are necessary because restitution is not a practical way of helping most crime victims. If we are to be honest in our concern for crime victims and realistic in our desire to help them, we cannot rely soley upon restitution and must look to compensation programs.

[1] Statement of Lee C. Falke on behalf of the National District Attorneys Association, "Hearings before the Subcommittee on Criminal Justice of the House Committee on the Judiciary on H.R. 7010 and related bills (crime victim compensation legislation)"; 96th Congress, 1st session, Serial No. 56, at 148 (1979).

Finally, it has been argued by opponents of the legislation that helping States assist innocent crime victims is not a proper Federal function. I would note initially that those who suggest this do not argue that it is unconstitutional to spend Federal funds for this purpose, for there is no credible basis for such an argument. Instead, it is argued that as a matter of policy expenditures for law enforcement and criminal justice purposes should be a matter of purely State concern since law enforcement is primarily a State matter.

The problem with that argument is that the Federal Government has for some time been making expenditures to assist States and communities in the field of law enforcement and criminal justice. The Federal Government has spent, and continues to spend, large sums of money to help States catch criminal wrongdoers, try them, and incarcerate them when found guilty. If the Federal Government can do that, surely it can spend some money to help States assist the victims of those criminals. California Deputy Attorney General April K. Cassou, testifying before the subcommittee last Congress on behalf of California's then Attorney General Evelle Younger, put it this way:

> [O]pponents of victims' compensation argue that, whatever the role of local government, Federal involvement is uncalled for. Law enforcement is after all a local concern. But the Federal Government is already involved in State law enforcement efforts monetarily, practically, and constitutionally. LEAA provides money for local projects; and while its commitment to any one project is limited, its overall commitment to assist local law enforcement is ongoing. Ongoing too is State/Federal cooperation with the F.B.I. and State prosecution of Federal crimes where there is concurrent jurisdiction. The importation of narcotics and guns affect State law enforcement. And finally, every detention, search, questioning, arrest, trial, sentence, appeal, and parole is bejeweled with Federal constitutional rights interpreted and applied by State law enforcement and State courts. If it seems that we step over the body of the victim to give medical and other services to the criminal, it also seems that we step over the victims' fundamental right to life, liberty, and the pursuit of happiness to grant constitutional rights to the one who took the victim's rights away.
>
> The Federal Government, then, like the State governments, finds itself officially, and constitutionally committed to act in this field of criminal justice. It is—perhaps not in the legal sense, but in the moral sense—A denial of equal protection for it to ignore the victims of crime.[2]

Mr. Chairman and members of the subcommittee, thousands of our citizens this year will fall prey to violent criminal attacks. Ironically, many of those who are victimized will not report the offense or will not fully cooperate with law enforcement. They perceive the criminal justice system as offering them scant compensation for their pain, their monetary loss, their inconvenience, and their fear of reprisal. Our criminal justice system, and quite properly so, is concerned with protecting the rights of those accused of crime in order that the innocent will not be wrongfully punished. I am suggesting that we also concern ourselves with the wellbeing of another group of innocent people—innocent crime victims. The late Senator Hubert Humphrey put it quite well when he told the subcommittee last Congress:

> Crime victim compensation must become an integral part of our system of justice. If we can afford to care for criminals, we can certainly afford to care for their victims as well. Crime victim compensation is a necessary step in ensuring equalization of treatment within the criminal justice system. We have to recognize that society must impose upon itself the additional responsibility of helping to relieve the burdens of innocent victims of crime when society neglects to do those things necessary to keep innocent victims from being harmed.[3]

I believe that State victim compensation programs go a long way to reassure crime victims that there is public concern for their welfare. Such programs ought to be encouraged and aided, and H.R. 1899 is designed to do just that. I want to assure you of my own strong personal interest in this legislation and my desire to work with you to report a bill that fairly and equitably meet the pressing

[2] Statement of Deputy Attorney General April K. Cassou, on behalf of California Attorney General Evelle Younger, "Hearings before the Subcommittee on Criminal Justice of the House Committee on the Judiciary on H.R. 7010 and related bills (crime victim compensation legislation)," 95th Congress, 1st session, Serial No. 56, at 84 (1979).

[3] Statement of Senator Hubert H. Humphrey, "Hearings before the Subcommittee on Criminal Justice of the House Committee on the Judiciary on H.R. 7010 and related bills (crime victim compensation legislation)," 95th Congress, 1st session, Serial No. 56, at 249 (1979).

needs of those who become innocent victims of crime. I am confident that your deliberations will result in such a bill.

Section-by-Section Analysis of H.R. 1899

SECTION 1

Section 1 provides that the short title of the legislation is the "Victims of Crime Act of 1979."

SECTION 2

Section 2 authorizes the Attorney General to make grants to States that have qualified crime victim compensation programs. The amount of a grant that a qualified State program may receive equals 50 percent of the cost of paying compensation to victims of State crimes and 100 percent of the cost of paying compensation to victims of analogous Federal crimes (described in section 7(8)(B) of the bill).[1] Such grants are subject to the availability of amounts appropriated, and grants may be made in advance or by way of reimbursement.

Section 2 also authorizes the Attorney General to prescribe such rules as are necessary to administer the legislation. The Attorney General, however, is prohibited from modifying the disposition of any individual claim that a State program has processed.

SECTION 3

Section 3 establishes a 9 member Advisory Committee on Victims of Crime. The committee's purpose is to advise the Attorney General with respect to the administration of the legislation and the compensation of crime victims. The members of the committee will serve one year terms and receive only travel and transportation expenses and a per diem allowance while away from their homes on committee business.

Seven of the members of the committee must be officials of States with qualified victim compensation programs. The purpose of this requirement is to ensure that those directly affected by the administration of the legislation will have a formal and direct method of making their views known to the Attorney General.

SECTION 4

Section 4 sets forth the criteria that a State program must meet in order to qualify for a grant under section 2.

First, the program must offer (a) compensation for personal injury to any person who suffers personal injury as the result of a qualifying crime; and (b) compensation for death to any surviving dependent of any person whose death is the result of a qualifying crime.

Second, the program must offer to aggrieved claimants the right to a hearing with administrative or judicial review.

Third, the program must require that claimants cooperate with appropriate law enforcement authorities with respect to the qualifying crime for which compensation is sought. This criteria, like the others, may be met either by statutory language or by rule or regulation adopted by the appropriate State agency.

Fourth, the State must require that appropriate law enforcement agencies and officials take reasonable care to inform victims about the existence of the State's victim compensation program and the procedure for applying for compensation under that program.

Fifth, the State must be subrogated to any claim that the victim, or a dependent of the victim, has against the wrongdoer for damages resulting from the qualifying crime, to the extent of any money paid to the victim or dependent by the State's victim compensation program.

Sixth, the program must not require a claimant to seek or accept welfare benefits, unless the claimant was receiving such benefits prior to the qualifying crime that gave rise to the claim.

Seventh, the program must deny or reduce a claim if the claimant contributed to the infliction of the death or injury with respect to which the claim is made.

[1] Because there are so few analogous federal crimes, there will probably be relatively few instances where a State will make an award to a victim for which it will receive 100 percent reimbursement. See House Report No. 95-337, at 6 n. 8; House Report No. 94-1550, at 13.

Eighth, the State must be able to require a criminal wrongdoer to make restitution to the victim, or the surviving dependents of the victim, of his crime.

Ninth, the program must not require that any person be apprehended, prosecuted or convicted of the qualifying crime that gave rise to the claim.

Section 4 also provides for a grace period for existing State victim compensation programs to modify their statutes and regulations in order to comply with all of the criteria of section 4. The grace period lasts from the effective date of the legislation until the day after the close of the first regular session of the State legislature that begins after the effective date of the legislation. During the grace period, all existing State crime victim compensation programs are deemed to be qualified for grants under section 2.

SECTION 5

Section 5 provides that certain expenses will be excluded from the cost of a State program when determining the amount of the Federal grant. Thus, the State itself pays for all of these expenses. The expenses that are to be excluded are: (1) administrative expenses; (2) awards to victims for pain and suffering; (3) awards to victims for property loss; (4) awards to claimants who failed to file a claim within one year after the crime occurred, unless the appropriate State agency finds good cause for the failure to file within that time; (5) awards to claimants who failed to report the crime to police within 72 hours after it occurred, unless the appropriate State agency finds good for the failure to report it within that time; (6) amounts awarded to a victim that exceed $50,000; (7) amounts awarded to a victim covering a loss for which the victim was entitled to be compensated by a source other than the State victim compensation program and the perpetrator of the crime and (8) amounts awarded to a claimant for lost earnings or loss of support that exceed $200 per week.

SECTION 6

Section 6 requires the Attorney General to report annually to the House and Senate Judiciary Committees on the administration of the legislation. The report, which is due not later than 135 days after the end of the Federal fiscal year, must provide specified information about each qualifying State program and about the Attorney General's activities in administering the legislation.

SECTION 7

Section 7 defines certain terms used in the legislation.

The term "dependent," for purposes of the legislation, means any dependent as defined by the State for purposes of the State's victim compensation program.

The term "personal injury," for purposes of the legislation, means personal injury as defined by the State for purposes of the State's victim compensation program.

The term "State" means a State of the United States, as well as the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

The term "compensation for personal injury" means, for purposes of the legislation, compensation for loss resulting from personal injury and includes: (a) reasonable expenses for hospital and medical services; (b) reasonable expenses for physical and occupational therapy and rehabilitation; and (c) loss of past and anticipated future earnings.

The term "administrative expenses" means, for purposes of the legislation, any expenses other than awards of compensation for personal injury and compensation for death. The term also includes attorney's fees when such fees are paid in addition to, and not out of, the amount of compensation awarded to the claimant.

The term "qualifying crime," as used in the legislation, means: (a) any criminally punishable act or omission that the State designates as appropriate for compensation under its program, and (b) any act or omission that would be a qualifying crime under (a) except for the fact that the act or omission is subject to exclusive federal jurisdiction.

SECTION 8

Section 8 authorizes appropriations for 3 years. The amounts are $15 million, $25 million, and $35 million.

SECTION 9

Section 9 provides that the legislation shall take effect on October 1, 1979, and that grants may be made under the legislation with respect to the fiscal year ending September 30, 1980, and succeeding fiscal years.

TESTIMONY OF HON. PETER W. RODINO, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, CHAIRMAN, COMMITTEE ON THE JUDICIARY, ACCOMPANIED BY ALAN A. PARKER

Chairman RODINO. Thank you very much, Mr. Chairman and members of the subcommittee. I appreciate this opportunity to appear once again before a subcommittee of the Committee on the Judiciary concerned with matters that I believe are of great interest, matters that relate to criminal justice. I believe that there is no more overriding and more urgent issue to be considered than trying to do justice to the innocent victims of crime.

Mr. Chairman, since as you have already stated, my prepared statement will be made a part of the record. I will summarize it.

Mr. DRINAN. Please proceed.

Chairman RODINO. I will be pleased to answer any questions. Mr. Chairman, it's been some time now that I've become involved in this subject. This is a matter that I believe all of us who believe in the principles of justice in these United States of America and the need to combine justice with compassion recognize that there are innocent victims of crime who, as a result of a criminal assault, find themselves sometimes disabled, sometimes overburdened with medical costs, hospital expenses, and sometimes unable to be productive members of society. These people as a result, become alienated from society, from the system of criminal justice and as a result fail to cooperate, in reporting those crimes.

That, I believe, should be called to the attention of government; and if indeed we want to help in the effort to try to combat crime, one of the principal tools that we can employ is this bill. I think it's a very reasonable bill that would provide that the Federal Government assist those crime victims compensation programs which presently are operative in 26 States.

Now, I understand that a 27th State, the State of Nebraska, has just endorsed such a program. The 27 States have recognized the need to provide some sort of compensation for innocent victims of crime, those who have met certain conditions, those who report their crimes, those who cooperate with authorities in trying to bring criminals to book and those people who indeed find themselves in conditions of hardship.

And I believe that this, as I say, would help in bringing those people who, I believe, over the years have become alienated, to be partners in trying to combat crime and at the same time be productive members of society.

I think that we would want to recognize that in many instances, as we will find from the cases that have been presented before the various States that have these programs, that many of these people,

and I've had occasion to talk with a number of them who appeared on various programs with me, had it not been for the fact that those States had compensation programs, would not have reported their crimes. They would have been alienated and looked upon government as not caring about them.

My first attention was first called to the urgency of doing something about this situation, when I looked at a television program some years ago. The television program showed a young black man who had attempted to help a white lady who was being assaulted by a bunch of ruffians. The young man wound up badly beaten, disabled for a period of time, in a hospital, and terrible embittered. He didn't have hospital or other kinds of insurance to defray the expenses he incurred, and he was away from his job for a long period of time.

I remember that I called on him and inquired about what he was going to do. He stated frankly that he didn't know what, except to maybe apply for assistance, going to the relief rolls.

All that I could do was to send him a little something, but that certainly wasn't enough. This is not what this man was looking for. He was looking for a government that would have understood and would have done something to help him.

Now, there are programs, as I said, in 27 States, that provide some kind of compensation. My bill has a reasonable approach; has a $50,000 ceiling on the amount of a State's victim compensation grant of which the Federal Government will help pay part of the cost. It provides that the Federal Government in those crimes wherein it may be a totally Federal crime, will provide 100 percent assistance. But in all other cases only 50 percent will be provided for by the Federal Government, and providing the States meet the various conditions that are outlined here, principally among them, the conditions that the victim be cooperative, that he report within a period of time, that he file a claim, among other conditions.

I believe, Mr. Chairman, that this bill is tremendously important. I know one might ask, especially in this time of fiscal austerity, how can be impose upon ourselves another spending program? I believe when we consider the cost factors, we must also consider the people who this government should be concerned about, who are presently being alienated, and who are asking this very fundamental question: Does the Government do more about the criminal defendant or the person who was a culprit in society, than for the innocent law-abiding citizen?

I believe that we must do something to help prevent those victims of crime who do become unproductive and who are disabled from going on the relief rolls instead and burdening the relief rolls as such.

I think the amounts that are involved in this bill are reasonable. The Congressional budget office and the Justice Department have made some estimates and I think they're reasonable.

The authorization levels in the bill are modest, $15 million in the first year, $25 million the second year, and $35 million the third year. I think they're very reasonable. I think that this is a kind of program that a just society should undertake as a responsibility.

Thank you very much.

Mr. DRINAN. Thank you very much, Mr. Chairman, for an eloquent and very persuasive statement. I commend you for being a leader in this for a long, long time, and I hope that in this session of Congress we can enact your legislation into law.

Mr. Hall?

Mr. HALL. Mr. Chairman, it's always good to see you, whether you're up here or down there. With reference to this crime conversation, of course, the committee, subcommittee last year heard extensive evidence on this matter. One of the victim's testimony, and I'm looking at the hearings of the Subcommittee on Criminal Justice, the testimony of Roger Meiners, who is a John M. Olin Fellow, University of Miami Law and Economics Center, indicated that—and I never saw this—he said, "If"—and I'm reading from page 232 of his testimony—

> If only 5.8 percent of the 1.7 million victims received compensation, this would mean 100,000 victims would receive awards nationwide if every state were to adopt the program. Given an average award of $4,000 per victim, which has been the experience of many states which have programs, this would mean a nationwide expenditure of $400 million in payments to victims of crime.

Now, I understood that you indicated that the cost would be around $15 or $18 million. And I don't have those figures before me. You indicated it would cost $15 to $18 million the first year?

Chairman RODINO. I'm indicating that that's the authorization level of the bill, and I think that, when we analyze the number of States that are involved in the program and that this reflects, I think, three-fourths of the crimes that would qualify under the bill, that a reasonable estimate comes within that area.

Mr. HALL. I believe that our colleague from New York, Jack Bingham, I believe he put a letter in the record giving the indication that New York State had adopted this victims' crime program some years ago. They were bogged down considerably in implementation of it, and I gather from reading his letter that just the State of New York alone would be way in excess of $15 to $20 million.

The thing that I'm coming to——

Chairman RODINO. Congressman, the law that I can reply to is that both the Congressional Budget Office and the Justice Department analyzed the crime figures of the various States involved and came up with figures that were reasonable within the range of figures that I have advanced.

I recognized that there was that witness who appeared before the committee and presented that extremely high figure. I can say that I am not in a position to rebut it myself personally, except that I think that the Budget Office now, and the Justice Department, which had been dealing with this problem for a period of time, and having gone through the various States involved in the program, are coming up with what I believe to be the more compatible and the more reasonable figures.

Mr. Chairman, may I say at this point, I understand that one of our colleagues, Congressman Roybal, who is to appear as a witness before your committee, has a White House appearance to go to, and I would be very happy to yield to him.

Mr. DRINAN. Mr. Chairman, that's characteristically gracious of you. I will ask Mr. Roybal to come and testify, since he has to be at the White House in the near future.

Mr. Roybal is the chairman of the Subcommittee on Housing and Consumer Interests of the Select Committee on the Aging. Last term his subcommittee issued a fine report on the needs of elderly crime victims.

Mr. Roybal, we are very happy to have you here and, without objection, your statement will be made a part of the record. Please proceed as you desire.

[The complete statement follows:]

TESTIMONY OF HON. EDWARD R. ROYBAL

Mr. Chairman, it is with great pleasure that I speak before your subcommittee today on an issue which deserves our attention and, as you well know, has been a matter of concern to all of us on the Aging Committee. Crime against the elderly is a growing concern of senior citizens and our efforts to provide compensation for the elderly victim of crime must be intensified to reflect its importance.

The Subcommittee on Housing and Consumer Interests, which I Chair, of the House Select Committee on Aging, has been deeply involved with the issue of compensation to certain elderly individuals who are injured or suffer property loss as a result of certain criminal acts. Past reports and hearings indicate that elderly victims suffer more since the majority are on low, fixed incomes and do not have the capability to recoup monetary losses or to replace stolen or damaged property. The elderly are also less resilient to the trauma and personal injury of criminal attack. Thus, crime leaves a deeper, more lasting mark, and injuries incurred may be more disabling and require a longer recover period.

On February 8, 1979, our colleague, Mr Rodino, introduced a bill entitled the "Victims of Crime Act of 1979", H.R. 1899. I wish to express my sincere support for this piece of legislation, which if enacted, would provide federal grants to states to assist those who are criminally victimized. I would, however, like to comment on some provisions which I feel would complement the already existing legislation as proposed by Mr. Rodino. My major concern is that, while it compensates for medical bills, funeral costs, loss of wages and other expenses, it does not sufficiently protect the elderly victim because it does not compensate for property loss.

In the last Congress, and again in this 96th Congress, I introduced a bill that would allow low-income persons 62 years or older to be compensated for the loss of essential property up to a maximum of $1,000. Only property which is necessary to the well-being and security of the individual would be eligible for reimbursement. Although the elderly appear to be victims of violent crimes to a lesser degree than the general population, the Subcommittee on Housing and Consumer Interests has found that they are frequently the victims of property crimes—burglary, robbery, and larceny with contact.

By not providing compensation for property loss, H.R. 1899 does not provide assistance to the most seriously debilitated victims of crime—the elderly.

In addition, emergency funds for the elderly crime victim should be made available. One-fourth of all persons 65 and over are retired and live on fixed incomes at or below 125 percent of the poverty level. Even the theft of a small amount of money from an older person on a fixed income can represent a much greater relative loss than the same amount stolen from almost anyone else. The elderly, if robbed, cannot meet the emergency because of the need to wait for their Social Secruity, pension, or Supplemental Security Income cheques to arrive in the following month.

I want to commend Mr. Rodino for his continued efforts in providing assistance to victims of crime. I believe, however, that there are a couple of excellent provisions in H.R. 1899 which can be expanded upon.

First of all, while H.R. 1899 calls for states to require that appropriate law enforcement agencies and officials take "reasonable" care to inform victims of qualifying crimes about the existence of a program of compensation, I believe that the only truly effective way to provide compensation is by allowing for a "Victim Advocate." Such an advocate would, aside from making the program's existence known, provide an effective means of encouraging the victim to complete the procedures necessary to collect when eligible.

Secondly, while the "Victims of Crime Act of 1979" provides for similar requirements to ensure that the law enforcement agencies and officials take "reasonable" care to inform victims about the procedures for applying for compensation, it does not necessarily assist them in applying, or provide for necessary linkages to community services. Again, a victim advocate, or a similar concept, could accomplish this function.

Crime compensation programs are premised on the growing recognition that

present remedies available to the victim, especially the elderly victim, are inadequate. The need to address compensation for "special persons"—the elderly; to establish a well-publicized emergency fund; to provide a property loss component for seniors; and to assist in the dissemination of information and collection of claims through the aid of a victim advocate are evidenced in the research of the Subcommittee I Chair. Victims Compensation legislation is based upon the realization that the concept is a worthy one and everything possible ought to be done to foster its success. Moreover, I believe that to achieve true equity we must go a step further and address the particular needs of the elderly.

TESTIMONY OF HON. EDWARD R. ROYBAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ROYBAL. Thank you, Mr. Chairman. May I also thank Chairman Rodino for the opportunity of making a brief presentation at this particular time. It is true that I must attend a briefing at the White House. I apologize for the rush in which I happen to be.

I greatly appreciate the fact that I will be given this opportunity at this time. Now, we all know that crime against the elderly is a growing concern of senior citizens and our efforts to provide compensation for the elderly victim of crime must be intensified to reflect its importance.

The Subcommittee on Housing and Consumer Interests, which I Chair, of the House Select Committee on Aging, has been deeply involved with the issue of compensation to certain elderly individuals who are injured or suffer property loss as a result of certain criminal acts. Past reports and hearings indicate that elderly victims suffer more since the majority are on low, fixed incomes and do not have the capability to recoup monetary losses or to replace stolen or damaged property. The elderly are also less resilient to the trauma and personal injury of criminal attack. Thus, crime leaves a deeper, more lasting mark, and injuries incurred may be more disabling and require a longer recovery period.

On February 8, 1979, our colleague, Mr. Rodino, introduced a bill entitled the Victims of Crime Act of 1979, H.R. 1899. I wish to express my sincere support for this piece of legislation, which if enacted, would provide Federal grants to States to assist those who are criminally victimized. I would, however, like to comment on some provisions which I feel would complement the already existing legislation as proposed by Mr. Rodino. My major concern is that, while it compensates for medical bills, funeral costs, loss of wages and other expenses, it does not sufficiently protect the elderly victim because it does not compensate for property loss.

In the last Congress, and again in this 96th Congress, I again introduced a bill that would assist the most seriously debilitated victims of crime. And that is the elderly. So I'm here, Mr. Chairman, to urge the committee to give every consideration for its inclusion.

While I have other recommendations, that one can find in the legislation that I have prepared, I think that the matter of property loss is of great importance, and something should definitely be considered by this committee when the markup of the legislation question is before you.

Mr. DRINAN. I can assure you that it will be. Would you want to proceed, or we'll put this in the record?

Mr. ROYBAL. If this is put in the record, then you'll have the entire statement. I would appreciate it.

Mr. DRINAN. I thank you very much, Mr. Roybal, and I'm certainly very sympathetic to that, and I want again, for the record, to commend you on the hearings and the report that you drew up as the chairman of the Committee on Aging.

I hesitate to delay you any further from your next appointment. Is there any member of the committee who would want to make a comment or question to Mr. Roybal?

Mr. ROYBAL. Thank you very much.

Mr. DRINAN. All right. We thank you very much.

Mr. ROYBAL. And thank you, Mr. Rodino.

Mr. DRINAN. Thank you, Mr. Chairman. Please resume your colloquy with Mr. Hall.

TESTIMONY OF HON. PETER W. RODINO, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, CHAIRMAN, COMMITTEE ON THE JUDICIARY, ACCOMPANIED BY ALAN A. PARKER—Resumed

Chairman RODINO. Mr. Hall, may I say that I am looking at page 232 of the hearings. First of all I find that there are discrepancies between what the witness says here and what he reports here as against what I've read and what I've seen as the product of research that has been done.

While this may not seem very significant, nonetheless I think it's significant in that it questions the reliability of the statement in its entirety. It says here, given an average award of $4,000 per victim, which has been the experience of many States which have programs, well, my impression and my recollection of the studies that were made state that the average award in the various States in the program is somewhere between $2,000 and $2,500, which would immediately discredit the figure he talks about.

Again, I say that I don't know whether he was taking into consideration the qualifying elements of the various States, but with the Congressional Budget Office and with the Justice Department having studied this question, I am going to have to rely on what they've got to say, together with the fact that I believe that we here in the Congress can set our own authorizations, and the level is, as I have stated before, $15 million, et cetera, for the first year, and we will be bound by that.

Together with that we will at least have been able to look at the program and see how it operates in that area.

Mr. DRINAN. Mr. Lungren?

Mr. LUNGREN. Yes; Mr. Chairman. As one who supports this type of legislation on a local and State level, I have great concern about the Federal Government getting involved in it. One of the problems that I've seen in talking with officials from my own State and localities is that, now, when we even discuss the possibility of not continuing certain revenue sharing and so forth, they tell me, despite the fact that they never intended to do so, they are not dependent on revenue sharing for regular operating expenses of their government.

And it concerns me greatly that, here, we appear to be ready to launch an effort that we were going to support up to 50 percent of State programs, and at a time when, as you indicated, we're reaching a crunch here in Washington, D.C., with respect to budget concerns, I wonder if this is really a wise thing.

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Chairman RODINO. Well, let me ask you this as a question. Wouldn't you believe it is a wise thing if you felt that this kind of a program would help in what we feel is a necessary weapon to combat increasing crime rates? We know that the citizenry is being alienated, that they fail to report crime. We know that crime, while it is primarily a State responsibility, cuts across State lines, and has become a matter of such national concern that there isn't an individual who isn't concerned about what might happen to him as a result of some assailant suddenly, attacking him.

As result, we've spent billions of dollars in the effort to combat crime, and I believe that this is a primary responsibility of our Government. I also believe that, if we were to spend $15 million and $35 and $50 million on a victims compensation program, and it would help to actually get these people back on track, so that they would be cooperative citizens, we would find that more people would report crimes and be willing to act as witnesses.

We find that even the witness programs that have been part of LEAA and other programs designed to bring in people, that people do come in and are helpful. And I might point out I was involved last year on a television program with an individual who had been convinced as anyone else that the Federal Government should stay out of most matters that relate to the States. He was a small businessman who ran a small grocery store in Virginia.

He was attacked by someone shot in a holdup. He became disabled. How embittered he was. And I recall that he heard about this program and the kind of help that it would have given him.

He was about $10,000 in the red. He had suffered permanent injury. He felt as many people do. He said:

> My God, the Federal Government goes out and says it's interested in its citizens but it's not. I don't even want to become involved and go out there and testify against this individual. What is in it for me? The Government isn't concerned with my welfare. I've had to go out and beg and borrow to take care of these bills.

Now, I think that, when we consider all these factors, the authorization in this bill is certainly a small amount to pay.

Mr. LUNGREN. Mr. Chairman, some of the things you've said with respect to the condition of crime I don't think can be argued with. As the tremendous magnitude it has today, this committee's now concerned itself with the revision of the Criminal Code or recodification of the Criminal Code. And one of the things we're concerned about, at least in our first discussions, is that we do not expand the impact of the Federal judicial system into those areas that are more properly in the State and local government.

And it seems to me, if that is something we believe is wise with respect to the prosecution of crime, that side of it, why is it not also wise with this side of it; that is, that we can't encourage the State to do so, but that it truly is a State prerogative, and it ought to remain that.

Chairman RODINO. I think if we look at all the Federal programs and all the Federal Government's involvement in helping to prosecute criminals and incarcerate them, and spend this money in an effort to help the States this would be another way of helping in the battle against crime.

Mr. DRINAN. Thank you.

Mr. Shelby?

Mr. SHELBY. Mr. Chairman, I have just gotten into the committee. I haven't done a lot of work.

Back in Alabama I was interested in and had introduced at one point during my legislative career, a proposed legislation that would compensate innocent victims of crime. But it was not funded with State funds. We were going to try to—let me say, it didn't pass. But it got on the committee and then it passed in the senate.

But we were going to try to get the money out of the perpetrators of the crimes rather than the State of Alabama to pay its society as a whole. What bothers me, I think the purpose is noble, and I certainly have a lot of respect for you; I've known you for a number of years.

In doing what you're trying to do, I'm worried about the cost, Mr. Chairman, and not just the initial cost, whatever it is. Do you have a fiscal note on that, what it would initially cost?

Chairman RODINO. I have just discussed the matter with Congressman Hall. I presented to the committee of course that the authorization level here is $15 million the first year, $25 million the second, $35 million the third.

The Congressional Budget Office has come up with figures and so has the Justice Department, and their figures are within that area. The total payment to victims by States—and this is from the Congressional Research Service—was $19,250,323.37.

And of course under my program the Federal share would be 50 percent of that. Now, even if we stated that the estimate was on the low side and we went up, I would think that the figures that I've advanced in the bill are within reach of what I think can do the kind of job that is necessary in this area.

Mr. SHELBY. The expenditure of the money bothers me; the purpose, I fully agree with. I think that we should as society as a whole look at the innocent victims of crime. But I think it's got danger.

Chairman RODINO. But I think all of us have to look down the line. We've got to ask ourselves: what is the attitude of the American people now towards government? And there is an alienation out there and more so with people who become victimized by criminals. Also, crime has become of such national concern that we have all recognized the need to do something.

And indeed over the past years, we have been doing something.

Mr. SHELBY. Crime is global now?

Chairman RODINO. The question is, Can we, with a program which I believe is a modest program, bring back these people into the order of society as cooperative citizens who will, first of all, cooperate with law enforcement in bringing the ciminals to book? States are full of those who turn their backs, just as in the case of the one individual from Virginia who was a small businessman who said he wasn't going to cooperate at all and came to testify because he felt the need for such legislation.

I think when we come up with a program that does a worthwhile job of meeting some of the objectives of helping in the effort to combat crime, bringing citizens together to cooperate in reporting cime, keeping them off the relief rolls then we have the responsibility to act.

There have been, I know, approaches that have been advanced on the part of some members who object to this and say, well, there is a program for these people. Let them go on welfare.

Mr. SHELBY. But isn't this an expenditure of Federal money, just like certain aspects of welfare? I mean, you'd call it something else, but it's really coming out of the Treasury.

Chairman RODINO. It concerns itself with the dignity of the individual, who was a productive member, who suddenly becomes disabled and to whom you then say: Well, look, you can go on welfare and we'll help you.

I think that Federal assistance to victims compensation programs would be well worth the effort, and I think sooner or later we're going to recognize it. I think we've got to recognize that we work within modest figures. Bur I'm all for saying if we've got to break ground and go into new areas, if they're justified and they're worthwhile, that's what we're here to do.

Mr. SHELBY. Thank you, Mr. Chairman.

Mr. DRINAN. Mr. Synar?

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. Chairman, I too share the feeling of—I think what most people on this subcommittee share, and this is an area that does need investigation. And just in your last sentence under Congressman Shelby, I think you hit a point which I am personally concerned with, which is: we need to get into worthwhile programs of justification, programs which justify themselves.

As a new member, like Congressman Shelby, we had not the opportunity to hear all of the testimony last year which was presented. I do share the concern that we have programs which are now in existence in 27 States, as you pointed out.

What is the success record of those 27 States on handling this problem before the Federal Government gets involved?

Is there a success level which justifies the Federal Government to become a partner? Or have we faced such unbelievable problems on the State level that right now we do not have the experience to determine whether or not these programs are worthwhile or justifiable?

Chairman RODINO. Well, my study of the programs in the various States indicates they are working and of course I recognize that some of the people who appear sometimes are presenting self-serving statements, bureaucrats who want to continue. But I think that when you study the programs on a whole and get reports back, I think we find that those programs have worked in instances where there have been people who, unfortunately, have been the innocent victims of crime.

I recall—and I don't have it with me, but I'll produce it for the record—a Wall Street Journal article which reported very favorably on so many standards and so many events that occurred in these programs which they applauded.

Police chiefs across the country, attorneys general in the various States of the Union, and people who are interested in doing something about the problem of crime, all have talked about the success of these programs.

But very frankly, while now another State has come in—and it's 27 States—the States have been asking for some kind of Federal intervention because they feel that the problem is one that goes beyond State lines and State interests.

Mr. DRINAN. Mr. Shelby, if I may.

Mr. Rodino, you've been very gracious in the past; I wonder if we could ask once again that we interrupt the questioning because the very distinguished chairman of the Committee on Aging is here, Claude Pepper, and he has an important hearing at 2 o'clock. If it is agreeable, Mr. Pepper could speak now and then we'll resume the questioning.

Chairman RODINO. I'd be very happy to do so. Unfortunately, I have some other pressing appointment.

Mr. DRINAN. All right. Let it go.

Mr. Kindness?

Mr. KINDNESS. Let me just express my regret that I was late in getting here, Mr. Chairman. I was involved in a hearing on another of your bills, the lobbying bill downstairs.

Chairman RODINO. Thank you very much.

Mr. DRINAN. Mr. Sawyer?

Mr. SAWYER. Just a very brief comment. I am in support of the bill. Having been a prosecutor, I know this problem of getting public cooperation, and I think maybe there's some logic in favor of it in light of recent decisions of how owners and operators are responsible for injuries, for not maintaining adequate protection.

So I think there's some argument, albeit a little stretched, that someone injured—really, the public has failed in providing protection, actually.

But I think overwhelmingly on that is the psychology of it. I think that we spend so many hundereds of millions, probably billions of dollars rehabilitating, correcting, providing additional assurances of fair trial and protection of rights all for the criminal and not a penny for the person who's injured.

And I think just to show the Government concern for the injured as well as the transgressor, I know it makes it very worthwhile.

Chairman RODINO. Well, I want to thank you very much. In light of that, the New York Times a year ago carried a story about one of these innocent victims, and there was a statement that caught me which is in line with what you say.

The individual, who was badly battered and who had tried to be a good samaritan, to try to help a law enforcement officer, said "crime pays for the criminal but not for the innocent victim."

Mr. DRINAN. You've been an excellent witness. Thank you very much.

Chairman RODINO. Thank you very much.

Mr. DRINAN. I'm extremely pleased that our next witness is the distinguished chairman of the Select Committee on Aging. I have worked very closely with Congressman Claude Pepper, who, as everyone knows, is a great leader in our efforts to help the elderly. I'm glad to welcome him here. I'm sorry that Congressman Mario Biaggi has another appointment and cannot be here. Mr. Biaggi is the chairman of the Subcommittee on Human Services of the Select Committee on Aging. That subcommittee has also been extremely concerned with crime against the elderly.

Congressman Pepper, we are delighted that you are here with us today.

Your statement will, without objection, be made a part of the record, and you may proceed as you desire.

[The complete statement follows:]

TESTIMONY OF HON. CLAUDE PEPPER, CHAIRMAN, HOUSE SELECT COMMITTEE ON AGING, CONCERNING H.R. 1899, "THE VICTIMS OF CRIME ACT OF 1979"

Mr. Chairman, I am extremely pleased to be here with you and this distinguished Subcommittee this morning. As Chairman of the House Committee on Aging, on which you serve so ably, Mr. Chairman, I have repeatedly had the opportunity to work closely with you and I have learned first-hand of your extreme dedication to meeting the needs of the elderly. I know that this area we are discussing today, aiding victims of crime, has long been one in which you hold the deepest kind of personal commitment. I am extremely pleased, as is our entire Aging Committee, that your colleagues on the Judiciary Committee have selected you for this key position as Subcommittee Chairman in which you will be able to do so much to assist those who need our help so badly. I am also pleased that two of the Members of this distinguished Subcommittee are new Members of our Aging Committee—Mr. Synar and Mr. Lungren—and I know they share your involvement in this area.

Over the last four years our Aging Committee, and particularly two of our Subcommittees under the Chairmanship of my distinguished colleagues, Mr. Roybal and Mr. Biaggi, have been extremely concerned with crime against the elderly. We have closely examined existing efforts to investigate crimes and rehabilitate offenders. But, our work has also convinced us that efforts to deal with the nationwide problem of crime cannot overlook the victim of crime. Too often the victim is completely forgotten about: we expect them to aid in efforts to prosecute suspects. Yet, we stand by as they endure trauma, severe financial loss, physical suffering, and tremendous inconvenience in the aftermath of crime.

Aid for victims of crime has its roots in the most ancient judicial systems. More than 4,000 years ago, the Babylonian Code of Hammurabi provided that if a man were robbed or murdered, the city would compensate the victim or his heirs for their losses.

Over the last ten years, more and more of our states have accepted the wisdom of this approach. In 1968, only five states had compensation programs to aid victims. In 1978, twenty-five states operated such programs. I am extremely pleased that last year, my own state of Florida enacted its own program in this area.

Compensation programs are of great help to people of all ages but they are particularly important to the elderly. Sixteen percent of the population over 65 lives below the official poverty level. To a retired person on a limited fixed income, the loss of even $20 from theft can cause great hardship. Many older persons have no large savings accounts to fall back on or insurance to cover their losses. Often they have no alternative to simply waiting until the next social security check comes to buy decent food or pay the rent. The impact of crime on the elderly is compounded by the fact that they are more likely to sustain difficult and prolonged injuries from offenders.

All too often our Committee has learned of the terrible suffering an older person experienced after being assaulted or robbed. We spoke to a couple living here in Washington who told us, "They took every little bit of money we had . . . we had to go without something to eat . . . we didn't have nothing." This couple faced incredible hardships because they live in an area that has no program to aid victims of crime.

Residents of my own Congressional District are much more fortunate when they are victimized because of Florida's new program. Consider the case of a 73 year old constituent of mine. She was attacked by two youths as she walked from the market to her car in a nearby parking lot. This woman was knocked to the ground, her purse was taken, and both her arms were broken. She had to spend 14 days in the hospital. Her Medicare and private health insurance did not cover $1,197.50 of her medical bills. Fortunately those expenses were paid for by Florida's Crime Compensation Commission. The 50 percent match proposed by the bill before this Subcommittee would be a marvellous way of helping even more people.

Clearly, suffering in the aftermath of violent crime triggers the outrage of everyone in this room. Now, in the 96th Congress, it must be last trigger action by action by the federal government. This must be the year when at long last we enact legislation like H.R. 1899 to assist those states which operate programs to aid victims. In doing so, we will also provide an incentive for the other states to enact programs for their residents.

For all of these reasons, I fully support H.R. 1899. I hope that it will be reported out of your Subcommittee at the earliest possible date.

However, I would like to suggest two amendments that could be incorporated

into this legislation. First of all, I strongly urge you to allow for compensation for certain property losses of elderly persons. In mnay cases, to persons on fixed incomes property loss can be just as devastating in the long run as personal injury or loss of cash. The elderly are least likely of any age group to carry insurance to replace stolen clothing, food, or medicine, so when these items are stolen, they often have no choice but to do without.

Second of all, I suggest that the Subcommittee consider amending H.R. 1899 so that it will not include a "means test". I understand that parallel legislation already introduced in the Senate by Senator Kennedy would not deny assistance to victims because they might be over an arbitrary income limit and I hope we can adopt that course on this side. A study by the National Council of Senior Citizens on this question has shown that use of a means test has several adverse consequences: it may lead to individuals being denied benefits inequitably or on the basis of technicalities; it increases the cost of administering the program and the amount of paperwork victims need to fill out; and finally it often discourages those who need help from seeking it because they do not want to be associated with welfare program.

Crime victimization of the elderly has radically altered and restricted their lifestyles. The so called golden years have become years of terror and poverty for millions of older persons. Enactment of H.R. 1899 would represent a vital commitment by the federal government in cooperation with our states to respond to the forgotten victims.

[Subsequent to testifying before the subcommittee, Representative Pepper submitted the following for inclusion in the hearing record:]

METROPOLITAN DADE COUNTY, FLORIDA,
PUBLIC SAFETY DEPARTMENT,
Miami, Fla., March 16, 1979.

Hon. CLAUDE PEPPER,
Chairman, Select Committee on Aging,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN PEPPER: Thank you for your letter dated February 23, 1979, in which you request information concerning victimization of the elderly.

The Public Safety Department is presently involved in a joint victimization study with the University of Miami's Institute for the Study of Aging. At the conclusion of this study, we hope to make some definitive statements concerning the rate of victimization of adults aged 65 and older in Dade County.

Attached you will find an interim report based on our collaborative study with the University of Miami on the social, psychological, and economic impact of criminal victimization of the elderly funded by the Administration on Aging. Please note that the report is based on data derived from the records of the Dade County Public Saftey Department during the months of January, February, and March, 1978, only.

Although these data are accurate for the specific period of time presented, we would like to stress the fact that they cannot be construed as generalizable or as a predictor of the outcome of the study which will not be completed until October, 1979.

Generally speaking, we have found that two groups of confidence people are more active in South Florida this time of year. They are the "Gypsy Groups" and the "Irish Groups." The types of confidence games that they perpetrate are for the most part aimed at senior citizens and fall in several categories to include representing themselves as employees of Florida Power and Light and/or the telephone company. They tell the potential victim that they either have faulty wiring in their homes that needs replacing or that they are entitled to a refund. In the case of the faulty wiring, what starts out as a five dollar charge,escalates to eighty dollars before the job is over and in the case of the refund, the victim is asked if the can change a large bill and when he gets the change, he is observed by a second subject who subsequently steals same. Other confidence games include general home repairs such as roof and driveway repairs. Also prevalent are vehicle repairs and body work.

In conclusion, we feel that the problem concerning elderly victimization is not the crime itself but the after-the-fact impact. Consequently, it is our opinion that efforts should be aimed at strengthening existing victim advocate programs and victim compensation programs which would allow elderly victims of crimes

to regain their losses both cash and property. It is also necessary that programs are developed which would allow a senior citizen to obtain certain security devices, i.e., locks, security surveys, etc., in order that no large monetary burden be placed on their limited income.

Finally, we cannot overlook the fact that specific and definite legislation needs to be enacted which would strengthen the penalties for any person who perpetrates a crime against a senior citizen.

We sincerely hope that the information we are forwarding to you will be helpful during the House Judiciary Committee hearings on legislation concerning crime against the elderly.

Please feel free to contact us regarding any matters of mutual concern.

Sincerely,

E. WILSON PURDY,
Director.

Attachments (3).

INTRODUCTION

The University of Miami Institute for the Study of Aging, through a grant from the Administration on Aging (Department of Health, Education and Welfare) has been working collaboratively with the Dade County Public Safety Department and the City of Miami Police Department to determine the psychological, sociological, and economic impact of victimization of the elderly.

The Administration on Aging, in calling for this kind of study, indicated that the development of social and fiscal policy in the areas of elderly victimization could not be based solely on the rate at which older people are victimized. Indeed, our study was funded some time after the LEAA study which indicated that elderly victims were underrepresented in the general population of those who were victimized. Rather, the crucial questions raised in our study focus on the *impact* on the victim, psychologically, sociologically and economically, along with rates and kinds of crimes.

As an example of the above, the victim may suffer psychological, social and economic impacts that cannot be understood by looking only at the rate of crimes or the type of crimes, but rather by looking at the impact to the victim. What is the impact on the elderly person, who when robbed of his money derived from a social security check, has no other financial resource to carry him? What is the impact of sexual assaults on women who live alone or must, even after the victimization, continue to travel in high risk areas because of work or some other necessity?

Although our study is not looking into *fear* of crime, studies have shown that the fear of being a victim can impact as negatively on the elderly person as the actual commission of a crime. Thus, the elderly person may impose upon himself/herself a lifestyle which is so constricted as to have no contact with the outside world.

The following report is based on data collected from the Dade County Public Safety Department in the months of January, February, and March 1978 of persons 65 years of age or older. The data are accurate for that period of time only. No inferences can be made on the outcome of the study based on these data.

1. Rates of Reported Victimization for Adults Aged 65 years and older in Dade County for the Months of January, February, March 1978.—The Metropolitan Dade County Public Safety Department compiles data on crime based on cases under its jurisdiction and on reports submitted by some municipalities within Dade County to PSD.

For the three months of data, PSD Reports showed the following figures:

Date	Elderly victimizations	Total reports of victimization	Rate per 100 reports
January 1978	254	14,206	2/100
February 1978	262	14,510	2/100
March 1978	281	16,575	2/100

These figures reflect all types of crimes reported to the PSD, including vandalisms, fraud, and other Class II crimes, as well as Class I offenders such as breaking and entering, robbery, assault, etc.

2. For purposes of reporting, crime is often classed as "serious" or "index" crime (Class I) versus less serious crime (Class II). The following presents data for the seven Class I crimes in our initial sample. We have also included significant types of Class II crime affecting elderly victims.

Crime	Number	Percent of all elderly cases
Class I—Murder/manslaughter	2	1
Rape	51	6
Robbery	22	3
Assault (aggravated)	179	22
Breaking and entering	261	32
Larceny	22	3
Auto theft		

[1] Less than 1 percent.

Class II crime:	*Number*	*Present of all elderly cases*
Fraud/confidence	11	1
Vandalism	171	21

(Other class II crimes account for remaining cases.)

While based on early data with more results to come, trends indicate that Breaking and Entering, Larceny, and Vandalism seem to account for the largest portion of victimizing occurring to elderly. Robbery is also worthy of note.

3. SIGNIFICANT ASPECTS OF REPORTED ELDERLY VICTIMIZATION

From our initial sample of the 800+ reported elderly victimizations, the following trends appear to be emerging:

Victim characteristics

Elderly victims are mostly male (55 percent) rather than female (45 percent) and most are Anglo (86 percent), black (7 percent), and Hispanic (5 percent). Fifty two percent of the victims are age 65 years through age 70 years, with 71 through 99 years accounting for the remianing 48 percent. We should note that since females outnumber males in the general 65 and over population, the higher number of males in the victims group is not something we would expect.

Location of victimization

Sixty one percent of victimizations occurred at the home, while 38 percent occurred on the street or in other public buildings. When we look at location types, 48 percent of all cases involved a free standing single family home while 15 percent occurred in apartment style residences. Looking at location from the standpoint of the victim's personal space or "turf", 52 percent of all reported crimes were on the victims residence property, and of these, half were inside the actual dwelling unit. The information thus far indicates that a major problem for elderly appears to be the invasion of the residence, usually in the commission of a crime targeted against property (breaking and entering and vandalism are most significant here.)

Recent studies have suggested that home victimization may have a much greater impact than usually thought because of the compromise of the home, the most important "safe" haven. It seems likely that the impact of losing secure feelings in one's home after a victimization may be an important factor in many elderly feeling more vulnerable. Since 63 percent of all victimizations involved no face-to-face contact between the victim and subject (that is, property was discovered missing or evidence of a break-in was found), this lack of contact, rather than minimizing impact, may add to anxiety over the apparent loss of the home as a "safe" place.

Victim injuries

Approximately 20 percent of victimizations involved direct contact between victim and subject, a condition largely associated with robbery or larceny. Physical involvement of subjects did not show a high rate of beating or bodily force (approx. 3 percent of all cases) nor was the incidence of verbal threats high (approx. 4 percent). Further, only about 8 percent involved use of guns knives, other sharp instruments, or clubs.

Given the above, we might expect a relatively lower injury rate. In fact, 94 percent of the reported victimizations in the sample showed no injury to victim. Of the 6 percent where injury was reported, most (4 percent) involved cuts, lacerations, or bruises.

Property loss

Property losses represent another area of potential concern with elderly victims. The dominant loss in reported victimizations is cash (5 percent) followed by jewelry (6 percent) and electronic equipment (5 percent).

In terms of the dollar value of losses, 51 percent involved losses of less than $49, 25 percent involved losses in the $100 to $499 category, followed by a 10 percent rate of loss in the $50 to $90 cagegory. 7 percent experienced losses of property valued at $500 to $1,000.

Offender information

The offender could not be identified in 86 percent of the cases. In terms of identifying relevant characteristics: sex of offender—66 percent of the cases unknown, ethnicity of the offender—67 percent of the cases unknown, offender height and weight—73 percent of the cases unknown, hair color of the offender—79 percent of the cases unknown, eye color of the offender—86 percent of the cases unknown, distinguishing features—73 percent of the cases unknown. Based on these kinds of data, it is not surprising that 91 percent of victimizations showed that, with respect to an initial police report, there was no apprehension of the offender.

Because confidence games are so numerous and can be perpetrated many different ways, we are including some of the types of games and a brief definition of each:

Pigeon drop.—Person finds a wallet full of money and offers to share it with you if you will put up a substantial amount as "Good Faith."

Bank examiner.—You are enticed to withdraw your money from your bank account in order to help catch a dishonest bank employee.

Mail frauds.—Be leery of any unsolicited mail . . . usually takes the form of consumer inquiries, business opportunities, medical help, and self-improvement.

Contracts.—Never sign a contract until you have had it looked over by your lawyer, banker or other expert.

Fear-sell.—This is a high pressure salesmanship . . . Get it now or never—you don't need it . . . never be forced into making any purchases that you will regret at a later time.

Telephone solicitation.—Never purchase anything over the telephone unless you know who you are dealing with and have made prior arrangements . . . then get a number and call the party back or insist on person to person contact.

Door-to-door salespersons.—Do not patronize them . . . if they are expected, check I.D. before allowing them in. Call their company for verification.

Retirement programs.—Only deal with reputable or well-known and established programs . . . Use a great deal of caution when looking into programs involving total residential living which encompasses paid medical expenses, food, room, and board.

C.O.D. delivery.—The victim is asked to pay C.O.D. charges on a package addressed to a neighbor who is not at home. As a gesture of friendship the victim pays for the item. The item contains worthless materials.

Business opportunities.—The victim is offered a chance to obtain a great financial income. However, the scheme may involve a fee to start the business opportunity and offer little income if any at all.

Endless chain letters.—In chain letters you receive a letter asking that you send a sum of money, or even a savings bond to the top name on the list. You then eliminate the top name, add your name and address to the bottom of the list. Then, theoretically, you should receive a bonanza of money from others on the list at a later date.

Charge card overcharge.—The victim signs a charge receipt stamped with an incorrect amount for his purchase—or—the victim is told that the first slip was a mistake and he is asked to sign a second charge card slip with the proper amount. The first slip has not been destroyed and is processed later, double charging you for the same item (The victim should have saved his charge slip and demanded that the extra slip be torn up.) You should always watch the sales person when he has your card in his possession.

Medical cures.—The victim is drawn in by unbelievable results other consumers have supposedly received with a company's product. These results are usually quite questionable and a doctor should be consulted.

CASE STUDIES

Regarding specific case studies, we suggest a recent Public Safety Department case. This case was a flimflam involving an 84 year old White Female. The victim was approached at her home by the subject, a White Female, approximately 60 years old, apparently of Gypsy extraction, claiming to be a faith healer. Both the victim and a witness to the incident, a White Female, 48 years old, allegedly suffer from terminal illness.

The subject told the witness to remain in the living room while she and the victim went into the bedroom to pray. (It should be noted that with these types of crimes specific attempts are made to reduce the number of witnesses available.) The subject then retrieved a sock from the victim's brassiere, which possibly indicates that they had been there before, and took $500.00 cash from it replacing play money. After spending a period of time praying, either to make the money increase or to remove the evil from it, the subject left the scene in the company of another White Female, approximately 50 years old and an older White Male, who was driving a pickup truck.

Another case involves a Miami Beach woman, 65 years old, who was the victim of a "pigeon drop." In this case the woman was conned out of $7,000.00 dollars cash and $2,000.00 dollars worth of jewelry.

PUBLIC SAFETY DEPARTMENT,
METROPOLITAN DADE COUNTY,
Miami, Fla., April 18, 1979.

HON. CLAUDE PEPPER,
Congressman, U.S. House of Representatives, Select Committee on Aging, Washington, D.C.

DEAR CONGRESSMAN PEPPER: Reference is made to your letter dated February 23, 1979, in which you requested information concerning criminal victimization of the elderly.

In addition to the information we have forwarded to you, we also requested Dr Priscilla Perry, Director, University of Miami's Institute for the Study of Aging, to prepare some comments for the House Judiciary Committees' hearings concerning crime against the elderly. Hopefully, this information will also be helpful to the Committee.

Please feel free to contact us if we can be of further assistance.

Sincerely,

E. WILSON PURDY, *Director.*

IMPACT OF VICTIMIZATION OF THE ELDERLY FOR INCLUSION IN THE CONGRESSIONAL RECORD RELATED TO TESTIMONY ON FEBRUARY 28, 1979

The University of Miami Institute for the Study of Aging, through a grant from the Administration on Aging (DHEW), has been working collaboratively with the Dade County Public Safety Department and the City of Miami Police Department to accomplish an indepth study of the psychological, social, and economic impacts of criminal victimization of the elderly. The Administration on Aging, in calling for this kind of study, recognized that the problem of criminal victimization on the elderly must be understood not only in terms of fear of crime and the rate at which older people are victimized, but more importantly, in terms of the impact of being victimized. Specifically, earlier studies have indicated that elderly victims are under-represented in the population of those victimized in major types of crime categories, e.g., burglary, assault, robbery, larceny, and rape. Other studies, focusing on the fear of crime among elderly, have indicated that fear of crime is a problem for many in society and particularly elderly. However, fear of crime may not bear a direct relationship to the experience of being a victim of a crime.

Crucial questions raised in our study focus on the impact on the elderly victim—psychologically, socially, and economically—resulting from particular types of crime and the consequences of these impacts on the lives of these victims. For example, a victim may suffer certain kinds of psychological trauma, economic loss, or social withdrawal as a result of being victimized. These problems cannot be understood by looking at rates of crimes or types of crimes occurring with an elderly population. Rather, these must be addressed by studies which directly related to the victim and his/her experience. What is the impact on the elderly person, the one robbed of his money derived from a social security check, who has no other financial resources to carry him? What is the impact of sexual assault on women who must live alone or even after victimization must continue to travel in

high risk areas because of work or some other necessity? What is the impact of the burglary which violates the elderly person's last safe haven, the home?

In our study, we seek to distinguish between impact, as defined above, and the more general problems of rate and fear of crime. As a consequence of this focus, we have sought to collect information on a number of aspects involving crime and the elderly which have not been extensively treated in other research. One of the most significant of these aspects, we feel, is a focus on all types of crime, not just "index" crime. The seven major Class I crimes (index crimes) are the categories of crime most frequently looked at. However, Class II crimes, something which has rarely been examined in studies involving the elderly, include simple assault, vandalism, and various fraud and confidence schemes—types of crimes which may have potentially serious consequences for many elderly.

Our project is being executed in two phases encompassing the period of two years. The overall objective of our research is to develop detailed impact from a large sample of approximately 500 elderly victims, age 65 and over, representing the range of types of crimes and elderly victims found in a large tri-ethnic, metropolitan environment encompassing both high density urban settings as well as suburban and more rural settings. Since existing research did not provide us with specific criteria for probability sampling of cases, the first phase gathered data over a six month period for the 100% sample of all reported elderly victims in Dade County processed through the Metropolitan Dade County Public Safety Department and the City of Miami Police Department. These data, results from which are to be overviewed here, provided a baseline for the construction of a sample for the more indepth interviewing for impact in the second phase of the study. This indepth interviewing (the second phase) involves the conduct of an interview with selected elderly victims within approximately two days of an incident to develop some indication of the immediate impacts on the elderly victim, followed by a four month follow-up interview to collect similar data on impacts to ascertain short and long term effects on various victims which may arise from involvement in certain types of crimes.

In the second phase, which is currently in progress, cases involving elderly victims are identified and, when included in the sample, are contacted by community intervention personnel from the respective law enforcement agencies who are specifically trained in behavioral interview and data collection techniques. The results from this effort are expected to provide much needed social policy data on the impacts of criminal victimization on the elderly relevant to areawide, state, and federal level concerns. Questions to be examined by these data include (1) reductions in mobility and social contact arising from victimization experiences, (2) economic losses beyond what was taken—e.g., medical care costs, costs for more secure modes of travel, and other "indirect" economic losses resulting from the experience, and (3) psychological losses in terms of feelings of diminished security and safety, and the impact of these feelings on victims' life styles. The data and findings are also expected to provide police and public safety personnel with information on special problems of elderly victims and potential interventions or procedures which may have utility in addressing these special problems.

The data from the first phase of this study encompasses some 2200 elderly victimizations reported through the law enforcement agencies during the period from January through June of 1978. In collecting these data, particular attention was focused on gathering systematic information on characteristics of the experience as well as the uniform crime reporting classification and the sociodemographic variables describing the victim. Specifically, our data included examination of methods of contact, the nature of the location in which the victimization took place, the character of the contact between the victim and the subject (offender) the physical activity involved in the victimization (what was done to the victim), and verbal activity (what was said to the victim). While our Phase I data characterize the experience of the elderly victim, they address impact only in terms of losses and injury.

Analysis of rates of reported victimization for the elderly relative to total reported victimizations tends to confirm observations which had been made in earlier LEAA studies—e.g., the elderly as a group are not victimized at a rate greater than that which would be expected given the representation of the population as a whole. However, as we have noted, this is only one dimension of the problem of victimization and the elderly, and the remainder of our results focus more on what happens to these elderly victims; who are they, what kinds of experiences are associated with certain types of criminal victimizations, and what happens in terms of losses, injuries, and so forth. While this is only the most general type of

impact measure, it does provide some insight into the dimensions of victimization and its impact as it affects elderly people.

At this juncture, we have found good support for distinguishing between personal larceny, e.g., "purse snatch" larceny involving a confrontive situation between the victim and the offender, as opposed to property larceny which may involve the theft of property from around a victim's home, or from an auto. Property larceny is then also distinguished from the burglary (breaking and entering), the latter involving the taking of property from inside the victim's home or other secured property which belongs to the victim. Other major classifications tended to follow the UCR groupings more closely and included assault, vandalism, and robbery. While we had limited data on fraud and confidence incidents, the incidences in which they were reported were far too few to accomplish anything statistically meaningful. From the few that we do have, it appears that when they do occur, they involve an extremely large loss, but there is no way to draw conclusions from the relatively small number. Murder and manslaughter, as well as rape, also represent categories where very few cases were observed. Since the focus of our study is on development of new insights and information which will serve as input into policy considerations, the extremely small number, coupled with the fact that crimes of murder and rape already receive significant attention, left us in a situation of considering more dominant and frequently occurring forms of crime mentioned above. Thus, in talking about types of crimes, we will talk about the following major groupings since these were the most frequently observed in our Phase I examination of reported crimes; personal larceny, property larceny, burglary, robbery, assault, and vandalism.

For the sample of some 2,100 cases which were incorporated with complete data in all analyses, the most frequently occurring crimes were those against property, larcenies of both kinds, burglaries, and vandalisms. Following these were robberies and then assaults. Specifically, of the total cases, property larceny accounted for some 27 percent, burglary 24 percent, personal larceny 15 percent, vandalism 15 percent, assault 7 percent, robbery 3 percent. From our data and analyses, thus far, the results seem to indicate that crimes in which property is the target are those which are most frequently experienced by elderly victims. Something not recognized in other data dealing with Class I crimes is the significant experience of vandalisms impacting on the elderly. Since vandalism, as it occurs with the elderly, is most often directed against the residence, it seems likely that there may be a significant amount of impact on the elderly victim suffered as a result of these intrusions or assaults on not only their privacy, but their basic security within their domicile. Our anecdotal experience thus far in conducting interviews indicates that the breach of an elder's home in the commission of a burglary, a vandalism, or in some cases, property larceny (if not home), may impact as severely as the street crimes associated with robbery and assault. However, until the Phase II study is completed, we have no direct information on this conjecture.

In our data, the victims appear to be slightly more likely to be male approximately 53 percent male versus 47 percent female. Given that our elderly population, like many elsewhere, is comprised of a larger segment of females, it would appear that elderly males are either being victimized at a disproportionately higher rate, or that it is elderly males who more often are reporting crimes. Ethnically, our population of victims was dominantly Anglo and may be viewed as representing fairly closely the distribution of ethnic groups within the population as a whole. Specifically, 80 percent of our victims were Anglo, 11 percent were Hispanic, and 9 percent were Black. Within ethnic groups, the larger proportion of male victims held across the board with the greatest difference being noted with Hispanic victims (57 percent male, 43 percent female). In terms of age, our analyses at this point indicate that the elderly victims tend to be predominantly nested in the 65 to 72 age range, not unexpected since this range of ages is more represented in elderly populations as a whole. While advancing age for elderly as a whole may be associated with factors which tend to reduce exposure to certain kinds of crime, it also seems likely that advancing age, when a victimization occurs, will contribute to significantly greater impacts. This is one of the questions we specifically expect to address in the interview data currently being assembled under Phase II. With respect to other factors involving elderly victims, the predominant location of victimizations is the residence and areas in or near the residence. The majority of crime impacting on the elderly impacts upon them at their resident setting (60 percent were home victimizations).

We feel this is particularly significant. With "street crime", the experience of victimization or fear of being victimized can be combated by reducing exposure to street crime situations. However, when the home is involved, a victimization may represent the violation of the last "safe" haven. One cannot leave one's home to reduce exposure. The alternative is protective behaviors which may further increase an elder's sense of isolation and fear. We have tended to think of street crimes as the salient problems; but the data suggest that residence crime is more of a problem for the elderly and, in Phase II, we are examining the consequences to victims in light of these violations of personal space. If the home is no sanctuary and, indeed, may be the target—the consequences to many elderly are potentially severe.

We have also examined some of the consequences experienced by elderly victims in these various categories of crime. Overall, only 9 percent of the victimizations examined had some injury to the victim. Further, most were not severe (e.g., hospitalization required). Injuries were more likely to occur in situations involving robbery, assault, and personal larceny (19 percent robbery, 39 percent assault, 31 percent personal larceny). Other crime categories showed negligible rates of injury.

A particularly interesting finding, with respect to where injuries occur points out that the vast majority of injury cases (some 75 percent) involved no weapon other than the hands, feet, or body of the offender. The hands and feet (no weapon), as noted, accounted for 120 out of the 161 reported injuries. The hands/feet category of weapons showed a step down type of function with most cases being noted at good condition and less cases, as one progressed into the hospital, in poorer condition. However, the data appeared to be reasonably clear in suggesting that the use of a potentially more lethal weapon by an offender seems to be less associated with victim injury than the use of no weapon other than the hands/feet. It remains to be seen whether this will corroborate the notion that the more potentially lethal the weapon, the less likely the victim is to resist the offender or in any way provoke action that will result in injury.

In looking at what elderly lost, the dominant loss among elderly victims is cash. Cash losses were more likely to be experienced by females, rather than males, as were jewelry losses. The only other major category with a significant percentage of loss was that of TV's, stereos, and electronics in which the loser was more likely to be a male. This initial data, which do not include other potential costs such as medical cost, indicate that when property is lost, the losses are in cash as opposed to checks, credit cards, and securities which might be replaced more readily. We did not find the high incidence of theft of income producing checks that one might have expected, but it may very well be that the large cash losses are due to effective offender strategies which victimize the elder following the cashing of such checks.

While we are still examining geographical distributions and neighborhood typologies as potential mediators of various types of elderly victimizations, the gathering of report data from two law enforcement agencies, each with a particular catchment area, has provided some initial indications of the effects of geographical location on types of elderly victimizations.

The Dade County Public Safety Department has a larger geographical area to cover relative to the City of Miami Police Department and, as expected, receives more reports. The Public Safety Department's area includes unincorporated areas of the county (suburban and, to some extent, rural areas) as well as some municipalities and the more urban areas in the northern end of the county. The City of Miami Police Department, however, covers an area which is largely urbanized and contains many of the major commercial concentrations in Dade County.

The overall comparison of elderly victimizations for both law enforcement agencies indicated that of approximately 2,100 cases, 67 percent were reported through the Public Safety Department, while 33 percent were reported through the City of Miami Police Department. In comparing the incidence rates of the various types of victimizations, PSD showed higher relation proportions of property larceny and vandalisms. The City of Miami, by contrast, showed a relative higher proportion of personal larcencies and robberies. Burglaries and assaults were relatively equal in their representations in the total elderly case loads of the Public Safety Department and the City of Miami Police Department.

At this juncture, it seems the significant differences between the law enforcement agencies experiences with elderly victimizations appear to accrue largely in two areas. First, the Public Safety Department appears to have significantly larger proportions of elderly victimizations reflecting purely property crime, an effect

no doubt associated with the large areas of suburban character where property larcencies and vandalisms are more likely to occur. The City of Miami, by contrast, seems to be experiencing a relatively larger proportion of street crime, herein defined as personal larcencies and robberies. The only other significant difference in the experience appears to covary with the ethnic composition of the two areas, and as a result, the City of Miami experiences a significantly higher proportion of Hispanic elderly cases, while Public Safety Department seems to be experiencing more Black elderly cases. Overall, however, Anglo elderly dominate as victims in both agencies.

By way of summary, the dominant locus of the home or residence in the immediate neighborhood as the focus of many victimizations, coupled with the property oriented nature of victimization types (burglary, vandalism, larcency), indicate that the fear experienced by many elderly with respect to not feeling secure within the home is not entirely groundless. The majority of elderly victimizations did not occur on the street. One dominant scenario of crime appears to be that which involves the offender taking or destroying property in or near the residence, often unobserved by the victim. Personal larcencies, robberies, and assaults, however, do usually involve direct contact between victim and offender. Thus, from the standpoint of the population of the victims examined in these data, there is a higher likelihood of victimization occurring in or near the home. Many such cases involve the victim coming upon the signs and evidence of entry into the residence or movement around the residence, and subsequent loss of property.

TESTIMONY OF HON. CLAUDE D. PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. PEPPER. Thank you very much, Mr. Chairman and members of the committee.

First, on behalf of Mr. Biaggi, I'd like to present his statement for inclusion in the record. We are very proud of the record Mr. Biaggi has made on behalf of what you are protecting here today.

Mr. DRINAN. Without objection.

[The complete statement follows:]

TESTIMONY OF HON. MARIO BIAGGI OF NEW YORK BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE

Mr. Chairman. My purpose is testifying today is simple—I am here to help advance a long denied but fundamental domestic human right—providing victims of crime with compensation. I regret that we must be here at all. Up until the very last day of the 95th Congress we were confident that H.R. 7010, providing compensation for crime victims, a bill I was proud to be an original co-sponsor, would pass. However, in an eleventh hour vote, it was defeated, and thus we must begin again.

One of the first bills I introduced in this Congress was H.R. 1899 which is identical to last year's legislation. I consider it one of the highest priority bills of this Congress.

While we may see annual and even regional variations in statistics on crime—the simple fact remains, that millions of Americans each year are victimized by crime. The impact of crime—economically, socially, physically, mentally on these persons never shows up in government statistics. What is even worse, is that funding to aid crime victims from the Federal Government is also practically nonexistent. According to figures provided by the Law Enforcement Assistance Administration, less than one percent of the $17 billion spent annually on criminal justice goes to aid victims of crime. This is both startling and indefensible.

To provide compensation for uninsured medical expenses and loss of earnings is certainly reasonable. I serve as Chairman of the Subcommittee on Human Services of the House Select Committee on Aging. I have conducted several hearings on crime victimization against the elderly and helped write a Committee report on the subject. I assure my colleagues that the impact of crime victimization is especially debilitating on our older citizens. If we were to need a motivation to enact this legislation—let it be to assist the plight of the elderly crime victim living on a fixed income—who suddenly is economically wiped out by crime.

Let us evaluate my bill as it relates to the elderly crime victims. It is generally agreed that uncovered medical expenses will be compensated under all legisaltion. Hearings conducted by our House Select Committee on Aging have revealed many seniors to have little or no health coverage either through Medicare or private Insurance for normal health expenses. Statistics reveal that elderly out-of-pocket medical expenses are three times that of younger persons. If physical or mental injury should occur as a result of crime—where does the senior citizen turn? Just consider if a crime resulted in nothing more than the loss of a pair of eyeglasses or a hearing aid. A senior citizen could not have that expense covered by Medicare. What if a serious illness were to develop as a result of a criminal act—again medicare would be of little assistance. The economic answer is simple—we need this legislation. If we were truly responsive to the elderly crime victim, we would also include provisions allowing for limited compensation for major property loss. I may consider offering this as an amendment when this legislation reaches the House floor.

I testify today on the basis of a lifelong career in the field of law enforcement. I entered Congress after serving for 23 years as a police officer in the City of New York. I saw first hand the tragedy of crime victimization. It has always galled me that crime victims have nowhere to turn for compensation. I know that some 23 states have programs providing various degrees of assistance for victims of crime—but today most of them are struggling to stay afloat. The combination of increasing crime victims compensation claims and steady or decreasing funding puts most of these programs in a perilous condition.

I close with a favorite observation of mine. Why Congress treats this idea as some type of new initiative confounds me. The fact is, in the year 2038 B.C., the Babylonian Code of Hammurabi stated that society should assist those of its citizens who are victimized by crime. It took until 1963 for a modern day state to establish a crime victim compensation program (New Zealand) It took until 1965 for a state of the United States to establish a program. It is now 1979 and we are still waiting for our federal government to establish a program to aid crime victims. Let us hope it does not take until 2038 A.D.

Mr. PEPPER. Mr. Chairman, I ask that my statement be incorporated into the record.

Mr. DRINAN. Without objection, it will be included.

Mr. PEPPER. In the first place, it gives me a great deal of pride and pleasure to see that you, a distinguished member of the aging committee, are chairing this very important and meaningful subcommittee, Mr. Chairman, and also that two other members, the valued new members of our aging committee, Mr. Synar and Mr. Lungren, are also members of your subcommittee.

It's interesting to note that 4,000 years ago in the Hammurabi Code of Babylon there was a provision made that if a man were robbed or murdered, the city would pay the damages in property to the robbed person, compensation for the death of the citizen, and loss to the heirs or representative of the person who was interested.

So what we are proposing here today has a long history as an equitable and compassionate action that's been taken by other nations.

We had an example in my district a little while ago where a 73-year-old lady was attacked by two young thugs in a parking lot as she walked from the supermarket to her car. She was knocked down, both of her arms were broken, and she was very severely injured.

She had to spend 2 weeks in a hospital. The hospital bill was about $2,000, of which $1,200 was not paid by the insurance and other coverages that she had.

Had it not been for the fact that the State of Florida at long last has a measure that does provide some protection to people accosted during an attack like that, I don't know what in the world that lady would have done.

Of course the public would have had to have borne the cost of the hospital bill or the hospital would have had their loss.

So this is one of the most humane, considerate, and compassionate proposals that I have known to be approached by this membership and by this Congress.

As was said a moment ago by the distinguished gentleman, Mr. Sawyer, after all, the public has the responsibility of protecting citizens in their safety and security. We prosecute citizens if they carry a gun. We're supposed to have gotten past the time where we arm ourselves and go around ready to defend ourselves against any attack that may be held against us.

We tell the individual, we'll send you to jail, in most instances, if you carry a gun or dangerous weapon to protect yourself. The State's going to protect you. The government is going to protect you. Yet we know that there's a horrible number of instances where people have suffered a loss of property or person, sometimes even their lives, where the State has not been able to afford them that protection.

So your coverage here of personal injuries, hospital bills, loss of time from employment, and the like, is to be highly commended.

I'm proud, Mr. Chairman, to be permitted to join you in the offering of this bill. I also am pleased to note that you are considering, and I hope favorably, the inclusion of property losses.

To a few of us, if we lose $100, it is not a serious thing in our lives, but to a lot of elderly people, the poor living in my district—and I suspect in the district of each one of you—the loss of a little savings $100 means all they've got in the world between them and maybe the little stipend that they may receive under social security.

So this is a human, meaningful thing. I mention only one other analogy. Several years ago, we passed legislation providing a Federal appropriation to aid a police officer or fireman who loses his life in the line of duty, being paid, as I said, to the family of the person who served in the public interest an amount of $50,000.

So, it's a recognition of an equitable, moral obligation that we owe to those people who offer themselves in their country's service. Here citizens who have not been protected by the law enforcement officers, through no fault of their own are offered some consideration and some compassionate assistance by this measure.

So it's a very human measure. This kind of morality is not going to break the Government of a great country like ours that has a gross national product of much more than $1 trillion a year. If so, we are lost in a good cause.

Thank you very much.

Mr. DRINAN. Thank you, Mr. Chairman, for that eloquent statement. May I suggest that in view of the fact that Mr. Pepper has a commitment at 2 o'clock, any questions and comments to him could be put in writing. I'm sure that he'll be happy to respond.

Mr. PEPPER. Thank you so much, Mr. Chairman.

Mr. DRINAN. Our next witness, Judge Eric E. Younger, is no stranger to this subcommittee, and it is a pleasure to welcome him back. He's a graduate of the Harvard Law School. He has been in private practice with a Los Angeles law firm, and he served for 3 years as an assistant attorney general for the State of California.

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He became a judge of the Los Angeles Municipal Court in 1974. His background also includes service as a Los Angeles County deputy sheriff and, in the city of Pasadena, as active reserve police officer.

Judge Younger is active in the American Bar Association's criminal justice section, and he chairs that section's committee on victims. Judge Younger will testify on behalf of the ABA.

He is accompanied by Laurie Robinson who recently appeared before us at our hearings on the criminal code. Judge Younger has submitted a prepared statement. Without objection, it will be made a part of the hearing record.

[The complete statement follows:]

PREPARED STATEMENT ON BEHALF OF THE AMERICAN BAR ASSOCIATION BY JUDGE ERIC E. YOUNGER, CHAIRPERSON, COMMITTEE ON VICTIMS SECTION OF CRIMINAL JUSTICE

Mr. Chairman and Members of the Subcommittee: My name is Eric E. Younger, and I am Judge of the Los Angeles Municipal Court. A former police officer, public and private lawyer and poverty law worker, I have had the honor to serve for two years as the first chairperson of our Section of Criminal Justice Committee on Victims.

I have come before you to underscore the concern of the American Bar Association's quarter million judges, lawyers, professors and students, with the treatment of victims of violent crime in America, and to urge your support of the Victims of Crime Act of 1979.

During the Ninety-Fourth and Ninety-Fifth Congress' hearings on similar legislation, numerous witnesses detailed the rationale for victim compensation and the operation of programs in several states which have implemented such programs.

For several years, the American Bar Association has supported the "Uniform Crime Victims Reparations Act," which provides for state creation of boards to evaluate claims for compensation of victims of crime. Although the victim of a crime is the intended primary claimant under the Uniform Act, a surviving dependent may make a claim if the victim dies.

We do not support any recovery for property loss or pain and suffering. Amounts paid victims from other sources are to be subtracted from compensation awards under the Uniform Act. H.R. 1899 is consistent on that point with the Uniform Act, and in that respect clarifies an ambiguity in previous bills.

The ABA first endorsed victim compensation legislation in principle in 1967 because of its serious concern for the increasing rate of crime, the gravity of crimes of violence, the high cost of crime to victims, and other issues raised by President Johnson's Crime Commission. President Ford announced his Administration's intent to assist victims of crime, and specifically endorsed victim compensation legislation, although only for federal crimes. President Carter's Administration took a still broader view in supporting legislation such as the present bill in the last Congress. In light of the growing national recognition of the plight of victims, Congress should move promptly to encourage the setting up of a compensation system such as envisioned in the Uniform Act.

The ABA also supports the concept of compensation for more than simple loss of earnings: Losses associated with medical expenses, job rehabilitation and legal fees should be included. H.R. 1899 clearly permits use of federal funds to reimburse costs associated with medical expenses and job rehabilitation. It is unclear in Section 7(7) whether federal funds can be used to cover attorneys fees.

Any discussion of crime victim compensation legislation must begin with a recognition that we are dealing with difficult policy issues. I do not intend to take your time with a recitation of the costs of crime, in societal, monetary or individual terms; plainly, they are staggering and exceed, as crime itself exceeds, our ability to record them.

But there is another reality which those of us who make our living trying to do something about crime have come grudgingly to recognize, and this is that all citizens must take affirmative action against it. American police forces are becoming highly professional, but dozens of factors have coalesced to prevent their making any real inroad against most crimes.

Seven years ago, for example, I was involved in drafting a state building security bill in California. I suspect it and laws like it in other states will pass sooner or

later, as have dozens of similar local ordinances which require people to improve their locks, hardware and windows in an effort to keep criminals out. When it was drafted, many people asked us, "You mean that honest people will be required by law to do these things because the police can't protect them from criminals?" The answer was a distasteful "yes." Legislation isn't the whole picture: Neighborhood watch programs, community crime prevention meetings and numerous volunteer programs reflect a recognition that crime has exceeded law enforcement's ability to keep it within tolerable limits.

Your own subcommittee's report on the 1976 legislation refers (at page 5) to this as the "failure to protect" rationale behind victim compensation legislation. Maybe the term "failure" sounds too much as though we are looking for a scapegoat, and such a search is unproductive and not the purpose of these hearings. Without such loaded terminology, what we can say is that victim compensation is merely the recognition that crime—like fires, floods or earthquakes—is a tragedy to which society has an obligation to react humanely toward those who have been stricken.

The "natural calamity" analogy brings to mind one of the arguments raised in the minority report on that 1976 legislation, sentiments which apparently dersuaded the House to kill last year's bill after Senate passage and Conference: This is the notion that it is "illogical, arbitrary, and unfair" (page 19) to compensate crime victims without compensating accident victims.

But there are some fundamental differences in the positions of the accident and crime victim: To begin with, we have a traditional method—one which needs mprovements and economies, but which works pretty well a great deal of the time—for compensating the victims of accidents. For instance, although automobile insurance is not universally held it is sufficiently common so as to effectively compensate millions of automobile accident victims every year. Moreover, when we venture onto the public road, we assume a certain amount of risk, and we are able to hedge our bets a bit, through uninsured motorist, collision and medical insurance, and by deciding when, where and with whom to ride.

Against crime, however, we can protect ourselves only slightly. Victimization potential can be adjusted somewhat but not eliminated, and the theoretical right of legal action against a perpetrator is worth virtually nothing. Put differently, the traditional means of compensating accident victims in the United States has almost no value to crime victims.

The other argument advanced against this sort of bill in the past minority report is that compensation funded by the federal government should be limited to federal crimes. This is a less expensive option, as only a handful of federal crimes (except those committed on federal reservations) produce "victims," but a decision to assist in compensating only "federal victims" would amount to doing virtually nothing outside the District of Columbia. A more honest approach is to analyze victim compensation on its merits and to recognize that any American citizen stricken by crime does not—and should not—have any concern for the state/federal crime distinction.

The hard reality is that expansion of ccmpensation programs to the twenty five states presently lacking them and a reasonable level of funding of those programs already in existence depends on this Congress' help. If those states lack the wisdom to adopt programs, then federal dollars will not be spent. But many states, including my own, have now adopted statutes, even in the face of increasing and wholly proper concerns about costs of government reflected in our famous Proposition XIII.

Despite efforts by many members of Congress, the House had substantially reduced the import of the last bill before finally killing it in the last five hours of the 95th Congress. The funding level had been cut to 25 percent of actual awards, and this figure simply provides no realistic incentive to the poorer states to begin programs nor does it meaningfully help those already having them. The allocation provided in this bill is lower, and we do not intent to argue with the mathematics, but if the 50 percent of victim awards feature of Section 2 of H.R. 1988 looks too expensive to this Committee, we would be pleased to offer some thoughts on low-cost options as a substitute for a flat reduction to the 25 percent of last year's House floor amendment.

I should note, in passing, that California's experience is that, as the programs mature and become known to victims, the number of claims increases but their per-claim size decreases. I've heard of no evidence of claims abuse nationally, but I have heard of problems in the fiscal integrity of some states' programs.

There are good features in the present bill: States are left with economic incentives to be responsible, as they must come up with half the cost; prohibition of

awards for "pain and suffering" and property losses are desirable and in accord with the American Bar Association position. H.R. 1899 contains (at Section 4(5)) a provision for subrogation of the state to any right the victim has against the perpetrator and a "collateral source" rule, as is present in the Uniform Act. (See Section 13 of Uniform Act). The seventy-two hour crime reporting requirement present in both the bill (Section 5(1)(B)) and the Uniform Act is, in our judgment, desirable. While there has been some argument on this point, requiring cooperation with the police and prosecution as a price of compensation is, on blance, reasonable and financially responsible, and should help make the compensation program within a state properly a part of its overall crime prevention strategy.

This latter feature deserves a moment's thought. Some experts feel that it is improper to use the "carrot" of compensation as a means of inducing victims to report crimes, thus causing, presumably, an incremental increase in criminals brought to justice. They argue that compensation should be the law because it is right—society owes it to victims—and for no lesser reason. I respect their point of view; it is a highly moral one. But I am from the land of Proposition XIII and also realize that I am addressing a subcommittee of a Congress faced with severe federal budgetary problems.

There need be no dilemma, however. Victims compensation is right, and that would, in itself, be a good reason to pass H.R. 1899. But the compensation system should cause the victims of presently unreported crimes—those who are "turned off" and wonder "why bother?" or who are just frightened—to report and aid the police in apprehension. The "good Samaritan" aspect of the Uniform Act (which is probably implicit in this bill, but should be more explicitly spelled out) will increase the frequency of citizen decisions to "become involved" against crime. After all, such involvement is, simply, in the best interests of each of us.

Note, too, another economy built into compensation statutes which may even save states some money. The cost of prosecutions investigated and commenced but subsequently dropped for non-cooperation of witnesses (including, but not limited to, victims) is substantial enough that many prosecutors' offices have funded victim/witness service units on the budgetary savings projected to flow from such programs' tendency to reduce non-appearance.

In addition to the basic rightness of the cause, there's a final issue, which we might call "societal ambivalance toward crime." We must candidly recognize that many of the values we cherish prevent us from dealing with crime in the most effective way, and to that extent, government itself chooses to tolerate some crime. That flows from the evolution of our system of justice in the English-speaking world; it has been one of a carefully developed balance between the power of society to protect itself and the rights of individuals to be free of that power's excesses. On our side of the Atlantic, that balance has included dramatic restraints on the state's ability to search, detain and interrogate, and an insistence that an accused be represented by counsel at every step of the legal process and punished only upon conviction "beyond a reasonable doubt."

These are important protections and the American Bar Association's defense of them has been unequivocal. But to say that they are important and that we support them is not to deny that the protections have crime control costs. If all we cared about was controlling crime, we could do better. But that's not all this society, or this government, cares about, so we are left to justly alleviate some of the impact of crime on innocent citizens we are not totally able to protect.

It is not infringement on the Constitutional rights of the accused to say that the society which grants them must come to grips with their consequences and costs. Am I, e.g., as a trial judge, not more able to enforce fairly an exclusionary rule laid down by the Supreme Court if I represent a system which is doing something for the innocent victim of the defendant whose rights I protect?

The bill is well-constructed and merits the support of all citizens, and of the subcommittee. But compensation is not all, or even a major part, of what we, as a society, must begin to do for the victims of crime. We have already made changes in the ABA Standards Relating to Criminal Justice to encourage judges and prosecutors to be sensitive to the needs of crime victims. The Bar has spoken out on rape and domestic assaults and has been a force in legislative changes in these areas. In June of this year, the President of the AMA and my Committee will hold public hearings, here in Washington, on the problem of victim and witness intimidation.

In the balance of his term as President of the American Bar Association, S. Shepherd Tate, who regrets his inability to be here today, plans to make victim

concerns a major issue. We trust this subcommittee and this Congress to do the same.

I will be pleased to answer any questions you may have.

Mr. DRINAN. Welcome to the subcommittee, Judge Younger and Ms. Robinson. Please proceed as you see fit.

TESTIMONY OF ERIC E. YOUNGER, JUDGE, LOS ANGELES MUNICIPAL COURT, ON BEHALF OF THE AMERICAN BAR ASSOCIATION; ACCOMPANIED BY LAURIE ROBINSON

Judge YOUNGER. Mr. Chairman, thank you very much. Because of the insertion in the record, I will, if I may, read probably less than half of my prepared statement take as much time as the members wish with questions and our attempts to answer them.

I've come before you to underscore the concern of the American Bar Association's quarter million judges, lawyers, professors, and students with the victims of violent crime in America and to urge your support of the Victims of Crime Act of 1979.

As some of you may know, the AMA first enforced victims compensation legislation in principle back in 1967 because of its concerns then for the increasing rate of crime, the gravity of crimes of violence and the high cost of that crime to victims.

President Johnson's crime commission got into quite a few of those matters in their reports in 1968. President Ford announced the administration's intention to assist victims of crime, specifically endorsing legislation, although only for what they referred to as "Federal victims."

President Carter's administration, 2 years ago, took a still broader view in supporting legislation much like this present bill offered by Mr. Rodino. In light of the growing national recognition of the plight of victims, Congress should move promptly to encourage the setting up of a compensation system such as that envisioned in the uniform act. Your subcommittee report on the 1976 legislation refers to the "failure to protect" rationale behind victim compensation legislation. Maybe the term "failure" sounds too much as though we're looking for a scapegoat, but such a simple problem certainly isn't the purpose of your hearings today.

What we can say about the victim compensation is merely to voice the recognition that crime, like fires or floods or earthquakes, is a tragedy; and its victims, those who have been stricken, obligate society to act humanely toward them.

The "natural calamity" analogy brings to mind one of the arguments raised in the minority report on that 1976 legislation, sentiments which apparently persuaded the House to kill last year's bill after Senate passage and conference; this is the notion that it is "illogical, arbitrary, and unfair" to compensate crime victims without compensating accident victims.

I might add in passing that at the subcommittee, that is, the hearings of this subcommittee of 2 years ago, that argument was emphasized quite a bit in my colloquy with committee members.

I think there's some fundamental differences in the positions of the accident and crime victims. To begin with, we have a traditional method, one which needs improvements and economies, but which

works pretty well a great deal of the time—for compensating the victims of accidents.

For instance, although automobile insurance is not universally held, it is sufficiently common so as to effectively compensate millions of automobile accident victims every year.

Moreover, when we venture onto the public road, we assume a certain amount of risk, and we are able to hedge our bets a bit through uninsured motorist, collision and medical insurance and by deciding when, where, and with whom to ride.

Against crime, however, we can protect ourselves only slightly. The victimization potential can be adjusted somewhat, but not eliminated, and the theoretical right of legal action against a perpetrator is worth virtually nothing.

Put differently, the traditional means of compensating accident victims in the United States has almost no value to crime victims.

The hard reality is that expansion of compensation programs to the 25 States presently lacking them and a reasonable level of funding of those programs already in existence depends on this Congress help. If those States lack the wisdom to adopt programs, then Federal dollars will not be spent.

But many States, including my own, have not adopted statutes, even in the face of increasing and wholly proper concerns about costs of government reflected in our famous proposition 13.

Despite efforts by many Members of Congress, the House had substantially reduced the import of the last bill before finally killing it in the last 5 hours of the 95th Congress. The funding level had been cut to 25 percent of actual awards, and this figure simply provides no realistic incentive to the poorer States to begin programs, nor does it meaningfully help those already having them.

The allocation provided in this bill is lower; that is, the House bill is lower. That was discussed at some length between Congressman Hall and Chairman Rodino. We do not contend with the overall mathematics of that allocation—but if the 50-percent awards feature of section 2 of H.R. 1899, that is, this bill, looks too expensive to the committee, we'd be pleased to offer some thoughts on low cost options as a substitute for any flat reduction back to 25 percent, such as the last year's House floor amendment.

I should note in passing that California's experience is that, as the programs mature and become known to victims, the number of claims increases, but the per claim size decreases. I've heard of no evidence of claims abuse nationally, but I have heard of problems in the fiscal integrity of some States' programs.

There are good features in the bill: States are left with economic incentives to be responsible, as they must come up with half the cost; prohibition for awards for "pain and suffering" and property losses are desirable and in accord with the American Bar Association's position.

H.R. 1899 contains a provision for subrogation of the State to any right the victim has against the perpetrator, and a "collateral source" rule as is present in the uniform act, which is a significant economic step.

The 72-hour crime reporting requirement present in both the bill and the uniform act is, in our judgment, desirable. While there has

been some argument on this point requiring cooperation with the police and prosecution as a price of compensation, it is, on balance, reasonable and financially responsible and should help make the compensation program within a State properly part of its overall crime prevention strategy.

The compensation system should cause the victims of presently unreported crimes—those who are "turned off" and wonder "why bother" or who are just frightened—to report and aid the police in apprehension.

In Chairman Rodino's words, those who wonder "why bother" or who are just too frightened to report and aid the police in apprehension—the "good Samaritan" aspect of the Uniform act which is probably implicit in this bill, but should be more explicitly spelled out will increase the frequency of citizen decisions to "become involved" against crime. After all, such involvement is simply in the best interests of each of us.

Note, too, another economy built into compensation statutes which may even save States some money. The cost of prosecutions investigated and commenced but subsequently dropped for noncooperation of witnesses, including, but not limited to victims, is substantial enough that many prosecutors' offices have funded victim/witness service units on the budgetary savings projected to flow from such programs' tendency to reduce nonappearance.

In addition to the basic rightness of the cause, there's a final issue, which we might call "societal ambivalance toward crime." We must candidly recognize that many of the values we cherish prevent us from dealing with crime in the most effective way, and to that extent, government itself chooses to tolerate some crime.

This flows from the evolution of our system of justice in the English-speaking world; it has been one of a carefully developed balance between the power of society to protect itself and the rights of individuals to be free of that power's excesses. On our side of the Atlantic, that balance has included dramatic restraints on the State's ability to search, detain and interrogate, and an insistence that an accused be represented by counsel at every step of the legal process and punished only upon conviction "beyond a reasonable doubt."

These are important protections and the American Bar Association's defense of them has been unequivocal. But to say that they are important and that we support them is not to deny that the protections have crime control costs. If all we cared about was controlling crime, we could do better. But that's not all this society or this Government cares about, so we are left to justly alleviate some of the impact of crime on innocent citizens we are not totally able to protect.

It is not infringement on the constitutional rights of the accused to say that the society which grants them must come to grips with their consequences and costs. Am I, for example, as a trial judge, not more able to enforce fairly an exclusionary rule laid down by the Supreme Court if I represent a system which is doing something for the innocent victim of the defendant whose rights I protect?

The bill is well constructed and merits the support of all citizens and of the subcommittee, but compensation is not all or even a major part of what we as a society must begin to do for the victims of crime. We have already made changes in the ABA standards relating to

criminal justice to encourage judges and prosecutors to be sensitive to the needs of crime victims. The bar has spoken out on rape and domestic assaults and has been a force in legislative changes in these areas. In June of this year the president of the ABA and my committee will hold public hearings here in Washington on the problem of victim and witness intimidation.

In the balance of his term as president of the American Bar Association, S. Shepherd Tate, who regrets his inability to be here today, plans to make victim concerns a major issue. We trust this subcommittee and this Congress to do the same.

I will be pleased to answer any questions that the committee or staff may have.

Mr. DRINAN. Thank you very much, Judge Younger, for an excellent statement. Has that ABA thought about property loss in connection with the elderly, as proposed by Congressman Claude Pepper?

Judge YOUNGER. Yes. As a matter of fact, the ABA's position in its consideration, evaluation, and endorsement of the Uniform Act does that. I must with all due respect to Congressman Pepper and Congressman Roybal, who is of course from my own neck of the woods, indicate that the bar opposes compensation for property loss, and I would have to admit, as the chairman of the relevant committee, that I think I strongly back that opposition.

I think you've got much too extensive a bill on your hands if you get into property loss. Mr. Roybal and Mr. Pepper said nothing I could disagree with. It's just that you gentlemen are far more aware than I that you can't solve every problem in a particular bill, and I don't think you can afford that one. It's that simple.

Mr. DRINAN. Thank you very much, Judge. Ms. Robinson?

Ms. ROBINSON. I don't have anything.

Mr. DRINAN. Thank you very much.

Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

And thank you, Judge Younger, for your statement.

If I understood your statement correctly, you indicated in its present form the bill would not necessarily encourage the creation of any new State programs for victims of crime compensation. Is that a correct understanding?

Judge YOUNGER. No. I maybe misspoke. What I meant to say was that I think your bill would be a substantial help. The one on the Senate side at the moment includes only 25 percent of actual awards—and that latter half is, of course important because the administrative costs of a new program would be the nut, so to speak, talking in business terms. It really means that that 25 percent figure in the Senate bill amounts to something like 10 or 15 percent of the total cost of the program.

I think the 50 percent in your present bill, H.R. 1899, probably is enough help to encourage the creation of some programs. You know, if I were here just speaking of victim concerns and had no notion of what the Congress and the executive branch is facing economically, I would try to talk you into 90 percent. But I do come with that knowledge, and I think 50 is a good compromise. I think going below 50 would, frankly, emasculate the bill.

Mr. KINDNESS. Would you care to make any projections, on an opinion basis, as to the effect of the passage of a bill such as the House bill would have on existing State programs?

Judge YOUNGER. It would be speculation, but perhaps an educated speculation. In testimony before predecessors of that subcommittee, there has been an indication of severe economic difficulties.

I am glad that Chairman Rodino has already left, because at one stage the attorney general testified that their fund in New Jersey was in trouble 3 years ago.

My understanding is that the New York program has had some significant dollar problems. The impact on the States with existing programs should be salutary, should help to make those programs more economically viable.

I guess I would have to confess that I think the top priority or the biggest thing this bill ought to accomplish, though, would be to start up assistance for those States which don't have programs at all.

Mr. KINDNESS. You mean overall, in recent years, we are seeing less financial difficulty at the State level than at the Federal level in terms of balancing the budget; right?

Judge YOUNGER. Well, again, I am not going to come back here and pretend that I don't understand that this is an era when fiscal austerity is certainly being stressed. I think Chairman Rodino's answer to that would be very much the bar's or my own. It's a question of priorities and he's said it all. We spend hundreds of millions, if not billions, of dollars on taking care of criminals. And I took the liberty—the bar was kind enough to go ahead and approve my saying in my prepared remarks, it is a very personal point—that, I am a trial court judge and I do all kinds of great things for crooks. I am as courteous to them as I am to the subcommittee and we have done great things for defendants in the last 20 years. But I just have to defer to Chairman Rodino's position in questions of priorities. It's about time we think of the 218 million Americans that are not criminals despite the amount of money.

Mr. KINDNESS. In terms of fiscal concerns in relative priorities, whether at the Federal or the State level, we have to concern ourselves there.

There is one other aspect on which I would like to know whether there has been any thought given by the American Bar Association, the criminal justice section, or elsewhere, and that is relating to this victim of crime compensation matter. In the history of automobile insurance, which you mentioned in your direct testimony, as we all know in a general way, there has developed over a period of years a tendency on the part of many drivers to feel that when an accident occurs the insurance takes care of it. It's all societal, somehow.

And I have a genuine concern that this type of program could have a similar effect on thinking of would-be miscreants, muggers, rapists, robbers, what have you. In fact, we have, in our society, more and more people thinking somehow that the victim of any incident is going to be taken care of by someone. Personal responsibility is annihilated by this type of thinking, and tendency toward the commission of a crime is increased.

Now, having expressed that prejudice or belief, has anything been considered along that line in tune with this legislation or with your testimony today, or would you care to express a personal opinion?

Judge YOUNGER. Yes, I can. It's a perfectly valid question, but there is an answer to it. It's kind of a real politic answer or one which may not even be very attractive.

The reason that the collective criminal mind, if you will, probably shouldn't have the luxury of thinking the way that you are describing is that this kind of program probably will increase reporting of crime, which, hopefully, in turn would increase apprehensions.

If an individual—and let's be candid—notwithstanding the well-publicized TV incidents of recent years, the average victim of crime is not a Member of Congress, the average victim of crime is a dweller of the inner city, ghettos, and barrios, people that are turned off.

For upward of 85 percent or 90 percent of armed robberies and homicides and 10 to 20 percent of rapes, thefts, and burglaries, if the person has the incentive in terms of perhaps getting a medical bill paid or going to the police and saying, "Yes, I know who did it; he's the guy that lives down the street," and so forth, it's going to increase the probability of apprehension, prosecution, and punishment of that individual—the perpetrator, that is.

So, I think, as regards the philosophical criminal, who sits back and says, "It won't be hurting anything, I may not get caught," remember that your bill has built in very wisely a provision that his victim has to help the police. And I think that provision belongs in there.

It's a concern which is realistic but outweighed by that law enforcement assistance provision which should definitely remain in your bill.

Mr. KINDNESS. That's a very good response. Thank you.

Mr. DRINAN. Mr. Hall?

Mr. HALL. Judge, it's good to see you again. I have told people before, I am the only surviving member of the old subcommittee. Whether it's good or bad, I have yet to determine.

I am looking at some statements that have been given to us by the Library of Congress which would indicate with the $19 million total payments to victims last year, or 1977—I believe the years are 1977–78—at which three States contributed more than half of that. Looks like your State of California had a total program of $5.8 million. New York, $5 million. And then, of course, you had two States, I believe—or three States—with over $1 million.

Is the California program in trouble financially?

Judge YOUNGER. Our program has been financially sound. I think our bigger problems have been the mass of paperwork that we've required of people but I am not aware of any economic difficulties.

To the contrary, nearly 2 years ago a deputy State attorney general testified before this subcommittee in San Francisco, and indicated that the program was quite healthy.

I might note something that might be of interest to the subcommittee, by the way, about the size of our overall award in California. Our curve of payments took a radical upturn in 1975 because in 1974 the legislature amended our State's law, which has been around since 1967, requiring, now, our police officers to advise the victim of the violent crime of his rights under the act. And the claims went up quite radically in 1975 because of this efficiency.

Police officers are apparently complying with that law. There is no sanction if they don't, but they apparently are. And I made a spot

check before testifying before this subcommittee 2 years ago. I had my court bailiff wander out to some police stations, walk up and ask at the front counter about victim compensation. Sure enough, they all had brochures and forms.

I was trying very hard to bring your questioning of Chairman Rodino to recall. I think it is way below the $4,000 figure. Although I would have to admit I am hazy on that, my recollection was that at least a substantial majority, numerically, of awards was somewhere below $1,000. But I can't tell you that I am positive of that because that would not be true.

Mr. HALL. Are you familiar with the fact that we had testimony last year which stated in effect—and I don't know that this was ever converted—that we had about 1.7 million violent crimes committed annually, and that was defined as one that resulted in injury?

This was testimony of Mr. Jones, page 266 of the hearings last year. And I think there was also testimony by witnesses that if this went into effect, they thought that there would be an increase in reporting, as you have mentioned a moment ago.

And I think they're exactly right. I think there would be a certain increase in the reporting of crimes, and that now the reportable crimes are less than 10 percent.

So Mr. Mann used an illustration: If you have 10 percent reporting of the 1.7 million, you immediately get up to an average claim, say, of $1,000. And I don't know that that was rebutted substantially. You start off with a $170 million amount to be expended during the first year.

Did you have any reason to believe that those figures would not be substantially correct?

Judge YOUNGER. Trusting your multiplication, which I'm certainly going to have to do, I kind of have my doubts, frankly, for two or three reasons.

No. 1, your $1 billion in a collateral source rule, which is buried down several pages, is probably a lot more important than it looks at first blush. If I'm a victim in a violent crime, I would note in passing, that California law has an income limitation, which is probably not a good idea, because that makes it look like welfare programs.

Let's say I was in a State that didn't have such a limitation. I've got Blue Cross through the county, and I suspect the members of the subcommittee, through the Congress, have some sort of health insurance protection. Most employed middle class, upper middle class Americans do. So if you take that multiplier number for the number of victims of crime, you have to reduce it rather radically.

Even if you're looking at victims of only violent crime, where there is a personal injury, you have to reduce that number rather radically to take out the somewhat substantial chunks of those who are self-medicated or who simply do not seek medical attention with any cost at all, who have compensation through insurance and other mechanisms, and so forth. You have to subtract all of those numbers before you do your multiplication.

Mr. HALL. I'm looking again at page 256, where Mr. Mann was talking to Mr. Jones, who I believe is a senior economic advisor to the Assistant Attorney Generals' Office. He said that his 1.7 million victim figure from the national crime survey, using the same dividers I

used for my analysis, includes crimes not reported to the police and crimes in which no cost was awarded the victims.

If we are looking at this strictly from a nuts and bolts standpoint, if we get this bill on the record, don't you believe that the cost, the annual cost when the other States come on board, is going to get into the $200 million figure before too long, annually? The 26 States now that we have really account for about 70 or 75 percent of the crimes that we already have. The 26 States.

Judge YOUNGER. My opinion would be no, although obviously, that's not an area where I would claim a lot of expertise. I'm questioning some of the numbers, not only because of insurance, but for another more important reason. The numbers of claimants who would be coming in for $70, for emergency repairs, suturing and X-rays, who don't have a loss of earning or anything like that. And remember the California experience, if you would, Congressman, when the police were required to give that advice and the number of claimants escalated, the per dollar value of a claim went down.

I'm quite sure that this would happen. Although we'd be taking care of more citizens, more citizens would have claims of a more modest nature.

I guess what I'm really saying is that I have a lot of trouble with those per-claim figures up in the thousands of dollars.

Mr. HALL. Suppose we passed a measure this session dealing with catastrophic insurance coverage, which anyone who suffers in an amount in excess of $2,500 or $5,000; may recover whatever may be decided upon, how do you think that might enter into the picture here?

Judge YOUNGER. I think my problem there—I hate to steal Congressman Pepper's analogy when I oppose his position on property loss—but I think my problem with such coverage is that, although it would be fine help for me or other people in the middle or upper income bracket, it probably won't help the poor soul who's rather marginally employed, earning $500 a month and trying to feed six kids, who sustains a $300 loss at the hands of a perpetrator of a violent crime.

So few people numerically sustain injuries in excess of $2,500 that you would thus be protecting a small number of people; which would be a significant economy.

Mr. HALL. What if we reduce that figure from $1,000 to a $500 figure? You're talking about $80 to $90 million a year, aren't you? I'm talking about dollars now. I'm talking about the amount of money it's going to cost the Federal Government to operate this plan.

I'm sure you have that on your mind, too.

Judge YOUNGER. I certainly do. If you're asking if a deductible feature would make it less expensive, yes, it would. And if that's essential to the passage of legislation such as this, I think it could be lived with.

Again, my difficulty is that I have a hunch it's the poorest people who would be hurt by the deductible. But maybe that's essential.

Mr. HALL. It wouldn't do anything to prevent crime, as far as I could see.

Judge YOUNGER. Only in the rather roundabout way I discussed with Mr. Kindness. It should improve reporting and it requires cooperation by the victim. But I can't say that it's going to remake the crime problem overnight.

Mr. HALL. Thank you, Judge.

Mr. DRINAN. Thank you very much.

Mr. Sawyer?

Mr. SAWYER. I just want to thank the witness for your highly publicized victimization of crime in this body, and at the same time, I applaud a highly publicized participation. Thank you.

Mr. DRINAN. Thank you.

Mr. Shelby?

Mr. Lungren?

Mr. LUNGREN. Thank you, Mr. Chairman.

Judge, as a fellow resident in the land of proposition 13, I think I understand as well as you do the concern we all have for the budgetary aspects of this. One of the things that interests me in your testimony and testimony of others, which is your prepared testimony, was the discussion of the fact that in 1966, 1967, I guess it was, California started off as the first State with this program. In 1968, five States had it. Now, we are in 1978 and depending on whose figures you look at, 26, 27, or 25 States have them. It seems to me that's pretty good progress without the Federal Government having to get involved.

With reference to what Mr. Hall said a minute ago, evidently 75 percent of the crimes involved in America now are in those States that are involved with these programs. And I wonder if actually, the underlying rationale here isn't, as I've heard in other discussions with officials from California, that we're strapped by 13, so where do we go to look for money? We go to the Federal Government because we can then fund the programs as we otherwise would have funded them.

And then, we don't, at the State level, have to make the tough decisions as to what are worthy programs and what are not worthy programs.

I think we all agree that the morality of this, the ethical response of society to victims of crime, was a noble one and one we share. I don't think that's the question we're addressing here.

The question we're addressing here is whether the relief from that should come from a level of government which traditionally, we have hoped, at least, has had the responsibility for controlling crime. That's why it seems to me to be far more reasonable for a bill to be presented to us with respect to the Federal Government having a Federal Victim Compensation Act that is dealing with those victims of what we believe to be crimes that fall within the Federal jurisdiction.

I guess what I'm really asking is: Do you really think that having the Federal Government become involved in this program is going to improve, for instance, the program in California, other than the fact that we are going to contribute money that California would otherwise have to raise by its own tax revenues?

Judge YOUNGER. I think, sir, that the answer to that would be to start backwards by candidly admitting it probably won't change the picture in California one bit. But you and I come from the wealthiest State in the country. I hear, around election years, that our gross State product is larger than all but five nations of the world or something like that.

If California were the only State of the Union, I think there would be relatively little reason to waste all of our time on this bill. We have

the luxury of being pretty well off, and we're coming up with some ways, by the way, other than going to Uncle Sam, to finance that program.

We now do have a mandatory restitution figure which, by the way, occurred politically. But what you do is make people convicted of heinous crimes, like unsafe lane changes, pay for the work the robbers and rapists do.

We've come up with some ways of financing it. I think that the problem in your statement, however, is that apparently the majority of States who came in, came, as your own data suggests, quite rapidly after 1967—22 States have adopted programs.

Again, Mr. Hutchison can correct me if I'm wrong. As of 4 or 5 years ago, 22 States had adopted programs. That means we've only picked up three to five in the 5 years since then.

So, while a substantial number of States have come in with programs, it has slowed to a real trickle within the past few years. And of course, you have smaller, poorer States left. And I guess when we're considering a program which as you indicated, seem to favor, I guess I just throw back at you: what about the poor person who lives in one of the States which doesn't have the money or the foresight or the ethics or whatever to have adopted the program and who gets mugged next week?

Do we say to him: Sir, you don't live in California? I think that maybe where the congressional responsibility comes in is to say: Well, yes, crime is a national problem. I note that some of the bills now in the Senate on various issues are using even interstate commerce powers as a basis for federalizing a lot of criminal justice issues. There is a lot of interstate commerce business.

I think, to use your own words, that the bill is an ethical statement as to where not only State legislatures, but also the Congress, do stand on the issue and should stand.

Yes, this is an issue of the States asking the Federal Government for money. I can't sit here with a straight face and say that it is not. Again, I can only go back to what Chairman Rodino said; that it's a question of priorities. I suspect any one of us in the room could sit down and go through the Federal budget and quickly take off 500 things that we would think are less important expenditures of money than this one.

I'm just here to tell you on behalf of the ABA, that we think this is enough of a high priority matter that, yes, the Federal Government should help it.

Mr. LUNGREN. The only thing I say to that, Judge, is I think many of us feel that to get these funds for victims in the long run, it would certainly be cheaper, more economical to raise tax revenues at the local level and turn around and contribute it to these people. And until we, in this Congress, take a hard look at whether or not we should start involving ourselves in programs that have been traditionally at the local and State levels, we're never going to have that opportunity to get budget under control. So that hopefully, at some point in time, we can say to the States: All right, we'll have an opportunity now to perhaps even cut taxes and let the localities decide whether they can take up the slack if they do wish it to happen.

I don't want you to get the feeling that some of us who have been

critical of this approach don't support the concept. I think the question is, where can the concept most effectively be presented and where can it most effectively help those people we want to help.

I think that's where I have a tremendous deal of difficulty with this particular bill. But thank you for your comments, Judge.

Judge YOUNGER. Thank you.

Mr. DRINAN. Thank you, Judge Younger.

Judge, you've been a very eloquent witness, and we thank you and Ms. Robinson for your cooperation. The support of the American Bar Association is most helpful and encouraging. Thank you very much.

Judge YOUNGER. Thank you very much.

Mr. DRINAN. It is a pleasure to welcome the next witness, Mr. Paul Rothstein, who is a professor of law at the Goregtown University Law Center. Professor Rothstein has appeared before the subcommittee on several occasions in connection with this and other legislation. His testimony has always been concise, well-reasoned and quite helpful.

Although he is probably best known as an expert on the law of evidence, Professor Rothstein is also one of the leading academic authorities on crime victim compensation. As a reporter for a committee of the National Conference of Commissioners on Uniform State Laws, he drafted the Uniform Crime Victims Reparations Act.

The National Conference of Commissioners on Uniform State Laws has approved that act and recommended its adoption by the States. The American Bar Association, as we have just heard, has also endorsed the act.

Professor Rothstein has also served as a special counsel to the Senate Judiciary Committee's Subcommittee on Criminal Law and Procedures, and in that capacity he worked on the Senate legislation to revise and recodify Federal criminal laws.

Professor Rothstein has submitted a prepared statement. Without objection, that statement will be included in our hearing record.

[The complete statement of Professor Rothstein follows:]

PREPARED STATEMENT OF PAUL F. ROTHSTEIN, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY

In the fifteen years since I first wrote of the then "seminal" idea of governmental compensation for victims of crime, we have arrived at a stage where 25 states have adopted legislation providing such aid; a Uniform Act has been approved and the U.S. Congress has passed bills in the area a number of times, the two Houses failing only to agree upon form. In being asked, as an early writer in the field, to work on or advise on most of the efforts, I find that the following 5 questions are the ones most frequently put to me about crime victims' compensation.

WHAT IS THE RATIONALE FOR THE GOVERNMENT GETTING INVOLVED?

The two most telling rationales to me are the "social contract" or "broken promise" rationale, and the "equal treatment of the victim" rationale.

The "social contract" or "broken promise" rationale holds that the state has promised the individual citizen that, in return for the citizen forgoing his own arms or private police and other self-protective measures like vigilantism, the state will protect him from crime. That promise is broken when a crime occurs. There is a double default: failure of law enforcement in the particular instance; and failure in the area of improving the social conditions that conduce to crime. In a way there is a third failure as well in many cases: a failure to apprehend the criminal. The state should make good on the broken promises and defaults. The cost of the crime is a cost of society and should be born by all in the form of pennies

from all, rather than concentrated entirely on the victim. In a very real sense his problem is our problem. It might be us. And an unrehabilitated victim costs us all.

The "equal treatment of the victim" rationale looks at the time, money, and effort society lavishes on the offender: elaborate, expensive constitutional guarantees; lengthy, costly trials, appeals and re-trials; state financed lawyers; free room and board, often over an extended period of imprisonment; parole, probation, and rehabilitation, all involving personnel, supervision, and certain hearings and procedures designed to secure fairness to the offender. All of this is to the good. But the "equal treatment" rationale goes on to compare the situation of the offender's victim. The contrast is striking. Too often the victim and his family are society's "forgotten people," left to fend for themselves, perhaps with severe, irreparable physical injury or death to the breadwinner. The victim has few rights. Little attention is paid to his rehabilitation. In many ways it is as bad for society that he goes unrehabilitated as that the criminal does.

The answer is not to diminish the offender's rights, but to increase the victim's. The victim today is victimized twice—once by the criminal, and once by a society that leaves him to sink or swim on his own. Indeed, he is victimized a third and a fourth time, as well: by the criminal justice system when he becomes involved in reporting a crime and becoming a witness—the shabby treatment, endless delays delays and reschedulings of appearances without notice, and abuse, callousness, and disrespect that he meets are chronicled in McDonald, Crime and the Victim (1977)—and again by the people in social and business situations that shun him as though he were a leper, as detailed in Barkas, Victims (1978).

It would seem a natural second step to society's expenditures on law enforcement, prosecutors, judges, courts, prisons, parole boards, etc., that some expenditure of effort be made on the other part of the problem, the victim.

The idea is not really new. Compensation for crime victims is found as far back as the Babylonian Code of Hammurabi, circa 1728–1686 B.C., one of the oldest known legal codifications.

2. AREN'T THERE OTHER SOURCES OF RELIEF FOR THE VICTIM? WHAT ABOUT THE OFFENDER—SHOULDN'T HE HAVE TO PAY THE VICTIM?

Of course, in many cases the proper thing is for the offender to be required to take responsibility. Crime victims compensation does not displace lawsuits by the victim against the offender. It is designed for those cases—most cases, it might be added—where the offender cannot be found or caught, or is impecunious so that he could not respond by payment of damages. For these reasons payment from the offender is not alone a satisfactory solution. And, in some cases, requiring payment from the offender can create more social problems than it solves. The offender may have a family which bears no part of the responsibility for the crime. Their continuing relationship with him may not be entirely voluntary. They may be financially dependent upon him. In some cases his crime may have been stimulated by scarce funds already being stretched to breaking point by too many obligations. Heaping more financial responsibility upon him will sometimes be good rehabilitation, sometimes not.

The other sources of relief for the victim are insurance (very uncommon in these cases; often unavailable; usually expensive), charity, and other welfare programs. The inadequacy of each of these has been demonstrated in the earlier hearings. If one of these sources is available and there is a danger of double compensation, of course there should be a deduction for it. Criminal injuries compensation is meant to apply where these are inadequate.

3. IS THIS A GIVE-AWAY PROGRAM?

No, it is not. I am taking the liberty of attaching an article to this statement ("Attachment A") which Congressman Rodino was kind enough to make a part of his remarks on this bill several sessions ago. It is written by myself, in connection with my work on the Uniform Act, and appeared in the American Bar Association Journal. It discusses, among other things, the various cost limiting factors in criminal injuries compensation programs—cost limiting factors that assure that only the most compelling cases and the most compelling elements of damages will be compensated. Cost limiters include, among other things, maximum amount limits; minimum out-of-pocket amounts in order to be eligible; exclusion of property damage; exclusion of pain and suffering; limitations on the

kinds of qualifying crime; exclusion of certain crimes where the offender might benefit or the risk of fraud is high (e.g., intra-family crimes); exclusion of benefits payable from other sources; consideration of financial need (a controversial provision; probably the best compromise is the "financial stress" test of the Uniform Act, which aims to eliminate impact on one's accustomed standard of living, be it high or low); exclusion of claimants who are uncooperative with law enforcement, who delay in reporting, or who brought the calamity upon themselves; etc.

4. WILL THESE PROGRAMS AID LAW ENFORCEMENT?

Yes. In four ways. First, persons who do not co-operate with law enforcement or who do not report the crime soon, are ineligible for benefits. Second, conduct that contributes to the happening of the crime (e.g., provocation) can render a victim ineligible. Third, there are favorable compensation provisions for "Good Samaritans" who get injured while helping police or citizens under criminal attack, or the like, in certain circumstances. Fourth, social norms against crime (incorporated as inhibitors to some degree into the conscious and subconscious minds of every citizen) are strengthened and reinforced when society, instead of merely paying lip service to the notion that it is terrible that someone was victimized, actually shows the sincerity of its feelings and moral condemnations by putting some money "on the line" to actually help the victim. Fifth, citizens, especially in the last decade, have become alienated from their government, believing it to be unconcerned for individuals. Individuals alienated from their government (a) do not share its values and are thus less prone to law and order, and (b) are less inclined to help law enforcement by reporting crimes, supplying information, acting as witnesses, and otherwise being co-operative with law enforcement. Without citizen internalization of the law into their own private standards of conduct, and without citizen co-operation in discovery and apprehension of criminals, law enforcement is doomed to failure. There simply are not enough police to have a policeman on every corner. Even if we were willing to divert the resources necessary to do just that, it probably would be undesirable for other reasons.

But government compensation for crime victims restores citizen faith in government—lets citizens know that government cares and is not remote from concern for the individual. In relieving alienation, it aids law and order and law enforcement.

5. WHY SHOULD THE FEDERAL GOVERNMENT BECOME INVOLVED IN THIS AREA?

There are several reasons, detailed more fully in my earlier testimony. The problem is too big for individuals and individual states to handle alone—both financially and in terms of complexity and the transcending of state borders. Crime is a nationwide concern. Victims are a nationwide concern. Criminals, victims, and the evidence of, implements of, and fruits of crime move freely interstate and among nations, and each present problems for all the states and nations they contact, as well as hampering interstate and foreign travel and commerce. These are peculiarly federal concerns. Much of crime (even robbery and burglary) is directly traceable to federal failures (no matter how justifiable) to stop the interstate and international production, manufacture, or "flow" of criminal contraband—principally narcotics flowing into the country, and guns, two chief implements of and causes of crime—a peculiarly federal responsibility. For example, figures show that most of theft crime, and the violence that goes along with much of it, stems from the need to feed a narcotics habit on a daily basis at ruinous black market prices, and the lowering of inhibitions to violence that certains drugs produce. In addition, there are legal problems that cannot be solved by individual states; for example, finding and obtaining jurisdiction over criminals in today's highly mobile interstatejand international society. Interstate flight is an important problem for a victim who might wish to sue an offender. And there is the inequity that arises where a crime is compensable on one side of the state line but because the crime happened when the victim crossed the street to the other side to buy a newspaper, he is out of luck. Important rights should not depend on such fortuities.

The federal government has participated in a large way in the law enforcement scene, and thus in the promise and default vis-a-vis the citizen addressed above under question No. 1. The F.B.I., the Law Enforcement Assistance Administration, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, and

52-407 O - 81 - 4

Firearms, the Food and Drug Administration, Customs, Immigration & Naturalization, the Coast Guard, and other federal enforcement bodies and programs attest to this. In addition, the federal government has played a role in the alienation and disillusionment of the citizen as respect to the government (see question No. 4 above) and should play a role in their reversal and in promoting an image and a reality of governmental concern for the individual.

The present bill accommodates both state and federal interests. It leaves freedom to the states to decide whether or not to have crime victims' compensated. By providing financial support, it encourages states not to hold back because they cannot finance the whole. It allows considerable freedom to the states to adopt their own form of program, but provides certain federal standards.

Conclusion

Half of the states of the United States, and several of the principal common-law foreign jurisdictions sharing our legal heritage, including England and provinces of Canada, have adopted criminal injuries compensation programs. The sponsors of H.R. 1899, Congressmen Rodino and Drinan, Congresswoman Holtzman, and Congressmen Mazzoli, Gudger, Mikva, Hyde, Biaggi, Bingham, Blanchard, Lehman, Nolan, Patten, and Vento, and other supporters of this bill, and the members of this Subcommittee, are to be complimented on briniging this important issue before the Subcommittee, the Committee, the Public, and, I am confident, the House itself.

["Attachment A"—reprint from American Bar Assn. Journal, Dec. 1974]

How the Uniform Crime Victims Reparations Act Works

(Paul F. Rothstein)

The Uniform Crime Victims Reparations Act, approved by the American Bar Association's House of Delegates, has been submitted to state legislatures. This timely act seeks recompense for the victims of crimes, but also incorporates numerous safeguards to prevent abuse.

The American Bar Association's House of Delegates, meeting in Houston on February 5, 1974, approved an idea whose time is rapidly approaching—the Uniform Crime Victims Reparations Act. The act is a product of a committee of the National Conference of Commissioners on Uniform State Laws for which I served as consultant and reporter over its three years of deliberations. The conference approved the act in 1973 and recommends adoption in all states.

The act establishes a state-financed program of reparations to persons who suffer personal injury, and to dependents of persons killed, as the result of certain criminal conduct or attempts to prevent criminal conduct or apprehend the perpetrators. A specially constituted board determines, independent of any court adjudication, the existence of a crime, the damages caused, and the other requisites for reparations, except that a final conviction determines that a crime has occurred. "Preponderance of the evidence" is the standard used. Reparations cover economic loss—medical expenses, rehabilitative and occupational retraining expenses, loss of earnings, and the cost of actual substitute services.

Justification for such an act is variously stated. Some persons say the state owes this to victims, having induced citizens to lay down their own arms in reliance on state protection and then having failed to prevent crime. Others urge parity between the expensive concern society lavishes on offenders—constitutional safeguards, free counsel, prison accommodations—and the concern shown their victims. This disparity often is enormous—private rights of recovery are largely illusory, offenders being untraceable or impecunious.

Probably the principal explanation for the burgeoning interest in this kind of act is simple humanitarianism—a recognition that we all share an interest in the well-being of our neighbors and an increasing willingness to distribute the cost of catastrophe.

Similar programs already exist in fifteen foreign common law jurisdictions, beginning with New Zealand in 1963 and Great Britain in 1964, and spreading to several provinces of Canada, Australia, and Ireland. Twelve of our states have joined them, including Alaska, California, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New York, Rhode Island (tentatively), and Washington. The United States Senate in 1973 passed S. 300, covering federally governed locales and providing for a 75 percent federal financing of state programs

omplying with federal standards. Prospects for eventual House passage seem good.

Some of the positions taken by the uniform act on a number of important issues dividing the field of criminal injuries compensation follow.

Should compensation depend on financial need?

Should criminal injuries compensation be a welfare measure, allowed only to the extent the crime creates severe financial hardship? Several plans, notably those of New York and Maryland, provide so. The uniform act recommends against any approach that considers financial ability. Since some states may disagree, the act provides an optional financial means test, which rejects linking compensation to "needs," "poverty," or "financial hardship," and adopts instead the somewhat innovative concept of "financial stress". This seeks to prevent too great an impact on a claimant's customary way of life, whether rich, poor, or middle class. "Financial stress" is a refinement of an idea found in the federal proposal and draws heavily on the New York Criminal Injuries Compensation Board's seven years of experience under a stricter standard.

The drafters note that a financial ability provision is not all savings; it entails administrative costs in determining eligibility. The act allocates the burden of economizing to other provisions, such as those limiting the elements of compensable damage and placing amount limits on awards. There is, for example, an upward ceiling of $50,000 a victim (not per claimant), an optional $100 minimum that losses must exceed to be compensable (does the expense of investigation of eligibility exceed any savings?), a $200 a week lost income limit, and a $500 limit on funeral and related expenses. Lost services not actually replaced for a cost are excluded. Medical and other similar expenses are confined to semiprivate accommodations and reasonable, customary, and necessary charges.

Should pain and suffering be compensable?

The uniform act, like most others, does not compensate "pain, suffering, inconvenience, physical impairment, and other nonpecuniary loss." This should allow more people to be at least partly compensated, although it can be extremely harsh on the unemployed housewife, for instance, who has lost an eye or arm but still manages to do her housework and whose insurance absorbs her medical costs. Despite real damage, she receives nothing. But a crime victim's reparation act does not affect private rights the claimant may have against the offender. Thus, the claimant is not being deprived of existing entitlements to damages for pain and suffering, as is the case under no-fault insurance.

Should property damage be included?

In accord with most existing programs, property damage is excluded. Limited resources can embrace only the most compelling injuries. Property losses could rapidly deplete resources. Besides, private insurance is often available. The act rejects the distinction made by the federal bill between "victims" and "good Samaritans." The latter and their surviving families are encouraged by being entitled to property reparations.

Should a board or a court administer the plan?

Existing programs use a board or a court to administer the plan. Some use the workmen's compensation board. Like most programs, the uniform act believes that the number of cases and questions peculiar to this area justify a special board rather than a workmen's compensation board or a court.

Should the board function like a court?

A more formal judicial model was adopted even though a less formal approach is economical of time and resources, because the rights dispensed seem as fundamental and important as any others. Claimants are entitled to lawyers, transcripts, detailed notice, and discovery, with special provisions governing the waiver of medical privilege and granting the board subpoena powers. Attorneys' fees are board awarded over and above compensation. Larger fees are illegal. The state attorney general is notified and may intervene on either side. A full record is kept, and decisions must be based on evidence in the record, with written findings

of fact and law and judicial review. Interested parties have ample opportunity to confront the evidence and examine the record. Decisions and rules or policies bearing on decisions are made public. Rule making is exempted from the public notice and challenge process of state administrative procedure acts because of the lack of demonstrable effect on identifiable interests and parties.

HOW ABOUT PAYMENTS FROM "COLLATERAL SOURCES"?

A program which stretches limited state dollars requires that some deduction from the state award for some reimbursement to the state) be made for other payments received by the claimant for the same injury. Whether the state should be credited only when the sum from these collateral sources is for elements of damage recognized in the compensation award has been debated. Some even go further and argue that the complainant should be allowed to receive the total state award plus all collateral sums, even if duplicative, without any reduction or reimbursement, until he has a total amount sufficient to "make him whole" for all his actual tort law damages, including those elements that could not be recognized under the compensation act.

Under some of these approaches, problems could arise in determining what the collateral payment is for, what a claimant's total actual tort law damages are (the board only determines economic loss), how to allocate payments partially satisfying collateral awards among the various elements, whether to deduct for "clear" collateral rights even if they have not yet been pursued and determined, how to ascertain if they are "clear," and whether and how to have state subrogation.

The state compensation award is inadequate in many cases because of the various limitations on damages. The "make-him-whole" approach tends to compensate the claimant for more of his total tort law losses without the state expense of making them directly compensable under the act. The claimant receives the benefit of premiums paid and remains willing to insure. This approach, however, requires perhaps an unnecessary ascertainment of the claimant's total tort law losses. And the determination may be required after the compensation hearing is over, *i.e.*, when the collateral source pays. The state coffers also must forgo the benefit of collateral recoveries unless and until the "make-him-whole" point is reached.

Unlike the federal bill, the uniform act rejects the "make him whole" approach. A middle ground is taken; only collateral payments to the claimant on elements of damage covered by a compensation award (economic loss) are to be deducted or reimbursed, while others (pain and suffering) are not. Rules are provided for determining what various collateral payments represent.

SHOULD MEMBERS OF THE FAMILY BE EXCLUDED?

When a claimant is a member of the offender's immediate family or lives in his household, possibilities arise of fraud, collusion, or that the offender may benefit from the award either directly or by being relieved of support. Indeed he may injure for gain, some argue.

Disqualifying from compensation persons having these affinities to the offender or his accomplice seems tempting. But the victim may be a wholly innocent spouse or child of the offender, trapped by the relationship. Varying degrees of estrangement are possible. A large proportion of all violent crime does, in fact, take place within the family or household, so excluding these crimes may defeat compensation when it is most needed.

Most acts do have a "relationship" exclusion usually covering the immediate family living with the offender and his household. Some accomplish this by excluding certain persons, others by excluding certain crimes, e.g., crimes against members of the family or household. The latter has the undesired side effect of cutting off from compensation a nonhousehold, nonfamily bystander who happens to be injured.

The intention of the exclusion is to avoid payment to the offender's family who live with him and others having a similar relationship. Some persons challenge this aim. The only justifiable reason for the exclusion, is to prevent fraud, collusion, or unfair benefit, they argue. Cannot cases arise in which the prohibited relationship exists, but there is no fraud, collusion, or unfair benefit, or the need to help the victim outweighs the benefit? Safeguards can be designed. Fraud, collusion, and unfair benefit arise in cases outside the exclusion, too.

If this is so, there should be no relationship exclusion. All claims should be scrutinized for fraud, collusion, and unfair gain to the offender. This is the

approach taken by the uniform act. Any claim may be disallowed or reduced on grounds of "unjust benefit" to the offender or his accomplice. "Unjust benefit" encompasses all the concerns of the standard relationship exclusion, at least where read in context with the remainder of the act, which requires proof of a genuine claim.

The act includes an optional alternative that excludes the immediate family or those in the same household as the offender or his accomplice "unless the interests of justice otherwise require in a particular case." The philosophy is the same: the amount of risk of unjust benefit and the strength of the circumstances suggesting compensation, rather than the relationship of the claimant, are determinative. The optional language, out of solicitude for problems of proof, assumes that the risk justifies exclusion in the case of relationship unless shown otherwise.

A common addition to the relationship exclusions—"maintaining sexual relations with the offender"—is not found in the act. Instead, those sexual relationships that warrant an assumption of unjust benefit, including fraud or collusion, would probably be encompassed by the "unjust benefit" language or the optional language excluding persons "living in the same household" or excluding the "spouse." More transient sexual relationship might disentitle under the general provision dealing with "contributory misconduct."

WHAT IS THE OFFENDER'S RESTITUTION DUTY?

Should the offender be required as part of the penal program to make partial or complete restitution to the state for the award, either out of private means or through some "work-it-off" program? Perhaps a special fine could be added to any other penalty. In the federal bill all criminal fines go into the criminal compensation fund, but this is hardly a restitution measure. The uniform act rejects the restitution approach because it risks creating more social problems than it solves. How much benefit anyone would actually receive is questionable. Restitution could hinder rehabilitation by heaping on the offender more obligations of the kind he could not meet previously and which may have helped lead to his criminal actions. Do we get anywhere by diverting funds away from one social problem, the offender's family, to another? While we could try to separate the cases that are appropriate for restitution, the cost of the necessary machinery and the restructuring of legal procedures does not seem worth the expected gains.

SHOULD THE CRIMES COVERED BE SPECIFIED?

Some acts list the particular crimes to be covered, and others state "any crime" or "any violent crime." Of course, a personal injury arising from the crime must always be shown.

The problem with listing crimes is the difficulty in predicting every crime that might give rise to personal injury. Some crimes that are ordinarily harmless to life and limb and are not in their statutory nature violent may be dangerous when committed under particular circumstances. One example suffices: criminal fraud consisting of a misrepresentation that an automobile has been repaired.

Including "any crime" resulting in personal injury may be too broad. A crime should be excluded if it is both ordinarily nonviolent in nature and committed under apparently nondangerous circumstances but through a weird concatenation of curcumstances results in personal injury. For example, suppose a criminal misrepresentation concerning stock values produces a heart attack in an apparently normal individual. Of course, deft handling of the proximate cause issue could avoid this result, even under an "any crime" approach, but much would depend on the administering board.

The language chosen for the uniform act, therefore, defines the covered "criminally injurious conduct" as "conduct posing a substantial threat of personal injury or death" and "punishable by fine, imprisonment or death," occurring or attempted in the state. In accord with most existing acts, motor vehicle offenses are specifically excluded except when personal injury or death is intended. The rationale is economic. These injuries will normally fall within other existing or projected compensation mechanisms, especially the no-fault scheme.

SHOULD COMPENSATION BE LIMITED TO CRIMES?

Several concepts in criminal and tort law are designed to relieve persons of liability to the extent that they were not at fault, for example, they did not have

the capacity to contemplate or foresee the harm. Should the inflicter's fault be relevant when the inflicter may not be a party to the proceedings and will not as a result of those proceedings be punished or required to part with private funds? Wasn't the concept of fault designed to limit the liability of the inflicter? Shouldn't the only issues be the extent of the loss and the victim's innocence?

But that argument goes too far. It suggests compensation for any catastrophe that befalls an innocent victim, something for which the public is not yet ready. The uniform act, like many others, requires a crime but not capacity, this being aimed principally at infancy and insanity. Part of the definition of compensable criminally injurious conduct is that it must be "punishable . . . [or would be] but for the fact that the person . . . lacked capacity to commit the crime under the laws of this state." This language avoids the ambiguity inherent in similar language under other acts.

WILL THE ACT IMPROVE LAW ENFORCEMENT?

Some law enforcement personnel fear that criminal injuries reparations will divert funds from law enforcement, especially under the pending federal bill in which federal funding of state plans is to come through the Law Enforcement Assistance Administration.

While there is no real answer to this problem, it is hoped that legislators will view these programs as additional to law enforcement with no impact on the funds appropriated for law enforcement. The two are directed toward different parts of the social problem of crime. Indeed, it is perhaps the failure of law enforcement that produced the impetus for victim compensation, and it would be ironic if that compensation resulted in less enforcement.

The need to appease law enforcers, the need to justify the use of the L.E.A.A., and plain good sense have stimulated interest in ways in which criminal injuries compensation can aid law enforcement and crime prevention.

Some persons argue that victim compensation reinforces psychological barriers against crime by creating strong social norms contributing to prevention. Society will demonstrate the sincerity of its moral condemnation by showing concern for the victim and treating the injury as something of enormity.

Whatever the merits of this argument, several specific provisions can help enforcement and prevention. They also safeguard against fraudulent or underserving claims. The act, for example, requires that, in order for the claimant to obtain compensation, the crime must be reported to law enforcement officers "within seventy-two hours unless the board finds there was good cause for the failure to report in that time." Programs vary respecting the time period and the presence of the "unless" clause.

A related requirement enables the board to take measures if the victim has not co-operated fully with police. There may be convincing reasons, such as threats, for not co-operating. It was deemed inadvisable to flag these in specific statutory language and risk improper inducement. The act merely provides, therefore, that the board in its discretion may to any extent reduce, deny, or reconsider the award for failure to co-operate with law enforcement.

Another provision allows "contributory misconduct" to influence an award. Some plans mandate complete denial of award on a "contributory negligence" as opposed to a "comparative negligence" model. The uniform act grants the board maximum discretion to decide what is contributory misconduct and its effect. The discretion is not unlimited, as there must be misconduct and it must be contributory. Negligence, provocation, consent, the duty to mitigate damages, and, possibly more debatable moral notions, also will play a role.

A fourth provision may encourage "good Samaritans" to help fellow citizens under criminal attack, or to help prevent escape, or to help officers. An assumption is made that the act can encourage and that encouragement will lead to fewer rather than more injuries.

This provision allows these "helper citizens" or their surviving families to claim reparations. But should they be included if they are mistakes or even negligent when they intervene? Should a request for assistance be required in the case of aiding officers? The acts take different viewpoints. The solution may depend on one's assessment of how overcautious people are today, the effectiveness of the police, and whether encouragement will mean fewer or more injuries.

The uniform act provides: " 'Victim' means a person who suffers personal injury or death as a result of . . . (2) the *good faith* effort of any person to prevent criminally injurious conduct, or (3) the *good faith* effort of any person to apprehend a person suspected of engaging in criminally injurious conduct." (Emphasis added.)

Why is a special provision needed? Aren't these people included under the other provisions compensating persons and their families injured as a result of crime? The quoted special language provides that situations of suspected crime are also encompassed in the case of helpers. These situations seem to have been overlooked in other acts. Beyond this, specifying that voluntary intervenors are not responsible for their own injury precludes a possible proximate cause or contributory conduct problem. Finally, it is best to address directly those you hope to encourage.

The approach of the federal bill—to favor helpers and their families by awarding them their property damage in addition to their regular damage and to relieve them of the "financial stress" test—was rejected in the uniform act on the same rationale that led to rejection of these approaches for ordinary claimants, and because it is doubtful that any encouragement would ensue.

PUBLICIZING THE ACT

Widespread citizen ignorance of the availability of existing acts is a problem. A legislative tendency not to publicize a costly program, a legislative insensitivity to the proportions of the problem, and a limited budget for awards may be responsible. The uniform act obligates the board to publicize it. While particular measures are not specified, possibilities could include postings in emergency rooms and public transport, educating medical personnel, spot media announcements, and a "Miranda" type of notification by police to victims of their reparations rights.

DISPARITIES BETWEEN THE FEDERAL AND UNIFORM ACTS

Pending federal financing has triggered enormous interest in criminal injuries compensation programs. The federal bill would provide 75 percent of the funds for a state plan that conforms to federal standards. The federal standards, while being left to future administrative determination, will require some conformity to the federal bill's proposed compensation program for federal localities. There is at least one glaring difference between that program and the recommended version of the uniform act. The latter omits a financial ability test. There are other differences as well. Won't states, to be safe, merely wait and carbon copy the federal compensation program, leaving no room for a competing uniform act?

Some considerations influenced the uniform act's drafters to proceed nonetheless. These are: (1) The federal bill may not yet be in final form. A uniform act could influence its shape. (2) Total conformity will not be required for federal financing. (3) Even substantial nonconformity will not totally defeat federal financing. As the federal bill now stands certain conforming expenditures will be federally financed despite the complex accounting this entails. (4) The federal bill may be delayed or never enacted, although this seems unlikely. (5) State acts can be changed if and when federal financing becomes a reality. (6) A state may choose to engage in an activity even though it may be outside the ambit of federal financing.

Current interest in compensating innocent victims and their families injured by crimes marks a step forward in modern Anglo-American law that will pay dividends to society. The uniform act is an attempt to put together and articulate in an improved fashion what has been learned from existing acts and their administration in a way that can be given serious consideration by all the states and by the federal government.

TESTIMONY OF PAUL F. ROTHSTEIN, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER

Mr. DRINAN. We are happy to have you here today, Professor. Please proceed as you see fit.

Professor ROTHSTEIN. Thank you very much, Congressman Drinan.

I might say, on a personal note, that my experiences at Boston College when you were dean convinced me that if our laws and this committee are being run by you as well as that law school was being run, then the country and the committee are in good hands. And I'm confident that they are being so run.

Thank you for that——

Mr. HALL. Did he work you to death like he does this committee?

Professor ROTHSTEIN. Yes; he did. And he's a man who never tires and never sleeps, and a man who devotes his life to the service of high ideals.

I want to compliment not only Chairman Drinan, but also the entire committee in opening up this issue, this important issue, whatever the resolution of it may be. I think it is an issue of great significance and great importance to the country.

I'd like to address just a few questions at this point and not really read the prepared statement.

The first question that I'd like to address is, why should the Government get involved at all? And then I will get to the second question which is, why the Federal Government.

I think there are two very convincing reasons. The first rationale is that Government, by getting involved in law enforcement, has made a kind of promise or covenant with the citizens. The Government has said: You lay down your own arms, you forgo your own private police, you forgo vigilanteism, and in return for that we will protect you, we will enforce the laws, we will be the police.

When a crime occurs, there is a default on that promise and a default in two ways. First of all, there's a default in that society has failed to contain and improve the conditions that breed crime. That's the more generalized default.

But the more particular default is that law enforcement has failed in the particular instance, for whatever reason. And because of that failure, because of that default, I believe that the Government should make good on that promise.

The other convincing rationale to me for why the Government should get involved is that we spend an awful lot of time, money and effort on the criminal—and I think that's all to the good—guaranteeing his rights, with an elaborate network of constitutional rights, including a free lawyer, free room and board. It runs into tremendous costs in prison.

And that's all to the good, it seems to me. The answer is not to diminish the criminal's rights, the accused's rights. The answer is to look at the victim and see that he gets parity of treatment, equal rights. And today, that is too seldom the case. He's society's forgotten man. No money is spent on rehabilitating him, and in many ways an unrehabilitated victim is as bad for society as an unrehabilitated criminal. So what I'm asking for is parity of treatment for the victim.

The second question I said I would address is why the Federal Government? It seems to me that the Federal Government has participated in a very large way in law enforcement and similar programs that I talked about, and that the failures, the defaults, are in very large measure the Federal Government's defaults.

When a crime occurs, think about the Federal agencies that are involved in law enforcement. The FBI, the Law Enforcement Assistance Administration, are all participating in law enforcement. The Drug Enforcement Administration, the Food and Drug Administration, regulating drugs. There is a default in many recognizable Federal areas, for example, in controlling and regulating narcotics and drugs, both the importation and the manufacture within the United States and the distribution in interstate commerce. Drugs are a very large

factor in crime. Many crimes are committed to support a drug habit because of the expense on the black market. In addition, Congressman Pepper's own committee some years back found that inhibitions to violence are lowered by certain drugs. Guns, the interstate distribution and manufacture of guns, are also important factors in crime. Interstate transportation is an important factor in crime. Also interstate communications.

There are defaults in all of these areas when crimes do occur. And so, the Federal Government is, in large measure, a participater in these programs and a defaulter.

The next problem I wanted to deal with is the problem of victim compensation's impact on law enforcement. Do these plans, crime victims compensation programs, do they contribute to law enforcement? I noticed that was one of the questions raised on the panel today.

It seems to me that they do, in several very important ways. First of all, on the moral inhibition level. It seems to me that society says, through a compensation program, that we feel so strongly about our moral condemnation of what the criminal has done, we feel so strongly about the victim and so sorry for him, that we are going to put some money on the line and not just pay lip service to how bad it is that this person's been victimized. We're going to condemn this victimization more strongly than that. We're going to put money on the line. When society says that, it shows that society really cares about it. This strong moral condemnation of the victimization reinforces the moral inhibitions against crime, which seep into our collective conscious and subconscious.

Second, also on the moral level, I think that no one would gainsay the fact that in the past decade, the present government excepted, but in the past the government and the citizen have grown apart.

The citizen has become alienated, feels that government does not care about the individual. And this is an alienation that the Federal Government has contributed to in large measure in the past decade. Again, I say, excepting present company and the present government, there has been an alienation between the citizens and the government.

The citizens feel that government does not care about individual citizens. It seems to me that it is time to reverse this, to show the citizens that government does care about individuals, and the Federal Government, since it is part of this alienation, has a duty, it seems to me, to reverse this alienation.

You might ask me how does this relate to law enforcement. Well, alienated citizens do not report crimes. They do not come forward as witnesses. They do not help the police. They do not share the government's ideal of law and order. They do not obey the law voluntarily.

It seems to me, without this kind of citizen self-enforcement of the law and citizen aid of law enforcement, our society cannot survive. There simply is not enough money to have a policeman on every corner. We need citizen cooperation. And if we were to have a policeman on every corner, that would not be a good idea, for other reasons.

Over and above what I have indicated as moral factors in inhibiting crime, it seems to me there are certain provisions in crime victims programs which contribute to law enforcement.

There are provisions, for example, that require the citizen to report crime. He is ineligible for compensation if he does not report in a timely fashion to the police.

There are provisions that dis-entitle the victim to compensation if he brings the crime upon himself. He cannot collect. There are provisions that reward and encourage good "samaritans" to aid in law enforcement, in aiding stopping criminality. There are others.

For these reasons, then, I think that these crime victims compensation programs do indeed help law enforcement.

The final question that I would like to address myself to is one that has been raised here, and that is this: What about restitution from the offender? What about making the offender pay? Why should the State pay?

Well, it seems to me that, of course, primary responsibility should rest with the offender. But too often the offender is not found. If he is found, too often he has no money and can't respond in damages. On occasion, it might be very bad policy to make the offender pay, even if he could be caught. I say occasionally it might be bad policy. He may have a family, an innocent family that he is trying to support. So, you create more welfare problems. It may be the thing that drove him into crime, more financial obligations, too overstretched.

So, it's a very delicate judgment in particular cases as to whether it is a good idea to require restitution, to require him to pay, although generally I think the primary responsibility is with him.

But for the reasons I mentioned, this is not enough. We need the crime victims program to supplement it.

That's all the prepared remarks that I have today.

Mr. DRINAN. Thank you very much, Professor Rothstein.

And without objection, we will also submit your article for the record, from the American Bar Association Journal, which is appended to your statement.

I thank you for a very good statement and for the history and background of the matter.

Mr. Hall?

Mr. HALL. Professor, good to see you here again.

One of the things I remember from our prior testimony was our colloquy on workmen's compensation statutes. I remember that you felt there should be Federal control, more or less.

I hope you've seen the light since.

Professor ROTHSTEIN. Federal guidelines is what I asked.

Mr. HALL. You made a comment a moment ago that's interesting. You said merely because a number of Federal agencies have become involved in a crime that's committed is one of the reasons why the Federal Government should become involved in this from the standpoint of payment of victims.

You mean because the crime is committed, you have the FBI and CIA and all the governmental agencies involved, that is a reason to strap the Federal Government with $200 million a year on payment for crime?

Professor ROTHSTEIN. I think the Federal Government is, in very large measure, a party to the default that I spoke of, because of the great involvement of the Federal Government in law enforcement, and particularly in those areas that are, in large measure, responsible for crime—narcotics, guns, and State communications and transportation and automobiles; all play a large role.

While the Federal Government may have its reasons as to why there was this default, nevertheless it is party to the default. The defaults are Federal.

Mr. HALL. You mentioned that you feel like it's because of the default that the Federal Government is in some of these areas.

Do I understand that to mean that it's your belief that the Government has defaulted in some way that causes these people to become victimized?

Professor ROTHSTEIN. Let me put it this way: that if the Federal Government did not default and were successful in the effort to contain these crimes, that the victimization would not occur.

Mr. HALL. Of course, if there wasn't crime, you wouldn't have a victim of crime. As I understand, you described the Federal Government had defaulted in some mysterious way. In what way has the Federal Government defaulted that caused these people that—what has the Federal Government failed to do?

Professor ROTHSTEIN. Failed to control the importation and interstate distribution and manufacture of drugs and narcotics. The Federal Government, which has primary responsibility in that area, has failed to prevent interstate use of automobiles in crimes and interstate escape of criminals so they can't be sued.

Now, the Federal Government may well have reasons and excuses, but the fact is that the Federal Government has been part of this promise: "You lay down your own weapons and your own police, and we will, with our might, protect you." And it has not done that.

Mr. HALL. And you think that merely because there's been a defalut, as you put it, on the part of the Government on all of these items, that that makes the Government primarily responsible to take care of the victims of what has occurred by reason of that alleged default?

Professor ROTHSTEIN. Yes.

Mr. HALL. If you take that to its logical and fullest conclusion, could you not make the asusmption, based on that premise, that the the Federal Government could be responsible for every ailment that the country has, as far as its citizens are concerned?

Professor ROTHSTEIN. Every area, perhaps, is not the same as this area. Because in this area, the Federal Government has stepped in in large measure in law enforcement and purported to control and regulate and participate. In other areas, that may not be so true.

Mr. HALL. Well, now, the Federal Government, you indicated a moment ago, there has been an alienation of the people from its Government, and I gather that you mean that the Government has not done enough for its people, which has made them alienated from the Government, per se?

Professor ROTHSTEIN. There have been a number of unsavory events in recent history, alienating the citizen from the government.

Mr. HALL. I have on.y been in this Congress a short period of time, but I recall some budgets that we have passed and approved since I have been here which indicate that out of the billions of dollars each year that is budgeted by our Government, that the payment to people to citizens of this country in various and sundry programs, payments for medicare, medicaid, all of them—you are familiar with them—has totaled billions and billions of dollars per year.

Now, are you saying that those programs are not being administered properly and because they are not being adminstered properly that Government has defaulted; therefore, if any of those people are injured or hurt or victimized in any way, its' the responsiblity of the Federal Government to come in and take care of them?

Professor ROTHSTEIN. I am suggesting this: that the perception of many people in our population, and particularly those people upon whom Government depends for aiding law enforcement, those people in high-crime areas, high-crime social strata, those people perceive Government, whether it's true or not, they perceive Government as being unconcerned with the individual. And a victim program would reverse that.

And I say the Federal Government has been, in large measure, responsible for this bad image. Whether the image be true or not, it is an image.

Mr. HALL. Whether it's true or not, you think the victim-of-crime legislation would cure that bad image that the majority of the people have against the Government?

Professor ROTHSTEIN. I certainly do.

Mr. HALL. This one program?

Professor ROTHSTEIN. I think it would go a long way in that direction.

Mr. HALL. I have no further questions.

Mr. DRINAN. Thank you.

Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman. I yield to the gentleman from Michigan, Mr. Sawyer.

Mr. SAWYER. Thank you.

I deduce from what you say about breach of undertaking or whatever, that you would then think the Federal Government should be liable for property loss, too?

Professor ROTHSTEIN. No; I don't, because I understand there are practical realities and practical limitations, and the idea is to spread the money where it is most needed. Put the oil on the wheel that needs it the most, without bankrupting the program, especially against a background of economy-minded Government.

Mr. SAWYER. But you are not then predicating it on a responsibility. Because I don't see how, on your thesis, we have defaulted in some undertaking, how we could be any the less liable for property loss to crime than we could human loss to crime.

Professor ROTHSTEIN. When you are making good for a default, it does still make sense to have some limitations on it so you can make good on the default to more people. No one ever pretends, for example, in a court suit that when people make good on a default that they are making good 100 percent. They try to do the best they can against the realities of limited resources.

Mr. SAWYER. Then, applying that, why isn't there some sense to the question that Mr. Lungren posed? Now that 23 States or 27 States, whichever it is, have been able to go ahead with such programs, and, as I understand it, you know, covering 75 percent of the economy on their own, why take into account those same applications, the imbalance of our budget? Why wouldn't it be then equally responsible for slipping a little further down, to whether we cover a billion for Federal crime?

Professor ROTHSTEIN. For several reasons. First of all, nearly half the States do not have it. That leads to a very unequitable and unjust situation where compensation depends on the fortuity of where you happen to be or where you happen to live.

For example, I cross over from Maryland into the District, and I get accosted in the District, not in Maryland; I would not get compensated.

Mr. SAWYER. Each of those States and their residentsare perfectly competent to have such a plan if they should politically want one.

Professor ROTHSTEIN, They may not be able to afford it.

Mr. SAWYER. We have heard that California has more gross national product than all but five countries. I suppose when California comes in, they'll have more gross national product than the whole country after we all furnish them their automobiles, breakfast foods, and everything else.

I think there is some merit, as opposed to last year when we looked at this, when virtually in States, most of the States didn't have such a program. In fact, my State of Michigan was just considering one at that point.

Now that we have seen 23 or 27 being able to fly on their own then in light of the practical limitations that you say compel you to eliminate property loss, would it not make some sense to just have a Federal program to cover Federal crime?

Professor ROTHSTEIN. Well, it would go some of the distance that I am recommending, but it wouldn't go the whole way. It wouldn't cover all those State crimes in those States.

Mr. SAWYER. Of course, we are already recognizing our ability to do that by the elimination of property code.

Professor ROTHSTEIN. The most pressing need, it seems to me, is in personal injury. We have to do things one step at a time. It seems to me we do not have unlimited resources and should put it where the most compelling cases are. That's a basic principle of law and of courts. They only indicate cognizance of the more compelling case.

Mr. SAWYER. Thank you, Mr. Chairman. That's all.

Mr. DRINAN. Thank you.

If I may comment that two or three Congresses ago, that was proposed, only the victim of Federal crimes, but it turns out there are all too few Federal crimes that could be compensated, and the cost of anyone administering the program could be enormous as far as the benefits to be given.

Mr. Synar?

Mr. SYNAR. No questions.

Mr. DRINAN. Mr. Lungren?

Mr. LUNGREN. Thank you, Mr. Chairman.

First of all, Professor Rothstein, after you gave that nice plug to Boston, I would like to say I am a graduate of Georgetown. We also have a good school.

Mr. DRINAN. If I might say, I have two degrees from Georgetown, and I concur.

Mr. LUNGREN. With respect to this question about Federal default, of its obligation to its citizenry to protect it, I am not sure that I accept that argument.

But following that argument along, one of the things that it seems to me has been of real difficulty with respect to contribution on the

local level are some Federal guidelines that have been promulgated by the Federal court system and imposed on the Federal court system which, in my view, probably caused far more default with respect to victims being vindicated, if you wish, because a perpetrator, once caught, is convicted.

That has to do, it seems to me, with the exclusionary rule of evidence. Number one, do you think that that has the same impact on the criminal justice system? And if you do, would you suggest that the Federal Government take a look at that in terms of whether that's the appropriate means by which we try and eliminate excesses by police officers in this country?

Professor ROTHSTEIN. I think your argument cuts the other way. I think you have just added one more item that shows the Federal Government's involvement in the law enforcement picture and in this program and one more item of Federal involvement in the default.

I think those protections for the criminal defendant are good, and I wouldn't take those away; but when the Federal Government is saying, "Here is what we give the defendant and the accused, here are the protections—all for the good—that we give him," then if crimes do occur and accuseds do go free and there is more victimization, the Federal Government should make good on that and pay the cost of being so nice—and rightfully so—of being so nice to the accused.

Mr. LUNGREN. The other question I have has to do with whether or not this type of program would actually help in identification of perpetrators of crime and the prosecution; that is, that you have more cooperation by the victims as the witnesses.

As I read the statute, there is encompassed in this a review, a hearing, an administrative or just review, which suggests to me that this might add another period at which both the victim and the witness will testify, in addition to the regular criminal proceedings.

It has been my conclusion, drawn from being a participant in the court system and observing the court system on the local level, one of the major reasons you do not have the cooperation of victims and witnesses today is, No. 1, being exposed to retelling their story. Certainly, in vicious circumstances, it brings it all back up to them again. Second, particularly with the witnesses, getting the witnesses back several times.

I am wondering if there have been any empirical studies to suggest that when, in fact, you have this sort of procedure set up, it increases participation to both victims and witnesses?

Professor ROTHSTEIN. I am an officer in a national organization. It's the national organization that is comprised of the memebers and administrators of the State boards. They do express confidence that it is increasing the reporting of crime.

I feel that the necessity of testifying yet again that you talked about before the criminal judicial hearings is a labor of love for these people, because this time they are going to get some help out of it.

Also, psychological studies do show that victims do gain some psychological succor and help out of telling the story in an environment of that sort.

Mr. LUNGREN. Are these hearings limited to just the testimony of the victim, or does it also encompass testimony of witnesses?

Professor ROTHSTEIN. On occasion, it can be testimony of witnesses to establish that the crime did in fact occur.

Mr. LUNGREN. Thank you.

Mr. DRINAN. Thank you very much.

Mr. Shelby?

Mr. SHELBY. I will pass.

Mr. DRINAN. Just one last question.

We have abundant material in previous hearings about what other nations do. Before me here is a long, long memo from the Council of Europe. Could you just summarize shortly, in a brief way, what advanced countries with jurisprudence like ours do in this matter?

Professor ROTHSTEIN. Yes. England, New Zealand, provinces of Canada, Ireland—we are in the minority in common law jurisdictions that share jurisprudence with us, in not having such a scheme.

Mr. DRINAN. I thank you. You make out a very good case, and I am certain you will be available for counsel as this issue develops. We thank you for your presentation and thank you for your patience and waiting here during the afternoon. Thank you.

Professor ROTHSTEIN. Thank you, members of the panel.

Mr. DRINAN. The next witness is David Marlin, who is Director of Legal Research and Services for the Elderly, National Council of Senior Citizens. He is accompanied by Ms. Victoria Jaycox and Mr. John H. Stein. Mr. Marlin and his colleagues are testifying on behalf of the National Council of Senior Citizens.

We welcome you here, Mr. Marlin. We have your statement, and without objection it will be made a part of the record. Please proceed as you see fit.

[The complete statement of Mr. Marlin follows:]

PREPARED STATEMENT OF DAVID H. MARLIN, PROGRAM SUPERVISOR, CRIMINAL JUSTICE AND THE ELDERLY, SPONSORED BY THE NATIONAL COUNCIL OF SENIOR CITIZENS

Thank you, Mr. Chairman, for inviting me to testify on H.R. 1899, The Victims of Crime Act of 1979.

I am here representing the 3.8 million-member National Council of Senior Citizens and its Criminal Justice and the Elderly Program. For nearly two years, with grants from four Federal agencies and two foundations, Criminal Justice and the Elderly has been conducting research and providing services to organizations around the country committed to lessening the dreadful harm which crime inflicts on older Americans.

One research project we have undertaken has produced a report, "Victim Compensation and the Elderly: Policy and Administrative Issues" by Richard Hofrichter of our staff. That report, which amplifies much of the testimony I offer today, will soon be printed by the House Select Committee on Aging.

I am also here representing our project's advisory board, the National Committee on Crime and the Elderly, which is a coalition of national organizations and officials in the aging field. The National Committee has endorsed the six basic recommendations I will be presenting today.

With me are Victoria Jaycox and John H. Stein, the director and deputy director respectively, of the Criminal Justice and the Elderly Program.

Mr. Chairman, we warmly endorse the aims of the legislation being considered in this hearing. There is, we believe, an urgent need to help the seriously-injured victim of crime pay for their unreimbursed medical costs and their essential household expenses during their recuperation.

There is a like need for financial aid to many of the surviving dependents of victims killed by their criminal assailants.

Though faundamentally a state responsibility, victim compensation programs can meet these human needs far more effectively if they receive Federal support. In this, we seek merely to have our national government do for crime victims what it has long done for other innocent victims of calamity.

To preface our recommendations on H.R. 1899, I would like to describe three basic characteristics found in the people who are the "victims of crime" mentioned in the title of that bill. True, they constitute only one out of every 23 victimized Americans, the relative few who are injured or killed. But they are, without question, the most lamentable casualties in crime's war against us all.

From reports our project receives, an all-too-common example is that of an elderly woman, now confined to a nursing home solely because someone knocked her down and hurt her in the course of stealing her pocketbook. Her broken bones may never fully heal. Quite possibly, she will never go home again.

It is from such anguishing cases as these that compensation claims arise. The primary impression one gets about these cases—a message continually voiced to me by colleagues in the victim assistance field—is that it is extremely rare to find such a victim needing help with his bills, and nothing more.

On the contrary, most criminally-injured Americans, who number less than 2 million a year, need and deserve a number of services, starting as soon after the reported crime as possible.

I need not belabor so obvious a point. One fundamental lesson it suggests to us is that victim compensation programs should be among the leading advocates of integrated financial and social services to the broken and bereaved Americans whom they serve. An important initiative towards that goal can come from the Federal legislation you are considering here. One of our recommendations has service integration as one of its main purposes.

A second basic characteristic belonging to the victims contemplated in this bill is that, as a class, they had greater social and economic disabilities than the rest of us even before crime added to their misfortunes. As President Ford emphasized on several occasions, America's crime victims come disproportionately from our minority communities, from our inner-cities, and from the poor among us. As to the victims of violent crime specifically, their annual income averages little better than half that of other Americans.

To this I would only add that the economic and social disabilities we find in crime victims as a general class seem to be especially prevalent in the elderly members of that sad group.

Unfortunately, despite the troubled circumstances of the victimized, most victim compensation programs are designed as if their eligible claimants are all well-educated, middle-class citizens.

Some of these state policies are merely insensitive to the social circumstances of victims. This is particularly true of their elaborate, forbidding claims procedures. But other policies, such as the minimum-loss rule, are overtly discriminatory against crime victims who happen to be poor.

Even more distressing than these policies are ones found in many of the Congressional bills dealing with this subject. Instead of encouraging state compensation programs to make themselves more responsive to the poor, some Congressional bills would actually give support to the policies of unresponsiveness.

It is for this reason that four of our recommendations seek to reverse the legislative trend towards making victim compensation a benefit program effectively reserved for only the most resolute poor and the middle-class.

Our third observation about the victims whom compensation programs are supposed to help is that, in practice, the help seldom arrives—even in states which have been operating compensation programs for a decade or more. For the fact is that only a minority, a small minority, of eligible victims even apply for compensation.

We believe that the major reasons for this disappointment have already been referred to: the fact tha compensation programs are not part of an integrated service team on hand when the victim most needs help, and the fact that there are several effective barriers standing between the poor and their entitlements.

Fortunately, a few states have started to face up to this complex problem. But even the California program, a leader in trying to get compensation awards to their intended recipients, succeeds in doing so in only one case out of eight. In New York, only one eligible victim in fifteen is actually compensated. We have no reason to believe that the record is much better in other states.

We therefore hope that any Federal legislation offering general assistance to state compensation programs will also assist them in the specific area where they need it most—in obtaining valid applications from all the needy crime victims the programs are intended to serve.

Mr. Chairman, these basic characteristics of the desired beneficiaries of the Victims of Crime Act have been impressed on us from our research and our work

with programs helping elderly crime victims around the country. I should indicate that our research does not disclose major differences in the kinds of needs our elderly constituents have and those of younger crime victims.

Rather, it appears to us that without fundamental improvements in the way our society responds to all its crime victims, the elderly among them have little prospect of seeing their own fortunes improve.

Accordingly, all but one of our recommendations are directed to the needs of crime victims of all ages. And even our final suggestion, a proposed demonstration project that would initially serve just the elderly, might be extended to all victims if later justified by experience.

The six recommendations which follow are in the nature of changes we would like to see made in the last bill considered by the House of Representatives, that is, the conference committee report adopted last year. Having already described to you our fundamental concerns—that many crime victims need more than financial assistance, that many suffer the disabilities of poverty, and that most are not being reached by existing programs—I believe I can state our recommendations plainly.

1. We are convinced that the enormous gap between the promise and performance of victim compensation will begin to close only if state programs publicize their existence and, to that end, have their local law enforcement agencies inform potentially-eligible victims about the program and its application procedures.

Most state programs are mandated by their statutes to publicize their programs, and many are conscientious in getting TV spots aired, in having posters put up in hospitals and other public places, and in distributing brochures about their programs.

However, as was indicated in a study conducted last year by the Minnesota state government, the key to making these publicity efforts work—the most productive way of getting a better ratio of applicants to eligible victims—is to make sure that local law enforcement agencies contact all injured victims or their surviving dependents.

As that report indicated, police agencies have an exclusive body of knowledge about each day's universe of reporting crime victims. Thus, they are uniquely positioned to send appropriate information on the compensation program to potential applicants.

For this reason, Minnesota and six other states—Alaska, California, New York, Oregon, Washington and Wisconsin—require their law enforcement agencies to contact such victims. Most do so by letter, although some California localities also give the victim the name and number of a person who can answer questions or help with the application procedures. The cost of these services is borne by the police organization, not the program.

These investments are highly beneficial. For example, in 1978, the first year after New York adopted the police-contact rule, applications rose 30 percent. In another year or so, as police departments in that state develop a smooth routine for meeting their responsibilities, the outreach efforts should prove even more successful.

That, at least, is suggested by the California experience, where a rigorous police-contact rule has been in effect since 1974. From the 1972–73 average of about 90 claims a month, California's monthly applications now average over 500—not a 30 percent increase, in other words, but better than a 400 percent increase.

Some states may not want to emulate these minimal publicity and informational efforts (minimal because, by our calculations, a leader like California still compensates only a quarter of its eligible victims). Some states may consider it fiscally prudent to allow most eligible claimants to remain ignorant about the program. We don't challenge their right to do so—what we do challenge is the wisdom of rewarding this policy choice with Federal aid.

For these reasons, I commend you, Mr. Chairman, and the other sponsors of H.R. 1899. In this area, your bill is a very substantial improvement over last year's conference committee report

2. No state program which requires applicants to meet a "financial hardship" test should be eligible for the federal payment.

In the first place, even in states like New York, which have sought to devise standards as to what the phrase, "financial hardship", means, the application of the rule ultimately rests on "highly subjective" judgments, as was noted by James Garofalo and L. Paul Sutton in their LEAA study, "Compensating the Victims of Violent Crime: Potential Costs and Coverage of a National Program."

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Subjectivity aside, such so-called means tests are intrusive and offensive to many rich and poor alike—most notably the elderly.

Social service workers in New York, for example, have told us of injured elderly clients who refuse to apply for compensation solely because they will not list their assets. Typical of the reasons, a Victim Services Agency staffer reported, are the elderly's fears that if they declare their savings, these will somehow be lost—savings which were set aside to pay for their funeral expenses some day.

A victim assistance worker in Baltimore described to us two separate instances in which an elderly client told him to stop helping her fill out the forms once she learned of the means tests—two applications aborted, he noted, during a year when the program made awards to only seven elderly victims statewide.

The perception of these victims, that compensation is a discretionary and distasteful gift of the state, is well-founded: financial hardship tests do in fact transform an entitlement based on principles of justice for all citizens into a form of charity available to a supplicating few.

Moreover, the means tests provide false, perhaps non-existent, economies. The well-to-do tend to have ample financial protection against medical expenses and absence from their work, largely obviating any need for compensation. Also, the enforcement of the means tests entails added program costs for investigations. These investigations, I might add, appear to add to the delays endemic in the compensation program; a year's wait for payment after a valid application has been filed is not uncommon.

Finally, the fact that your home state, Mr. Chairman, and fourteen others operate cost-conscious programs without a means test suggests that such tests are both objectionable and unnecessary. Those fifteen state programs, incidentally, are found in: Delaware, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Washington, Indiana and Montana.

3. The "minimum loss" provisions found in nineteen state statutes—one set at $25, fifteen at $100, two at $200, and one at $250—are sadly misguided, sacrificing the interests of many low-income victims to those of bureaucratic convenience.

Clearly, that is the main effect of requiring a victim to endure $100 in losses before qualifying for an award. The Garofalo-Sutton study, already mentioned, shows that the theoretical applicant pool for compensation based on medical expenses shrinks by 75 percent when the $100-minimum rule is imposed—at a net savings of only 9 percent in awards paid out.

Still, we can understand the initial reluctance by the guardians of the public purse to open the gates to the claimants for less than $100. Though the awards themselves add up to very little money, the administrative costs—about $150 per case, according to the Justice Department—seems formidable.

But the Department's testimony before this subcommittee last year begins to inject some reasonableness into this discussion. Said Acting Deputy Assistant Attorney General Ronald L. Gainer, "Perhaps a solution would be to devise a mechanism for the payment of such small claims that does not entail elaborate or costly administrative procedures."

That proposal could be incorporated in the Federal legislation you are considering here. Yet it is not really needed, in our judgment. For when one looks at the financial experience of the nine programs which have no minimum loss requirements—Washington, Montana, Nebraska, Nevada, New York, Ohio, Alaska, Florida and Hawaii—one does not find any discernable pattern of higher program costs in these than in the minimum-loss states.

Common sense suggests why, when the so-called floodgates open, only a trickle of small claims come in: people rarely fill out imposing claims forms, least of all those which require backup documents, to recover $7.52 or even $42.83 in losses. These figures, incidentally, were not pulled out of thin air. They are the lowest and highest, median medical losses shown in five categories of victims surveyed in LEAA's national victimization surveys (and used by the Justice Department in last year's testimony).

In other words, the headaches involved in making small claims are just as great as are produced in processing them—and only a minority of victims eligible for small awards will ever opt to file for them.

The reason we believe it important to keep that option open is that, for some in that minority group, an $80 or $90 loss does not represent an inconvenience but rather income critically needed for food, rent or health care. Our victim-assistance colleagues around the country have actually seen elderly crime victims whose Medicare-assisted treatment left them short a "small" amount of cash which, in

turn, caused them problems with their landlords or caused them to make do on a skimpy diet for weeks—this at the very time they are trying to recuperate from a mugging.

These poignant cases urge us to recommend that the minimum-loss provisions act as disqualifications for Federal aid. At the very least, the Congressional legislation should be silent on the subject, so that states which have no minimum loss rules will be helped with small claims as well as larger ones. For this reason, we much prefer H.R. 1899 to last year's conference committee bill.

That bill, you will recall, barred any Federal contributions to an award covering the first $100 in a claimant's losses. An exception was placed in this provision, offering the Federal matching dollars to states which awarded small claims to elderly victims. Though well-intended, that loophole would probably benefit fewer of our constituents than if there were nothing to attach the loophole to. Here's why:

With the financial incentives working to support the minimum loss rules, few states would carve out a difficult-to-administer, no-minimum exception for the elderly. Shift the incentives away from adopting or retaining the minimum loss rules, and more states will open the doors to small claims, of which there will probably be few. Yet of those few, many, we expect, will be filed by elderly crime victims.

4. The Federal subsidy should be conditioned on the state program's having an effective method of making pre-awards in meritorious, emergency cases. To the victim living on a small, fixed income, for example, there is precious little relief in a check that arrives ten or twenty months after the urgent need for it arose. The kinds of cases just referred to—in which an $80 loss can be a major financial strain—are prime examples of the need to compensate for small claims and to do so quickly.

At present, only nine states—California, Delaware, Illinois, Kansas, Massachusetts, Nevada, New Jersey, Ohio and Washington—do not allow a pre-payment up to a certain limit in cases that seem destined to win an award and involve emergency needs. Our difficulties stem from the fact that there are no administrative systems to effect emergency payments where they are permitted.

There are parts of a potential system here and there. Maryland, for example, has checks on hand that the director can sign immediately when he knows of a bona fide emergency. Yet there are few mechanisms to inform him of these emergencies in a methodical or timely fashion.

Thus, we urge that the bill not merely require the Attorney General to report to Congress on the performance of emergency award systems, but that he mandated to make grants only to states authorizing such systems, and that he be charged to help make the emergency systems be effective in achieving their purposes.

5. The Federal subsidy should be available to compensation programs which pay for the repair or replacement or damaged or stolen property—but only if that property is an item of necessity essential to the victim's well-being.

In this, all we seek is Congressional sanction of a praiseworthy trend in state practices. The New York program, for example, will pay for the replacement of a victim's hearing aid or glasses broken during a criminal assault. Several of the states allow such payments, and we are pleased to note that as medically-related awards, they would be subject to the Federal matching scheme under H.R. 1899.

However, as state compensation agencies gain insight into the experience of the victims of violent crime, they inevitably come across instances of lost or damaged property which is essential to the victim's well-being, not in the physical sense as much as the psychological one. It was presumably with this in mind that the California program recently allowed a small award to a victim whose door lock was broken in the course of being victimized.

The example of the door lock is especially meaningful to elderly crime victims, to whom that piece of equipment is absolutely essential to a sense that their home is secure refuge. Similarly, to the elderly person living alone, a working telephone isn ot just a piece of electronic equipment, like a toaster, but is that person's lifeline.

By placing a ceiling of, say, $1,000 per claim, the Federal legislation would allow states to compensate victims for the loss or destruction of such property and yet keep this exceptional mode of property-loss compensation within appropriately-narrow limits.

6. We urge Congress to authorize and fund a $1.5 million demonstration program to establish "Elderly Emergency Services" projects in localities around the country.

Administered by the Justice Department, the proposed experiment could be modeled on many existing victim assistance programs but with three distinctive eatures:

It would put a social services worker quickly in touch with those elderly victims known to have been injured in a crime qualifying for compensation;

In addition to offering crisis counseling and other appropriate services, the social service worker would, in every appropriate case, help the victim apply for for a compensation award or an emergency pre-award, and;

The demonstration program would not only evaluate the human impact of this integrated service model in terms of its social service and financial benefits, but would conduct related research on the scope and nature of the underlying problem—the seeming inability of most eligible crime victims to apply for their entitlements even when they know about the compensation program.

The premises on which the demonstration program rests are, first, that a form letter alone does not induce most eligible victims to apply for benefits and, second, replacing the letter-system with one of personal contact with the victim entails a responsibility to also attend to his social service needs. Hence the requirement that the contacting person be a social service worker who is prepared to offer crisis counseling, social service referrals, and all the other neighborly deeds performed by victim assistance programs.

This presupposes that many crime victims lack confidence and assertiveness—that they are, at least temporarily, somewhat numb and passive.

Our colleagues in the victim assistance field report that such qualities are indeed common in victims—that the job of the victim assistance worker is often directed on getting clients to become self-reliant again. The characteristic unassertiveness of victims also made a strong impression on Imre Horvath, the news producer who prepared a mini-documentary on victims for the CBS program, "60 Minutes." As Mr. Horvath testified last year:

They [the victims] seem reluctant to take the initiative in seeking help, even in areas where it might be available through established social services. They would seem to prefer that they be sought out, and offered assistance and possibly assigned to some sort of special category within the social services that would connote blamelessness.

We will be pleased to offer additional thoughts on the legislative design of such a program, but for the present I would merely make this elaboration: the Elderly Emergency Services concept hypothesizes that many traumatized victims, most notably the elderly, will neither weather the emotional crisis very well nor seek appropriate relief from its disasterous financial effects unless sought out and helped by a trained volunteer or a social service staff member.

Plainly, that hypothesis runs counter to the way in which virtually all compensation programs operate now. Yet the evidence tends to show that the present approach to compensation is failing our social goals, that somewhere between seventy-five and ninety percent of compensation's intended beneficiaries are not benefitting from these programs. Therefore, experimentation with new techniques is urgently needed.

Mr. Chairman, this concludes my formal statement. I hope I have given the subcommittee some perspective on the victims who are the subject of these hearings. I hope too that their concerns, their needs, will ultimately shape the legislation Congress adopts.

We will be happy to answer any questions which you may have.

TESTIMONY OF DAVID MARLIN, DIRECTOR, LEGAL RESEARCH AND SERVICES FOR THE ELDERLY, NATIONAL CONFERENCE OF SENIOR CITIZENS ON BEHALF OF THE NATIONAL COUNCIL OF SENIOR CITIZENS; ACCOMPANIED BY VICTORIA JAYCOX, DIRECTOR, CRIMINAL JUSTICE AND THE ELDERLY PROGRAM, AND JOHN H. STEIN, DEPUTY DIRECTOR

Mr. MARLIN. Thank you very much, Mr. Chairman.

On my right, Victoria Jaycox, and on my left, John Stein, director and deputy director, respectively, of the criminal justice and the elderly program sponsored by the National Council of Senior Citizens.

Sitting in the audience since 1 o'clock, listening to the colloquies, I feel I've learned a good bit about some of the concerns of Members of Congress with respect to this bill. None of the witnesses have come today to oppose the bill, nor do we. We're here to support it.

What I've learned from listening to the testimony and the questions and the answers, and thinking through the position we've taken, furthers my belief that the bill is needed, useful, and important, that it will help supply uniformity in compensation programs around the country and that it will stimulate those States who do not have programs to add them.

I think the cost is minimal, and that the people are deserving.

The National Council of Senior Citizens, who I represent, is an organization of 3.5 million older persons. About 3 to 4 years ago, with other organizations in aging and organizations interested in the problems of older people, NCSC formed a committee called the National Committee on Crime and the Elderly.

One of its first research projects dealt with victim compensation. We have prepared a report in which we have examined victim compensation statutes around the country, how they work, how they operate, what their problems are, what their defects are, what their values are.

That report, incidentally, is about to be published by the House Select Committee on Aging.

Two of the reasons why we concentrated on victim compensation were the actual victimization of older persons and second, the fear of criminal assault with which many older persons live in many major cities in this country. The fear, unfortunately, is even greater than the evidence of victimization.

There have been many stories published in newspapers or otherwise provided to the Congress, its Judiciary Committees, House and Senate, and to other committees, about older persons living virtually captive in their houses or apartments, particularly in major cities.

One of the phenomenon that's happened in urban America is that younger people sons and daughters in this very mobile society we have have moved out of large cities into the suburbs frequently leaving older persons as the major or as a major community within particularly poor and decaying neighborhoods.

I remember that a couple of years ago the New York Times ran a series of articles on crimes principally perpetrated against older persons in the Bronx—Concourse Avenue as I recall. We all feel strong sympathy for them and have a strong reaction that our society needs to do something to assist older persons who have been victimized.

And that I think is what lies behind this bill and what lies behind our support of the bill.

I want to touch briefly on some points in our prepared testimony. One of the advantages of having Ms. Jaycox and Mr. Stein here is they can respond in depth to our understanding of how crime compensation works. So we welcome your questions in that area.

There are three basic characteristics of crime victims. One is that they require a number of services. They require medical attention frequently. They have to cope with medical expenses. They need help in notifying friends and relatives that they've been victims of violent crimes.

If they're hospitalized and placed out of circulation they need emergency help. They need money. They may need repairs to their

house if they're burglarized. They frequently need psychological counseling. They may need nursing care.

The second characteristic of elderly crime victims is that they have greater social and economic disabilities than the rest of society even before crime is added to their misfortune.

A third characteristic is that help seldom arrives for older victims of crime. Even when there are compensation programs our study indicates that a very small proportion of eligible victims ever in fact receive compensation.

We examined the bill that came out of conference committee last year and decided that there are six areas in which the bill could be and should be improved.

Now some of these changes have been incorporated in the bill which has been submitted by Chairman Rodino. But I want to refer to these six points, indicating the ones that have already been accommodated in the present bill.

First, one important item that was left out of the bill last October was the requirement of publicity about the existence of compensation programs. That has been reinstated in Chairman Rodino's bill, at least as it applies to police departments and law enforcement officials, although there is no requirement that the compensation programs themselves publicize the existence of their project. We think that should be added to the present bill.

Second, the bill that came out of the conference last October provided Federal payments only when the victim's loss exceeds $100. That no longer is in the present bill, and we appreciate that. I understand that in S. 190, Senator Kennedy's bill, he also has removed the $100 minimum loss.

The third issue is the means test. The bill that came out of the conference last October had a means test. Unless you were nearly indigent, you were ineligible for compensation. We think that should not be in the present bill. We suggest that it be eliminated. We believe that means testing by the States as a condition of eligibility principally serves to discourage many eligible persons who do not have the requisite help and know-how and savvy to handle the many difficult forms that are required in making an application for compensation.

A fourth recommendation involves emergency payments.

Mr. DRINAN. Mr. Marlin, if I might interrupt you for a moment, I think that the fear of some of the sponsors of the bill last year was that that would be another reason why some people might vote against this bill; namely, that they would see this could go to people who are well off and maybe even affluent, and therefore some people did insist on a means test.

My State, along with yours, has no means test.

Mr. MARLIN. That's correct. But people who are affluent have other means of insurance and do not plan on crime compensation programs.

The fourth issue deals with emergency payments. I should point out there is no cost to adding this provision to the bill. This provision requires States, as a condition for participating in the program, to authorize emergency payments for necessities, but only if there is a determination made that it's likely that the claimant ultimately will recover an award.

So the emergency payment, in effect, would be set off by receiving the award. For older persons who are living on fixed incomes, and

who do not have the ability to withstand the financial loss caused by the crime and the delay in receiving compensation payment—it would permit them to have a quick and immediate emergency award.

The fifth point deals with property loss, an item that has been discussed several times this afternoon. We are in favor of the suggestion that was made by Congressman Pepper to permit Federal payments to States who authorize property loss. We think that the details Mr. Pepper suggested are good. We think that sounds like a sensible solution.

I want to point out that there are some States who do provide reimbursement for some property loss or damage. In New York, for example, that program will pay for the replacement of a victim's hearing aid or glasses broken during a criminal assault. Several States allow such payments, and we are pleased to note that, as medically related awards, they would be subject to the Federal matching scheme under Congressman Rodino's bill, H.R. 1899.

Indeed, as State compensation agencies gain insight into the experience of the victims of violent crime, they inevitably come across instances of lost or damaged property which is essential not only to the victim's well-being in the physical sense, but also the psychological.

Examples are door locks and working telephones, not just as mechanical and electronic equipment but as an elderly person's lifeline and security.

By placing a ceiling of $1,000 a claim, which I believe was the same amount mentioned by Mr. Pepper, Federal legislation would encourage the States to compensate victims for the loss of and destruction of essential property, and yet keep the cost low.

The sixth and final suggestion relates to a demonstration program, and we have a price tag on this. Our suggestion is $1.5 million. It's a program that would permit an experiment by the Department of Justice on a demonstration basis to make a determination how, through victim assistance programs, persons who are victimized by crime and who are injured can receive assistance in applying for the rewards and obtaining referrals to social service agencies who will help them.

We have submitted to committee counsel some language that would accommodate this. We hope that the committee will give sympathetic consideration to a demonstration program which would supply some real assistance to crime compensation programs around the country, and, if valuable, could be replicated through the Nation. Thank you very much.

Mr. DRINAN. Thank you very much for a very fine statement.

I'm glad that you brought up the two points that others had not fully addressed; namely, the question of the replacement or repair of damaged or stolen property and also the means test; and that the Committee on Aging will be proposing an amendment to the bill that was here last year, and the amendment would permit a State to receive Federal aid at certain limited circumstances. The victim must be 62 years or older, and the item must be an item of necessity, as you suggested, and the ceiling would be $1,000.

The State, as I understand the amendment, would not be required to make such an award in order to participate in the overall Federal program. We're not mandating it; we're just authorizing it.

I thank you for your statement.

Mr. Conyers, do you have any questions or comments?

Mr. CONYERS. No, I don't. I think the witness made a good statement.

I was wondering, Mr. Chairman, is the demonstration program in lieu of legislation?

Mr. MARLIN. No. Mr. Conyers, it is an additional item, either for incorporation within the bill or in other legislation.

In our study of victim compensation programs throughout the Nation, we were impressed with the difficulty of victims in receiving compensation awards and then, in obtaining rehabilitation. There are a number of victim assistance programs that operate throughout the Nation that supply real help.

On their staffs are persons who are trained to be sensitized to the needs of crime victims and who can assist them. Most programs have had great results, and our thought is that there should be a tie-in between victim assistance programs and crime compensation programs, because they are so intimately related.

So we thought making a proposal in this context would be most helpful to furthering the objectives of the bill.

Mr. DRINAN. Thank you, Mr. Conyers.

Mr. Kindness?

Mr. KINDNESS. No question, Mr. Chairman. I thank you.

Mr. DRINAN. Mr. Hall?

Mr. HALL. One question. You indicated that the passage of this legislation would be inclined to make uniform the packages throughout the country. How do you arrive at that conclusion?

Mr. MARLIN. Well, section, I believe it's 4, section 3 or section 4 of the bill, Congressman, sets forth a series of standards that must be met by a State in order to participate in a Federal program.

We think that all those standards are good. Some of them are tough. They require, for example, that a victim cooperate with law enforcement programs in order to be eligible.

Mr. HALL. You're talking about uniformity of awards or uniformity of reporting that sort of thing?

Mr. MARLIN. It does not relate to the amount of award.

Mr. HALL. I thought you had reference to a uniformity of awards between the States? I misunderstood you.

Mr. MARLIN. No, no.

Mr. HALL. That's all I have.

Mr. DRINAN. Thank you very much.

Anything further?

Mr. SMIETANKA. Just to the question that Mr. Lungren left with me and asked me to raise, and that's your perception of the relative importance on the elderly of crime victimization and inflation. There have been several questions directed at a concern that the budget be held down. Which, in your opinion, is more valuable to all the elderly? That is, holding down inflation or compensating those who are victimized by crime?

Mr. MARLIN. I want to make a brief answer, but I also want to ask my colleagues to respond to this question, or any other comments they might have. That's quite a choice, that question.

I think the interest of the elderly is both to keep inflation within bounds—there's probably no group of Americans who find inflation more ravaging than persons who no longer are employed, or are unemployable, and live on fixed incomes. And older persons certainly want, as do all Americans, safe streets.

As for the implication that underlies the question, is this bill too expensive, I do not think so; $15 million, for its first year, in appropriations is so small as to be de minimis. I urge the committee to report out this bill favorably and for Congress to pass it. If some of the concerns about the costs, potential costs, turn out to be real instead of mythical, there is always an opportunity for the Congress to amend the legislation.

You have an opportunity now to stimulate the half of the States who do not have this legislation to pass it and to provide this kind of benefit so badly needed by innocent people throughout the country. And I urge you to do that.

Mr. DRINAN. Thank you very much.

Yes?

Mr. STEIN. I have one comment concerning Mr. Smeitanka's question, and an additional response. First, about the cost of this program, I think we're probably the only people testifying here who have expressed considerable dissatisfaction with the State victim compensation programs as they're now operating. We want them to reach far more people than they now do, not 5 or 10 percent of the qualifying, needy victims, whom the programs now serve. We believe an important element of the Federal aid program here would be to enable the States to meet their responsibilities far better than they are now, to help far more victims, eligible victims. With that kind of Federal encouragement, both State and Federal costs would go up.

But I want to say that the concern of the costs has been grossly distorted by Mr. Meiner's testimony of last year, to which Mr. Hall seemed to refer earlier. Mr. Meiner's statement was the most careless piece of work that I've ever seen in this field. He built the program up to what was $1 billion, ultimately.

As proponents for expansion, we calculate that the $15 million program would and probably should go to the $35 million level contemplated in the bill in 3 years time, and that ultimately, in 5 or 10 years, as the State programs started truly meeting the responsibilities to the poor, who are the primary clientele to be served, that the Federal share could rise to a level, in today's dollars, of something in the order of $75 million.

I appreciate the fact that it shows some considerable growth over where we started, from $15 to $75 million. But the notion that it toes up to one-half billion dollars is just nonsense. It was a very sad disservice, I think, to you, Mr. Hall, and to others of the committee to have those kinds of numbers floating around.

Mr. DRINAN. I thank you for your comment, sir. And I thank you, Mr. Marlin, and your colleagues for your participating and your valuable testimony.

The subcommittee has received three items, and without objection, they will be placed in the record: first, a statement from Msgr. Francis Lally on behalf of the United States Catholic Conference; second, statement from Roger E. Meiners, assistant professor in the College of Business Administration, Texas A. & M. University; and third, a memorandum from Barbara McClure of the Congressional Research Service. Without objection, they'll be made a part of the record.

[The statements of Monsignor Lally and Professor Meiners and the memorandum from Ms. McClure follow:]

UNITED STATES CATHOLIC CONFERENCE,
DEPARTMENT OF SOCIAL DEVELOPMENT AND WORLD PEACE,
Washington, D.C., February 22, 1979.

Representative ROBERT DRINAN,
Chairman, Subcommittee on Criminal Justice, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We appreciate this opportunity to comment on H.R. 1899, the proposed Victims of Crime Act of 1979. In 1973, the Catholic Bishops of the United States expressed the view that society must share at least some of the responsibility for compensating the innocent victims of crime. The proposed legislation recognizes this responsibility and marks a significant step toward fulfilling it.

In their 1978 statement, Community and Crime, the Bishops' Committee on Social Development and World Peace supported the creation of programs of victim compensation. They suggested that these programs should provide compensation for personal injuries which were the result of a crime; compensation for surviving dependents of an individual whose death was a consequence of a crime; compensation for a percentage of the property lost as a consequence of a crime. While H.R. 1899 does not include the provisions for property lost, addressing personal injury needs is a critical improvement in the criminal justice process.

In both the 1978 document and the 1973 Bishops' statement, The Reform of Correctional Institutions in The 1970s, the issue of involving the offender in providing restitution to the victim was addressed. It was suggested that provisions might be made, as part of compensation programs, for the offender to share the responsibility of at least partial recompense to the victim. This would, however, depend on the offender being paid at a fair rate for the work done in confinement. We support the provision in H.R. 1899 that encourages consideration of offender restitution efforts by the state programs, but are concerned that care is taken to ensure that the offender has the means to pay restitution. Copies of the aforementioned documents have been enclosed for your information.

In conclusion, we would urge the Subcommittee to report favorably on H.R. 1899. It represents a significant and positive effort in the criminal justice area.

Sincerely yours,

FRANCIS J. LALLY,
Secretary.

STATEMENT OF PROF. ROGER E. MEINERS, PH. D., J.D., DEPARTMENT OF MANAGEMENT, COLLEGE OF BUSINESS ADMINISTRATION, TEXAS A&M UNIVERSITY, COLLEGE STATION, TEX.[1]

In the age of "the politics of austerity" it seems unlikely that Congress should consider passing a potentially expensive social program. Especially one that would impose federal intervention into an area already partly provided for by the private sector. This does not mean that worthwhile new programs should not be adopted. It is possible to undertake actions that would benefit an afflicted group that potentially includes all Americans: the victims of crime. Unfortunately, the proposed legislation will not accomplish that goal.

As is frequently the case with proposed legislation, Congress has been provided an optimistic cost estimate by an agency which stands to gain budget and power by passage of the legislation. Can anyone seriously believe that for a few tens of millions of dollars that anything substantive could be done for the millions of victims of crime we have every year in this country? If we are serious about providing public support for crime victims, then we should admit that even a modest effort will be expensive.

An estimate of the number of victims of violent crimes resulting in injury can be determined by using statistics provided by the comprehensive victimization survey taken by the LEAA. The estimates of criminal victimization provided by the LEAA surveys (Table 1) are used rather than the FBI's "Uniform Crime Reports", which have been the traditional source of estimates of victimization. The LEAA surveys have revealed that most crimes are not reported to the police. Victim compensation would provide an added incentive for victims to

[1] A more comprehensive review of the topic is in the author's book, "Victim Compensation: Economic, Legal, and Political Aspects," Lexington Books, 1978.

report their victimization to the police. This estimate excludes some crimes which potentially would also be compensated, such as murder, arson, and crimes inflicted on persons under 12 years of age. It also excludes millions of crimes "when the extent of the injury was minor (e.g., bruises, black eyes, cuts, scratches, swelling) or is undetermined but requiring less than 2 days of hospitalization."

TABLE 1.—VICTIMIZATION RATE PER 1,000 POPULATION AGE 12 AND OVER FOR INCIDENTS RESULTING IN INJURY[1]

Crime	1974 rate	Total number
Rape and attempted rape	1.0	164,562
Robery with injury	2.3	378,493
Aggravated assault with injury	3.3	543,055
Simple assault with injury	3.5	575,967
Total		1,662,077

[1] Population age 12 and over was 164,600,000. Injury is defined as "serious injury (e.g., broken bones, loss of teeth, internal injuries, loss of consciousness) or in undetermined injury requiring 2 or more days of hospitalization."

Source: National Criminal Justice Information and Statistics Service, "Criminal Victimization in the United States: A Comparison of the 1973 and 1974 Findings," National Crime Panel Survey Report, No. SD-NCP-N3 (Washington, D.C.: U.S. Government Printing Office, 1976).

Assuming that only six percent of the crimes with injury were compensated, there would be approximately 100,000 awards nationally in 1979. The six percent figure was determined by my study to be a realistic figure, given the nature of the compensation plans used in various states today, and based upon the experience of several states. The mean compensation award is assumed to be $5,000. This is based on the experience of several states which have programs within the federal guidelines. The estimated award is consistent with the 1977 estimate of CBO.

Multiplying these figures would yield a total compensation bill of $500 million nationally for 1979. This amount ignores administrative costs that would probably add at least another 10 percent to this total. Considering that both the crime rate and hospitalization costs are increasing, an estimate of over a one-half billion dollar annual outlay for the early 1980s would not seem out of order.

However, this estimate is based on the assumption that compensation is instituted in every state, in response to the federal program, and that each state reaches a level of awards projected by the Washington and Maryland experiences. This estimate does not reflect the subsidy effect on the *size* of the program. Once the impact of a 50 percent subsidy is taken into account, the states would be found to engage in *more* compensation than they would have without federal assistance. Assuming a constant level of demand on the part of the state legislators for compensation, the program would *double* in size in each state, which would mean national compensation expenditures of over $1 billion annually, of which the federal government would be responsible for at least $500 million.

This would be achieved by increasing the size of the average compensation payment as well as by increasing the number of compensation awards granted in each state. With a 50 percent federal subsidy, if a state grants $10,000 per award, the cost to the state remains at $5,000. A state could also continue to make awards averaging $5,000, but make two times the number of payments, and the federal subsidy would leave the cost to the state constant. What would emerge in practice is uncertain, probably some combination of the two extremes. The important point is the potential for growth of the compensation programs that could occur due to the impact of the federal subsidy.

The incentives for state legislators to support victim compensation are easy to discern. If they do not support compensation they allow federal tax dollars paid by their state residents to be shifted to states which have the program. The federal subsidy reduces the price to a state of providing a compensation program. Once the federal program is implemented, if the federal government pays 50 percent of the outlays of the state programs, the cost of compensation falls to one-half of its actual level from the perspective of the state legislators. Many states have not implemented compensation programs on their own volition because the expenditures outweigh the benefits perceived by the legislators. With federal subsidization, the price of providing awards to victims as seen by legislators falls. Then they would have the incentive to begin and expand such programs. The legislators are faced with the choice of financing compensation to get the federal subsidy or allowing their constituents to pay federal taxes for the programs in other states.

By now Congress should have learned an expensive lesson from the practice of paying some percent of the cost of state programs—it gives the states incentives to continuously expand the programs at the expense of the federal government. Once locked into such programs withdrawal by the federal government becomes nearly impossible.

Public compensation is structured to have the taxpayers provide a balm for the suffering of innocent victims of crime. Once enacted it may reduce the chances for institution of a restitution program, by which criminals would make payments to their victims. If victims are compensated by the state, the demand for satisfaction from the criminals may be reduced, so that the basic problem, crime, will not be addressed.

Like many governmental programs, victim compensation is designed with the best of intentions, and appears to cost relatively little to achieve a desirable goal. In reality, victim compensation threatens to emerge as another tentacle of leviathan, encompassing far more in territory and dollars than ever envisioned. Numerous similar stories have unfolded in recent years and victim compensation would seem likely to offer one additional instance of such bureaucratic growth.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., February 9, 1979.

To: House Criminal Justice Subcommittee. Attention: Tom Hutchison.
From: Education and Public Welfare Division.
Subject: Costs of State crime victim compensation programs, and number of violent crimes in States with victim compensation programs.

Per your request for assistance in preparing for hearings on crime victim compensation legislation, we have gathered the following information concerning those States which already have crime victim compensation programs.

I. COSTS OF STATE CRIME VICTIM PROGRAMS

State and budget year dates	Payments to victims	Administrative costs	Total program cost
Alaska (July 1, 1977, to June 30, 1978)	285,672.63	73,883.78	359,556.40 [1]
California (July 1, 1977, to June 30, 1978)	5,025,288.84	867,306.96	5,892,595.84
Delaware (July 1, 1977, to June 30, 1978)	146,872.92	87,941.82	234,814.70
Florida (Jan. 1, to Dec. 31, 1978)	463,599.00	377,845.00	814,444.0
Hawaii (Jan. 1 to Dec. 31, 1978)	245,802.36	61,290.00	307,092.36
Illinois (July 1, 1977, to June 30, 1978)	1,082,214.26	[1] NA	NA
Kentucky (July 1, 1977, to June 30, 1978)	66,902.16	[2] 24,417.15	91,319.31
Maryland (July 1, 1977, to June 30, 1978)	1,192,305.00	140,234.00	1,332,539.00
Massachusetts (July 1, 1977, to June 30, 1978)	1,124,972.18	[1] NA	NA
Michigan (Oct. 1, 1977, to Sept. 30, 1978)	533,000.00	95,000.00	628,000.00
Minnesota (July 1, 1977, to June 30, 1978)	372,625.00	51,375.00	424,000.00
New Jersey (July 1, 1977, to June 30, 1978)	919,045.11	167,298.00	1,086,344.11
New York (Apr. 1, 1977, to Mar. 31, 1978)	4,313,078.00	739,317.00	[3] 5,052,395.00
North Dakota (July 1, 1977, to June 30, 1978)	26,161.22	24,269.76	50,430.98
Ohio (July 1, 1977, to June 30, 1978)	1,242,753.00	316,326.54	1,559,079.54
Oregon (Jan. 1, 1978, to Dec. 31, 1978)	132,783.00	[4] NA	NA
Pennsylvania (July 1, 1977, to June 30, 1978)	269,922.52	237,586.00	507,508.52
Virginia (July 1, 1977, to June 30, 1978)	247,376.32	30,556.00	277,932.32
Virgin Islands (July 1, 1977, to June 30, 1978)	62,587.59	14,204.27	76,791.86
Washington (July 1, 1977, to June 30, 1978)	983,610.00	155,926.00	1,139,535.00
Wisconsin (Jan. 1 to Dec. 31, 1978)	513,751.26	99,270.51	613,021.77
Total payments to victims	19,250,323.37		
25 pct Federal share	4,812,580.84		
50 pct Federal share	9,625,161.69		

[1] Administrative costs of victim compensation program combined with those of Attorney General's office and Court of Claims. Breakdown not available.
[2] Cost of claim investigators only. Administrative costs of victim compensation program combined with those of Board of Claims. Breakdown not available.
[3] New York projects a total cost for the current fiscal year (Apr. 1, 1978 to Mar. 31, 1979) of $5,359,000—$4,000,000 to $4,500,000 for payments to victims and $859,000 for administrative costs.
[4] Not available until July 1, 1979.

Note: Programs too recently established to have cost figures available are: Connecticut (January 1979), Indiana (June 1978), Kansas (August 1978), and Tennessee (July 1978). Rhode Island and Louisiana have passed laws which will establish programs if Federal funding becomes available. Nevada and Georgia have "Good Samaritan" programs which award compensation to victims only if they were injured while attempting to prevent a crime. In Nevada a total of $5,178.10 has been awarded since 1975; in Georgia only 1 award of $5,000 has been made.

II. NUMBER OF VIOLENT CRIMES IN STATES WITH VICTIM COMPENSATION PROGRAMS (1977)[1]

Alaska	1,804
California	154,582
Connecticut	8,774
Delaware	2,224
Florida	58,052
Hawaii	2,012
Illinois	50,829
Indiana	16,553
Kansas	7,206
Kentucky	8,077
Louisiana	20,577
Maryland	28,716
Massachusetts	24,593
Michigan	53,381
Minnesota	7,705
New Jersey	28,732
New York	149,087
North Dakota	438
Ohio	43,521
Oregon	10,830
Pennsylvania	33,328
Rhode Island	2,820
Tennessee	16,743
Virginia	14,893
Washington	13,714
Wisconsin	6,117
Total	756,534

[1] Not including states with "Good Samaritan" programs only and the Virgin Islands.
Source: FBI Uniform Crime Reports, Crime in the United States, 1977.

The total number of violent crimes in these 26 States with victim compensation programs (756,534) represents 75 percent of the total number of violent crimes in the United States for 1977 (1,009,499) as reported by the F.B.I. The total number of violent crimes for the 20 States for which cost information was available is 683,862, or 67 percent of the total violent crimes in the U.S. in 1977.

We hope this information was helpful to you. If we may be of further assistance please feel free to contact us.

BARBARA MCCLURE.

Mr. DRINAN. The meeting is adjourned .
[Whereupon, at 3:30 p.m., the hearing was adjourned.]

COMPENSATING CRIME VICTIMS

TUESDAY, APRIL 3, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 1:10 p.m., in room 2141, Rayburn House Office Building, Hon. Robert F. Drinan (chairman of the subcommittee) presiding.

Present: Representatives Drinan and Kindness.

Staff present: Thomas W. Hutchison, counsel, and Raymond V. Smietanka, associate counsel.

Mr. DRINAN. The subcommittee will come to order.

There is a record vote underway, and without objection, we will suspend the beginning of the hearing until the members have voted. We will resume in about 7 or 8 minutes.

[Recess.]

Mr. DRINAN. The subcommittee will come to order.

The subject of today's hearing is H.R. 1899, the Victims of Crime Act of 1979. Several people have already testified in support of H.R. 1899—Representative Peter W. Rodino, the chairman of the Committee on the Judiciary; Representative Claude Pepper, the chairman of the Select Committee on Aging; Representative Edward Roybal, the chairman of the Aging Committee's Subcommittee on Housing and Consumer Interests; Hon. Eric Younger, judge of the Los Angeles Municipal Court, who testified on behalf of the American Bar Association; Prof. Paul F. Rothstein, who drafted the Uniform Act recommended by the National Conference of Commissioners on Uniform State Laws; and David H. Marlin, director of legal research and services for the elderly, National Council of Senior Citizens.

We are honored to have testify today the attorney general of North Carolina. As the top law enforcement officer in his State, he is uniquely qualified to speak to the need for crime victim compensation programs, as well as to the appropriateness of Federal assistance to the States. I am certain that his testimony will be most helpful.

We had hoped to have California attorney general George Deukmejian testify. Unfortunately, due to the strike at United Air Lines, he was unable to fly out from the coast. He is submitting a statement in support of the legislation, and unless there is objection, his statement will be made a part of the record when received.*

I regret that General Deukmejian cannot be here as planned, but I understand his problem. The record will reflect his support for the legislation.

*No statement was received from General Deukmejian.

At this time, I want to call upon a good friend and colleague, a former member of this subcommittee and a lamented nonmember now, Congressman Lamar Gudger, for the purpose of introducing the distinguished attorney general of his own State, the Honorable Rufus Edmisten. Representative Gudger is an alumnus of this subcommittee and last year helped draft, and was a cosponsor of, the victim compensation bill reported by the committee last Congress.

Mr. Gudger, please proceed.

TESTIMONY OF HON. LAMAR GUDGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. GUDGER. Mr. Chairman, I consider it a privilege to be permitted to present to this committee its next witness. As the chairman has observed, it was my privilege to serve on this subcommittee and to support its victim of violent crimes bill in the 95th Congress.

It was at that time that I learned the viewpoint of this witness and his interest in this amendment. Since 1974, Rufus Edmisten has served as the attorney general of North Carolina, my home State, but he comes to Washington with other impressive credentials.

For example, he is a member of the bar of the U.S. Supreme Court, the Court of Appeals of this district, and the U.S. Court of Military Appeals. He is also a member of the American Bar Association, the District of Columbia Bar Association, and of course, the bar association of his home State.

Perhaps more interesting to this committee, however, is the fact that for 10 years, he was chief aide to North Carolina's U.S. Senator Sam Ervin, Jr., during the Watergate period and served as counsel to the Senate Select Committee on Presidential Campaigns, sometimes known as the Watergate Committee.

Some may remember him when he was serving as counsel, Senate Subcommittee on Separation of Powers, which was dealing with the very question of Presidential prerogatives at the time of the Watergate incident. In his capacity as attorney general of the State of North Carolina, Rufus Edmisten has added to his considerable knowledge and understanding of basic constitutional and legal principle.

Also, as an attorney general of that State, he and his staff are charged with drafting substantially all of the legislation presented to the North Carolina General Assembly. In other words, he is not only an expert on the laws of his State, past and present, but expert on those laws which are due to be enacted by North Carolina's General Assembly, which is now in session.

I believe that because of these qualifications, you will find his testimony particularly meaningful, and it is a great honor for me to have the opportunity to present to you, Mr. Chairman, the members of your committee, Rufus L. Edmisten, attorney general of the State of North Carolina.

Chairman DRINAN. Thank you very much, Mr. Gudger. I, too, concur with the sentiments which you enunciated and deem it a great honor to have you here, Mr. Attorney General.

You may proceed in the manner you see fit.

You have submitted a prepared statement that will, without objection, be made a part of the record.

[The complete statement follows:]

PREPARED STATEMENT OF RUFUS L. EDMISTEN, ATTORNEY GENERAL, STATE OF NORTH CAROLINA

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you and testify in support of H.R. 1899, the Victims of Crime Act of 1979.

Crime prevention and crime detection are major concerns in the State of North Carolina and in all of the states. My duty as Attorney General of the State of North Carolina, and the duty of all public officials is to protect our citizens. Nationally hundreds of millions of dollars are spent every year to improve police departments, to make court systems more efficient, to protect the right of the accused, to develop innovative approaches to prosecuting serious and repeat offenders, and to insure humane treatment of those convicted and incarcerated. We attempt to catch, punish and rehabilitate offenders. We strive to deter criminal activty.

The problem we are confronted with is that no matter how great our efforts, no matter how much money is spent, and no matter how successful the results of our efforts, there will always be crime and there will always be innocent victims of criminal violence. The question arises as to what we should and can do when we fail, as ultimately we must, in our obligation to protect all of our citizens.

We must, of course, continue to concentrate our money and efforts at combatting crime, but we cannot ignore the most tangibly tragic aspect of crime—the plight of its victim. The innocent victim of crime bears alone the loss of property and the economic burdens of unreimbursed medical expenses and lost earnings. Recognizing that crime is a social phenomenon which cuts across the very fabric of our society, should we permit the economic consequences of crime to be borne disproportionately by those innocent citizens unfortunate enough to be in the wrong place at the wrong time? By those who are out of work, or elderly, and can afford it least?

It can be said truthfully that a crime victim is victimized twice. Once by the wrong doer and once by the criminal justice system. Crime victims are victimized by the criminal justice system in a number of ways. First, too few criminals are apprehended. Society, which has a duty to protect its citizens, has failed to protect against the commission of the wrongful act and that failure is compounded by the failure to apprehend and punish the wrong doer.

Second, when the wrong doer is caught the criminal justice system operates with an attitude which appears to assign a low priority to the welfare of the victim. Society expects so much from the victim, but gives so little in return. Victims are expected to assist police and prosecutors, to the extent of taking time off from work if necessary. Cases are handled by those in authority to suit their own schedules, not the victims. Cases are set for trial and cancelled and reset for the convenience of the judge, the lawyers and the defendant, often with little concern for the convenience of the victim.

The success of our criminal justice system depends upon the willing and patient cooperation of those victimized. Deterrence, detection and punishment of crime depend upon such participation. Can we in good conscience ask innocent victims to endure the trauma and inconvenience of that participation, but leave them alone to bear the cost and trauma of the crime itself.

Is there a federal interest in providing financial reimbursement to alleviate some of the burdens born by the innocent victims of crime? Is there a federal interest in

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demonstrating that government has concern for victims of violent crime? The answer is obvious. The federal obligation and interest are self evident. Crime transcends state boundaries. Criminals do not observe jurisdictional lines. Criminals move about in this day and age of vast and speedy mobility leaving behind shattered lives. Just as the separate law enforcement agencies of our cities, counties, states, and the U.S. government combine and work together in a coordinated network to deter and apprehend criminals, so to should the states and their federal government combine together to address the injuries inflicted on innocent citizens.

The common purpose and interests of the states and the federal government in crime have always been recognized and are evidenced by the large federal expenditures assisting states in the fields of law enforcement and criminal justice. The federal government is involved monetarily in state law enforcement efforts with its substantial LEAA appropriations.

Federal law enforcement activities affect crime problems faced by the states. The importation and flow of illicit drugs and guns, racketeering and organized crime, are particulary federal concerns and responsibilities. Thus, the federal government shares with the states the failure to protect our citizens. That failure makes monetary assistance for innocent crime victims an appropriate federal response to the crime problem in this country.

The federal efforts in assisting local law enforcement will be enhanced by the crime victims compensation program. The reimbursement program will encourage citizens to report crimes promptly and to assist law enforcement officers. This increase the chances that perpetrators will be apprehended and convicted. It is common sense, that where the government demonstrates its concern for its citizens, its citizens in return will be more inclined to fulfill their vital roles of participating in our criminal justice system. The federal government as well as the states, will reap the benefits where some measure of faith is restored in our people's belief in our system of justice.

The proposed victims compensation bill is a recognition of the importance of victim participation in our criminal justice system and a recognition of the unfairness of requiring them to bear the total economic brunt of criminal violence which society has failed to prevent.

I wish to inform you that in North Carolina I am strongly endorsing a State victims compensation program. I personally requested this legislation. Last week a bill which parallels the proposed federal legislation was approved by the State Senate's Law Enforcement and Crime Control Committee. The proposed North Carolina legislation will only become a reality if the United States Congress enacts a victims compensation program which will partially reimburse the State for the costs of such a program. The effective date of the Victims Compensation Bill has been preconditioned of federal assistance.

This is an important matter to me, and your support of federal legislation is vital. I invite your questions.

TESTIMONY OF RUFUS L. EDMISTEN, ATTORNEY GENERAL, STATE OF NORTH CAROLINA

Mr. EDMISTEN. Mr. Chairman, I would say in the words that Senator Ervin used to say upon hearing the introduction of Lamar Gudget: "May the guardian angle shed a tear on the very eloquent enunciation of my past."

I am particularly happy to be back up to Congress. I did serve 10 years in the other body, and I saw a lot of bills that were not worth anything and a lot that were worth a lot. I am thoroughly convinced that this is one that means so much to the American people.

Now, I am not going to read much of this statement here. I have some deep views about victims compensation. As attorney general, as Congressman just said, I am the State's chief law enforcement officer in North Carolina.

The rapings, the murderings, the robbings are commonplace on all of our States. I must say, Mr. Chairman, Congressman, that I have

become very disgusted on so many occasions when I see absolutely billions of dollars in this country and in all of our States expended on those who are accused of committing crimes, while absolutely nothing, in most States—there are about 20 now that have some form of victim compensation—nothing is expended in my State and many others, on that poor, hapless person who happens to be the victim of crime.

It is my observation that in the overwhelming majority of the cases, those who are victims of crime are already poor. They are already ignorant in many instances, uneducated, and they can least afford the acts of the violent criminals.

In no way am I detracting from our effort in this country to rehabilitate people. I don't like to hear that talk. Almost everywhere I go, people say: Lock him up. Throw the key away. Don't try to rehabilitate. I would never say that.

So, I do not detract, Mr. Chairman, one bit from that concept to say we should continue. However, it makes me sick to see time and time again, innocent victims of crime and nobody cares about them at all, except their families and friends.

One of their greatest friends should be the courts of our land, and they happen, on many occasions, to become their enemies, because the victim is the last one anybody ever thinks of.

I will give one example of why I think that the Congress ought to pass this bill. I have a personal friend who lives on a little mountain road that leads from Wilkesboro, N.C., to Boone, my hometown. He runs an apple shop in the season of the year when the apples become ripe. He is totally handicapped and is in a wheelchair, but he is able to drive his special equipped truck down to his apple stand every year.

Last fall, when the apples were beautiful and ripe, as they always are in western North Carolina, my friend, Mr. Newland Welborn was there running his apple shop, minding his own business.

That afternoon, three hoodlums came by and they came into the shop where Mr. Newland Welborn was running his apple stand. All they had to do was take their finger and push Newland Welborn away in his wheelchair and say: I want your money.

That did not satisfy these very brave individuals. They took a huge stick and they beat my friend, Newland Welborn. He was in a wheelchair, and they beat him almost to a pulp. He went to Baptist Hospital in western Salem, N.C., where was unconcious for a number of days.

He finally recovered, but they wrecked his truck in the meantime, during the robbery. They took the money. They took everything he had. I happen to know that Newland Welborn did not have any insurance. He had absolutely nothing. Nobody, except the friends that Newland Welborn has, and his family cared a thing about Newland Welborn.

The other persons have subsequently been tried. One was convicted. One was not, Their sentences were extremely light, and in no way whatsoever has that person, who worked so very hard all of his life, received one penny of compensation.

I simply use that as an example, Mr. Chairman. It happens hundreds of times every day throughout this great land; these things, and that is not the worst one I could give.

Crime prevention and crime detection are major concerns in the State of North Carolina and in all of the States. My duty as attorney general of the State of North Carolina, and the duty of all public officials is to protect our citizens. Nationally, hundreds of millions of dollars are spent every year to improve police departments. We get millions in my department to make court systems more efficient.

LEAA has said that our court systems will receive a huge share of all LEAA funds to protect the rights of the accused. There are literally billions of dollars that are sent down to the States to set up legal aid societies, other organizations to protect the rights of the accused, to develop innovative approaches to prosecute an offender and to insure their incarceration.

We attempt to catch, punish, and rehabilitate offenders. We strive to defer criminal activity. The problem we are confronted with is, no matter how great our efforts, no matter how much money is spent, no matter how successful the results or efforts, there will always be crime and there will always be innocent victims of criminal violence.

The question arises as to what we should and can do, when we fail, as we ultimately must, in our obligation to protect all of our citizens.

We must, of course, continue to concentrate our money and efforts at combating crime, but we cannot ignore the most tangibly tragic aspect of crime—the plight of its victim. The innocent victim of crime bears alone the loss of property and the economic burdens of unreimbursed medical expenses and lost earnings. Recognizing that crime is a social phenomenon which cuts across the very fabric of our society, should we permit the economic consequences of crime to be borne disproportionately by those innocent citizens unfortunate enough to be in the wrong place at the wrong time? By those who are out of work, or elderly, and can afford it least?

It can be said truthfully that a crime victim is victimized twice. Once by the wrongdoer and once by the criminal justice system. Crime victims are victimized by the criminal justice system in a number of ways. First, too few criminals are apprehended. Society, which has a duty to protect its citizens, has failed to protect against the commission of the wrongful act and that failure is compounded by the failure to apprehend and punish the wrongdoer, as much as we try to do it.

Second when the wrongdoer is caught, the criminal justice system operates with an attitude which appears to assign a low priority to the welfare of the victim. Society expects so much from the victim, but gives so little in return. Victims are expected to assist police and prosecutors, to the extent of taking time off from work if necessary. And most often that is the case. Cases are handled by those in authority to suit their own schedules, not the victims. Cases are set for trial and canceled and reset for the convenience of the judge, the lawyers, and the defendant, often with little concern for the convenience of the victim.

The success of our criminal justice system depends upon the willing and patient cooperation of those victimized. Deterrence, detection, and punishment of crime depend upon such participation. Can we in good conscience ask innocent victims to endure the trauma and inconvenience of that participation, but leave them alone to bear the cost and trauma of the crime itself?

Is there a Federal interest in providing financial reimbursement to alleviate some of the burden borne by the innocent victims of crime? Is there a Federal interest in demonstrating that Government has concern for victims of violent crime? The answer is obvious. It is certainly yes. The Federal obligation and interest are self-evident. Crime transcends State boundaries. Criminals do not observe jurisdictional lines or powers. I have not seen one yet who does. Criminals move about in this day and age of vast and speedy mobility leaving behind shattered lives. Just as the separate law enforcement agencies of our cities, counties, States, and the U.S. Government combine and work together in a coordinated network to deter and apprehend criminals, so too should the States and the Federal Government combine together to address the injuries inflicted on innocent citizens.

The common purpose and interests of the States and the Federal Government in crime have always been recongized and are evidenced by the large Federal expenditures assisting States in the fields of law enforcement and criminal justice. The Federal Government is involved monetarily in State law enforcement efforts with its substantial LEAA appropriations.

Federal law enforcement activities affect crime problems faced by the States. The importation and flow of illicit drugs and guns, racketeering and organized crime, are particulary Federal concerns and responsibilities. Thus, the Federal Government shares with the States the failure to protect our citizens. That failure make monetary assistance for innocent crime victims and appropriate Federal response to the crime problem in this country.

The Federal efforts in assisting local law enforcement will be enhanced by the crime victims compensation program. The reinbursement program will encourage citizens to report crimes promptly and to assist law enforcement officers. This increases the chances that perpetrators will be apprenhended and convicted. It is commonsense, that where the Government demonstrates its concern for its citizens, its citizens in return will be more inclined to fulfill their vital roles of participating in our criminal justice system. The Federal Government, as well as the States, will reap the benefits where some measure of faith is restored in our people's belief in our system of justice.

The proposed victims' compensation bill before your committee, Mr. Chairman, is a recognition of the importance of victim participation in our criminal justice system and a recognition of the unfairness of requiring them to bear the total economic brunt of criminal violence which society has failed to prevent.

And I would like to inform you that North Carolina now has a victims compsensation bill before its general assembly. I sponsored the bill because I feel so strongly about it. That bill that I sponsored includes a provision that says it will become effective the next fiscal year after Congress passes legislation like yours, Mr. Chairman. And I think, if I said nothing else, that would be reason enough to pass this legislation. Frankly, the very reason that I pushed and chaperoned the bill is because I knew I could get some help from the Federal Government, and my general assembly would pass the bill if they felt they could get some seed money, some startup.

On behalf of Congressman Gudger, whom we love dearly in North Carolina, I want to thank the committee and say that I speak for

thousands of victims of crime who would like to be treated just a little bit fairer than they have been treated before, Mr. Chairman.

Chairman DRINAN. Thank you very much, Mr. Attorney General, for a very eloquent and forceful statement. And I commend you upon the initiative that you have taken in arranging that that Senate, in your great State would approve of this and reported favorably.

I wonder, Mr. Attorney General, would you develop one point that is made in your legislation, where you say at the bottom of page 2 and elsewhere, that the reimbursement program will encourage citizens to report crimes promptly and to assist law enforcement officers?

We have had testimony, not quite as eloquent as yours, but nontheless probative, that talks about the victims. And your story, I'm certain, about the crippled man who was victimized is very powerful. But could you elaborate a bit on another point? Namely, that the law enforcement officers of this country also need this law because this would help them in their difficult task of prosecuting the law?

Mr. EDMISTEN. I noticed in H.R. 1899 that the bill mandates that we have certain reporting procedures in our legislation. We have that in North Carolina's law. And it is very common thoughout law enforcement that we have difficulty in getting people to be participants and witnesses to crimes. I have dozens of people who walk up to me and say: Mr, Attorney General, I've seen a lot of illegal things happen, but I'm not going to get involve. I don't want to.

Our greatest difficulty in law enforcement, in proscecuting serious crimes is getting the witnesses to feel like they are part. Well, the reason that some of them don't want to take a part is No. 1: they feel like they're going to be a street tramp. And I say that very seriously.

In so many of our courts, you have a husband and a wife who are both working. One of them is called to be a witness in a case, or could be a witness, let's say. But that husband, who is maybe going to be a witness says: I'm going to have to take off work. He comes in on Monday morning. And it may be Friday before he is called to the stand. And I have known times when it has gone for weeks.

The man has been out of work. He has no provision in his industry to be compensated for being out of work. He has not been a witness, so he doesn't get a witness fee.

Well, there are many people who are victims of crime who do not report that because they simply know what they are going to have to go through and they can't be conpensated anyway.

I know that this holds up law enforcement because crass as it may seem, money does talk in this area and for that person who makes 150 bucks a week at a factory, you know, to miss 2 or 3 days work is a great burden on that person.

I think it would help us tremendously. And it says in our North Carolina bill, as dictated by this committee's bill, that persons must report the crime within 72 hours. And that our Victims Compensation Board will establish—would not compensate a person who had not reported it within 72 hours unless there was some reason they couldn't. Obviously, if they are unconscious, like my friend was, they can't report the crime.

I think it would be a tremendous aid to law enforcement. It would set an atmosphere of come on, we're going to treat you as part of it and not make you the scapegoats for everything.

Chairman DRINAN. Thank you for a very fine answer on a related point. I wonder if in the course of the bill passing in your State, whether some people along the line question the propriety of Federal legislation in this area.

Was the argument made and if so, how would you refute it? Was the argument made that the enforcement of State laws a responsibility of local governments and that if the State wants to compensate its victims, that's perfectly acceptable but that we should not have the Federal Government involved in the matter?

Mr. EDMISTEN. Mr. Chairman, of course, in my State as in many others, a lot of State legislators are frightened of any kind of "Federal program" because they say: What strings are attached to this?

Frankly, in this bill, there are no strings attached, if you draw a proper bill, and I don't think anything about the Federal guidelines in there are stringent or improper. And to my mind, the uniformity that this will attempt to create throughout the country will be very salutary.

If you happen to be in one of the States now—Maryland, New York—and you are victimized by criminal activity, you have some hope of being made maybe a little bit whole. If you drive through North Carolina or South Carolina and you are mugged, you've got nothing.

I think creating uniformity is what the Congress ought to encourage. And I've had no problem with the Federal involved here from home. They are very anxious for the Congress to pass this enforcement.

I would personally prefer the 50-percent funding.

Chairman DRINAN. Thank you very much. It's good to know that people are waiting upon the words and the action of the Congress of the United States. I'm happy to yield at this time to the ranking minority Congressman, Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman, and I thank you, Mr. Attorney General for a very good presentation.

The one question that occurs to me is what is the position of the Governor of North Carolina with respect to the legislation?

Mr. EDMISTEN. Yes, the Governor supports my concept.

Mr. KINDNESS. Second, I'm inclined to think of any program that attempts to spread the risk in terms of sorts of insurance definition, is that I think tends to be—and I go back to when I was a boy and the people who drove automobiles had an entirely different view of liability when an accident occurred than is the case today.

So frequently today, you will find people involved in an accident not the least bit concerned with whose fault it was, but ratner, which insurance company is going to pay, and so on. And with complete unconcern about blame, or fault as far as they are concerned in driving, either that day, or any subsequent day.

And it concerns me just a little bit that legislation of this sort that we are considering here may come to be viewed in this similar line. That is, that those who might seek to perpetrate crimes involving another person might feel that much freer to pursue that course because somebody is going to compensate the crime victim.

Would you care to comment in this area at all?

Mr. EDMISTEN. Congressman Kindness, I have dealt with a lot of criminals throughout a long history, and I don't believe that one of

them has ever thought about whether they would get the death penalty if they committed a certain crime.

I am not arguing for or against the death penalty. We have it in North Carolina and I intend to argue it at the proper time before the Supreme Court. But, I have not found any criminals who think at all whether they are committing crimes. I don't believe if we passed this legislation, that we would, in any way, encourage people to commit crimes.

I don't think there are any statistics in the States which now have a Victims Compensation Board that would lend any weight for a proposition that they might commit more crimes. I just don't believe that they think of anything when they are attempting to commit a crime.

Our particular bill is not going to allow complaints to be filed or applications to be filed for traffic accidents. If someone runs a stop sign and they injured a person, that is not covered by this. But, if that person is in a car and he deliberately tries to run over the Attorney General because he didn't like the fact that I put his brother in jail for pushing dope, that would be a criminal act with a motor vehicle.

To answer your question succinctly, I don't believe it would make one hair of difference to any criminal. Because those that commit crimes, they don't think. They just want to be brutal, regardless.

Mr. KINDNESS. One other aspect of this I guess is this matter of reporting crimes promptly and cooperating in the prosecution of them. I think that there is a definite problem which you have addressed in your testimony. Victims of crime and witnesses generally being treated as though they were very much incidental to the whole judicial process.

But, I wonder whether we address that question best, No. 1, from the Federal level; and No. 2, by means of this sort of legislation. What we are presumably addressing on this legislation is an entirely different matter—the compensation of the victim for certain parts of the monetary damage that may be sustained. They are still going to be subjected to the same delays and problems in terms of the conduct of the prosecution in court.

Someone saying: Maybe we ought to be putting resources in the direction of removing some of those problems of dealing with the prosecution of the cases and treating the witnesses in a more realistic and proper manner.

Would you care to comment on that?

Mr. EDMISTEN. Congressman, we are, at the present time, supplying millions of dollars through LEAA funds to the States to try to make our court systems work better. I don't know what you could do to make them work better. I am rather proud of ourselves in North Carolina, but we have got a lot of improving to do.

But, I believe very sincerely, if you can get an atmosphere created in one little way that this bill might do, that it will help down the road. Now, I don't know of anything that is done for a witness or say, a victim who is going to be a witness now, that is not done 20 times over for a criminal defendant.

The whole system is just simply geared toward those who are accused of crimes. And I don't think massive amounts of money have done that much to do some of the things we want to do in our courts.

I am not saying cut it off. But, I think in many ways, LEAA money has just given more money in some instances to continue the practice that you have been doing before a little bit better.

If that practice happened to be one that wasn't very good, it just perpetuated in a bigger way. I think this is direct compensation here. Our bill is drawn very tightly. You can't get any compensation where you had insurance or any of those sorts of things. It just recognizes that society is getting a little bit sick and tired of seeing all of this money spent on those who commit these crimes.

Mr. KINDNESS. Just as one string of a spider's web doesn't have a great deal of strength. Once it gets parlayed with others into its structure, a spider's web has a great deal of strength.

Similarly, the Federal requirements, guidelines, regulations surround local governments today, and is the way we get stronger all the time. And while I will certainly acknowledge that, as you stated in your testimony, this particular legislation doesn't have the strings attached that would ordinarily be so objectionable, I would submit and ask your comment on this: I would submit that this is one other string in a web that is growing all the time. Suppose, for example, those who would like to do so were successful in getting an amendment on this bill on the floor, that required that in order for States to participate in this program with the Federal reimbursement, they must meet certain requirements with respect to the condition of their jails and prisons.

I don't know where North Carolina stands right now. I have a fair idea of what is happening in Ohio and how many county jails we are probably going to be seeing closing down within a short time, if we can't do something rather drastic.

But, suppose this is one other tool of the Federal Government to tell the State of North Carolina: You can't have any participation in this program unless you meet certain standards over here and over here. Isn't there a danger of this occurring and "this" being one of the strings in the web?

Mr. EDMISTEN. Well, Congressman Kindness, were that to be the case, I would hold up my right hand and swear on a Bible that we wanted nothing to do with it.

This week, some 20 attorneys general in Washington, were talking with Federal officials about some of the matters you just mentioned. I know how bureaucracies grow. I was working for Senator Irvin for 10 years. I know I shouldn't be offering advice, but I think the trouble is that the Congress has too many of these delegations of powers on hand.

When I see a piece of legislation in my State now that says: And the secretary is hereby authorized to issue such rules and regulations as he or she may deem necessary, I try to talk the person out of it. Because I think that is one of the things that has caused all of the recessments between the States and the Federal Government.

I think that is a great cause of inflation today. Millions of dollars that we spend to comply with certain matters of HEW and others, I would not want the bill, and would not apply for any Federal money if it had those. Because I think compensating victims should not be held hostage for some other idea that some other person thought was socially beneficial.

Mr. KINDNESS. I understand what you are saying. And I admire the attitude that is expressed there. But, I wonder whether we don't sometimes get outselves deeper and deeper into this web by building the reliance upon participation in Federal programs?

This is, on its face, a very desirable program, I think. It is proposed in legislation. Whether it comprises one more string in the web, that if taken away, would then be a very serious political problem and governmental problem, but applies down the road, that could occur if we don't have jails and prisons that comply with all guidelines and standards. In Ohio, maybe this would happen to us.

We have victims of crime compensation measure there, too. I would just urge that we not be too quick to accept the concept that this legislation standing alone, cannot enmesh us further into the web.

Mr. EDMISTEN. May I answer this, Congressman? As I understand, this is a one-shot deal to encourage the States to set up their own victims compensation programs. And once we have done that in North Carolina, we get the help the first time from the Federal Government, and then I suppose we can apply again.

But, I would hope that my General Assembly of North Carolina would pick it up entirely. I think this is sort of comparable to the medicaid fraud units. One of the few things I have taken recently, the Department of HEW said: We'll give you some money to set up a medicaid fraud unit, who find those people who are cheating in providing medicaid programs—doctors, nurses, and nursing homes, et cetera.

We have set one up and thank goodness, I found it so pleasant. I haven't had any Federal officials saying: You must follow these rules and regulations. Maybe there is a new day coming.

Mr. KINDNESS. I expect this would be a continuing program. We would predict that we would find it to be continuing in its final form. But, I would suggest that if we really did expect this program to be a sort of a demonstration type of program or encouragement program, I would feel far better about it myself.

I appreciate your thoughts on that.

Mr. EDMISTEN. I hope you can feel better about it, Congressman, as time goes on.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. DRINAN. Thank you very much, Mr. Kindness.

Mr. Attorney General, I was very encouraged today to receive endorsement of this legislation from the California District Attorneys Association. And without objection, their statement will be placed in the record.*

I wonder if you could tell us about movement on behalf of the attorneys general of the United States to support this particular piece of legislation?

Mr. EDMISTEN. This legislation has never been brought before the National Association of Attorneys General.

I wish we had time to do it, but this has been a meeting where those matters do not come up. And I hope to bring it up in June or the next meeting, whenever that is.

*See p. 89 infra.

Mr. DRINAN. Would you see any reason why the attorneys general would not endorse this legislation?

Mr. EDMISTEN. Well, if they see as much mayhem and grief and suffering as I do on the part of innocent victims, I don't see how they could.

Mr. DRINAN. The only resistance to this legislation, as I see it, is from those who feel that we should not spend money in this particular way. Some people may have objections about the Federal Government becoming iuvolved.

But, ultimately, as I recall the failure at the very last moment in the last Congress of this bill, the objection was to the expense involved. It is a few million the first year and people theorize, well, that will grow and grow.

I wonder if you see any other objection that people in your great State or elsewhere would offer or could offer to this bill?

Mr. EDMISTEN. Well, I think that very well-meaning people can voice concerns like Congressman Kindness did about another Federal program that would get the States hooked on something and then somewhere, they would jerk it away, and here is another expense.

I have felt those and recall those symptoms on LEAA many times. You get hooked and you go to the respective State legislatures and say: Will you please pick us up? Now, Congressman Gudger and then as a State Senator Gudger, bailed us out many times by picking up things that LEAA had started.

I don't think this is ever going to create a very large staff of people anywhere. I don't believe you should have any kind of a big staff here in Washington. They don't need to be creating a bureaucracy to run this thing.

It is a matter of sending out money on a very proportional basis to those States that comply with the guidelines in here. I don't really see why this would turn out to be a bureaucracy.

I think this is so different, Congressman Kindness, from some of the other pieces of legislation I have seen over my 10 years with Senator Ervin. This has got good subjects and verbs and complete sentences and doesn't have so much of the legal mumbo-jumbo hogwash that we lawyers engage in all the time.

I like the bill. I would like to congratulate whoever drew it up.

Mr. DRINAN. I thank you for those comments. I wonder if Senator Ervin took a position on it when he was in the other body. I think the bill passed during the time he served there.

Mr. EDMISTEN. That is something I don't really recall at all.

Mr. DRINAN. Obviously, a letter of endorsement from Senator Ervin would be particularly helpful to this subcommittee and the House and Congress of this country. His endorsement would carry a lot of weight.

Mr. EDMISTEN. I believe we can probably procure that.

[The statement on p. 77.

Mr. DRINAN. We thank you very much, Mr. Attorney General. This has been very helpful. I hope that with your assistance, the 96th Congress will turn this into a law.

Thank you very much. The meeting is adjourned.

[Whereupon, at 2 p.m., the hearing was adjourned.]

ADDITIONAL MATERIALS

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION,
Sacramento, Calif., March 30, 1979.

Hon. PETER RODINO,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR CHAIRMAN RODINO: The California District Attorneys Association supports the passage of H.R. 1899, the Victims of Crime Act of 1979, which would help States assist the innocent victims of crime.

California was the first state to adopt a program of crime victim compensation. Section 13959 of the California Government Code underscores our concern: "it is in the public interest to indemnify and assist in the rehabilitation of those residents of the State of California who as a direct result of crime suffer a pecuniary loss which they are unable to recoup without suffering serious financial hardship." We encourage the Federal government to assume support of State legislation assisting the victims of crime.

By contributing to victim compensation for losses resulting from physical injuries, the Federal government affirms that crime is a nationwide concern and that the welfare of the victim is as important as the rights of the accused.

The integrity of our public safety function is challenged by every crime; and it is sadly diminished by a relative lack of concern for victims' needs. To counteract this with crime victim compensation is to encourage citizen respect for law enforcement.

The Victims of Crime Act of 1979 not only demonstrates a national commitment to innocent victims of crime, it encourages States to act responsibly as well. H.R. 1899 creates a Federal example which, I hope, our several States will follow.

Sincerely,

STEVE WHITE,
Legislative Affairs Director.

96TH CONGRESS
1ST SESSION

H. R. 1899

To help States assist the innocent victims of crime.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1979

Mr. RODINO (for himself, Mr. DRINAN, Ms. HOLTZMAN, Mr. MAZZOLI, Mr. GUDGER, Mr. MIKVA, Mr. HYDE, Mr. BIAGGI, Mr. BINGHAM, Mr. BLANCHARD, Mr. LEHMAN, Mr. NOLAN, Mr. PATTEN, and Mr. VENTO) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To help States assist the innocent victims of crime.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Victims of Crime Act of 1979".

POWERS OF THE ATTORNEY GENERAL

SEC. 2. (a) Subject to the availability of amounts appropriated, the Attorney General shall make an annual grant and may make supplemental grants for compensation of vic-

tims of crime to each State program that qualifies under section 4. Except as provided in section 5, the grants made to a qualifying State program under this Act with respect to a Federal fiscal year shall equal—

(1) 50 per centum of the then current cost, as determined by the Attorney General, of such State program with respect to qualifying crimes that are described in section 7(8)(A); and

(2) 100 per centum of the then current cost, as determined by the Attorney General, of such State program with respect to qualifying crimes that are described in section 7(8)(B).

(b) For the purpose of carrying out the provisions of this Act, the Attorney General is authorized to—

(1) prescribe such rules as are necessary to carry out this Act, including rules regarding the data to be kept by State programs receiving assistance under this Act and the manner in which these data shall be reported to the Attorney General; and

(2) approve in whole or in part, or deny, any application for an annual or supplemental grant under this Act.

(c) Grants under this section may be made in advance or by way of reimbursement. The Attorney General shall not

have the power to modify the disposition of any individual claim that has been processed by any State program.

ADVISORY COMMITTEE

SEC. 3. (a) There is established an Advisory Committee on Victims of Crime (hereinafter in this Act referred to as the "Committee") which shall advise the Attorney General with respect to the administration of this Act and the compensation of victims of crime. The Committee shall consist of nine members, one of whom shall be designated the Chairman, all appointed by the Attorney General. Seven members of the Committee shall be officials of States with programs qualifying under section 4. The Committee shall meet at least two times a year, and at such other times as the Attorney General may direct. The term of office for each member of the Committee shall be one year. The Committee shall remain in existence until September 30, 1983.

(b) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel and transportation expenses, including per diem allowance, in the same manner and to the same extent as persons employed intermittently in the Government service are allowed travel and transportation expenses under subchapter I of chapter 57 of title 5 of the United States Code.

QUALIFYING STATE PROGRAMS

SEC. 4. (a) A State proposing to receive grants under this Act shall submit an application to the Attorney General at such time and in such form as the Attorney General shall by rule prescribe. A State program for the compensation of victims of crime qualifies for grants under this Act if the Attorney General finds that such program is in effect in such State on a statewide basis during any part of the Federal fiscal year with respect to which grants are to be made and that such program meets the following criteria:

(1) The program offers—

(A) compensation for personal injury to any individual who suffers personal injury that is the result of a qualifying crime; and

(B) compensation for death to any surviving dependent of any individual whose death is the result of a qualifying crime.

(2) The program offers the right to a hearing with administrative or judicial review to aggrieved claimants.

(3) The program requires as a condition for compensation that claimants cooperate with appropriate law enforcement authorities with respect to the qualifying crime for which compensation is sought.

52-407 O - 81 - 7

(4) There is in effect in the State a requirement that appropriate law enforcement agencies and officials take reasonable care to inform victims of qualifying crimes about—

(A) the existence in the State of a program of compensation for injuries sustained by victims; and

(B) the procedure for applying for compensation under that program.

(5) There is in effect in the State a law or rule that the State is subrogated to any claim the victim, or a dependent of the victim, has against the perpetrator of the qualifying crime for damages resulting from the qualifying crime, to the extent of any money paid to the victim or dependent by the program.

(6) The program does not require any claimant to seek or accept any benefit in the nature of welfare unless such claimant was receiving such benefit prior to the occurrence of the qualifying crime that gave rise to the claim.

(7) The program requires denial or reduction of a claim if the victim or claimant contributed to the infliction of the death or injury with respect to which the claim is made.

(8) There is in effect in the State a law or rule that, in addition to or in lieu of any other penalty, a perpetrator of a crime may be required to make restitution to any victim or victim's surviving dependent for that crime.

(9) The program does not require that any person be apprehended, prosecuted, or convicted of the qualifying crime that gave rise to the claim.

(b) If a State has a crime victim compensation program in effect on the effective date of this Act which does not otherwise qualify under subsection (a), such program shall be deemed qualified for grants under this Act until the day after the close of the first regular session of the State legislature that begins after the effective date of this Act.

LIMITATIONS ON FEDERAL GRANTS

SEC. 5. For purposes of computing the annual cost of a qualifying State program for grants under section 2, there shall be excluded from such cost—

(1) administrative expenses of the program;

(2) any State compensation award for—

(A) pain and suffering; or

(B) property loss;

(3) any State compensation award to any claimant—

(A) who failed to file a claim under the State program within one year after the occurrence of the qualifying crime, unless good cause for such failure has been found by the appropriate State agency; or

(B) who failed to report the qualifying crime to law enforcement authorities within seventy-two hours after the occurrence of that qualifying crime, unless good cause for such failure has been found by the appropriate State agency;

(4) any amount by which compensation awards with respect to a victim exceed $50,000;

(5) any compensation for loss compensable under the State program that a claimant was entitled to receive from a source other than—

(A) the State compensation program; or

(B) the perpetrator of the qualifying crime;

(6) any State compensation award for lost earnings or loss of support to the extent such award is greater than $200 a week per victim.

REPORT OF THE ATTORNEY GENERAL

SEC. 6. Not later than one hundred and thirty-five days after the end of each Federal fiscal year in which grants are made to State programs under this Act, the Attorney General shall submit a report to the House and Senate Committees on the Judiciary. The report shall include—

(1) with regard to each qualifying State program—

(A) the number of persons compensated;

(B) a statistical presentation of—

(i) the kinds and corresponding amounts of loss compensated;

(ii) the range in monetary value of claims awarded;

(iii) the reasons for denial of claims; and

(iv) the types of crimes that resulted in claims;

(C) a description of the administrative mechanisms and procedures used in processing claims, including claims for emergency assistance if the program provides for such assistance;

(D) the time required to process claims, including claims for emergency assistance if the program provides for such assistance;

(E) efforts made to publicize the program;

(F) administrative expenses; and

(G) the number of qualifying crimes described in section 7(8)(B) that were compensated; and

(2) with regard to the activities of the Attorney General in carrying out this Act—

(A) an itemized statement of grants and expenditures;

(B) copies of rules made under section 2(b); and

(C) projected expenditures for the Federal fiscal year in which the report is required to be submitted.

DEFINITIONS

SEC. 7. As used in this Act—

(1) the term "dependent" means, with respect to a State compensation program, any dependent as defined by such State for purposes of such program;

(2) the term "personal injury", with respect to a State compensation program, means personal injury as defined by the State for such program;

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

(4) the term "compensation for personal injury" means compensation for loss that is the result of personal injury caused by a qualifying crime, including—

(A) all reasonable expenses necessarily incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services and devices relating to physical or psychiatric care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the State;

(B) all reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation; and

(C) loss of past and anticipated future earnings;

(5) the term "property loss" does not include expenses incurred for medical, dental, surgical, or prosthetic services and devices;

(6) the term "compensation for death" means compensation for loss that is the result of death caused by a qualifying crime, including—

(A) all reasonable expenses necessarily incurred for funeral and burial expenses; and

(B) loss of support to any dependent of a victim, not otherwise paid as compensation for personal injury, for such period as the dependency

would have existed but for the death of the victim;

(7) the term "administrative expenses" means any expenses not constituting compensation for death or compensation for personal injury, and includes any fee awarded by the State agency administering a State compensation program to any claimant's attorney, if such fee is paid in addition to, and not out of, the amount of compensation awarded to such claimant; and

(8) the term "qualifying crime", with respect to a qualifying State program, means—

(A) any criminally punishable act or omission which such State designates as appropriate for compensation under its program; or

(B) any act or omission that would be a qualifying crime under subparagraph (A) except for the fact that such act or omission is subject to exclusive Federal jurisdiction.

AUTHORIZATION

SEC. 8. For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated $15,000,000 for the fiscal year ending September 30, 1981; $25,000,000 for the fiscal year ending September 30, 1982; and $35,000,000 for the fiscal year ending September 30, 1983.

EFFECTIVE DATE

SEC. 9. This Act shall take effect on October 1, 1979, and grants may be made under this Act with respect to the fiscal year which ends September 30, 1980, and succeeding fiscal years.

I

96TH CONGRESS
1ST SESSION

H. R. 4257

To help States assist the innocent victims of crime.

IN THE HOUSE OF REPRESENTATIVES

MAY 30, 1979

Mr. RODINO (for himself and Mr. DRINAN) introduced the following bill; which was referred to the Committee on the Judiciary

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(1) 25 per centum of the then current cost, as determined by the Attorney General, of such State program with respect to qualifying crimes that are described in section 7(8)(A); and

(2) 100 per centum of the then current cost, as determined by the Attorney General, of such State program with respect to qualifying crimes that are described in section 7(8)(B).

(b) For the purpose of carrying out the provisions of this Act, the Attorney General is authorized to—

(1) prescribe such rules as are necessary to carry out this Act, including rules regarding the data to be kept by State programs receiving assistance under this Act and the manner in which these data shall be reported to the Attorney General; and

(2) approve in whole or in part, or deny, any application for an annual or supplemental grant under this Act.

(c) Grants under this section may be made in advance or by way of reimbursement. The Attorney General shall not have the power to modify the disposition of any individual claim that has been processed by any State program.

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SEC. 3. (a) There is established an Advisory Committee on Victims of Crime (hereinafter in this Act referred to as the "Committee") which shall advise the Attorney General with respect to the administration of this Act and the compensation of victims of crime. The Committee shall consist of nine members, one of whom shall be designated the Chairman, all appointed by the Attorney General. Seven members of the Committee shall be officials of States with programs qualifying under section 4. The Committee shall meet at least two times a year, and at such other times as the Attorney General may direct. The term of office for each member of the Committee shall be one year. The Committee shall remain in existence until September 30, 1983.

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(1) The program offers—

(A) compensation for personal injury to any individual who suffers personal injury that is the result of a qualifying crime; and

(B) compensation for death to any surviving dependent of any individual whose death is the result of a qualifying crime.

(2) The program offers the right to a hearing with administrative or judicial review to aggrieved claimants.

(3) The program requires as a condition for compensation that claimants cooperate with appropriate law enforcement authorities with respect to the qualifying crime for which compensation is sought.

(4) There is in effect in the State a requirement that appropriate law enforcement agencies and officials take reasonable care to inform victims of qualifying crimes about—

(A) the existence in the State of a program of compensation for injuries sustained by victims; and

(B) the procedure for applying for compensation under that program.

(5) There is in effect in the State a law or rule that the State is subrogated to any claim the victim, or a dependent of the victim, has against the perpetrator of the qualifying crime for damages resulting from the qualifying crime, to the extent of any money paid to the victim or dependent by the program.

(6) The program does not require any claimant to seek or accept any benefit in the nature of welfare unless such claimant was receiving such benefit prior to the occurrence of the qualifying crime that gave rise to the claim.

(7) The program requires denial or reduction of a claim if the victim or claimant contributed to the infliction of the death or injury with respect to which the claim is made.

(8) There is in effect in the State a law or rule that, in addition to or in lieu of any other penalty, a perpetrator of a crime may be required to make restitution to any victim or victim's surviving dependent for that crime.

(9) The program does not require that any person be apprehended, prosecuted, or convicted of the qualifying crime that gave rise to the claim.

(10) There is in effect in the State a law or rule that there be assessed upon any person convicted of a qualifying crime as a cost of court (in addition to any other costs assessed under law) a sum not less than $5.

(11) There is in effect in the State a law or rule requiring any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, or article, relating to such crime to deposit any proceeds owing to such individual under the terms of the contract into an escrow fund for the benefit of any victims of such qualifying crime or any surviving dependents of any such victim, if such individual is convicted of that crime, to be held for such period of time as the State may determine is reasonably necessary to perfect the claims of such victims or dependents.

(b) If a State has a crime victim compensation program in effect on the effective date of this Act which does not otherwise qualify under subsection (a), such program shall be deemed qualified for grants under this Act until the day after

the close of the first regular session of the State legislature that begins after the effective date of this Act.

LIMITATIONS ON FEDERAL GRANTS

SEC. 5. For purposes of computing the annual cost of a qualifying State program for grants under section 2, there shall be excluded from such cost—

(1) administrative expenses of the program;

(2) any State compensation award for—

(A) pain and suffering; or

(B) property loss;

(3) any State compensation award to any claimant—

(A) who failed to file a claim under the State program within one year after the occurrence of the qualifying crime, unless good cause for such failure has been found by the appropriate State agency; or

(B) who failed to report the qualifying crime to law enforcement authorities within seventy-two hours after the occurrence of that qualifying crime, unless good cause for such failure has been found by the appropriate State agency;

(4) any amount by which compensation awards with respect to a victim exceed $25,000;

(5) any compensation for loss compensable under the State program that a claimant was entitled to receive from a source other than—

(A) the State compensation program; or

(B) the perpetrator of the qualifying crime;

(6) any State compensation award for lost earnings or loss of support to the extent such award is greater than $200 a week per victim.

REPORT OF THE ATTORNEY GENERAL

SEC. 6. Not later than one hundred and thirty-five days after the end of each Federal fiscal year in which grants are made to State programs under this Act, the Attorney General shall submit a report to the House and Senate Committees on the Judiciary. The report shall include—

(1) with regard to each qualifying State program—

(A) the number of persons compensated;

(B) a statistical presentation of—

(i) the kinds and corresponding amounts of loss compensated;

(ii) the range in monetary value of claims awarded;

(iii) the reasons for denial of claims; and

(iv) the types of crimes that resulted in claims;

52-407 O - 81 - 8

(C) a description of the administrative mechanisms and procedures used in processing claims, including claims for emergency assistance if the program provides for such assistance;

(D) the time required to process claims, including claims for emergency assistance if the program provides for such assistance;

(E) efforts made to publicize the program;

(F) administrative expenses; and

(G) the number of qualifying crimes described in section 7(8)(B) that were compensated; and

(2) with regard to the activities of the Attorney General in carrying out this Act—

(A) an itemized statement of grants and expenditures;

(B) copies of rules made under section 2(b); and

(C) projected expenditures for the Federal fiscal year in which the report is required to be submitted.

DEFINITIONS

SEC. 7. As used in this Act—

(1) the term "dependent" means, with respect to a State compensation program, any dependent as defined by such State for purposes of such program;

(2) the term "personal injury", with respect to a State compensation program, means personal injury as defined by the State for such program;

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

(4) the term "compensation for personal injury" means compensation for loss that is the result of personal injury caused by a qualifying crime, including—

(A) all reasonable expenses necessarily incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services and devices relating to physical or psychiatric care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the State;

(B) all reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation; and

(C) loss of past and anticipated future earnings;

(5) the term "property loss" does not include expenses incurred for medical, dental, surgical, or prosthetic services and devices;

(6) the term "compensation for death" means compensation for loss that is the result of death caused by a qualifying crime, including—

(A) all reasonable expenses necessarily incurred for funeral and burial expenses; and

(B) loss of support to any dependent of a victim, not otherwise paid as compensation for personal injury, for such period as the dependency would have existed but for the death of the victim;

(7) the term "administrative expenses" means any expenses not constituting compensation for death or compensation for personal injury, and includes any fee awarded by the State agency administering a State compensation program to any claimant's attorney, if such fee is paid in addition to, and not out of, the amount of compensation awarded to such claimant; and

(8) the term "qualifying crime", with respect to a qualifying State program, means—

(A) any criminally punishable act or omission which such State designates as appropriate for compensation under its program; or

(B) any act or omission that would be a qualifying crime under subparagraph (A) except for the fact that such act or omission is subject to exclusive Federal jurisdiction.

AUTHORIZATION

SEC. 8. For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated $15,000,000 for the fiscal year ending September 30, 1981; $25,000,000 for the fiscal year ending September 30, 1982; and $35,000,000 for the fiscal year ending September 30, 1983.

EFFECTIVE DATE

SEC. 9. This Act shall take effect on October 1, 1979, and grants may be made under this Act with respect to the fiscal year which ends September 30, 1980, and succeeding fiscal years.

I

Union Calendar No. 394

96TH CONGRESS
2D SESSION

H. R. 4257

[Report No. 96-753]

To help States assist the innocent victims of crime.

IN THE HOUSE OF REPRESENTATIVES

MAY 30, 1979

Mr. RODINO (for himself and Mr. DRINAN) introduced the following bill; which was referred to the Committee on the Judiciary

FEBRUARY 13, 1980

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To help States assist the innocent victims of crime.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Victims of Crime Act of 1979".

POWERS OF THE ATTORNEY GENERAL

SEC. 2. (a) Subject to the availability of amounts appropriated, the Attorney General shall make an annual grant and may make supplemental grants for compensation of victims of crime to each State program that qualifies under section 4. Except as provided in section 5, the grants made to a qualifying State program under this Act with respect to a Federal fiscal year shall equal—

(1) 25 per centum of the then current cost, as determined by the Attorney General, of such State program with respect to qualifying crimes that are described in section 7(8)(A); and

(2) 100 per centum of the then current cost, as determined by the Attorney General, of such State program with respect to qualifying crimes that are described in section 7(8)(B).

(b) For the purpose of carrying out the provisions of this Act, the Attorney General is authorized to—

(1) prescribe such rules as are necessary to carry out this Act, including rules regarding the data to be kept by State programs receiving assistance under this Act and the manner in which these data shall be reported to the Attorney General; and

(2) approve in whole or in part, or deny, any application for an annual or supplemental grant under this Act.

(c) Grants under this section may be made in advance or by way of reimbursement. The Attorney General shall not have the power to modify the disposition of any individual claim that has been processed by any State program.

ADVISORY COMMITTEE

SEC. 3. (a) There is established an Advisory Committee on Victims of Crime (hereinafter in this Act referred to as the "Committee") which shall advise the Attorney General with respect to the administration of this Act and the compensation of victims of crime. The Committee shall consist of nine members, one of whom shall be designated the Chairman, all appointed by the Attorney General. Seven members of the Committee shall be officials of States with programs qualifying under section 4. The Committee shall meet at least two times a year, and at such other times as the Attorney General may direct. The term of office for each member of the Committee shall be one year. The Committee shall remain in existence until September 30, 1983.

(b) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel and transportation expenses, including per diem allowance, in the

same manner and to the same extent as persons employed intermittently in the Government service are allowed travel and transportation expenses under subchapter I of chapter 57 of title 5 of the United States Code.

QUALIFYING STATE PROGRAMS

SEC. 4. ~~(a)~~ A State proposing to receive grants under this Act shall submit an application to the Attorney General at such time and in such form as the Attorney General shall by rule prescribe. A State program for the compensation of victims of crime qualifies for grants under this Act if the Attorney General finds that such program is in effect in such State on a statewide basis during any part of the Federal fiscal year with respect to which grants are to be made and that such program meets the following criteria:

(1) The program offers—

(A) compensation for personal injury to ~~any individual who suffers~~ *individuals who suffer* personal injury that is the result of a qualifying crime; and

(B) compensation for death to ~~any surviving dependent of any individual whose death is~~ *surviving dependents of individuals whose deaths are* the result of a qualifying crime.

(2) The program offers the right to a hearing with administrative or judicial review to aggrieved claimants.

(3) The program requires as a condition for compensation that claimants cooperate with appropriate law enforcement authorities with respect to the qualifying crime for which compensation is sought.

(4) There is in effect in the State a requirement that appropriate law enforcement agencies and officials take reasonable care to inform victims of qualifying crimes about—

(A) the existence in the State of a program of compensation for injuries sustained by victims; and

(B) the procedure for applying for compensation under that program.

(5) There is in effect in the State a law or rule that the State is subrogated to any claim the victim, or a dependent of the victim, has against the perpetrator of the qualifying crime for damages resulting from the qualifying crime, to the extent of any money paid to the victim or dependent by the program.

(6) The program does not require any claimant to seek or accept any benefit in the nature of welfare unless such claimant was receiving such benefit prior

to the occurrence of the qualifying crime that gave rise to the claim.

(7) The program requires denial or reduction of a claim if the victim or claimant contributed to the infliction of the death or injury with respect to which the claim is made.

(8) There is in effect in the State a law or rule that, in addition to or in lieu of any other penalty, a perpetrator of a crime ~~may be required to make restitution~~ *is required to make restitution, where appropriate,* to any victim or victim's surviving dependent for that crime.

(9) The program does not require that any person be apprehended, prosecuted, or convicted of the qualifying crime that gave rise to the claim.

(10) There is in effect in the State a law or rule that there be assessed upon any person convicted of a qualifying crime as a cost of court (in addition to any other costs assessed under law) a sum not less than $5~~.~~ *payable to that fund from which the State pays victim compensation awards.*

(11) There is in effect in the State a law or rule requiring any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview,

statement, or article, relating to such crime to deposit any proceeds owing to such individual *or his designee* under the terms of the contract into an escrow fund for the benefit of any victims of such qualifying crime or any surviving dependents of any such victim, if such individual is convicted of that crime, to be held for such period of time as the State may determine is reasonably necessary to perfect the claims of such victims or dependents *and fully to pay the compensation awarded to such victim or dependent pursuant to the State program.*

~~(b) If a State has a crime victim compensation program in effect on the effective date of this Act which does not otherwise qualify under subsection (a), such program shall be deemed qualified for grants under this Act until the day after the close of the first regular session of the State legislature that begins after the effective date of this Act.~~

LIMITATIONS ON FEDERAL GRANTS

SEC. 5. For purposes of computing the annual cost of a qualifying State program for grants under section 2, there shall be excluded from such cost—

(1) administrative expenses of the program;

(2) any State compensation award for—

(A) pain and suffering; or

(B) property loss;

(3) any State compensation award to any claimant—

(A) who failed to file a claim under the State program within one year after the occurrence of the qualifying crime, unless good cause for such failure has been found by the appropriate State agency; or

(B) who failed to report the qualifying crime to law enforcement authorities within seventy-two hours after the occurrence of that qualifying crime, unless good cause for such failure has been found by the appropriate State agency;

(4) any amount by which compensation awards with respect to a victim exceed $25,000;

(5) any compensation for loss compensable under the State program that a claimant was entitled to receive from a source other than—

(A) the State compensation program; or

(B) the perpetrator of the qualifying crime;

(6) any State compensation award for lost earnings or loss of support to the extent such award is greater than $200 a week per victim.

REPORT OF THE ATTORNEY GENERAL

SEC. 6. Not later than one hundred and thirty-five days after the end of each Federal fiscal year in which grants are

made to State programs under this Act, the Attorney General shall submit a report to the House and Senate Committees on the Judiciary. The report shall include—

(1) with regard to each qualifying State program—

(A) the number of persons compensated;

(B) a statistical presentation of—

(i) the kinds and corresponding amounts of loss compensated;

(ii) the range in monetary value of claims awarded;

(iii) the reasons for denial of claims; and

(iv) the types of crimes that resulted in claims;

(C) a description of the administrative mechanisms and procedures used in processing claims, including claims for emergency assistance if the program provides for such assistance;

(D) the time required to process claims, including claims for emergency assistance if the program provides for such assistance;

(E) efforts made to publicize the program;

(F) administrative expenses; and

(G) the number of qualifying crimes described in section 7(8)(B) that were compensated; and

(2) with regard to the activities of the Attorney General in carrying out this Act—

(A) an itemized statement of grants and expenditures;

(B) copies of rules made under section 2(b); and

(C) projected expenditures for the Federal fiscal year in which the report is required to be submitted.

DEFINITIONS

SEC. 7. As used in this Act—

(1) the term "dependent" means, with respect to a State compensation program, any dependent as defined by such State for purposes of such program;

(2) the term "personal injury", with respect to a State compensation program, means personal injury as defined by the State for such program;

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

(4) the term "compensation for personal injury" means compensation for loss that is the result of personal injury caused by a qualifying crime, including—

(A) all reasonable expenses necessarily incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services and devices relating to physical or psychiatric care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the State;

(B) all reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation; and

(C) loss of past and anticipated future earnings;

(5) the term "property loss" does not include expenses incurred for medical, dental, surgical, or prosthetic services and devices;

(6) the term "compensation for death" means compensation for loss that is the result of death caused by a qualifying crime, including—

(A) all reasonable expenses necessarily incurred for funeral and burial expenses; and

(B) loss of support to any dependent of a victim, not otherwise paid as compensation for personal injury, for such period as the dependency

would have existed but for the death of the victim;

(7) the term "administrative expenses" means any expenses not constituting compensation for death or compensation for personal injury, and includes any fee awarded by the State agency administering a State compensation program to any claimant's attorney, if such fee is paid in addition to, and not out of, the amount of compensation awarded to such claimant; and

(8) the term "qualifying crime", with respect to a qualifying State program, means—

(A) any criminally punishable act or omission which such State designates as appropriate for compensation under its program; or

(B) any act or omission that would be a qualifying crime under subparagraph (A) except for the fact that such act or omission is subject to exclusive Federal jurisdiction.

AUTHORIZATION

SEC. 8. For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated $15,000,000 for the fiscal year ending September 30, ~~1981~~ *1980*; $25,000,000 for the fiscal year ending September 30, ~~1982~~ *1981*; and $35,000,000 for the fiscal year ending September 30, ~~1983~~ *1982*.

52-407 O - 81 - 9

13

EFFECTIVE DATE

SEC. 9. This Act shall take effect on October 1, 1979, and grants may be made under this Act with respect to the fiscal year which ends September 30, 1980, and succeeding fiscal years.

96TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 96-753

VICTIMS OF CRIME ACT OF 1979

FEBRUARY 13, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DRINAN, from the Committee on the Judiciary, submitted the following

REPORT

together with

DISSENTING, SEPARATE DISSENTING, AND SEPARATE VIEWS

[To accompany H.R. 4257]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4257) to help States assist the innocent victims of crime, having considered the same, report favorably thereon with amendments and recommended that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 3, line 24, strike out "(a)".

Page 4, beginning in line 9, strike out "any individual who suffers" and insert in lieu thereof "indviduals who suffer".

Page 4, beginning in line 12, strike out "any surviving dependent of any individual whose death is" and insert in lieu thereof "surviving dependents of individuals whose deaths are".

Page 5, beginning in line 23, strike out "may be required to make restitution" and insert in lieu thereof "is required to make restitution, where appropriate,".

Page 6, line 8, strike out the period and insert in lieu thereof "payable to that fund from which the State pays victim compensation awards."

Page 6, line 14, after "individual", insert the following: "or his designee".

Page 6, line 21, after "dependents", insert the following: "and fully to pay the compensation awarded to such victim or dependent pursuant to the State program".

Page 6, strike out line 22 and all that follows through line 2, page 7.
Page 12, line 8, strike out "1981" and insert in lieu thereof "1980".
Page 12, line 9, strike out "1982" and insert in lieu thereof "1981".
Page 12, line 11, strike out "1983" and insert in lieu thereof "1982".

PURPOSE

The purpose of this legislation is to help States assist the innocent victims of crime.

STATEMENT

The victim of a violent crime endures more than just the shock and trauma produced by the criminal act. The victim also faces economic loss brought on by hospital and medical bills and by time lost from work, and in many instances this economic loss is quite substantial, causing a serious financial strain upon the victim and the victim's family. All too frequently, crime victims are unable to recoup the financial losses they sustain as a result of their victimization, either from public sources or private sources.

Recognizing that many victims of crime suffer considerable financial hardship, some 28 States have established programs to compensate people who are injured by criminal acts. These 28 States, based upon the most recent statistics in the FBI Uniform Crime Reports, account for more than three-quarters of the violent crimes in this country. The States that presently have crime victim compensation programs include:

Alaska	Montana
California	Nebraska
Connecticut	Nevada
Delaware	New Jersey
Florida	New York
Hawaii	North Dakota
Illinois	Ohio
Indiana	Oregon
Kansas	Pennsylvania
Kentucky	Tennessee
Maryland	Texas
Massachusetts	Virginia
Michigan	Washington
Minnesota	Wisconsin

The crime victim compensation programs in these States have several important characteristics in common. First, they compensate only *innocent* crime victims. The Michigan legislation is typical. It provides that a person is not eligible for compensation under its program if that person was (1) "criminally responsible for the crime", or (2) "an accomplice to the crime".

Another important common characteristic is that the programs will pay compensation only if the crime victim has been physically injured or has died. The Pennsylvania legislation, for example, provides that for purposes of its crime victim compensation program the term "victim" means a person "who suffers bodily injury or death as a direct result of a crime". Thus, State crime victim compensation programs deal with the most serious cases, cases where the victim has been killed or injured.

Other important common characteristics include provisions that prevent double recovery. For example, if part of a victim's medical bills are paid by an insurance program of some sort, then that amount would be deducted from the victim's claim under the crime victim compensation program. In other words, the States compensate victims only for losses that would otherwise be unreimbursed. Further, the State programs all provide that the State is subrogated, to the extent of any compensation paid to the victim, to any claim that the victim has against the offender as a result of the crime. Consequently, in those relatively few instances when an offender is caught, convicted, and able to pay a judgment, the State can recover the amount of compensation it paid to a victim. Finally, the State programs do not compensate victims for crimes involving property loss, such as stolen cars or television sets. The States, therefore, do not act as property insurers.

While the 28 State crime victim compensation programs have important characteristics in common, they also differ in many respects. One difference involves the method of administration. Four States (Illinois, Massachusetts, Ohio and Tennessee) utilize their courts to determine whether a claimant is eligible for compensation and, if so, how much the compensation should be. The other States use administrative agencies to investigate claims, determine claimant eligibility, and make awards of compensation. Some of them, such as Kentucky, Kansas and Florida, use a specialized agency whose sole function is to administer the State's crime victim compensation program. Others, such as California, Virginia, and Texas, use a State agency that has other functions besides administering the crime victim compensation program.

The States also differ in the way they define the crimes whose victims will be eligible for compensation. Some States, like New Jersey and Wisconsin, provided that the victims of certain enumerated crimes are eligible under their programs. Some States, like Montana and Virginia, refer to any crime that causes physical injury or death. The Indiana legislation refers to "a violent crime."

The State programs differ in other respects—such as whether to require a minimum loss and, if so, how much and whether that minimum loss is a deductible amount; the maximum amount that can be awarded; whether to utilize a financial need test; the length of time within which claims can be filed; whether to permit attorney fees and, if so, how much to permit and whether those fees should be paid in addition to or out of the award of compensation.

The diversity among the State crime victim compensation programs has been the result of each State designing its own program to fit its own needs and goals. The committee believes that this diversity is desirable and that any Federal legislation ought to permit and encourage it. H.R. 4257 has been drafted to allow each State flexibility to shape its own crime victim compensation program.

In brief outline, the legislation enables the Federal Government to help the States assist innocent crime victims. State victim compensation programs that meet 11 criteria are eligible for grants of assistance from the Federal Government. The grant would equal 25 percent of the State program's cost of paying compensation to the victims of State crimes and 100 percent of the cost of paying compensation of

victims of "analogous" Federal crimes.[1] The Federal grants are to be administered by the Attorney General, who will be advised by an Advisory Committee on Victims of Crime. Seven of the nine members of this committee will be officials of States receiving Federal grants, giving those States with qualified programs direct and formal access to the Federal officials responsible for administering the legislation.

It has been suggested that there is no Federal interest in helping States to assist crime victims. The Committee does not accept that argument. The Federal Government is already heavily involved in assisting the States in other aspects of their criminal justice systems, most notably through the Law Enforcement Assistance Administration. As stated by the representative of the California Attorney General.

> LEAA provides money for local projects; and while its commitment to any one project is limited, its overall commitment to assist local law enforcement is ongoing. Ongoing too is State/Federal co-operation with the FBI and State prosecution of Federal crimes where there is concurrent jurisdiction. The importation of narcotics and guns affect State law enforcement. And finally, every detention, search, questioning, arrest, trial, sentence, appeal, and parole is bejeweled with Federal constitutional rights interpreted and applied by State law enforcement and State courts. If it seems that we step over the body of the victim to give medical and other services to the criminal, it also seems that we step over the victims' fundamental right to life, liberty, and the pursuit of happiness to grant constitutional rights to the one who took the victim's rights away.
>
> The Federal Government, then, like the State governments, finds itself officially, and constitutionally, committed to act in this field of criminal justice. It is—perhaps not in the legal sense, but in the moral sense—a denial of equal protection for it to ignore the victims of crime.[2]

It is, in the committee's judgment, entirely appropriate for the Federal Government to be a partner with the States in assisting innocent crime victims. Federal funds have gone to the States for use by police and sheriff's departments, by prosecutors, by courts, by corrections departments—in short, for use by all parts of State criminal justice systems. If Federal funds can go to the States to help them apprehend and try criminals, and imprison them when convicted, then Federal funds can go to the States to help them assist the innocent victims of crime.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1

Section 1 of the bill provides that the short title of the legislation is the "Victims of Crime Act of 1979".

[1] "Analogous" Federal crimes are those crimes that occur within a State which would be covered by the State's crime victim compensation program but for the fact that they are subject to exclusive Federal jurisdiction. This term is explained in detail in the analysis of section 7(8)(B) of the legislation.

[2] Statement on behalf of California Attorney General Evelle Younger, in *Victims of Crime Compensation; Hearings on H.R. 7010 and Related Bills before the Subcommittee on Criminal Justice of the House Commitee on the Judiciary*, 95th Congress, 1st Session (1977), at 84.

Section 2

Section 2 of the bill vests in the Attorney General the responsibility for administering the provisions of the legislation. The Attorney General is empowered to make annual and supplemental grants to qualifying State crime victim compensation programs. The grants may be made in advance or by way of reimbursement and are subject to the availability of appropriated money. The legislation, therefore, does not create an entitlement program. The grants are also subject to the limitations found in section 5 of the legislation.

The formula for determining the amount of a grant is set forth in section 2(a). Under that formula, a qualified State victim compensation program may receive, during a Federal fiscal year, an amount equal to 25 percent of its cost of paying compensation to victims of most qualifying crimes (those that fall within State jurisdiction) and 100 percent of the cost of paying compensation to victims of "analogous" Federal crimes. These crimes are defined in section 7(8)(B) of the legislation to be crimes that occur with the boundaries of the State but that are within the exclusive jurisdiction of the Federal Government to prosecute.[3]

Section 2(b) of the bill authorizes the Attorney General to prescribe such rules as are necessary to administer the legislation and to approve, in whole or in part, a request for an annual or supplemental grant under the program. Section 2(c) of the bill expressly precludes the Attorney General from modifying the dispostion of any individual claim processed by a State agency administering the State's victim compensation program. The responsibility for administering each State program rests exclusively with the State involved.[4]

Section 3

Section 3 of the legislation establishes an Advisory Committee on Victims of Crime composed of nine members appointed by the Attorney General, seven of whom must be officials of States with programs that qualify for grants under the legislation. The members will serve 1 year terms and will receive only transportation and travel expenses and a per diem allowance while away from their homes in the performance of their services for the committee. The purpose of the committee is to advise the Attorney General on matters relating to the administration of the legislation and to the compensation of crime victims. Since a majority of the committee will consist of officials from States with qualifying victims compensation programs, those directly affected by the manner in which the legislation is administered will have a direct and formal method of making their views known to the Attorney General.

Section 4

Section 4 of the bill sets forth 11 criteria that a State crime victim compensation program must meet in order to qualify for a grant under

[3] The Committee believes that the overall impact of the analogous Federal crime provision will not be great. It will primarily affect those States with Federal enclaves over which States may not exercise criminal jurisdiction.

[4] For example, some States utilize a financial need ("means") tests in determining eligibility for victim compensation. Section 4 of the legislation does not require a qualified State crime victim compensation program to impose a means test. Section 2(b) does not authorize the Attorney General to issue a rule requiring all qualified State programs to impose a means test. Likewise, since section 4 does not preclude States from utilizing a means test, the Attorney General could not, by rule, preclude any qualifying State program from utilizing a means list if it chooses to do so.

the legislation. A State program must meet all 11 criteria in order to be eligible for a grant.

Section 4(1) requires that the State program offer "(A) compensation for personal injury to individuals who suffer personal injury that is the result of a qualifying crime; and (B) compensation for death to surviving dependents of individuals whose deaths are the result of a qualifying crime." [5]

Section 4(2) requires that the State crime victim compensation program offer to aggrieved claimants the right to a hearing with administrative or judicial review. No particular form of administrative or judicial review is required by the legislation.

Section 4(3) provides that the State crime victim compensation program must require that "claimants cooperate with appropriate law enforcement authorities with respect to the qualifying crime for which compensation is sought." A State may meet this qualification, or any of the other qualifications, either by statute or by rule or regulation adopted by the appropriate State agency.

Section 4(4) provides that there be in effect in each State with a qualified crime victim compensation program a requirement that appropriate law enforcement agencies and officials take reasonable care to inform victims of qualifying crimes about (1) the existence of the State's compensation program and (2) the procedure for applying for compensation under it.

Section 4(5) requires that the State be subrogated to any claim that the claimant has against the perpetrator of the qualifying crime for damages resulting from that crime. The State is to be subrogated to the extent of any money paid to the claimant by the program.

Section 4(6) provides that the State program may not "require any claimant to seek or accept any benefit in the nature of welfare unless such claimant was receiving such benefit prior to the occurrence of the qualifying crime that gave rise to the claim." Thus, a qualified State victim compensation program cannot require that a claimant seek or accept welfare benefits in lieu of, or in addition to, any award of compensation it makes, unless that claimant was receiving those welfare benefits prior to the crime that resulted in the claim.

Section 4(7) requires that a State victim compensation program must deny or reduce a claim if the victim is found by the agency administering the State program to have contributed to the infliction of the death or injury that is the basis for the claim. Thus, for example, where the agency administering the State program finds contributory fault on the part of the victim, the victim's claim would have to be reduced or denied altogether.

Section 4(8) provides that State law must require that an obligation to pay restitution must, where appropriate, be imposed upon criminal wrongdoers, The restitution obligation may be imposed at the time the wrongdoer is sentenced, in addition to or in lieu of any fine or term of years imposed. The restitution obligation may also be imposed after the wrongdoer is sentenced, as a condition of parole, for example.

Section 4(9) of the bill provides that the State may not require that anyone be apprehended, prosecuted or convicted of the offense that gave rise to the claim. A person who receives crime victim compensation does so because that person has been the innocent victim of a crime. That person's status as a crime victim does not change because the police were unable to catch the wrongdoer, or because the prosecutor decided to drop the charges against the wrongdoer as a part of a plea bargain, or because the case against the wrongdoer was dismissed on a technicality. It appears that all of the States that presently have crime victim compensation programs will be able to meet this requirement.

Section 4(10) requires that a State impose upon convicted defendants court costs of at least $5. This sum is to be imposed in addition to any other costs assessed under State law, and the revenues generated by the additional court costs are to go into the fund which the State uses to pay victim compensation awards.

Section 4(11) provides that State law require that any person who contracts directly or indirectly with a person charged with or convicted of a crime for an interview, statement or article relating to the crime, must turn over to the State any money due the person charged or convicted. The State is to hold the money in escrow for a reasonable period and can use the money only to pay claims perfected by the victims, if the wrongdoer is convicted.

Section 5

The legislation provides that certain State expenditures on behalf of its victim compensation program are not reimbursable. Section 5 of the bill defines those expenditures which may not be included in the State program's cost of paying compensation when determining the amount of the grant for which that program will be eligible.[6]

Section 5(1) provides that administrative expenses are not included in the cost of paying compensation. Thus, a State with a qualified victim compensation program must pay for all of the administrative expenses connected with operating its program.[7]

Section 5(2) provides that any amount awarded by a qualified State program for "pain and suffering" or for lost property shall be excluded from the cost of paying compensation when determining the amount of the grant. The term "pain and suffering" is used in its tort law sense and represents amounts awarded on the basis of a subjective evaluation of the extent to which someone endured discomfort. A State program may make such awards without jeopardizing its status as a qualified program. However, the amount of any award designated as compensating the claimant for pain and suffering will not be included in the State program's cost of paying compensation when the amount of its grant is determined. The lost property exclusion means that a qualified State program which chooses to compensate victims for stolen cars or other personal property would not be able to include amounts for such awards in its cost of paying compensation.[8]

[5] The term "compensation for personal injury" is defined in section 7(4) of the bill; the term "personal injury" is defined in section 7(2); the term "dependent" is defined in section 7(1); and the term "qualifying crime" is defined in section 7(8).

[6] Some State statutes—for example, those in Tennessee and Virginia—authorize the making of an emergency award in some circumstances. This legislation treats such awards the same way it treats regular awards. Thus, amounts expended by a qualified State program for emergency awards are to be included in the costs of that program when computing the federal grant. The limitations in section 7 of the bill apply to emergency awards just as they apply to regular awards.

[7] For the purpose of administering this legislation, certain awards of attorney's fees are defined by section 7(7) to be administrative expenses.

[8] A limited class of things that could be classified as "property"—medical, dental, surgical, or prosthetic devices, such as eyeglasses or artificial limbs—are defined not to be property for the purpose of administering this legislation. See section 7(6) of the bill.

Section 5(3)(A) provides that any amount awarded by a qualified State program to a claimant who filed a claim more than 1 year after the occurrence of the qualifying crime shall be excluded from the cost of paying compensation when determining the amount of the grant—unless the agency administering the State program has found "good cause" for the delay.[9] A number of State programs have more stringent filing requirements.[10] The legislation does not require those States to change their requirements.

Section 5(3)(B) provides that any amount awarded by a qualified State program to a claimant who failed to report the qualifying crime to law enforcement authorities within 72 hours after the occurrence of that qualifying crime shall be excluded from the cost of paying compensation when determining the amount of grant—unless the agency administering the State program has found "good cause" for the failure to report within 72 hours.[11] A number of State programs have more stringent requirements about reporting to the police.[12] The legislation does not compel those States to change their requirements.

Section 5(4) provides that any amount awarded by a qualified State program in excess of $25,000 shall not be included in the cost of paying compensation when determining the amount of the grant. Where the victim is deceased, the awards paid to the victim's dependents are aggregated. All aggregated amounts in excess of $25,000 are excluded from the cost of paying compensation when determining the amount of the grant.

Section 5(5) provides that any amount awarded by a qualified State program to a claimant who is entitled to receive compensation from a source other than a compensation program assisted under the legislation or the perpetrator of the qualifying crime, up to the amount of that compensation, shall be excluded from the cost of paying compensation when determining the amount of the grant. The purpose of this collateral source provision is to discourage the making of awards that would result in double recovery by a claimant. Thus, for example, a claimant may be entitled to be reimbursed by an insurance plan for all or a part of his medical expenses. That part of the State program's award which duplicates the reimbursement from the insurance plan will not be included in the cost of paying compensation when determining the amount of the grant.

Section 5(6) provides that any amount awarded by a qualified State program in excess of $200 per week for lost earnings shall be excluded from the cost of paying compensation when determining the amount of the grant.

[9] Some States, such as Wisconsin (2 years), have longer claim filing periods. In those States, if the claim was filed after 1 year, but within the period permitted by State law, the State program may be able to conclude that there was good cause why the claim was not filed within 1 year. If it does so conclude, the amount of the award in that instance can then be included in the cost of paying compensation when determining the amount of grant.

[10] Kentucky, for example, requires a filing within 3 months, which can be extended to one year upon a showing of good cause.

[11] A number of States, such as Minnesota (5 days after the crime or after the time when a report could reasonably have ben made), have longer police reporting provisions. In those States, if the report was made after 72 hours but within the period permitted by State law, the State program may be able to conclude that there was good cause why the police report was not made within 72 hours. If it does so conclude, the amount of the award in that instance can then be included in the cost of paying compensation when determining the amount of the grant.

[12] Maryland, for example, requires that the report to the police be made within 48 hours.

Section 6

Section 6 of the bill requires the Attorney General to report periodically to the Congress. Section 6(1) requires that the report contain certain information about the activities of the qualified State programs. Section 6(2) requires that the report contain certain information about the Attorney General's activities in administering the legislation.

The Attorney General's report must be filed within 135 days after the end of the Federal fiscal year. The purpose for this reporting provision is to assist the Congress in carrying out its oversight responsibilities with respect to the administration of the legislation. Requiring that the report to be filed within 135 days after the end of the Federal fiscal year will enable the appropriate congressional committees to evaluate the program's administration and effectiveness in time to include any necessary changes in authorization legislation.

Section 7

Section 7 of the bill defines certain terms used in the legislation.

Section 7(1) provides that for the purpose of administering the legislation, the term "dependent" means what each State defines it to mean for purposes of that State's victim compensation program.

Section 7(2) provides that for the purpose of administering the legislation, the term "personal injury" means what each State defines it to mean for purposes of that State's victim compensation program.[13]

Section 7(3) defines "State" to include every State of the Union, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory of the United States (such as the Virgin Islands).

Section 7(4) defines the term "compensation for personal injury" to mean "compensation for loss which is the result of personal injury" and includes: (1) appropriate and reasonable expenses for hospital and medical services; (2) appropriate and reasonable expenses for physical and occupational therapy and rehabilitation; and (3) loss of past and anticipated future earnings.[14]

Section 7(5) provides that the term "property loss" does not include expenses incurred for medical, dental, surgical or prosthetic services and devices. This permits awards that compensate claimants for expenses connected with replacing or repairing such items as broken eyeglasses, dentures, artificial limbs, hearing aids, or wheelchairs to be included in the cost of paying compensation when determining the amount of the grant.

Section 7(6) defines "compensation for death" to mean compensation paid for losses resulting from the death of the victim, including reasonable funeral and burial expenses and loss of support for the victim's dependents.

[13] The definition of "personal injury" used in the legislation will permit a qualified State program to include pregnancy resulting from rape as a personal injury for the purposes of its program. Michigan, for example, defines personal injury to mean "actual bodily harm and includes pregnancy." If the Michigan program is found to be a qualified State program under this legislation, amounts representing awards for pregnancy-related expenses of a victim would be included in its cost of paying compensation for the purpose of determining its grant.

[14] Section 7(4) also defines "compensation for personal injury" to include compensation for appropriate and reasonable expenses incurred for "nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the State." Thus, this provision permits the State agency to compensate a claimant for expenses incurred for treatment rendered by a Christian Science practitioner or by a Christian Science nursing home if the State law recognizes the Christian Science method of treatment.

Section 7(7) defines the term "administrative expenses" to include an award of an attorney's fee if the fee "is paid in addition to, and not out of the amount of compensation." Therefore, amounts representing awards of attorneys' fees paid in addition to the compensation are not included in the State program's cost of paying compensation when determining the amount of the grant.

Section 7(8) defines the term "qualifying crime" to mean (A) any act or omission occurring in the State which is criminally punishable and which the State designates that it will compensate the victims of, and (B) any act or omission that would qualify under (A) but for the fact that the act or omission occurred within the exclusive federal jurisdiction.[15] Thus, while each State with a qualified program has complete freedom to specify those crimes whose victims will be eligible for compensation, it must make all victims of those crimes eligible, without regard to the victim's State of residency. A qualified State program will be eligible for a grant equal to 25 percent of the cost of paying compensation to the victims of such crimes.

Section 7(9) requires that States compensate the victims of certain crimes that fall within exclusive Federal jurisdiction. The crimes involved are those that are "analogous" to the State crimes whose victims are eligible for compensation.[16] However, in return for a State program assuming this burden, it will be eligible for a grant equal to 100 percent of the cost of paying compensation to the victims of "analogous" crimes.

Section 8

Section 8 of the bill authorizes the appropriations of $15 million to carry out the purposes of the legislation during the first fiscal year of its existence (fiscal year 1980). It authorizes the appropriation of $25 million during the second fiscal year (1981) and $35 million during the third fiscal year (1982).

Section 9

Section 9 of the bill provides that the Attorney General may begin to make grants starting with fiscal year 1980.

COST ESTIMATE

The committee, based upon the following analysis prepared by the Congressional Budget Office, estimates the cost of the legislation to be $8 million for fiscal year 1980, $13 million for fiscal year 1981, and $16 million for fiscal year 1982.

[15] In some States, an act may not be a "crime," even though all of the elements of an offense are present, if the perpetrator lacked the capacity to commit a criminal act—because, for example, the perpetrator was under a certain age or was "criminally insane." The State of Massachusetts deals with this situation in a way that is typical of States with victim compensation programs. For the purposes of its victim compensation program, Massachusetts defines "crime" to include an act "which, if committed by a mentally competent adult, who had no legal exemption or defense, would constitute a crime . . ."

The phrase "criminally punishable" is used in the legislation in order to make it clear that a State may include in its cost of paying compensation amounts representing awards to victims where, technically, no "crime" has been committed. Thus, if the Massachusetts program is found to be a qualified State program, when it compensates a claimant where it finds that the offender was acquitted (or not prosecuted) because of insanity, or mental irresponsibility, the amount of that award would be included in the cost of paying compensation when determining the amount of its grant.

[16] For example, the Washington program makes rape victims who are injured eligible for compensation. If a rape occurs within the territorial boundaries of Washington but is subject exclusively to federal jurisdiction, the Washington program, to be a qualified program, must provide that the victim of that federal rape shall, if otherwise eligible, be entitled to compensation.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 14, 1979.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the request of the staff of the Subcommittee on Criminal Justice of the House Committee on the Judiciary, the Congressional Budget Office has prepared the attached cost estimate for H.R. 4257, the Victims of Crime Act of 1979.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM,
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JUNE 13, 1979.

1. Bill No.: H.R. 4257.
2. Bill title: Victims of Crime Act of 1979.
3. Bill status: As ordered reported by the House Committee on the Judiciary, June 5, 1979.
4. Bill purpose: The bill gives the Attorney General the administrative responsibility for making grants to states with qualifying programs to compensate the victims of violent crimes. These grants would cover 100 percent of the costs of awards resulting from crimes subject to exclusive federal jurisdiction and 25 percent of the costs of awards for other crimes. Individual states determine which crimes qualify for their programs. However, to receive federal grants, a state must compensate individuals for personal injuries which were the result of qualifying crimes, as well as offer compensation for loss of support to eligible victims' dependents. The bill excludes from the reimbursement formula any state compensation for pain or suffering, property loss, any amount over $25,000 on an individual award, costs for which the victim was or will be reimbursed from another source, and states' administrative expenses. The bill authorizes the appropriation of $15 million in fiscal year 1980, $25 million in fiscal year 1981, and $35 million in fiscal year 1982 to carry out this program. This is an authorization bill that requires subsequent appropriation action.
5. Cost estimate:

	[In millions of dollars]
Authorization level:	
Fiscal year:	
1980	15
1981	25
1982	35
1983	---
1984	---
Estimated outlays:	
Fiscal year:	
1980	8
1981	13
1982	16
1983	17
1984	18

The costs of this bill fall within budget function 750.

6. Basis of estimate: The authorization levels are those stated in the bill and the full amounts authorized are assumed to be appropriated. The resulting outlays will be significantly affected by three variables: (1) the national incidence of violent crime in the coming years, (2) the percentage of violent crime victims covered in states with compensation programs, and (3) the value of the awards to individuals. CBO's estimate assumes that the national incidence of violent crimes will increase at an average rate of 2 percent annually. This assumption is based on violent crime data provided by the FBI. CBO estimates that approximately 1.6 percent of the victims of violent crime in the participating states would receive compensation awards, and that participation would include states with approximately 90 percent of the nation's violent crimes. Compensation is estimated to initially average $2,700 for lump sum awards (one-time compensation) and $2,500 per year for protracted awards, with increases in subsequent years at the rate of inflation. It is projected that the awards would be disbursed by the federal government at a rate of 80 percent the first year and 20 percent the second year.

The critical assumptions and general methodologies that were used to derive these costs are explained below.

Incidence of violent crime

The growth rate of violent crimes between 1970 and 1975 averaged 5 percent per year, but many criminal justice experts believe that growth rate was abnormal, and that a smaller growth rate will occur. The rates of change in recent years are shown in the following table:

	Total violent crimes	Annual percentage change
1975	1,026,280	5
1976	986,570	−4
1977	1,009,500	2
1978 [1]	1,059,975	5

[1] Uniform crime reports: 1978 preliminary annual release, Mar. 27, 1979.

The FBI crime report indicates a 4 percent decrease in 1976 followed by increases of 2 percent and 5 percent in 1977 and 1978, respectively. The growth assumptions employed in deriving this estimate reflect the view that the average increase in violent crimes will be about 2 percent per year for the next 5 years.

Less than 1 percent of all violent crimes can be classified as exclusively federal in jurisdiction.

Compensation victims as a percentage of total victims

Currently 27 states in which 75 percent of the nation's violent crimes occur operate victim compensation programs. In addition eleven states have partial programs or pending legislation to help compensate victims. It is assumed that several of these eleven states would initiate comprehensive victim compensation programs with federal cost sharing in effect. CBO assumes that approximately 90 percent of the nation's violent crime victims would be included in a national program. CBO's assumption of the percentage of victims of violent crimes who will receive compensation awards is based on data obtained from seven states (California, Illinois, Maryland, New Jersey, New York, Minnesota, Massachusetts) with existing victim compensation programs. These programs, where 44 percent of the nation's violent crimes have been committed, give compensation awards to 1.4 percent of their violent crime victims. CBO has projected that this bill would give existing state programs greater visibility and subsequently increase the number of awards to include 1.6 percent of victims in 1980 and 1981, and 1.7 percent thereafter.

Value of awards

The grant experience of the seven aforementioned states is also the basis for projections about the type and amount of compensation awards. The average lump sum award is expected to be $2,700 in 1980. For protracted grants, which 20 percent of the recipients receive, the average annual value is assumed to be $2,500 in 1980. Both amounts are increased in subsequent years to reflect inflation. Protracted grants are assumed to be paid for an average of two years.

Federal administration costs

The administrative expenses of the Justice Department are projected to be $300,000 initially, increasing to $400,000 by 1984. A staff of four professionals and four support personnel is assumed, in addition to the one supervisory Executive Level IV position.

7. Estimate comparison: None.

8. Previous CBO estimate: During the 95th Congress, CBO prepared cost estimates for two similar bills, H.R. 7010 and S. 551.

9. Estimate prepared by Michael E. Horton.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

NEW BUDGET AUTHORITY

The bill authorizes the appropriations of $15 million for Federal fiscal year 1980; $25 million for Federal fiscal year 1981; and $35 million for Federal fiscal year 1982.

INFLATION IMPACT STATEMENT

H.R. 4257 will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

COMMITTEE VOTE

The committee reported the bill by voice vote on June 5, 1979.

DISSENTING VIEWS OF MESSRS. KINDNESS, LUNGREN, McCLORY, VOLKMER, BUTLER, ASHBROOK, MOORHEAD, SENSENBRENNER, HALL (OF TEXAS) AND SYNAR TO H.R. 4257

We strongly oppose H.R. 4257. Now is not the time, nor is this bill the proper governmental vessel, for such an uncertain and unnecessary legislative journey.

Admittedly, compensating victims of crime can be a legitimate governmental concern. In fact, many of those opposed to passage of H.R. 4257 have vigorously supported victim compensation programs in their own States where they have been initiated without Federal assistance. But we must join the administration in opposing a bill proposing Federal grants for State crime victim compensation programs.

More so than its predecessors, this Congress represents a Nation weary of growing Government spending and anxious to restore funding priorities closer to the people. As conscientious trustees for the American taxpayer, we are expected to say "no" when common sense so requires.

The rationale for any major Federal undertaking requires the existence of a Federal purpose, the discharge of a Federal responsibility, or the development of a uniquely Federal solution to a widespread problem. Thus far, supporters of H.R. 4257 have been unable to provide any such bases.

One necessity for H.R. 4257, we are told, is to encourage States to initiate victim compensation programs. But what are the facts? Nearly 30 States with 75 percent of America's victims have already established programs without any Federal encouragement. The obvious weakness of this supposed rationale leads to the disquieting conclusion that the burgeoning cost of existing victim compensation programs has caused State legislators regret and prompted them to seek to pass their expense on elsewhere. The Federal Government cannot be merely an automatic carte blanche for State programs. The proper role of the Federal Government is to devote its limited resources to those problems not already being adequately treated by the States.

Whether a State wishes to compensate its crime victims is a matter of its own spending priorities. Having chosen to do so, a State should not seek to have that decision underwritten by the other 49 States.

Indeed, the discussions of a Federal "bail out" for the States in the past two Congresses have precipitated an unhealthy development: several States have passed crime victim compensation legislation but conditioned their implementation upon Federal funding participation. Thus, the previously unhampered growth of self-reliant State programs has been stymied by the siren-song of the ever enlarging Federal "big brother."

At its core, the basis for this legislation is the misguided notion that Federal dollars can somewhow always more efficiently fund State programs than can State dollars. Although that philosophy may have easily prevailed in the past, it is rightly questioned today.

Supporters of H.R. 4257 also argue that the Federal Government bears some responsibility for the victims of State crime. However, such attenuated reasoning represents a quantum leap in the Federal-State relationship—a leap so profound that its logical concommitant would be the detailing of the FBI as urban patrolman. For there can be no Federal responsibility where there is no Federal authority. State crime victims result from the violation of State criminal laws which the Federal Government has no ability to enforce. Moreover, to blame the Federal Government for a street crime in New York, in reality only channels that responsibility to the taxpayers of the other 49 States, certainly none of whom were able to prevent that crime in the first place.

Before this Congress is tempted to assume the burden of compensating State crime victims, it should have no misunderstanding as to the size of the task. Cost estimates for an earlier 50–50 Federal/State proposal ranged all the way from $22 million to $200 million annually; the only agreement appears to be that whatever the expense, it will grow.

Furthermore, the Congress should not delude itself into believing that the 25 percent Federal share of H.R. 4257 is the final word. In subcommittee hearings, there were already requests to expand the scope and thus the cost of this bill enormously. Make no mistake—this bill establishes a precedent upon which there will be naturally persistent requests for greater Federal financial involvement. H.R. 4257 is a vast, new Federal welfare program poised on the launching pad; like all skyrockets, once fired, it will only go higher and higher.

Perhaps H.R. 4257 would merit support if it proposed an innovative method to correct a uniquely Federal problem. Instead, it merely follows the long discredited notion that every problem must be Federal in nature and can be spent away by the Federal Treasury.

But beyond that, it pours Federal money on the wrong end of the problem—no amount of money will make the victim appreciate his pains; he would have preferred that the crime had been prevented. Although this bill is advertized as a crime fighter, it can only reduce crime as effectively as bandaids prevent cuts.

It is said that paying the victim will persuade him to report the crime and to testify at the trial. But there is today no lack of victim participation in the criminal justice system, but rather, nonvictim witness indifference—an indifference this bill will only reinforce. H.R. 4257 adds still another hearing at which a witness must testify—the victim compensation hearing—thus further convincing him that silence is the only way to avoid personal involvement in the endless grinding of the criminal justice system. Instead of enhancing the citizen role in law enforcement, this bill may actually detract from it.

If there were but some assurance that by paying State crime victims with Federal dollars we could significantly—and magically—reduce the number of crimes, then this bill would be meritorious. Such a promise is as illusory as the supposed connection between the Federal

52-407 O - 81 - 10

Government and its responsibility for State crimes. H.R. 4257 is merely a head-long plunge into another fiscal tunnel so blind that there is not even light at the end.

For these reasons, we respectfully dissent.

HAROLD L. VOLKMER.
SAM B. HALL, JR.
MIKE SYNAR.
JAMES F. SENSENBRENNER, JR.
DANIEL E. LUNGREN.
JOHN M. ASHBROOK.
M. CALDWELL BUTLER.
THOMAS N. KINDNESS.
CARLOS J. MOORHEAD.
ROBERT MCCLORY.

SEPARATE VIEWS OF MR. HYDE TO H.R. 4257

I was supporter of this legislation last session, because I protest the amounts of money and attention society spends on rehabilitating the criminal, while ignoring the often helpless victim. Notwithstanding, I am persuaded that the States can and should initiate and support these programs without Federal help, since our acknowledged goal is to cut Federal spending wherever possible.

One way to hold down the deficit is to refrain from starting new programs. This program, while laudable, can await Federal involvement until we get inflation under control.

After all, we are all victims of the crime of inflation, and that *is* a federal responsibility.

HENRY J. HYDE.

SEPARATE DISSENTING VIEWS OF THE HONORABLE SAM B. HALL, JR. TO H.R. 4257

While I am in complete agreement with the position expressed by the dissenting views, I think it is important to emphasize the cost to the American taxpayers of this radically new program. At a time when the overtaxed citizens of this country are crying out for relief from excessive regulation by the Federal Government and from Government generated inflation, this legislation would create an unprecedented new Federal program costing, at the lowest estimate, $72 million over the next 5 years. Based on estimates provided the Committee last Congress, the Federal share under this bill could reach $100 million per year. Either way, the cost of this program is excessive, especially since there is no demonstrated need for the Federal Government to become involved in what is, by its very essence, a State and local matter.

SAM B. HALL, JR.

APPENDIX

Proceedings of the Committee on Victims of the Section of Criminal Justice of the American Bar Association, June 4 and 5, 1979

[On June 4 and 5, 1979, the Committee on Victims of the American Bar Association's Section of Criminal Justice met in Washington, D.C. to discuss victim and witness intimidation. The following is a transcript of the proceedings at those meetings:]

MORNING SESSION

MONDAY, JUNE 4, 1979, 9:00 A.M.

Judge YOUNGER. My name is Judge Eric Younger. I am Chairperson of the Committee on Victims of the American Bar Association Criminal Justice Section.

Some two and a half years ago the American Bar Association Criminal Justice Section formed the Committee on Victims. That committee was formed to see what the bar should be doing to improve the lives of crime victims.

We started out on such modest projects as encouraging victim compensation statutes throughout the states; many states now have them. We have suggested changes in the American Bar Association's Standards for Criminal Justice. What we're doing here today is trying to make inroads into the problem of victim and witness intimidation; a majority of you here have indicated you also believe it is a serious problem.

I'd like to introduce the members of the hearing panel and the President of the American Bar Association, S. Shepherd Tate.

First, Judge Frank Marullo of the Criminal Court in New Orleans. He is a former member of the Louisiana State Legislature and has spent some six years on the criminal court.

Next is Michigan Circuit Court Judge Susan Borman, formerly on the Recorders Court in Detroit.

David Levine is now a practicing attorney in Oakland, California. He started as the law student member of our committee.

Judge Phrasel Shelton is Presiding Judge of the San Mateo Municipal Court in northern California.

Daniel J. O'Brien of Dayton, Ohio is a former deputy district attorney of Dayton and now is in the private practice of law, primarily defense work.

Howard Yares runs the Victim Counseling Program of the Philadelphia Bar Association.

Ruth Nordenbrook, presently the Chairperson of the ABA Criminal Justice Section Committee on Women & Criminal Justice, is a former deputy district attorney from Seattle, Washington, now an Assistant United States Attorney in Brooklyn.

E. Michael McCann is the District Attorney in Milwaukee County, Wisconsin, one of the few places in the U.S. where something has been done to combat the problem of victim/witness intimidation.

Frank Carrington, the Vice-Chairperson of this committee, has been a legal advisor to the Denver and Chicago Police Departments and is now President of Americans for Effective Law Enforcement.

I am honored to introduce to you the man who made it possible for us to hold this hearing—supplementing the financial help of the Florence V. Burden Foundation. The President of the American Bar Association, from Memphis, Tennessee, Mr. S. Shepherd Tate.

President TATE. As President of the American Bar Association it is with some embarrassment that I welcome this very fine audience to hearings on victim/witness intimidation. Our pleasure is quite obvious at the federal, state, and local officials, many volunteers, and members of the judiciary who have sent in written comments and who are here to testify today. We are very pleased that you have honored us by your comments and your real concern.

We are pleased by the contribution that has been made by the Florence V. Burden Foundation of New York which has splendidly supported these hearings. I have been extremely interested in this subject and I asked the ABA Board of Governors to provide additional funds to support this vital project.

But I am, and I know Judge Younger and others here are also, a bit embarrassed. We are embarrassed by the written comments from many of you who said you were happy—but surprised—that the American Bar Association was doing something about intimidation.

While everyone in this room probably agrees that intimidation is a serious problem, many of you disagree as to just how to go about doing something about it. And the committee has deliberately included testimony that is critical of its approach. But most of you are satisfied, I believe, as we are, that it is a serious problem.

I said a moment ago that we are somewhat embarrassed by the bar's lack of interest in this matter in the past; these hearings are intended to do something about that. But, more important, these hearings are intended to advance the search for answers to addressing the plight of victims and witnesses; by doing so, we hope to make justice a reality in all parts of the criminal justice system.

Thank you for participating.

Judge YOUNGER. Let me introduce Lucy N. Friedman, Director of the Victim Services Agency of New York. She was formerly with the Vera Institute of Justice, and holds a Ph. D. in Social Psychology from Columbia.

Ms. FRIEDMAN. Thank you. I will talk about the issue of intimidation based on the experience we have had in New York, and then discuss some remedies.

Our experience is based on the Brooklyn victim/witness project, started in 1975 by the Vera Institute of Justice, with L.E.A.A. funds. Last year the project was taken over by the Victim Services Agency.

Early in that project, when we were trying to discover why more victims didn't come to court, we discovered that fear of retaliation was a major concern of victims, and often prevented them from coming forward.

In order to get a clearer picture, we interviewed 295 victims at the beginning of the court process and again at the end. Twenty-six percent told us they had been threatened at some time during the process; 5 percent had been intimidated indirectly and 21 percent directly at some time throughout; 38 percent told us they were very much afraid of revenge, and another 16 percent reported they were somewhat afraid.

In other words, more than half the victims in the process were concerned about the defendant taking some form of revenge.

We see about 30,000 victims a year; that means that over 7,500 victims a year in Brooklyn are being threatened.

Data indicate that most of the threats are not realized. Of the 65 people we spoke to who had been threatened, 4 were hurt at some point and 3 were involved in suspicious accidents, which they assumed the defendant in some way brought about.

We also found that at the end of the process the fear was reduced; whereas over 50 percent were fearful at the beginning, by the time disposition occurred, that percent figure was down to about 40 percent.

I'd like to introduce Ms. Polly Reyes who has been a victim and who has been intimidated. I think her experience will illustrate some of the data that I will talk about later.

Ms. REYES. Thank you. My name is Polly Reyes. I'm from New York City. I want to share with you some of my experiences, hoping that something can be done as a result, and so that not every victim has to go through what I went through. I am a single parent. By necessity I had to move into a section of Manhattan close to my parents, convenient for me in terms of everyday living.

From the outset I stood out as a sore thumb because I was not a welfare recipient; I did work, and I didn't fit into the neighborhood. I moved there in September; nobody took notice of me. Around Christmas, people started noticing my coming and going. I had my own little car. I didn't fit in again. In February someone

smashed the windows of my car and poured sugar in the gas tank. I couldn't imagine why they did this. Then I noticed that inadvertently I had left a Court Officers Association card on my windshield, so the association was made there that I was connected with the criminal justice system. The card belonged to my ex-husband. I left it there. So they took retaliation on me, smashed my windshield. That was in February.

In March—I lived on the ground floor—they started smashing plants against my windows. Still I didn't know who was doing this. Every time something happened there was one person in particular who was always around, but I made no connection between him and what was going on. I thought he was just one of the neighborhood kids, never thought of him as a criminal; he was just a little kid hanging out.

In May I started getting harassment from everybody in the neighborhood—names, stares, the works. I paid it no mind; I just went about my business. In the last two weeks of June, each Wednesday my apartment was burglarized. The first time they ransacked my whole bedroom. They took all my jewelry, my clothes, color TV, my radio, my camera equipment. I came home and I found my pay stubs and my deposit slips all lined up on my bed. I couldn't figure out what they were trying to do.

The first week in July again they burglarized my apartment, and this time they hit the living room and my son's bedroom. The fourth Wednesday, the Wednesday before the New York City blackout, they literally moved me out. I came home and found all my furniture in the hallway, covered with my sheets and bedspreads.

At that point, the fourth burglary, was when I found out the person who was doing this was the little guy who was hanging around every time something happened; he lived right above me on the second floor.

Each time something happened I called the police; I reported it. No one ever said to me that they though it might have been this guy from the second floor. I was coming home every night not knowing that this boy knew who I was but I didn't know who he was. I was literally being set up, and I wasn't aware of it.

When I finally found out who he was and he knew that I knew who he was, I had him arrested. We went to court. I went to a hearing. He was under sixteen so we went to Family Court. I went to corporation counsel hearings and one of my first questions to them was: When I leave here, is he going to be allowed to leave with me? They assured me, no, that wouldn't happen.

But sure enough, as I left the court, he was on the same elevator I was on. I was walking with two detectives. And in the lobby of the building he said to me. "One of these days, Whitey, it's going to be just you and I, no cops, nobody around."

That same night was a payday. He knew it was a payday, he knew how much I was going to deposit, and he knew how much I was coming home with. So as I entered the building he was waiting for me on the stairway. He mugged me at knifepoint. And when I gave him $50 he knew I had more on me because he knew exactly how much I was making. So I had to give him everything I had on me.

I left. That night I went back to my mother's house. When I found out who he was, I moved out. I couldn't stay there. I knew at some point he was going to break in in the middle of the night when I was there. And I had a son. My son had already been harassed and assaulted in the neighborhood. I wouldn't let my son go out anymore. We had to move.

A few nights later, again I was coming home to get some clothes and things, and he wouldn't let me park my car. I kept trying to back in and he would just stand in the way. He was trying to scare me. But I just kept on driving. I said if he doesn't move I'm going to hit him and it's his fault. He got out of the way; I parked the car. He started telling everybody, "That's her; that's the white bitch that had me arrested."

At this point I couldn't go back to that neighborhood because I was just asking for it. Two weeks later I got my transfer and I moved out of there. This was in August. In October I was called again from the corporation counsel. There had been no hearings until October. And in October, when they called me, I had no idea they had rescheduled the session for that day. They called me and told me that he was being tried on charges of having shot an FBI agent with his own gun. I said to them, "Well, look, if you have him on that you don't need my testimony."

They said, "He's going to be placed at this hearing."

I thought when he'd get placed it would be to send him away and throw the key away. He was being placed in a juvenile home.

I moved away from there and I just made up my mind that I'd never go back there. And I was very hesitant to get involved in anything.

This past December, the day after Christmas, I was assaulted. It was a traumatic experience. I had never been physically assaulted before. It was a sexual assault. I fought him but I wouldn't call the police. I was afraid. I was more afraid not of what had happened, but that I was going to get the same runaround that I got in the other case. If they found out who he was they wouldn't tell me and I just wasn't going to set myself up again. It took me a while to call the police. I called Lucy Friedman and others who encouraged me to call the Sex Crime Analysis Unit.

I did report it. He has not been caught. But there has been a series of sexual assaults in the neighborhood and from the description, it is the same person.

I hope what I've said here will save someone from similar problems.

Judge YOUNGER. Thank you. Ms. Reyes has brought up a point we do come across—where there's no apprehension, the victim is often better off than when someone does get caught.

Ms. FRIEDMAN. I think that's right. Ms. Reyes went through a very terrible experience, and difficult as New York sometimes is, I think that is more awful than most experiences. It does illustrate many of the patterns that we see over and over, and which have been documented by our research. My first reaction is that Ms. Reyes' experience illustrates our *inability* to respond to the problem. Ms. Reyes had to relocate. That's fairly traumatic. And it's hard to think of other responses the criminal justice system can make—particularly when we're talking about 7,500 people a year. Clearly the police department can't provide security guards for all 7,500.

Another response I have—and this we see a lot when we talk to victims and hear about their experiences—is the lack of fear on the defendant's part. I hope legislation and attention to the issue will filter down to defendants and make them recognize that they don't have a license to do this. In Ms. Reyes' case, the defendant even said in front of police officers "I'm going to get you."

A third issue is intercultural intimidation. That is something we do not see very much because our program is a court-based program; we're only seeing people who had the courage or wanted to report the crime to the police. We're not seeing those people who are so intimidated by the community that they're not coming forward at all.

A fourth point is the fact of prior relationship. We have seen in our research and seen in our experience that intimidation occurs much more often between people who know each other. In our study, we found that, whereas for the total population, 26 percent had been threatened, if there had been a prior relationship between the victim and the defendant, the percentage went up to 34 percent—1 out of every 3 cases. And the pattern with fear followed that; 68 percent of those victims who knew the defendant beforehand reported themselves very much afraid.

In developing remedies, we have to think of different kinds of remedies, when victim and defendant know each other, as opposed to if they are strangers.

Judge YOUNGER. If you're getting a percentage like that from people who have the fortitude to come forward, then perhaps the proportion among people you don't hear about would be many times greater. Do you have any findings on that?

Ms. FRIEDMAN. No. We did find surprisingly that victims who said they were afraid came to court more regularly than those who did not. So there may be some sort of compensatory relationship there—if someone is fearful, they look to law enforcement agencies and report the crime.

One of the responses that we as an agency are going to be making is to have some community-based victim programs. By being situated in the courthouse, we're not getting out to what must be a large number of persons.

Also, victims really don't know what happens to the defendant. Police officers often don't know the outcome of a case. What we often see are victims who say at the first stage in the process, "Is the defendant going to be out tonight?" We often are not able to answer this question.

One of the programs we're thinking of initiating is one in which we let the victim know where the defendant is. In some cases, it may increase fear; and in other cases we hope it will decrease fear.

Judge YOUNGER. Thank you both.

Our next witness is Lieutenant Arnold Nannetti of the Milwaukee County Sheriffs Department. He is an 11-year veteran. He headed the Witness Protection Unit, part of Milwaukee's well-known Project Turnaround for over three years under an LEAA grant. He has brought an intimidated victim with him.

Lieutenant NANNETTI. I was selected to head Milwaukee's Witness Protection Unit for Project Turnaround in 1975.

We learned that three warrants were issued for threats to injure a witness from January 1 through August 31, 1975. We started up September 1. From then to December 31 we had 18 more such warrants issued, also for battery of a witness. We found that if you provide good protection you get the "gift of gab" from victims and witnesses. We decided if we could relocate somebody in our own community and prove they couldn't be found, we'd gain their respect and also gain cases of threats or intimidation. In some cases we relocated them out-of-state. We handled 528 cases in three and a half years, with 22 relocated out-of-state.

I brough a victim with me today. Her alias name here is Kathy Jordan.

Ms. JORDAN. I was sexually assaulted and badly beaten by several men and required hospitalization. I was so terrified that I would not tell anyone who had done it. I was fearful to even utter the names of the people who did it. So I refused to talk to anyone about what had happened. After about a week in the hospital I started thinking. I decided that I had to do something—hopefully to prevent this from happening to anyone else. I called the Witness Protection Unit. I asked exactly what would be done to protect me and my family. And at that point, even thought skeptical, I finally did call the police.

From the time I left the hospital, I was in protective custody. I was taken to a hotel. I did not go back to my apartment. The assailants knew where I lived, and went back there. I was held in protective custody and sent from the state for my protection. And I now feel much more secure.

Lieutenant NANNETTI. Kathy has been relocated out-of-state under a different name. She's employed at this new location. We kept her in a hotel after the assault under an assumed name. After two weeks we relocated her out-of-state and she's been doing fine.

The six men involved in this assault were members of a motorcycle gang, well-known in the community for this type of thing. They have been looking for her ever since. So far, it's been a year and a half. They haven't located her yet; I hope they will not.

Our success in the first year was only 83 percent of our victims or witnesses who testified against the defendants. The second year, it rose to 87 percent. The final year and a half we were in business it went up to 97.6 percent of victims/witnesses who testified.

We obtained a total of 123 warrants for victim intimidation.

Mr. MCCANN. Milwaukee has a population of 1 million, with a relatively low crime rate. At first we wondered whether your unit could do relocation. It seemed to require much sophistication. Could you describe how you do the relocation, where you picked up the skills to do it at a local level? Also touch on the problems about the inadequacies of our state statute.

Lieutenant NANNETTI. We started relocation because there's no way we can babysit a witness 24 hours a day. So we attempted relocation; it's very difficult.

First of all, by law, moving companies must record the location where they're moving somebody. So we decided to put all the furniture into storage, when it actually went to a new location. We control the mail by using a post office box. Telephone, gas and electric bills go to us.

We also have forms for a child's school record, so we could relocate children to a different school without anybody finding out who they were. It worked.

Our state statute on threats to injure a witness provided a fine of $10,000 and 10 years if you were convicted. But battery to a victim or witness was only 5 years. So the defendants would rather beat the daylights out of the witness than threaten them. The statute has now been changed.

PANELIST. Would you describe how you provided, with a minimum staff, around-the-clock service?

Lieutenant NANNETTI. We started out with six officers and me the first year, cut down to three officers the second year, and two officers and me the last year and a half. We utilized the county police department to patrol persons' homes. We followed up on this every week. We'd make sure a squad came around to the house. We kept in contact with all the victims and witnesses. Our response time was good—if we received a call, within five minutes, we had a squad at that home. With another law enforcement agency, it could take 25 or 30 minutes. Response time was the key. A person felt safe if you responded in a hurry.

All of our officers had a history of every case we handled. The witnesses were reassured when the officer could relate to their case.

The minute a defendant went out on bail the victim or the witness was informed by us. I'd rather have the witnesses know when it happens than find out two days later when they see him on the street. This also reassured them.

Mr. McCann. Wisconsin law permits a judge at the time bail is set to set conditions for release. Would you describe the utilization of the procedure concerning direct or indirect contract between the victim and defendant or his agent, and how you found that a more useful tool even than the statute.

Lieutenant Nannetti. When we first started we'd have to appear in court every time and ask the judge to tell the defendant, on the record, not to intimidate or come near the victim's home, call, or have any of his friends do it. Then it was incorporated into the bail bond, stating—you shall not, either directly or indirectly, visit, call, or intimidate the victim or witness in this case. The defendant has to read it and sign it. If he did violate it, he would be charged with bail jumping. This is quicker to get a person off the street than trying to get the evidence to charge him with threats to injure a witness.

We'd put a listening device on the phone (which was legal there) calls. And even after we got that evidence, unless we could elicit this person's name or the victim knew the person by voice, it was difficult to get a warrant.

Panelist. With your experience as a police officer, can you describe the different impact when a regular patrol officer with many assignments learns from the prosecutor that in one of his cases there's a special victim as opposed to when such threats are the principal responsibility of your unit.

Lieutenant Nannetti. When police officers handled a case and one of their victims received a threat, they would call a completely different squad. These officers work three shifts. It could happen on the third shift, that squad would take the information, pass it down to the next shift, who would pass it on to the third shift—and it loses something.

We had a specialized unit working 24 hours a day to handle threats or intimidation. Whereas when it was handled by a police officer, he had so many different cases, he couldn't follow up on the case all the time. He just took the complaint and passed on it, just like reporting an accident.

Panelist. Do you have a sense that in stranger-to-stranger situations relocation is an appropriate response, whereas in prior relationship threat situations relocation doesn't work?

Lieutenant Nannetti. It's a lot easier to relocate somebody who is involved with a stranger than a prior relationship situation. The person involved with a personal relationship situation knows everything about the victim, including all the aunts and uncles that live in Timbuktu. It is very difficult to relocate them.

Panelist. What's the budget for your unit?

Lieutenant Nannetti. We started out with LEAA funds. Our budget ran $83,000 for one year, for two officers and myself, and maintaining equipment, two squads, and the rest of the equipment, telephones, relocation funds. Our funding ended December 31 when federal funds ran out.

Panelist. Ms. Jordan, what are your comments on the program, and what effect has the relocation program had on your family ties?

Ms. Jordan. The relocation program does work. Without it, I don't think I'd be here to tell you about it. Some of the people who assaulted me I knew, others I did not know at all. I knew they were definitely out there looking for me.

Panelist. Are you able to contact your family.?

Ms. Jordan. Definitely, yes. It's been rough. I'm not as close to my family physically as I was, but I'm as close to them as I was in every other way.

Lieutenant Nannetti. It took some time before her parents were allowed to know where she was.

Panelist. Who made the choice to relocate her?

Lieutenant Nannetti. The perpetrators of the assault had told her that if she went to the police they would kill her. This particular gang has the capability of doing that. I made the choice to relocate her because I knew I couldn't protect her in that particular locality.

Judge Younger. Thank you both very much.

Let me introduce the Deputy Assistant to the Superintendent of the Chicago Police Department, Richard Brzeczek.

Mr. Brzeczek. On behalf of the Acting Superintendent of Police and all the men and women of the Chicago Police Department, I would like to express our collective thanks for inviting the Chicago Police Department to appear today and present views on this most serious problem.

In examining the problem, it appears that these hearings today should be called the hearings on the compounding or aggravation of victim/witness intimidation. I suggest this for several reasons.

First, the incidence of crime in this country has created such a plague of fear in each of our communities that each of us has become somewhat a victim of the fear of criminal assault. The widespread and bold actions of the criminal element in our communities have made all of us somewhat psychological victims because of the ever present fear of crime.

For those of us who have been less fortunate and actually suffered the consequences of a criminal act, the fear is negatively reinforced. Furthermore, if the criminal is apprehended, it seems more likely than not that the victim becomes even more intimidated if for no other reason than his total unfamiliarity with the criminal justice system. Once the arrest is made, the crime victim can be expected to perhaps give additional statements, sign complaints, and even confront the offender again in a lineup.

The requirement to perform these totally unfamiliar acts undoubtedly causes consternation in the crime victim. The victim can also be expected to appear in court and again be expected to perform such unfamiliar tasks as testifying on behalf of the prosecution and withstanding adroit and skillful cross-examination.

But this may not be the end of the victim's problems. We have seen in recent years the development of a new mentality within the criminal element which intimidates, harasses, assaults and even murders victims and/or potential witnesses. This apparently is an innovative defense posture, or at least an alternative to a defense, because if the defendant can keep the victim or witnesses out of court he is virtually certain of securing an acquittal.

The price that the victim must pay to redress the wrong done against him is basically to be subjected to a system with which he is totally unfamiliar. Such compelled participation itself is very intimidating. But when you compound or aggravate the victim's plight by attempting to keep him out of court through harassment, assault or, potentially, murder you not only aggravate the preexisting apprehension that the victim may have, but such actions are a direct affront to the integrity of our criminal justice system. It appears ludicrous that our system of criminal justice, which provides a certain forum for the redress of grievances, tolerates the obstruction or obfuscation of the victim's access to the system itself because of intimidation and harassment.

A classic example of what we are talking about is a situation which occurred early in 1978 in Chicago. An individual was shot while waiting for a bus on a street corner. The motive, at best, was racial. Later in 1978, while the charges were pending against the offender, the victim was again shot several times while returning from work. Since the second shooting, the Chicago Police Department has contributed two police officers per shift for a 24-hour-a-day coverage of the victim's home. The Cook County Sheriff's policy is to escort the victim and his family at all times while they are away from home.

This case raises several considerations. First, this is but one case. It doesn't take much to determine the cost factor in providing the necessary security for the victim and his family. If two or three of these situations were to exist concurrently, the cost factor becomes compounded so rapidly that the entire concept becomes cost prohibitive. Second, ask yourself this question: Who is really incarcerated in this type of situation; who is the one who has given up his freedom to move about unmolested; who is the one who is confined to the relative safety of his own home; who is the one who must continually live in fear in a shroud of armed protection?

It is the victim. It seems ironic that an intimidated victim suffers such a fate and infringement on his personal liberties that his present situation parallels that of an incarcerated offender.

This situation is generally the exception rather than the rule when it comes to various forms of victim/witness intimidation. Most of the time the intimidation is in the form of threats, coercion, or duress—with psychological harm being the end result rather than physical harm. The intimidation of a victim or a witness is extremely difficult to prevent because the offense itself is very insidious. Many times the actions of the person causing the psychological intimidation are not even criminal. For example, in a gang-related incident a victim or witness may find gang members standing on the sidewalk in front of the victim's or witness' home doing nothing more than glaring at the house. While this may not be criminal activity, the psychological impact upon the victim or witness is beyond adequate description.

The most efficient approach to protecting victims and witnesses from intimidation appears to be isolated confinement with armed protection to prevent any

harm from coming to the victim or witness. But in a large metropolitan area where intimidation is a relatively frequent occurrence, one would have to build a camp where all these victims and witnesses could be confined until there has been some assurance that the threat of intimidation has passed. This of course is an unreal solution to the problem.

More successful approaches are community-based witness assistance programs which demonstrate some degree of unity and solidarity with the community. The potentially intimidated victim or witness at least has the psychological reassurance that he has the support of the community.

The development and maturation of these programs undoubtedly need additional research and funding to maximize their respective positive impacts. In addition, the passage of additional statutes, such as the one suggested by this committee, and the imposition of judicial sanctions upon persons who perpetrate the intimidation, are necessary so that the judicial system can maintain its integrity as it relates to the multitude of considerations before it in a specific case. In addition, intimidation should be dealt with by the court in a manner that does not require the stringent, almost inflexible guidelines of a criminal trial, but at the same time can bring a severe penalty.

While I have been somewhat superficial in addressing this problem, my approach does not imply any diminution of its magnitude. The intimidation of the victims and witnesses has been going on too long. It's about time that those of us who are responsible for insuring the integrity of the criminal justice system do something about it.

Judge YOUNGER. If you were to design—and didn't have to worry about financial constraints—that community program you talked about, what does it look like?

Mr. BRZECZEK. We do have victim/witness protection facilities where we can house persons—but I think more importantly, we must let the system itself deal with the problem. If I had more resources, it would be for the establishment of additional courts, judges, and prosecutors to deal more swiftly with the problem. The opportunity for the intimidation to occur is created by the dilatory tactics in continuances where cases are prolonged for two or three years.

Even when no direct intimidation or harassment occurs, victims are frustrated at having to wait for the matter to come to trial, and there is also their constant fear—is he going to try to get back at me? And even if it doesn't occur, the psychological duress is worse than the intimidation. The expeditious disposition of matters pending before the court would help to end some of these problems.

Mr. MCCANN. I'm a prosecutor and I'm sympathetic to what you have said. A witness who will be testifying later suggests that prosecutors and police are not adequately covered by the proposal—he alleges we threaten people from time to time. I think we might put something in the proposal to deal with the problem from a prosecutor's viewpoint. I think it's legitimate to say to a proposed witness or a co-conspirator, "If you don't testify, we will charge you." How would you feel about the possibility of a section being put in addressing the problem of an overzealous prosecutor or officer threatening a recalcitrant witness with general threats that they have to cooperate?

Mr. BRZECZEK. If there are people in the prosecutorial or law enforcement profession who are wanton and willfilly overzealous, that may be an appropriate provision. But I wouldn't want to see a provision that would be applicable to a prosecutor or a police officer who in good faith is encouraging the witness to testify or encouraging a victim to come forward, and there may have been a misinterpretation of the encouragement.

Many time what we're involved in as prosecutors and law enforcement officials in encouraging victims and witnesses—even to the point of dealing with them negatively—is nothing more than a manifestation of some of our frustrations, because of all the work we put into a particular case, which now hinges upon the testimony of a given person, and that witness becomes recalcitrant. It isn't a wanton and willful criminal act of intimidation.

If you want to include such a provision, draft it carefully so as not to include innocent good faith remarks made to victims or witnesses because of frustration.

PANELIST. What do you have in mind when you say we need some kind of more severe punishment with less stringent procedure, and, I would imagine, less due process protection?

Mr. BRZECZEK. We can look to other types of currently existing proceedings—contempt proceedings, proceedings for revocation of probation—and perhaps

use the due process standards that are required in those proceedings, which may not necessarily be those used in criminal trials.

At the same time, especially if the person doing the intimidating is the defendant or is in any way connected with the original proceeding, that action of itself aggravates the original proceeding, compounds it, and deserves a more severe penalty.

As far as penalties are concerned, when you're talking about adding to an armed robbery charge, for example, a misdemeanor charge, I think there can be ways of drafting the appropriate legislation so that if the intimidation compounds an already existing misdemeanor proceeding then perhaps the intimidation should be a misdemeanor. But if the intimidation compounds an existing felony proceeding then the intimidation should be dealt with as a felony.

Judge YOUNGER. We greatly appreciate your being here.

Our next witness is Dr. Dean G. Kilpatrick from the Medical School at the University of South Carolina. He is now a full Professor in the Department of Psychiatry and Behavioral Sciences.

Dr. KILPATRICK. I would like to perface my remarks by thanking the American Bar Association for holding these hearings. I have had some experience working with rape victims for about five years. I congratulate the ABA for getting involved in this. These hearings are very important; what we accomplish here may have an impact on the problem. In addition to my academic work, I am also a founding member of People Against Rape, a community-based rape crisis center in Charleston, S.C. I have also been a co-principal investigator on a research project looking at the effect of the sexual assault experience on rape victims, and following them up over time.

My testimony is most germane to rape victims, but I guess it also would apply to other violent crime victims. The content of my testimony will focus on the following three areas: (1) that victims of violent crime become quit disturbed by even the slightest contact or potential contact with anything that they associate with their assault; (2) that harassment and intimidation can take many forms, a few examples of which I'll give; and (3) that interactions with the criminal justice system are extremely stressful for most victims.

The remainder of my testimony will discuss the development of programs which assist the victim in preparation for upcoming testimony.

Dealing with the first issue—that an overt threat of physical harm or other retaliation made by an assailant to a victim could produce extreme distress—seems to me fairly self-evident. It has been well illustrated by comments already made here. That requires very little explanation.

Most of the rape victims we have talked to have gotten some sort of overt threat if they prosecute; sometimes even if they don't prosecute they get a threat.

The capacity for even slight contact to raise distress is prhaps less apparent, but I think it is no less a problem. I would llke to explain what we feel is the mechanism by which this causes distress, and also some research evidence from our project which supports the idea that things that are associated with the crime—including the defendant—acquire the capacity to produce much distress.

The key factor in understanding why such slight contact can be so disturbing is to really understand what a crime experience is like. In a rape case it is abundantly clear that, for the victim, a rape experience means being powerless, vulnerable, and in danger of physical harm or even death. Whether it's a stranger or someone the victim knows, it is a situation which has gotten out of control and is perceived as a threat to physical and psychological safety. Above all, it is terrifying.

When subject to such a dangerous and painful situation, it is reasonable to assume that any normal person would respond by experiencing high levels of fear and anxiety—terror is really a better term for it.

In a recent study in which we asked rape victims to describe their rape experience, we found the 98 percent of the victims reported being scared, 94 percent felt terrified, 95 percent felt worried, and 90 percent felt helpless. Moreover, there were a lot of physiological symptoms of anxiety which most people would not be readily aware were symptoms of anxiety. For example, 96 percent said that they felt shaking or trembling; 80 percent noted heart racing; 76 percent said they experienced physical pain; about 70 percent, tight muscles; and about 60-some-odd percent, rapid breathing. Thus, the rape victims showed considerable evidence of both cognitive and physiological anxiety during the crime itself, and there is little reason to believe that other crime victims do not experience similar emotions as well.

What effect might we expect this distressed emotional state during the crime to have on subsequent behavior? There is a type of associative learning called classical conditioning which says that any stimuli which are present at the time of rape-induced distress will acquire the capacity to evoke severe distress. Without getting too jargonistic here, I hope, just as the dogs in Ivan Pavlov's famous experiment learned to salivate to the sound of a bell which had been paired with the presentation of food, rape victims learn to experience fear when they are confronted with persons or situations which they associate with the rape. Thus, the mere sight of an assailant or the sound of his voice will produce enormous fear in the victim, regardless of whether he makes an overt threat.

Obviously, such fear is highly intimidating. I don't have time to go into the detailed research evidence, but basically we've gotten a lot of support for this notion in our own research, and have shown that victims are more afraid than non-victims, which is not too surprising. But the specific things that the victims are afraid of are things which are most closely associated with the crime. An overwhelming fear of victims—again not surprising in light of the testimony—is that they will be attacked again.

This fear of subsequent attack and natural tendency to experience rape-induced fear when confronted by anything associated with the assailant have two overriding implications for programs designed to deal with potential intimidation. First, statutes should be drafted which prohibit any attempt by defendants to contact the victim, either in person or by phone. Meetings held in the presence of a third party, such as an attorney, might be excepted from this prohibition. Second, it is obvious that there is a need for some sort of way to provide safety for a victim because they are very afraid of attack; obviously this has a very intimidating aspect to it.

There are many forms of victim intimidation, and I would like to go through just a few of these just to illustrate the breadth of the form that intimidation can take.

There was one person who had been the victim of a very brutal sexual assault and who was offered $2,000 by the defense attorney if she would drop charges—which I find offensive; this obviously needs to be dealt with.

Another victim was raped and beaten repeatedly by two assailants who then blindfolded her and bound her. Then they carried on a 30-minute conversation about whether they should kill her or not, in her presence. They finally decided not to, left her in the woods, came back later to try to find her but she had escaped. They also told her that they would kill her if she reported the crime. She did report the crime; it did result in a conviction. Prior to the trial the defendants' families threatened her with another assault. And then finally the assailants told her that they would kill her when they got out of jail. They in fact later escaped from jail and she had many anxious moments. The main point here is that the conclusion of the trial does not necessarily end the victim's fears.

A third victim was raped by a member of a family from whom she was renting a trailer. After pressing charges, the defendant's family confiscated all her belongings. They informed the victim that these would not be returned until she dropped charges. She did not drop charges and the defendant was convicted. The victim had to initiate a civil lawsuit to obtain the return of her property.

A fourth victim received a series of phone calls from her assailant. He did not overtly threaten her, but the sound of his voice alone was enough to throw her into panic. A fifth victim was enrolled as a trainee in the Job Corps and was assaulted by one of her instructors. She reported the assault and was informed that she was being dismissed from her training program for being a "troublemaker."

Clearly, each of these five victims was subjected to attempted harassment and intimidation. It is equally clear that any statute which attempts to prohibit harassment and intimidation must deal with the broad spectrum of problems reflected in these case histories.

Finally, I'd like to talk about the criminal justice system and why it is so traumatic for victims. There are many reasons why interactions with the criminal justice system are stressful and anxiety-provoking for victims. It is reasonable to believe that some victims may be sufficiently intimidated by the anticipation of such stress to cease their involvement with the prosecutorial process. Therefore, I would like to identify a few of the most important potential sources of stress for the victim posed by the criminal justice system.

First, a victim may be reluctant to report the crime because she doubts that she will be believed or that she will be treated humanely—I use she but I think it

applies to males as well. This is a particular problem for rape victims who, no doubt, sense the generally negative attitudes towards rape victims held by the general public.

Illustrative of these attitudes are some data reported by Martha Burt who conducted a random sample of the Minnesota population on attitudes toward rape. Sixty-nine percent of the sample believed that, in the majority of rape cases, the woman was promiscuous or had a bad reputation; 71 percent believed that women with an unconscious wish to be raped may do something to bring on the attack; 56 percent of reported rapes were believed by this group to have resulted from the victim's lying about the assault to get even with a man with whom she was having difficulties. Finally, 53 percent of the reported rapes were thought to have been concocted by women who discovered they were pregnant and wished to protect their reputations. Given these unfavorable attitudes, how would you feel if you were a victim? That you would be believed? That you would be treated sympathetically?

Second, as Borgida and White discuss in a recent paper, the continued existence of laws which permit the introduction into evidence of information regarding the rape victim's prior sexual conduct is highly intimidating to victims. Forty states have modified their statutes with respect to this issue, but implementation of new procedures has been uneven at best. In other words, the law has been changed in many states but the judges are still trying it under the old law and letting in evidence which theoretically should have been excluded.

Borgida and White report that introduction of evidence regarding prior sexual conduct is extremely prejudicial. I would urge this committee to use its influence to insure that additional legal changes are made where required and that the new statutes are adhered to, as well.

A third problem is that preliminary hearings and trials are extraordinarily stressful for victims. Victims frequently lack important information about courtroom procedures and about the way the system works. For example, I have talked with many victims who did not understand the basic tenet that defendants are presumed innocent until proven guilty beyond a reasonable doubt by 12 jurors. If a victim does not comprehend the civil liberties' safeguards, she often assumes that a not guilty verdict means that society has found her wanting.

Additionally, the courtroom situation involves many cues which are associated with the crime. These include physical cues such as observing the defendant, and cognitive or mental cues such as thinking about and reliving the events of the assault, which she has to do to prepare her testimony. Our previously discussed theory states that events associated with the crime will produce stress and anxiety. Hence, it is not surprising that a courtroom appearance, which involves many crime-related cues, would be highly anxiety provoking.

In the time remaining, I would like to urge this committee to seriously consider developing strategies for reducing the trauma of courtroom procedures. While there are complex issues involved in accomplishing such a goal, I can offer a few suggestions.

First, some mechanism should be established to inform the victim about the judicial process and his or her role in it. This really sort of reinforces some things that were said earlier. We all fear the unknown, and the addition of a victim advocate to the present system—who could provide relevant information—might reduce at least some of this fear.

Second, some method for preparing the victim for oncoming testimony is clearly indicated. The goal of preparation should be to reduce the victim's anxiety such that it does not preclude presentation of effective testimony. It's not to coach the witness in terms of what specifically to say. But I maintain that a victim who is having an anxiety attack essentially—and normally so—at the time that she's testifying cannot really be an effective witness.

We have effective, efficient anxiety-management techniques in our therapeutic arsenal which could readily be taught to paraprofessionals assigned to assist victims.

Finally, modifications could be made in the physical arrangements of courtrooms such that the victim does not have to sit facing the defendant and his family and friends. Many victims have commented on how distressing this is, and I can think of no rational reason not to effect this change.

Again, thank you for allowing me to address this hearing.

Mr. CARRINGTON. Thank you. You said judges are ignoring new legislation limiting evidence in rape cases. We have several judges here. I wonder if they might comment.

Judge SHELTON. That type of legislation has been enacted in California and my experience is that it is working.

Judge BORMAN. In Michigan, that type of testimony is absolutely prohibited and it is my understanding that the judges are abiding by that.

Dr. KILPATRICK. We do have some evidence in South Carolina where we have monitored court cases that some judges are letting that testimony in, but are also trying cases under the old rape statute.

PANELIST. I'm intrigued by your unique idea about a possible change in where the defendant would sit or where a witness would sit vis-a-vis other people in the courtroom. I'm just wondering what you mean by that. I don't think anybody has thought about it. How pragmatically would you handle it?

Dr. KILPATRICK. This is not my idea but that of victims who talked about it with me. They stated that in the courtroom situation, when they are testifying, they are looking right out, and the defendant's family, friends, and the defendants are sitting right in front of them; they find this very intimidating. I don't know exactly why this is necessary. It may be just an accident of architecture.

PANELIST. Changing the positioning in the courtroom would bar the defendant from facing his accuser. Also, jurors and judges must observe the witnesses for credibility; the manner in which they testify may add to their making decisions about that particular witness. It would not be fair to the jury or the judge to be placed in a position where the victim would not have to look at that defendant.

Dr. KILPATRICK. I don't think it's fair the way it is because most jurors are not aware that the victim is very intimidated by just seeing the person and the family and friends. I would be happy for it to stay the way it is as long as the jury was made aware that the reason the victim is acting funny when she's on the stand is because she is being intimidated at that very time.

PANELIST. That would be the job of the prosecutor to explain that to the jury.

Judge YOUNGER. Thank you, Dr. Kilpatrick.

Our next witnesses are Robert Grayson, Mary Bremner, and Donna Harris. Mr. Grayson is a Crime Victim Advocate for the city of Paterson, New Jersey, and Chairman of the newly-formed New Jersey Council on Crime Victims. He was a newspaper reporter who was permanently blinded in the right eye and suffered other nerve impairment as a result of a criminal attack four years ago.

Ms. Donna Harris is a counselor with the Memphis, Tennessee, Rape Crisis Program. She is involved in long-term counseling and therapeutic group sessions for rape victims and works with the Memphis District Attorney's Office.

Ms. Mary Bremner is Executive Director of the Aid to Victims of Crime Program, St. Louis, Missouri.

Mr. GRAYSON. I was personally a crime victim in Parsippany, New Jersey, a suburban community. I found that criminals create the scars, that victims cover their sores, but that we have the power to either help the victim heal those scars or deepen them. And one of those areas where the scars can deepen is the area of intimidation, when an intimidation complaint is not properly handled.

I liken intimidation to a cancer. I call intimidation the legal version of cancer; because intimidation is baffling, its presence is difficult to detect; though intimidation is not directly communicable, it spreads; sometimes it clusters in certain areas. Early warning signs are often overlooked. Intimidation's presence is feared. Sometimes there are not cures for intimidation and we often lose the patient.

The difference between the two is when you lose to intimidation you not only lose the confidence, cooperation, and respect of the individual involved, but you also lose the confidence, cooperation, and respect of the person's family, friends, and future acquaintances, people whom you might have to rely on again in a courtroom situation. And the result of this will affect the way crimes are reported and the conviction of criminals.

There are several areas of intimidation. All are serious, especially to a person who has just gone through a traumatic experience, that of either being the victim of a crime or having witnessed a crime.

Of course the first and foremost intimidation is where a threat is actually made.

And for the most part I feel that even in the case of actual threats, these threats are not really taken seriously or investigated seriously by officials. A prosecutor's office should have a special individual or unit to handle intimidation complaints. The establishment of this post would provide victims and witnesses with a place to turn to make an intimidation complaint, a place where they can feel their complaints will be taken seriously by a person or staff that realizes intimidation problems are real and has the experience in handling them. Victims and witnesses must feel that an intimidation complaint is completely checked out and proper steps are taken to put an end to these threats.

In my particular case my family and I received threatening phone calls prior to the trial. These threats continued during the trial. The four defendants who mugged me were attempting to have me not go to court; to drop the charges, and were making threats against my personal safety and reputation and the safety of my family. Three of them were out on bond, one was in jail. But the threats were not identified, so we don't know that the particular people who were out of jail were making the threats. However, the threats were coming from them or members of their family or friends interested in not having them go to jail.

They had long juvenile records; records consisting of beatings. I happened to be the lucky person who got them when they had just become adults. Mine was their first case going to an adult court with the potential for their going to prison.

When my parents reported the intimidating phone calls to the judge and the prosecutor nothing was done. At one point the judge held a meeting with the defense attorney and told him it wasn't nice for the defendants to make these phone calls and it would be wise for him to tell them to stop. The calls didn't stop, and they continued even after the trial.

Another area of intimidation relating to my case: in New Jersey we have introduced a Crime Victims Bill of Rights. One of the points included in it is keeping victims and suspects in separate holding areas when they go down to police headquarters immediately after a criminal act. The night I was mugged the four suspects were arrested. The four suspects and I were at police headquarters. The four men who had just threatened to kill me were put in the same holding room with me and the door was closed.

I can tell you as a victim that while sometimes you don't have time to be scared during the criminal assault, because it's happening so fast, you certainly are scared when you turn to law enforcement officials for help and find that they put you back in the hands of the same people you were trying to get away from.

The solution to the problem is simple—the complete investigation of a complaint. Granted, many of the threats are not carried out. But the real question is whether or not victims or witnesses performing their civic duty by reporting crimes and then testifying in court should have to live with these threats regardless of whether the threats could ever be carried out.

Just as a crime victim finds it very demoralizing to be treated as a statistic or the 80th mugging of the year, so too the same victim does not want to feel like a number or a paranoiac when making an intimidation complaint, a threat that seems very real and very frightening to the crime victim.

I can't tell you as a crime victim how very traumatic an experience this is. And having a threat made against you by people associated with those who assaulted you is certainly unnerving.

I want to move briefly on to several other areas where I feel intimidation also exists. Many victims or witnesses who have not been threatened fear that they will be. Some victims and witnesses fear that the suspect will recognize them or remember their name and address and will come and get them later on. I find this concern especially among senior citizens. Many senior citizens fear their names will be printed in the newspaper and friends of the suspect will try to harm them.

Everything should be done to make sure that suspects do not come by the names and addresses of victims or witnesses simply because that information constantly appears on different court documents. It should be impressed upon defense attorneys that information about the victim or witness should never be turned over to the suspect. As a former daily newspaper reporter, I feel a spirit of cooperation can be struck between a prosecutor's office and the press to give some anonymity to victims and witnesses. Such anonymity is essential in getting people to come forward and testify in some cases.

Though it is often essential to a news story to print a victim's or witness' name, perhaps the address can be kept confidential to cut down on the fear of reprisals. Perhaps total anonymity for a victim or witness can be given when it can be proven that there is a real threat upon a person's safety.

In our area there has been a rash of burglaries resulting from obituaries printed in the newspaper with the deceased's address. The suspects go to the house and rob it while the funeral is going on. In our area we no longer print the deceased's address in order to cut down on that problem. That same cooperation could work in this case.

There's another area of intimidation that is not looked upon seriously—intimidation by the unknown. When we think of intimidation we usually only think of threats of bodily harm. But what about the victims and witnesses who are intimidated by the unknown aspects of the judicial system? For these victims and witnesses this is usually their first encounter with the judicial system. They don't

52-407 O - 81 - 11

know what to expect. Often the system has not been explained to them, and they have many unanswered questions. They are usually apprehensive, frightened, tense, and usually just recovering from their traumatic victimization experience.

Unfortunately this problem is widespread, but it can be overcome by establishing better communication between victims and witnesses, and judicial and law enforcement authorities. For instance, a victim or witness testifying before a grand jury can be very intimidated by the aura of secrecy surrounding the proceeding. The fact that each individual must enter the hearing room alone and a guard is usually posted at the door can be very unnerving to someone never before involved in the judicial system. Not knowing what to expect once inside a grand jury room, and perhaps not even really understanding the job of the grand jury, can also be intimidating.

This intimidation of the unknown serves to keep many victims from reporting crimes or going to court. A better explanation of the judicial system, allowing victims and witnesses to view a vacant grand jury room before giving testimony, cordial and compassionate courtroom guards and matrons who understand the fear and trauma a victim or witness is facing, the opportunity to view a trial in progress and to ask questions about the court procedure—these would serve to greatly ease this intimidation of the unknown and allay victim/witness fears of the procedure designed to actually help them.

We've talked today about legislation, but there's one point we must keep in mind: We can't legislate the compassion and the understanding it takes for a law enforcement official to put himself in the position of the victim or the victim's family, and to take bold steps to properly protect the victim/witness at every level of the system. We must do the utmost to make sure that the personnel that will meet this challenge are involved in our system.

Too often we hear that intimidation and the cure for intimidation is the job of no one. The police say it's not in their realm, the prosecutors say it's not in their realm. Yet the victim is being intimidated and has no place to turn. It's about time people stopped passing the blame. Start saying, I'm going to help that victim because I know what that victim is going through.

One point I'd like to leave you with is that the victim who suffers the scar of a brutal attack has a lifetime sentence. There's no parole from permanent injuries whether they be physical or emotional. And we can only add to that by not helping the victim who is in fear. Thank you.

Judge YOUNGER. Ms. Bremner.

Ms. BREMNER. In St. Louis, we already have a number of supportive services for victims. The St. Louis Police Department has had a Victim/Witness Intimidation Unit for six years. The Circuit Attorney's Office has a victim/witness support unit which aids victims as they progress through the court system.

When we began our work to respond to the American Bar Association's victim intimidation proposal we organized a symposium with people involved in victim/witness services in the St. Louis area. It was attended by law enforcement officials, prosecutors, interested citizens—and our testimony today is a result of that symposium.

One of the things that came out was the fact that intimidation and fear of intimidation operate on a recurring cycle. Intervention at one point is not going to solve the problem. You can successfully prosecute an intimidation case and yet still have people refusing to report crimes out of fear of intimidation. The fear of intimidation leads to refusal to participate in the system; then further intimidation develops an attitude of fear and apathy which encourages intimidation—which makes intimidation easier when citizens are refusing to get involved in the system, which in turn increases personal fear.

If, however, victims overcome that fear and do get involved, the response of the criminal justice system is going to be an essential factor in their future participation as well as that of their family and friends.

In Missouri we have two statutes which were part of the revised Criminal Code which took effect January 1, 1979. One is tampering with a witness and the other harassment. As a result of this revision, while 14 arrests were made and 6 warrants issued in 1978 in intimidation cases, the first four months of 1979 saw 15 arrests made and 6 warrants issued for intimidation.

A number of basic premises were brought out by the symposium participants. Most of them focus on rebuilding a mutual support between citizens and the criminal justice system. The problem is widespread and needs to be dealt with in a variety of forums.

Communication is essential to a victim's belief in the system and to his sense of security. That means communication from the police and from the prosecutor's

office throughout the investigation, trial preparation and court proceedings. Often victims are totally unaware of what is going on in the case. This only serves to increase their sense of insecurity and fear. Emotional support is essential not just to aid the victim in dealing with the problem of victimization, but also to help him through the trauma in dealing with police investigations, trail preparation. and court proceedings.

Emotional support can be provided by referral by the police to appropriate victim service agencies where available; crisis counseling, including social workers and/or private agencies; and realistic information efforts.

Judge YOUNGER. Two previous witnesses have said something I've heard frequently. The information these people really care about is: is he out or not?

Ms. BREMNER. Right.

Judge YOUNGER. Are you able to provide that information accurately to the witness?

Ms. BREMNER. Not always. What we do is attempt to, through the police department and the Circuit Attorney's Office, find out that information. There is no system set up right now to do that. I believe the police department in cases where intimidation has already started keeps track of that and does inform victims.

Another suggestion made in the area of emotional support is to provide a friend in court, particularly for juveniie victims, someone who can be there with the victim/witness simply to provide emotional support as they go through what is a very traumatic experience.

Threats and fear of threats should always be taken seriously and not discounted. Even where we have facilities available for investigating complaints, many times victims' fears are discounted simply because they have not yet received a phone call and not yet been contacted. They may still have good reason to be afraid.

Defendants must be informed at a variety of points of the penalties for intimidation, in an attempt to prevent intimidation in the first place and/or to prevent further intimidation. You may have the laws on the books, but be sure you get the word out.

And in the private area we need to start a cycle of community spirit involving publicizing successfully prosecuted cases, developing a sense that we in the community can do something about this. It's not just a set of individual solutions to individual problems, but community spirit needs to be developed.

The results of our symposium also indicate that the problem of intimidation requires a variety of approaches and that intervention in the "cycle of fear" must be made at a number of points. Most essential to improved cooperation between citizens and the criminal justice system, which is seen as a basic necessity for successfully dealing with intimidation, is the system's overall responsiveness to the needs of victims, particularly their fears. The specific recommendations we can make with regard to the American Bar Association's proposals are as follows:

We recommend that you strengthen the police procedures section:

By in-service training to improve the ability of the "front-line officers to deal with victims supportively; in other words, the officers who first deal with the victim need to know how to be supportive;

Police provision of immediate information to victims regarding the availability of supportive services; the existence of intimidation units;

The use of shared resources by cooperating departments in developing special intimidation units. In St. Louis the suburban areas have a variety of internal police departments and a top police department. This suggestion means that they develop a cooperative unit, sharing services of the smaller departments;

Arranging for educational programs tied in with crime prevention programs, particularly neighborhood-based efforts. We need to go to the grassroots level to enable people to start helping each other;

Arranging for regularly scheduled contacts with victims who are the subjects of harassment;

Enlisting the cooperation of victims' and witnesses' neighbors and coworkers;

Development of public education campaigns. Advise intimidators of the penalties involved; and

Emphasizing continued contact and follow-up with victims. The suggestion was made that if there is a manpower shortage, reserve officers or volunteers be used to continue police department contact with victims.

The second area is strengthening the legislation, particularly including bribes and other forms of "friendly intimidation." The recommendation was made that stiffer penalties be included.

The third area to develop a section on the judicial role:

Use of verbal admonitions in court to deter intimidators;

Minimizing contact between witnesses and defendants;

Allowing victims and witnesses not to give their addresses or other personal information in open court. That does not need to be part of the testimony in open court; and

When needed, provide written admonitions to defendants stressing the penalties involved for intimidation.

And the fourth area concerns addressing the need for emotional support for victims and sensitivity to victims' fears:

Encourage coordination among victim services and crisis counseling services with the various elements of the criminal justice system;

Include the concept of providing a victim with a "friend in court"; and

Improve communication with victims throughout the investigative and court process.

The fifth area is developing strategies for dealing with domestic violence and intimidation.

As has been mentioned earlier, stranger to stranger crimes are much different in terms of follow-through than intimidation from someone the victim knows.

Judge YOUNGER. Thank you. Ms. Harris.

Ms. HARRIS. In Memphis in 1978 there were 544 forcible rapes reported to the police. One third of them at some point during the legal process dropped the charges. Based on the reports of the victims I've worked with, the majority dropped the charges out of fear. And the source of the fear was intimidation. The means of intimidation reported to me can be broken into three general areas.

First, a victim might be intimidated by threats from the assailant or his family. Threats of physical harm to the victim or her family if she doesn't drop the charges might come by phone, letters, or in person. Frightened for her life, and afraid to tell the police about the threats for fear the assailant will carry them out, the victim refuses to prosecute.

A second form of intimidation is less overt. Frequently the assailant's family will contact the victim to plead for their son. The family may harass the victim, flooding her with phone calls or making themselves very visible to her. The victim's own family may intimidate her, implying that she's lying or at fault or that a trial will be harder on her and on the family than it's worth. For her own sake, or for the sake of the assailant, they urge her not to prosecute. The victim may also be offered bribes by the assailant or his family to drop the charges.

Lack of prosecutions resulting from direct implied intimidation are due to the victim's ignorance of where to obtain help and to the lack of support from the legal system.

This lack of information and support from the criminal justice system is the third form of intimidation. My clients often report feeling more victimized by the legal system than they do by the assailant. They are thoroughly intimidated from the time of their initial report of the crime to the police until a verdict is handed down by the jury.

Much of this intimidation is not "real;" there is no deliberate attempt on the part of police or prosecutors to abuse the victim. Instead, the legal system is routinely and impersonally grinding out justice, and the victim feels intimidated. It is based on these feelings that many victims do not cooperate as witnesses or refuse to prosecute.

Police and prosecutor "burn-out" is one factor in victim intimidation. What to a victim is the most tragic, terrifying incident that ever occurred is just another case to police and prosecutors. And they are taught to handle cases, not people—so victims' feelings are largely ignored or buried. The police/prosecutors' intent is to build a case to get a conviction, while the victim's impression is that the people she has turned to as primary helpers either cannot or will not help. These feelings influence a victim's ability and willingness to cooperate as a witness.

Another means of intimidation is lack of communication. Until the case is closed, victims largely define their lives in terms of a pending trial, yet no one tells the victim anything about the case. No one explains what is being done, why it is being done, why certain questions are being asked, or why they are repeated over and over. No one tells her that the assailant is released on bond or what she can do if he contacts her. Police/prosecutors' intent is to let justice take its course, while the victim ends up feeling forgotten confused, frightened.

Part of the intimidating lack of communication is that no one corrects the victim's unrealistic expectations of the criminal justice system. Most victims report a crime believing in Perry Mason, and expecting a quick and fair conclusion to the case. When nothing like this occurs, victims feel further victimized. They feel on trial. The assailant is released on bond, while the victim is being alternately grilled for information and ignored. No one informs the victim that it will take a year or more for a trial date to be set, that the case will probably be reset several times, and that she will spend several days just sitting, waiting to be called to testify. All this leaves the victim feeling very initimidated and in no state to make a good witness.

Victims generally leave the criminal justice system feeling very disillusioned. This can be changed. The intimidation stems primarily from (1) the victim's own ignorance of the legal process, and (2) the understandable but unfortunate tendency of police and prosecutors to forget that victims are people and not "just another case."

There are several methods which can be used to effect changes. One option to help alleviate victim intimidation is in-service training workshops for police and prosecutors. These workshops would include sessions on crisis intervention, interpersonal communication, and the referral resources available. In workshops that we have organized we have always had a panel of former victims who discuss their involvement in and feelings about the legal system.

Another option is to have available a booklet to be given to a reporting victim. The booklet would follow step-by-step through the legal process, explaining in detail all that happens, defining terms, and informing the victim about the amount of time involved. A helpful inclusion is a page for the names and phone numbers of the reporting officer, investigating officer, state prosecutor, and various offices to contact for information about the case.

A third option is to hire a victim advocate. This need not be a law enforcement officer. A paraprofessional with knowledge of the criminal justice system and background in counseling and social work would be appropriate. Assigned to the District Attorney's Office and with access to police records, the victim advocate could serve as a buffer between the victim and the legal system. The advocate could keep victims informed about the progress of their cases and be available to answer questions usually directed to the police. The advocate could prepare victims for trial, setting realistic expectations and accompanying them to court.

Many benefits can result from effective advocacy. Based on the Rape Crisis Program's advocate program, clients report that they do receive information and support from the system. We have also had positive feedback from the police department. They report a decrease in calls for information from victims; therefore, they are freer to do investigations, and the victims, knowing what is going on, are more able and willing to cooperate. Since we do try to keep a record of address and phone changes—and they frequently move after an assault or change their phone numbers out of fear we frequently are able to locate victims that the system has lost over the time between the report and the trial date. The victims, knowing who is who in the courtroom and why each person is there, are ready to testify. They feel like witnesses in a criminal trial, worthy of respect and the respect of the court.

A simple wallet card explaining the victim advocacy program and giving a number to call could be handed to each victim reporting a crime. The police officer could take a few minutes to further introduce the program. With the victim's permission, his name and phone number could be given to the advocate and the advocate could initiate contact.

No matter what format an advocacy program takes, it accomplishes several goals: it keeps victims in the legal system, it prepares them to be witnesses, and it provides information and support to victims of crime.

Judge YOUNGER. It gives me great pleasure now to introduce Congressman Robert McClory, Member of the House of Representatives from the Thirteenth District of Illinois. He is ranking minority member of the House Judiciary Committee. Congressman McClory is a former State Legislator and practicing attorney from Illinois.

Congressman MCCLORY. Thank you. I have asked my Committee Counsel, Tom Boyd, to join me here. I am delighted to have the chance to be here. I first want to commend the Bar on arranging this hearing. I can't think of a subject in the area of reduction of crime in America which is more significant than the hearings which you are holding on the witness/victim intimidation.

I have prepared a brief statement on the model state statute. The proposed recodification of the Federal Criminal Code has a section which relates to witnesses

that does not include victims. It is important that a statute should relate to both witnesses and victims.

I have taken the position in the past that victim compensation, an issue which has become tangential to the one we are considering here, is a responsibility of the states. I've said further that the federal government cannot and should not assume the role of a nationwide insurance company. It is our role to enforce the federal laws and assist the states, to the extent that we can, with the enforcement of their own laws.

I should note that the Law Enforcement Assistance Administration has taken a leadership role in this regard. They have provided funding for victim/witness projects and have contributed substantially to an understanding of the problem. The subject of LEAA's extension is a critical one now before the Congress; the Bar should take a very positive and forceful position in support of this sole federal involvement insofar as state and local law enforcement is concerned. Because it's only through the LEAA funding that the state and local communities get support from the federal government for law enforcement.

I am particularly pleased that you are directing your efforts to enact victim/witness statutes first to the state legislatures by way of a proposed draft statute. I have reviewed your proposed statute and believe it presents a number of novel and worthwhile changes in general state law. It is a good blend of witness intimidation statutes and those which are more broadly directed to the obstruction of justice. At the federal level we still have only obstruction of justice statutes which are primarily designed to punish those who threaten or attempt to intimidate witnesses, jurors, or court officers.

In Section 2, as in Section 5, your proposed statute distinguishes between witnesses and victims. Both sections make it a misdemeanor for someone to verbally dissuade a witness or a victim from giving testimony. In this connection I am wondering if the penalty should not be greater than one year. The connotation of misdemeanor is one of light punishment; most think of it in terms of a fine or a very brief stay behind bars. In the area of victim/witness intimidation, verbal peer pressure can be intense. It is often the latent fear of physical injury rather than the actual stated threat which makes people reluctant to testify or report crimes.

I note that in subsection 3(b) you increase the penalty to that of a felony where such verbal persuasion "is accompanied by any express or implied threat of force or violence." Perhaps this subsection is intended to reach the type of community or peer pressure I am concerned about. On its face, however, I am not sure. I am not certain, for instance, what implied threat or force is. Does the presence of a knife in the belt of the criminal constitute an implied threat of force? Probably-yes. Does the presence of two huge thugs behind the criminal constitute the same threat? I don't know, but I think that the ultimate effect on the victim/witness is the same. For that reason, I would recommend that you consider combining Sections 2 and 3 as well as Sections 4 and 5.

I think it was wise to eliminate the word "attempt" in the statute. The mere presence of the threat, real or implied, can often be enough to frustrate the victim/witness. Unsuccessful attempts in this area may be just as effective as the completed act itself.

Section 7 lists several court orders to which a judge may resort in order to guarantee the safety of a victim/witness. I agree that, as a practical matter, several of the listed powers would have little effect. However, I would recommend that this committee consider police protection as another alternative. Occasionally this rather extreme—but often necessary—step is reserved for material witnesses, not victims. If the committee should determine that the court could not authorize police protection, it could certainly order that the police be in a position to respond promptly to a call for help.

The last two sections of the statute relate to a subject which I'm very vitally concerned in and on which I have introduced legislation—reform of Bail Reform Act. A few years ago the attitude in Congress was that persons should be released on their own recognizance if they were not going to be a danger to the community, and if they had a domicile in the community, and it was expected that they were going to be around. We weren't thinking so much about whether they were going out to commit other crimes.

The experience has been now, that we find that there's an increase in recidivism of those out on bail; we find a very high percentage of those who are released on their own recognizance have been the persons committing crimes. Perhaps these hearings indicate a changed attitude on the part of the public to which the Bar and the Congress is responding. Our concern a few years ago was primarily with the attempt to rehabilitate the criminal.

We have now come to the realization that these hopes are being unfulfilled, that some of the steps we took before are contributing to an increase in crime and that we have to recognize that those who commit crimes must be punished for them, and that we must develop new techniques for dealing with crime—especially street crime, which is the focus of the Law Enforcement Assistance Act.

Some changes in the Bail Reform Act are needed. That must be part of the package that you are dealing with. It can likewise help protect the victims and perhaps avoid having further victims of a criminal who has been released on his own recognizance.

In addition to the law that you have heard testimony on, I'm sure you have in mind the reaction that the organized bar should take with regard to attitudes and conduct of members of the judiciary. Having been a practicing lawyer, I know the disheartening, discouraging condition that victims and witnesses feel when they are subject to interminable continuances. There are many other steps we can take, for which no change in the law is needed, that can help induce victims of crime to testify.

PANELIST. Your comments on the Bail Reform Act—underlying them is a fear I have at least, that the victim/witness intimidation area is looked upon as a zero-sum game, where rights accorded to the defendant are rights that are taken away from the prosecutor, and in some instances from the victim and witnesses; and that benefits of protection that are going to be accorded victims and witnesses are ones that are in turn going to be taken away from the defendant. You suggested that in the form of cutting back on the Bail Reform Act as a response to victim/witness intimidation. Could you comment?

Congressman MCCLORY. There is a strong feeling that where the judge is aware of the fact that he's got a person before him who has committed a number of crimes before, that he very appropriately demand some kind of security bail before releasing that person.

It's not pretrial detention; but instead of pretrial detention, a hearing preliminary to releasing a person on bail, like we traditionally had. I think we just went too far when we made the only release condition be that the person have a domicile in the community and be likely to stay in the community. Sure, he's in the community, but he goes on committing crimes in the community. We want to try to overcome that. That would be my position with regard to the bail reform.

On the other subject of protecting witnesses and victims of crime, what we're doing is we're really aiding society in seeing that those crimes that have been committed are ones that get prosecuted. When we think of the type of crimes that are not prosecuted because of witnesses refusing to come to court because of intimidation, we realize we must take strong steps to correct that. So it's just another step, but it seems to be consistent with an effort on the part of society to do a better job of enforcing the criminal law.

PANELIST. The problem that you mentioned about a person being released on bail or his own recognizance and then accused of committing another crime. The question before the judge is whether to increase his bail or post bail or vacate his release on his recognizance once he is accused of another crime. The problem is he's out on bail or out on his own recognizance, he's been accused of a second crime. Then the prosecution comes before the court and asks to have the bail revoked because he's committed another crime.

The problem is due process. How do we deal with the second crime when the presumption is that that person is presumed innocent until such time as he is proven guilty? How do we deal with that due process issue?

Congressman MCCLORY. It would be difficult where the person does not have a criminal record. But the seriousness of the charge would be an appropriate thing to consider and perhaps the type of crime that's involved. So all we would be doing would be imposing greater discretion in the court to consider more than just the question of whether the person has a domicile in the community.

Ms. NORDENBROOK. In a recent case the U.S. Supreme Court suggested that the presumption of innocence is an evidentiary presumption. I wonder if this isn't going to clear the way for reform in bail considerations. I always take the position that as a prosecutor I don't have to presume that the defendant is innocent, and, in fact, if I do think he's innocent then it's irresponsible of me to proceed. I wonder if this isn't going to clear the way for court consideration of all the circumstances surrounding the commission of the alleged crime in considering pretrial release.

Congressman MCCLORY. I think it will contribute to a solution of this.

Mr. BOYD. In the case you referred to, the presumption of innocence was interpreted as being an evidentiary question. In *United States* v. *Wynn*, a 1975 case in the 6th Circuit, it was decided that a court had the inherent responsibility to consider the safety of the community in setting bail. In fact, if one considers the Bail Reform Act of 1966's distinction between capital offenses and non-capital offenses, the court is permitted to consider the safety of the community as a factor in setting bail in capital cases. But the Congressman's point is that that consideration does not extend under current law to non-capital cases. It is merely an evidentiary consideration—the safety of the community and, arguably, of witnesses and victims.

Judge YOUNGER. Let me thank Congressman McClory and Mr. Boyd.

Congressman MCCLORY. Thank you. Again I want to commend you, Judge Younger, and President Tate.

And I'm delighted to see LEAA Administrator Hank Dogin here. We're going to have a very good program under his talented leadership.

Judge YOUNGER. Thank you.

Henry S. Dogin is Administrator of the Law Enforcement Assistance Administration. He has been head of the Drug Enforcement Administration for a couple of difficult years and was leader of several federal strike forces prior to that time. Ms. Jan Kirby is with him this morning.

Mr. DOGIN. Thank you. I'd like to thank Bob McClory for those very kind remarks.

When I learned the ABA was holding hearings on victim/witness intimidation I wanted very much to attend. As a former prosecutor in New York County, I was an active participant in the early 60's in observing the way victims and witnesses should not be handled, the lack of sensitivity on the part of prosecutors, court officials, court personnel, and police personnel, just to get the daily rush of business over with.

And in 1974, I was part of the organized crime strike force program. I was the Deputy Assistant Attorney General in the U.S. Department of Justice Criminal Division, with overall supervision over the witness protection program, now under the aegis of the Marshals Service. It's a fascinating problem one in which I've taken a great interest.

I'm lucky we have on our LEAA staff a person as talented and as dedicated to victim/witness services as is Jan Kirby. We have set up a special unit within LEAA for the victim/witness program.

It's very important that we obtain the assistance of the public. We have a responsibility as public officials; prosecutors, to encourage cooperation with the victim and witness. We've done this with varying degrees of success. We've done a great deal in the last five or six years. LEAA, even prior to my coming on board, pointed the way in the right direction for services to victims and witnesses in the police and prosecutorial setting.

I see you will have a panel of federal officials. The U.S. Marshals Service in its relocation service provides physical protection and whole new identities for an individual and family, including financial assistance, employment, and housing as needed, sophisticated school records and dental and medical records to create a new identity. Their success ranges from temporary immediate physical security to documentation of an individual's past.

But these are limited services and they are usually only available in my experience to persons who are strong and brave enough who have come forward in major prosecutions on the federal level—usually organized crime or cases involving the most important and dangerous narcotics violators—only for them are protection and relocation services available.

Some special services have been available to states in major prosecutions; use is only on a temporary basis. But I'm concerned about the thousands of citizens every year who face the criminal justice system as victims, everyday situations—the *non*-organized crime case, the *non*-major narcotics prosecutions.

It's a tough thing to come forward and be a witness—especially if the alleged perpetrator is someone from your neighborhood and you have to go back to live in that neighborhood. The fear of defendant retribution may deter the average citizen from reporting a crime or identifying the perpetrator.

We asked this question when the Institute for Law and Social Research did a study on the PROMIS system. We found that only 2 percent of respondents in LEAA's Crime in the Nation's Five Largest Cities report cited fear of reprisal as the major reason for not reporting crime. We can be quite sure that such fear though is more prevalent in some cases—family violence, domestic violence or

where people know each other in the neighborhood. We must be very concerned about the fear of coming forward, the fear of retribution.

We've tried to address this in a major program we are undertaking in the victims/witnesses area. We're looking at all kinds of approaches to get the cooperation with the police investigation and participation in the prosecution on the parts of the victim or the witness. They include a number of services or approaches that could be utilized.

The first approach could be a special unit of a police agency, including at the federal level the U.S. Marshals Service. Down at the state or local level you would have a unit designed specifically to protect citizen witnesses who wish to pursue the legal process. Some urban police departments offer such services as around-the-clock witness protection, intensive surveillance of an individual's immediate family, home and place of business, as well as limited and temporary physical relocation.

The problem with these programs is cost. They're expensive. And again, at the local level, they're usually for the big prosecution; they are rarely available to the woman who fears her husband's physical abuse, if she were to call the police; or to an elderly man who may fear intimidation of a young gang member living in the neighborhood.

The second, and probably the most logical and cost-effective approach to witness intimidation, is not to meet the issue of protection head on. It's to provide the full, widest range of services to encourage the witness' or the victim's participation in the process. And I'm referring to a number of strategies that have been developed by LEAA since the victim,witness program was begun in 1974. They include the widest possible range of services. I'd like to suggest a few that might help in meeting the victim intimidation problem.

To reduce fear, you must have a great deal of training for criminal justice personnel. The investigating officer's demeanor while writing up an incident report or taking statements from witnesses can either promote confidence in the willingness and the ability of the authorities to protect citizens or simply reinforce the notion that crime reporting further endangers the individual. Therefore, police officers should receive training in accurate and sensitive report taking, attend first to the most immediate physical and emotional needs of a victim, and possess information and knowledge of all the range of services that are available in the community. A police officer must often be a social service officer. He has to know what kind of programs—medical, psychiatric, emotional counseling—are available to the individual. He must be able to steer an individual to such services.

The prosecutor must be more concerned about the fear of an individual going through the legal process. When we were DA's, we were handling about 50 folders at one time. We didn't have more time to be sensitive to victim/witness needs. We had to keep our calendars accurate and try to keep the detention facilities at a reasonable capacity. But prosecutors have to know about the needs of victims, the services that are available. They have to notify victims. They have to pick up the phone and call these victims' place of business and advise the employer just what's needed of the individual, support that person in that person's employment. Also, it is important that transportation be provided; getting the witness to and from the courthouse is important.

An additional needed service is the separation of the complainant from the defendant's family. If the family of a defendant is allowed to initmidate a victim or a witness in any way, that could scare off a person, and lead to a very difficult time in trying to get cooperation in the prosecution of the case.

There must be greater use and enforcement of peace bonds and restraining orders in family situations. The prosecutor must know the civil court and what civil remedies are available. Most prosecutors just know the criminal setting and how to prosecute a case. They don't know the wide range of legal remedies that are available to a person who may be a victim of a crime.

We've got to have improved court calendaring systems to prevent these repeated and unnecessary confrontations between parties.

There are a lot of temporary types of services that can be made available. Temporary shelters for abused spouses and children should be available to everyone.

Milwaukee's Project Turnaround is an excellent program for victims and witnesses.

We've come a far way in how we handle victims and witnesses. I think much must be credited to the Law Enforcement Assistance Administration, and much to the prosecutorial community. Most prosecutors around the country have

become more sensitized to the needs of victims and witnesses. It is a major priority. It should continue—and I know it will continue as long as I'm the Administrator of LEAA.

Judge YOUNGER. Let me ask you about Project Turnaround in Milwaukee. That was a multi-million-dollar, very efficacious grant program. Then along came the Proposition 13 movement. Is LEAA giving any attention to what can be done to market successes locally when the dollars run out?

Mr. DOGIN. We are in the era of significant budget cutting. I just put an extra $2 million towards program replications to let people around the country know the kinds of programs that are working, such as Project Turnaround. We have an information clearinghouse. Jan Kirby heads it. But we've got a problem—institutionalization of these programs. We must try to get some commitment at the inception of a program that if it works there will be dollars available—whether city, state, country, or private dollars—to institutionalize the program. LEAA cannot carry these programs longer than three or four years.

Ms. NORDENBROOK. A real problem is that there is no victims of crime lobby, that it's only when there's a very startling incident that the community comes in and complains. There is an active lobby for defendants. And I'm not criticizing it; certainly there are areas of concern. I have seen victims who have been mained and who have not been able to afford these kinds of expenses, medical and surgical services that are afforded to criminal defendants who will be sectennced to life imprisonment. The community has to become more involved. I wonder what the answer to that problem is.

Mr. DOGIN. You are correct that there is now no formal victim/witness lobby. There may be in the future. But I'll tell you what I've seen around the country in our victim/witness efforts. There *are* victim/witness networks. There are people within states who communicate with each other intra- and inter-state. We are trying to foster these networks—people who are really committed to helping victims, many of whom either were victims themselves or who have close relatives who were victims of serious violent crimes. I wouldn't have a major victim/witness program unless I felt there were people out there committed to it. This network growing up around the country could be the beginning of what later on might become a lobby.

PANELIST. Some previous witnesses, and to some extent your own testimony, focused on two lurking issues. One is that the amount of intimidation is less than the amount of fear of intimidation. And, secondly, the wrong is not as much with the defendant or the defendant's family as it is with the mysteries of the court system, the sort of shuffle-off-to-justice approach to processing criminal cases.

If you break the problem down there is a very tough nut; how do you deal with a defendant or a defendant's family or friends who are standing in the back of the courtroom giving the evil eye to the witness. We have some real problems with that but a much easier problem than trying to make the victim/witness feel comfortable and familiar in their experiences with the criminal justice system.

I suspect there are many people here who would like the answer to the following question: Is there any money available from LEAA for education of non-party participants in criminal court settings and in pretrial and investigatory settings so that they come to the court with a familiarity of the pitfalls that they're going to run up against?

Mr. DOGIN. You're raising two issues—the court process itself and educating people about the court process and their rights if they become victims or witnesses.

I think parallel with a victim/witness program you've got to have a speedy trial program, a program that moves cases expeditiously through the system. You've got to have experienced prosectors available, experienced and trained public defenders, and enough of them to move cases expeditiously, openly, fairly. The mystique about the court process that you suggest will be dispelled. Every victim/witness program has to have a speedy trial program.

You're right that there should be a public educational process on the mystique and workings of the court. When I was in New York as a State Planning Agency Director administering LEAA funds, we funded a number of court-watching programs, where members of the public would be present during the criminal litigation and would become familiar with it, and almost exercise a citizen oversight role—carping, recommending to the court and the prosecutor how they perceived it. It was an excellent educational process.

In order to address the needs of victims—and the needs go far beyond intimidation—you've got to have victim/witness service programs; you've got to have a

speedy trial program that moves the cases expeditiously; and you've got to have a public education program as to what the court system is all about.

Mr. MCCANN. The program in Milwaukee is a truly excellent one. Money is an element of the institutionalization, although not the entire thing. What LEAA did was stimulate the National District Attorneys Association in their victim/witness program. I think it's tragic that LEAA has suffered the cutbacks it has. I want to publicly thank you for what your agency has done for the citizens of Milwaukee.

Mr. DOGIN. Thank you very much.

Judge YOUNGER. Mr. Dogin, we very much appreciate your being here.

Let me introduce Mr. David Rapoport. Mr. Rapoport is going to talk about intimidation in a correctional setting. He is Assistant Director of the American Correctional Association Correctional Law Project.

Mr. RAPOPORT. Thank you on behalf of the American Correctional Association, the major trade association for correctional professionals in this country.

I'm speaking today on behalf of the Project's Director, Mr. William C. Collins. The Correctional Law Project is funded by the National Institute of Corrections. Its mandate is to keep the field up-to-date on recent developments in correctional law.

I will discuss an aspect of the victim/witness intimidation problem which is not dealt with in the proposed package—the problem of victim and witness intimidation as it occurs in prisons today.

Discussing problems of crime in prison reminds me of the movie, "Dr. Strangelove," in which a struggle between a U.S. Air Force general and the Russian Ambassador, in the heart of the Pentagon, is broken up with the admonition, "You can't fight here—this is the war room!"

One wants to say, "You can't commit crimes here; this is a prison!" Unfortunately, such admonitions carry little weight and accomplish about as much as the threat of a new misdemeanor conviction does to deter an armed robber from intimidating a witness or victim in prison.

Crimes do occur in prisons and will continue to occur. Enlightened correctional administration, adequate staff, and model facilities may reduce this crime rate, but I doubt that prison crime will be eliminated in our lifetimes. When one considers the prison population—the violent, the lawless, those who harbor nothing but disrespect for the law—it is little wonder that crime continues inside the walls.

If victim/witness intimidation is a "persistent problem" in the free world, it is an epidemic in prison. It's one of the basic rules of the game for prison inmates.

Intimidation is to be expected in virtually every case where an inmate may potentially be testifying against another inmate, the only possible exception being where the inmate/defendant is highly unpopular and lacks any connection with inmate power groups.

Unfortunately, many times no specific threat need be enunciated. Prisoners know the rules and do not need to be reminded of them. To borrow again from your proposed package, the casual remark that a witness should not bother getting involved in the legal process may mean, in the prison context, don't bother on pain of death or severe bodily harm.

The threat, when carried out, may not be subtle at all. I am familiar with one case in which a "snitch" was stabbed by another inmate while the two were locked together on a tier. There was no particular reason for the incident to occur at that time. The defendant later stated that he did it as a matter of principle. A conviction was obtained in that case, despite two related problems: there was no weapon found in that case, and exculpatory testimony was available from several friends of the defendant.

Indeed, the problem of dealing with manufactured or contrived testimony in favor of a defendant is perhaps as much a problem in dealing with prison crime as is victim and witness intimidation. Given the ease with which religions are formed in prisons today, it is only a slight exaggeration to expect the proverbial 32 Bishops to appear to testify in behalf of any inmate defendant, and to testify to anything that might bring about an acquittal.

On occasion, an inmate will step out of the crowd to testify against another inmate. The result, for the prison administrator, is that such individuals must then be treated with kid gloves. Typically, they must be removed from the institution pending trial. After the trial, in the words of one warden: "They're done." A return to the general population is out of the question. The witness would almost immediately become a victim. If one returns to the same institution at all, it must be to protective custody.

In most facilities, the protective custody section of the institution is, in a sense, a jail within a jail. Access to general institution programs and facilities is

cut off or sharply reduced, since persons in protective custody (who include others than just snitches) generally cannot mingle safely with the general population. Inside this unit, paranoia runs high since inmates in the unit may not like snitches—or each other, for that matter. The institution can never be sure that when someone asks to be put in protective custody that it is for his own safety or to get someone already in the unit.

The other alternative for handling the inmate witness besides protective custody is a transfer to another institution, probably out-of-state. This takes the inmate further from family and home, but may allow him to resume a more normal institutional life.

I emphasize may because frequently such transfers do not realize the goal. Inmates know why people are transferred and if someone suddenly shows up in Iowa from, say, the Arizona State Penitentiary, suspicions are inevitably raised. Since inmates tend not to embrace due process in their interpersonal activities, such mere suspicion may be all that is needed to fit the transferee with a "snitch jacket." If the act of transfer is not enough, letters about the new arrival may flow back to the transferring institution to confirm the reason for that transfer.

One may suggest simply paroling the inmate witness following the testimony. This is often at least possible. However, reductions in time for inmates are, in most states, difficult to obtain. Parole boards may feel that their principles are compromised if someone is paroled solely on the basis of a prosecutorial request. In many cases it may be illegal to parole individuals not otherwise eligible for parole consideration. Public safety may not allow parole in other situations. Release may be an alternative only for a few short-timers who are already close to their release date.

I personally doubt the wisdom of extending release as a possible benefit to most potential inmate witnesses. I question how much honest testimony would be received and how credible a witness would be to a jury if it were known that the witness was cutting 5 years off his time by testifying.

Unfortunately, the pressure against testifying fosters self-help justice in the institution—an eye for an eye—and tends to increase the lawlessness of the prison yard. If someone is not strong enough, individully, to take his own vengenace, all the more reason to join a gang. Intimidation is a prime weapon of prison gangs, which are a major problem in several states' institutions currently. The struggles for power in institutions present perhaps the most serious security problem facing administrators today.

One coming before a group such as this is supposed to have a solution ready to pull out at the last moment. Unfortunately, my "solution reserve" is almost as depleted as our nation's energy supplies.

Given the person in prison and those coming to prison, and given the nature of U.S. prisons, I doubt any solution is actually available today. Perhaps, through spending hundreds of millions of dollars to build small, compact, highly-staffed institutions to replace today's large institutions, the problem could more easily be dealth with and possibly reduced substantially, perhaps.

Unfortunately, this is not likely to happen in the current environment.

Judge YOUNGER. I think our committee would have no reluctance when we get into redevelopment of the final package in including some portion dealing with the correctional setting.

Panelist. In your written testimony you refer to handling intimidation problems better in the prison disciplinary context. We're talking about a state criminal statute. But it would probably bear some thinking on our part whether to separate out in-prison violence.

Mr. RAPOPORT. My recommendation would be to strengthen your proposed-statute by clearly indicating that that statute applies to intimidation in prisons or jails by making such behavior a felony. A misdemeanor, to someone serving a prison term of years, is little deterrent. Similarly, a new misdemeanor conviction provides scant retribution for society in general. At a more practical level, I doubt that many prosecutors are likely to pursue misdemeanor convictions for persons already serving a term of years.

Although Section 3(b) of the proposed statute could cover much of what I have spoken about, I feel a clearer statement would be of significantly greater benefit. For example:

"Every person doing any of the acts described in Section 2, under any one or more of the following circumstances, is guilty of a felony:

Subsection (f)—a new proposed section—"Where such an act is committed by any person incarcerated in a jail, prison, or other detention facility."

That would emphasize the concern of this particular problem. I considered questioning whether the proposed statute applies to any "proceeding authorized by law," or whether it should specifically cover prison disciplinary proceedings where victim or witness intimidation also remains the order of the day. It strikes me that such problems can best be handled in the prison disciplinary context and need not always involve the criminal law. However, I do wonder whether the statute in its present form could be interpreted as including prison disciplinary hearings as proceedings "authorized by law." Much of the solution (if a solution exists at all) to the problem of victim or witness intimidation in prison lies beyond the mandate of this committee and the proposed statute. Frankly, I have serious reservations that any sort of intimidation statute could have a significant impact on the problem in the prison context. However, the same concern could be expressed regarding the benefit of a statute in the non-prison context as well. Nevertheless, such a statute would reflect a clear statement by this group and by society that such intimidation was not an acceptable form of behavior and was not going to be tolerated.

I urge the committee to expand the scope of the statute to specifically address the problem of victim and witness intimidation as it exists in prisons today.

Thank you.

Judge YOUNGER. Thank you.

(Adjournment of Morning Session)

AFTERNOON SESSION

MONDAY, JUNE 4, 1979, 1:30 P.M.

JUDGE YOUNGER. We now have a representative of the National Association of Criminal Defense Lawyers—John W. Condon, Jr., of Buffalo, a former Chairman of the New York Bar Criminal Justice Section. He is on the Board of Directors of the National Association of Criminal Defens Lawyers, which designated him to appear here.

[Mr. Condon's written statement follows:]

"REDUCING VICTIM/WITNESS INTIMIDATION: A PROPOSED PACKAGE"

Position statement against the Committee's proposal by John W. Condon, Jr., Representing National Association of Criminal Defense Lawyers

The National Association of Criminal Defense Lawyers is against this proposal because it does not reach its stated purpose. If its purpose were to assure more convictions, it surely would do that. But if it is supposed to prevent intimidation, it barely touches on the problems that exist. In addressing intimidation, this proposal is deficient in many ways:

OUTLINE OF REMARKS

I. The data upon which the proposal is based is suspect and uncertain. Intelligent evaluation of this proposal as a solution to the "problem of intimidation" requires more specificity concerning the character, causes and extent of the "problem of intimidation."

II. The legislation proposed will not solve the problem of intimidation it purports to address. It offers no affirmative protection to anyone.

III. The proposal is lopsided and consequently unfair. It is biased toward prosecutorial interests in conviction and chills defense need and duty to investigate.

IV. If the real purpose of this proposal is to focus on the problem of intimidation, it is tragically insufficient. It omits significant areas of intimidation, particularly prosecutorial intimidation.

V. Conclusion: Endorsement of this proposal cannot be justified. It presents too many dangerous consequences and contains too many informational inadequacies.

REMARKS

I. The data upon which the proposal is based is suspect and uncertain. Intelligent evaluation of this proposal as a solution to the "problem of intimidation" requires more specificity concerning the character, causes and extent of "the problem of intimidation."

The sole objective data offered as the basis of the proposal is a 1976 LEAA funded study which ostensibly indicated 28 percent of witnesses cited fear of

reprisal as their reason for non-cooperation with prosecutorial purposes.[1] Although requested, no copy of the study has been provided with this proposal. As well, no vindication is given that this study has been independently verified, nor that interviewee responses were assessed for reliabillty rather than taken at face value. We are all familiar with jurors seeking to be excused from jury duty who give responses they feel will excuse them, even though inaccurate.

Likewise, it appears that the focus of the LEAA study was witness cooperation, not intimidation. To extrapolate data from one context into another is poor practice. No justification for doing so appears here.

At the same time, the LEAA is law enforcement oriented and the study itself was apparently conducted through INSLAW, a pro-prosecution research society. The possibility thus exists that the data is biased.

Our concern with the reliability of the 28 percent figure prompted us to contact Charles Silberman, noted author of Criminal Violence Criminal Justice (Random House, 1978). Mr. Silberman's inquiry into the area of intimidation suggests that the LEAA figure is excessively high. His research indicates that intimidation is a minimal factor in the problem of non-cooperation with prosecutors. Other factors, particularly reconciliation among the people involved, family and peer pressure, and witness fear of exposure of their own peccadilloes are far more significant.[2]

We cannot evaluate the potential harm of the legislation proposed here without far more exact information about the problem it purports to solve. For example, societal purposes may be better served by reconciliation among people, as Silberman observed, than by nonreconciliation and prosecution. After all, the real problem addressed by law is the breakdown of cooperation among people, not the breakdown of cooperation of people with prosecutors.

In short, we must consider ourselves on notice that the data as presented is inadequate to support a recommendation for legislation.

II. The legislation proposed will not solve the problem of intimidation which it purports to address.

As the introduction of Part II of the proposal suggests, the problem of intimidation may have its source in lack of prosecutions rather than lack of legislation: "The greater problem exists in those states which do have [intimidation] statutes, since few ever result in prosecutions." (p. 3). Logic compells the recognition that failure of prosecutors to prosecute appears the most likely reason for failure of witnesses/victims to cooperate with prosecutors. A dereliction of prosecutorial duty will not be rectified by another law which prosecutors may or may not enforce in their continued discretion. Once again, we are forced to acknowledge that we do not know enough about the problem to intelligently advise a solution.

At the same time, it is clear that this proposal creates no affirmative duty to offer people protection. It leaves the door open to perpetuate the "con" tactics which law enforcement personnel already acknowledge they use to secure cooperation (Proposal, p. 10). And the outcome for the person who relies upon the "con" can be fatal.[3]

The failure to create an affirmative duty to protect can engender profound consequences. For example, in New York, the government is not liable for its failure to provide police protection unless it has entered a "special relationship" with a given individual. Such special relationship is characterized by an authorized public official giving a specific assurance to an individual and the individual acting in reliance upon it. The fact that an individual requests protection is *not* enough. (4) The incentive for the government is thus to withhold rather than to undertake to provide wither assurance or protection.

This proposed statute would do nothing to guarantee protection to anyone.

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[1] Proposal, p. 1.

[2] See Exhibit A ** Silberman, Charles: *Criminal Violence Criminal Justice*, Random House 1978, p. 266–7: Most of the time, however, victims refuse to cooperate because they have become reconciled with the offender after one or the other has calmed down or sobered up. (P. 267, discussing the significant fact that much of a criminal court's caseload involves victims and offenders who know each other from prior interpersonal relationships.)

[3] See Exhibit B * Buffalo Courier Express Sunday Supplement, October 15, 1978: "The Murder that Haunts Cheektowage Police"—August 18, 1971: 4:00 a.m. Police record shows report Ventura heading to residence of ex-girlfriend. He states he would kill her. 5:50 a.m. Michele to father: "Daddy, we're safer here . . . there are police cars all over the place, Daddy." 10:10 p.m. Ventura murders Michele and her husband.
* Editor's Note: Because of their bulk, the exhibits, are not included in this printed transcript. Limited copies are available from ABA Criminal Justice Section.

[4] See Exhibit C * *Riss* v. *City of New York*, 22 N.Y. 2d 579.

III. The proposal is lopsided and consequently unfair.

The language and phraseology employed is decidedly pro-prosecution. The emphasis which emerges is that conduct which may impede a prosecution is criminal. Nowhere does the proposal make it a similar crime to impede the defense. For example:

(i) See pg. 6, Section 4(b): Making it a misdemeanor to present or dissuade a victim from "assisting in the prosecution" of a complaint, indictment or information. Why should it not also be criminal to prevent or dissuade assistance to the defense?

(ii) See pg. 7, Section 7: Establishing "the declaration of the prosecutor" as evidence which the court may consider in making a court order. Why should not the declaration of defense counsel also be afforded such consideration?

This bias is further illustrated by the relationship between (a) the definition of "malice" and (b) dissuasion as operative conduct of the proposed offense. A wish to vex or annoy is sufficient to establish malice (see Section 1(a)). Yet being a witness of a victim involved in a criminal action is not a pleasant experience to begin with. Anyone seeking to speak with an already unhappy witness or victim is automatically exposed to jeopardy for "vexing or annoying."

At the same time, since only the prosecution is obliged to procure and put on witnesses to meet a burden of proof, only the defense seeking to investigate proof of guilt is continually vulnerable to prosecution for "dissuasion."

The proposal offers no declaration that defense investigations are necessary and proper; it urges no court or prosecutor to encourage defense investigatory efforts. It invites the presumption that anyone other than law enforcement personnel seeking to speak with witnesses is improperly motivated. This proposal will validate that presumption while chilling defense investigation by a continued potential for prosecution. It creates an incredible weapon, not against crime but against those engaged in defending citizens accused of crime. To presume it will not be used against the defense is folly; to omit protection against such abuse is worse.

These and similar inequities raise serious doubt whether the real purpose of the proposed statute is to cripple the defense and enhance the likelihood of conviction. If this is so, it should be stated with the "brutal candor" the proposal espouses (p. 13). If not, strenuous effort must be made to insure some measure of parity because the citizen-defendant and government prosecutor.

IV. If the real purpose of this proposal is to focus on the problem of intimidation, it is tragically insufficient.

It does not concern itself with the intimidating effect of media publicity upon witnesses and victims. It does not concern itself with the intimidating effect of the legal system itself on witnesses and victims.[5]

But the most glaring omission of all is that the proposal offers no remedy for prosecutorial intimidation—particularly that intimidation designed to coerce a person to become a witness for the prosecution. Such coercion has at times risen to the level of outright torture, both mental and physical. Yet, as persuasion, it falls outside the proposed statute which speaks only of dissuasion.

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[5] See Exhibit D * "Witness for the Prosecution" by Robert McClory, Student Lawyer, April, 1979.
See Exhibit E * "The Forgotten Victims of Crime" by Former U.S. Attorney General Herbert Brownell, New York City Bar Association Cardozo Lecture, March 4, 1976: "In the typical situation the witness will several times be ordered to appear at some designated place, usually a courtroom, but sometimes a prosecutor's office or grand jury room. Several times he will be made to wait tedious, unconscionable long intervals of time in dingy courthouse coridors or in other grim surroundings. Several times he will suffer the discomfort of being ignored by busy officials and the bewilderment and painful anxiety of not knowing what is going on around him or what is going to happen to him. On most of these occasions he will never be asked to testify or to give anyone any information, often because of the last-minute adjournment granted in a huddled conference at the judge's bench. He will miss many hours from work (or school) and consequently will lose many hours or wages. In most jurisdictions he will receive at best only token payment in the form of ridiculously low witness fees for his time and trouble. In many metropolitan areas he will, in fact, receive no recompense at all because he will be told neither that he is entitled to fees nor how to get them. Through long months of waiting for the end of a criminal case, he must remain even on call, reminded of this continuing attachment to the court by sporadic subpoenas. For some, each subpoena and each appearance at court is accompanied by tension and terror prompted by a fear of the lawyers, fear of the defendant or his friends and fear of the unknown. In sum, the experience is dreary, time-wasting, depressing, exhausting, confusing, frustrating, numbing and seemingly endless." (p. 139)
* Editor's Note: Because of bulk of exhibits, they are not included in this printed transcript. Limited copies are available from ABA Criminal Justice Section.

That Machiavellian techniques are being used by prosecutorial forces upon witnesses has been amply illustrated in *People* v. *Portelli* (15 N.Y. 2d 235) and *People* v. *Isaacson* (44 N.Y. 2d 511).[6]

In *Portelli* a witness was beaten, stripped naked, his testicles struck and lighted cigarettes touched to his back by police. Ultimately he gave testimony against Portelli. Should we ignore such torture when we address the problem of intimidation?

In *Isaacson*, a witness was beaten and threatened with being shot to death before he agreed to cooperate with the New York State Police against Isaacson. Are we to perceive such death-threats as non-intimidating because they "persuade" rather than "dissuade"?

At this very minute on McNeil Island in the State of Washington, U.S. Strike Force attorneys are by their own admission waging a coldly calculated campaign of intimidation against one Sam Calabrese: "We're going to get Sam to give us Shenker" says U.S. Strike Force Attorney Michael Kramer, "or we're going to bury him." [7]

Can any proposal addressed to intimidation properly remain silent about such conduct? Yet this proposal does.

The proposal is also silent about abuse of witnesses at the hands of prosecutors using grand jury process. This abuse has reached epidemic proportions and today threatens the very exisence of the grand jury. It is one of the vital legal issues of the decade. This proposal expresses no concern about such intimidation.

Defense attorneys are likewise subject to protracted intimidation simply because they are defense attorneys. They are subpoenaed before grand juries and threatened with indictment and contempt unless they reveal priviledged informationl Agency harassment in the form of IRS audits is a common occurrence.

Police brutality makes national headlines with shameful regularity. The mechanitions of Watergate also teach with crystaline clarity that intimidation by government forces is a reality.

Logic dictates and common experience compells that a proposal which unjustifiably excludes intimidation by prosecutorial forces protects prosecutions first and people second. Such a priority is antithetical to the premise that ostensibly underlies the proposal, manely that people need protection from intimidation. As drafted, the proposed legislation reflects a fundamentally inaccurate promise that only accused citizens perpetrate wrongs and that only defendants employ intimidation.

V. Conclusion:

Endorsement of this proposal cannot be justified. Too many imbalances and deficiencies exist unremedied and unexplained. More information to define the problem is required. Sections protecting defense interests must be included. We should have an opportunity to consider what people who have been subject to intimidation perceive as the problem and possible solution. We cannot cure a problem by recommending legislation when the problem is poorly understood and the negative ramifications of the legislation have been overlooked.

Mr. CONDON. Thank you. The National Association of Criminal Defense Lawyers representative is delighted you are taking an interest in intimidation. It surely is the cancer of the criminal justice system and we expect great things will happen from your work.

In our investigation and evaluation of this matter we wish to state the problem somewhat differently. We take the approach that your proposal acts as a catalyst

[6] See Exhibit F: *People* v. *Portelli*, 15 N.Y. 2d 235.
See Exhibit G: "Police Coercion of Witnesses," especially re Portelli at note 6, p. 866: "[Witness] Melville's 'interrogation' was allegedly conducted by eight or nine detectives who twisted his arm, beat him with a stick, struct him with open hands, stripped him naked, hit him in the testicles, and touched lighted cigarettes to his back."
See Exhibit H: *People* v. *Isaacson*, 44 N.Y. 2d 511 at 515: "As found as a matter of fact by the trial court, during this questioning [of Breniman, a witness later to become informant], an investigator of the New York State Police struck Breniman with such force as to knock him out of a chair, then kicked him, resulting in a cutting of his mouth and forehead, and shortly thereafter threatened to shoot him. Breniman testified that this abuse was administered because he refused to answer a question, that when struck his glasses flew off, that he was kicked in the ribs when down, that a chair was thrown at him, that he was also threatened with being hurled down a flight of stairs, and that one of two uniformed State Troopers who witnessed these events said 'I [Breniman] may as well forget about it. They would swear that I fell coming in the substation on the steps.' "

[7] See Exhibit I: Ordeal at McNeil: Federal Lawmen Plan and Unpleasant Future for Sam Ray Calabrese: Convict with 14 year term faces many new charges to pressure him to talk," *Wall Street Journal*, April 11, 1979.

for everyone to examine and identify the problem and search for a practical, meaningful solution. We try to interchange the words victim and witness as they have been utilized here—you have been speaking about victims and witnesses of a crime.

We suggest that intimidation creates its own victims, and every time that happens in the criminal justice system that the system is weakened. We are sure you will consider that intimidation against anyone, creating a victim, diminishes and weakens the system. We point out that there is a great deal of prosecutorial intimidation that hasn't been touched upon in your proposal.

I will bring several incidents to your attention and have them documented. We have a submission here which shows some of these documented situations. The New York State Court of Appeals, in the case of *People* v. *Portelli*, states expressly that Portelli was beaten, stripped naked, his testicles struck, and lighted cigarettes touched to his back by the police. We submit to you that surely that is intimidation. The Court did not condone such atrocious conduct but indicated that there was no remedy to the individual that that evidence was utilized against. There is no meaningful way for someone accused of crime to reach out and stop the prosecution from torturing individuals in the U.S. today. And it is a viable, regular form, we feel, of intimidation.

In *People* v. *Issacson*—again in New York—a witness was beaten and threatened with being shot to death before he agreed to cooperate with the New York State Police—horrible intimidation.

There is also a situation brought to light by a conservative publication, the Wall Street Journal. It refers to a federal facility on Puget Sound, McNeil Island. There is an inmate there named Sam Calabrese. And if we are to understand that publication correctly, the U.S. Dept. of Justice is leaking information fasely to make him out to be an informant so he may be murdered. But the prosecutor who has told us this, if quoted correctly in the Wall Street Journal, states, "We're going to get Sam to get us Shenker." Morris Shenker is a criminal defense lawyer.

What is happening in all metropolitan cities in the U.S., we can assert to you specifically, is that our clients without our knowledge are being approached successfully by the prosecution and being offered that which we could never give them—to resolve with totality their criminal matter. They are being asked to come back into the lawyer's office and attempt to ensnare him in a plan. We cannot recite to you the number of occasions that the lawyer has not been able to perceive that this is going on. We can recite to you some occasions where it has occurred unsuccessfully.

Also, we represent to you that prosecutors have ingeniously created witnesses who are presented in an attractive fashion to the defense for the purpose of ambushing the defense.

Why the quality of justice is in severe jeopardy because of intimidation is that now any criminal law specialist has truly to appreciate that he is a target, and as a result has to deal at arm's length with his own client. He has to be suspect of any witness. And, as a result, the one meaningful component that can't be controlled in the criminal justice system, of which there are three—the prosecution, the judiciary, and the defense—on many occasions has to run scared. And if any one of these three components is weakened, we all lose.

Just think how often it happens that people get served with a grand jury subpoena. Is there anyone here who on a criminal prosecution, if given a subpoena, would not have a sense of fear and intimidation, embarrassment and concern as to what to say and why? Think of the average witness in a criminal case. We in the defense don't have the power to compel their testimony; we don't have much power to bring them forward—unlike bringing them into a grand jury where they can be compelled to testify under oath, and they can't vary it at a time in the future. Witnesses are brought in to the grand jury and neutralized, and it is made clear to them that they can be subject to not perjury, but the good kind of perjury; that's merely that if you have a contradictory statement under oath there doesn't have to be proof which is true and untrue—merely that it was made.

Frequently what happens is that those people are not before a grand jury that's investigating the crime at all. The indictment has been returned; they are there merely as a cathartic for the prosecution in a subtle, if not a direct, way to teach them the rules of the game. It happens blatantly on occasion that they aren't put before the grand jury at all; they're taken to the District Attorney's office. That's surely a form of intimidation.

A witness going to testify to an alibi contrary to what prosecution witnesses are testifying to is told on occasion, "If you testify that way, you'll be indicted

for perjury." The trial jury should decide whose side is telling the truth. Defense witnesses are intimidated and they evaporate. Or sometimes the lawyer is told, "If that witness testifies, you will be accused of subornation."

Nobody wants to be investigated. It takes a great amount of courage to oppose your government in representing unpopular people, but when not only are you put in that position, but you're also going to be investigated, do you want to run the risk?

Intimidation is horrible—all intimidation. But your proposal reflects a philosophy that the only type of intimidation that occurs is that on behalf of the defense—that the prosecution's witnesses are the only ones ever intimidated. You are giving a weapon to the prosecution, which aggressive advocacy breeds—the idea that if we in the defense even approach a prosecution witness, we are now subject to remedial sanctions.

I personally have been told in a courtroom by a judge that he has learned that I have talked to defense witnesses. Automatically there's something horrible about that.

We hope the entire specturm of intimidation will be thoroughly ventilated and meaningful rules offered to deal with such cases as in New York, where the person was burned with cigarettes, stripped naked, rapped on their testicles. The best, meaningful tool to stop horrible forms of intimidation is the exclusionary rule. It's not a popular one, but a meaningful one. It's not a question of justice or law and order at any price, but the quality of justice.

PANELIST. I read your submission. It was excellent. I'm a prosecutor, and there's no question that there are occasionally situations where threats are made by police and conceivably even by prosecutors. You raised a question about dissuading an alibi witness. I suspect that our proposals, Subsection (2), would cover that, and would make a prosecutor who tried to persuade or dissuade an alibi witness from appearing at least guilty of a misdemeanor.

Mr. CONDON. That is a case that could be made out, but who do you go to in order to get the prosecutor indicted? Who's going to investigate it? Who's going to evaluate it? Realistically, who in the world is going to do anything about it? From a practical sense, I say nothing will be done about it—or is done about it. Just as you've said, you don't doubt that it has happened, but you never heard of anything happening about it. And it won't—unless you people do something about it.

Judge YOUNGER. We heard a young woman testify this morning that she had been raped by a motorcycle gang, who told her they were going to come back and finish off what was left of her if she cooperated with the prosecution. Isn't the threat of being slapped with a grand jury subpoena kind of slight compared to that?

Mr. CONDON. Automatically, what you think of when you're talking about intimidation is just that—organized crime. The only data you have presented is that 27 percent of noncooperating witnesses gave reason of the threats. That is like going on jury duty. People have a toothache; they just don't want to serve. Those incidents probably could and do and have happened, and I think that it is despicable that anybody would do that to anyone in this great land of ours. And I think—using a word that has been interjected here—occasionally it does. But I'm saying that regularly the prosecution uses intimidation. With equality, you should direct your attention not only to that which occurs occasionally, but also that which occurs regularly. I urge you to give equal consideration to both sides.

PANELIST. Mr. Condon, I agree with your views. I believe there is intimidation on both sides—from prosecutors or police officers as well as from defendants and their families. Too often we may feel it's a one-sided situation, but it's equally bad on both sides.

Mr. CONDON. I came up here from Texas. I was there to meet a lawyer from Georgia having the fascinating name of Bobby Lee Crook, a criminal lawyer. He has given me permission to use his name. In his years of experience with the Strike Force, it's his representation that 98 percent of the witnesses who have been interviewed against his clients and who testified in court, have been told, "A contract has been let on your life to murder you." Nothing meaningful comes of that except you surely make a very enthusiastic witness.

I suggest that on occasion the threats given to government witnesses sometimes come from the government.

PANELIST. Should there be some kind of a witness intimidation statute at the state level?

Mr. CONDON. In my view there should be—one that covers both sides. There should be workable sanctions, because if you make it a misdemeanor for prosecutorial intimidation, the statute isn't going to work.

PANELIST. Should prosecutors be covered the same statute as defendants, or should there be a separate statutory scheme to cover the prosecutor side?

Mr. CONDON. It should surely be a higher crime for someone who knows exactly what they're doing—rather than for some defendant's brother trying to help him—maybe knowingly, but foolishly.

PANELIST. I understand you believe asking prosecutors to investigate prosecutors was not likely to result, as a practical matter, in an effective response. Do you favor a special prosecutor setup?

Mr. CONDON. Definitely not. We don't need any more special prosecutors or investigatory bodies. Just give a remedy. That is the one thing that will stop it—the exclusionary rule. Never mind about penal sanctions—they're meaningless; an exercise in futility.

PANELIST. I'm sure some prosecutorial harassment has happened, but what is the end result?

Mr. CONDON. I've seen many police abuse cases, *Monroe* v. *Pape*, extended now with the *Monnell* decision, providing civil damages for abuse—or the *Bivens* case on the national level. In the Western District of New York three weeks ago, a police officer from the suburban Amherst Police Department was a civil defendant. For 18 months it had harassed an individual, arresting him three times for drunken driving. The plaintiff prevailed. He got $1,700.

Mr. CARRINGTON. Mr. Condon, thank you. This has been our most spirited discussion.

Mr. CONDON. I appreciate the opportunity to have been here.

Mr. CARRINGTON. Our next speakers are, first, Ian H. Lennox, Executive Vice-President of the Philadelphia Citizens Crime Commission, immediate Past President of the National Association of Citizen Crime Commissions, and William Heiman, Chief of the Rape Prosecution Unit, Philadelphia District Attorneys Office.

Mr. HEIMAN. Thank you. First, I'm grateful for the opportunity to testify concerning the very serious problem of victim/witness intimidation. I'd like to discuss the most important problem facing our Philadelphia District Attorneys Office—the life-threatening type of intimidation that many witnesses suffer during the course of a violent crime and subsequently while the case is pending.

Our statistics indicate that in 50 percent of rape cases reported, where an arrest is made, the rapist has threatened the victim with violence or death if she reports the incident to the police or cooperates with the District Attorney. We charge those defendants under our statute called "terroristic threats." In at least one-third of the cases the victims are approached when the case is pending.

I think we are doing a pretty good job with some of the less serious types of intimidation. We have a separate Rape Unit. We're able to maintain attorney continuity with the victim all the way through the court process—keep her informed what is happening in the court system and explain legal procedures.

I'd like to discuss the much more serious problem where a victim is directly threatened if he or she will testify. We had a case recently where a young lady was kidnapped and raped both in Philadelphia and in New Jersey. Her throat was slashed from ear to ear; she miraculously recovered. She was threatened with death to her and her boyfriend if she cooperated with the prosecution. Her boyfriend was murdered several months ago. We were able to work with New Jersey and pool our resources, and we have her hidden away now. She comes with a police guard to court to testify.

In another case, we had an elderly eyewitness to a furniture store holdup who testified at the trial. On the very afternoon a reviewing court reversed on technical grounds and granted a new trial, he and his wife were murdered in their home as they sat in their easy chairs watching television—pointblank range in the back of the head.

What we want to set up in our District Attorney's Office is a victim/witness intimidation unit. This unit would be staffed by some five detectives and a paralegal; we would need several cars and some money to set up a relocation type house. We would provide victims threatened directly with their life with 24-hour protection and relocation services if possible. We would promptly investigate the case and bring additional charges against the perpetrator.

An important factor would be to have the assigned Assistant District Attorney on the underlying crime maintain control over the intimidation part of the case. It

does make a difference if the same Assistant DA stays on the case from beginning to end. In that way if the victim is intimidated during the the course of the proceedings, the assigned Assistant can work with the Victim Protection Unit detectives and with the victim and take that separate case into court.

Also, what we do now and would like to continue is public education, specifically with victims and the witnesses. We also want to get out into the community, appealing for support to combat this problem.

Funding is a tremendous stumbling-block. We don't have the funds to set up such a unit. We must look to sources such as LEAA at least for start up. Also, we anticipate working with our surrounding counties. We realize this is a regional problem.

Finally, here is our challenge as prosecutors: The court system is designed to permit witnesses and victims to come into the courtroom, undeterred, unthreatened by threats of intimidation, and to offer their testimony and the chips fall where they may. A trial is supposed to be a search for the truth. If victims are intimidated, they never offer their testimony—and the system breaks down.

As a selfish comment in my role as a prosecutor, I know this much: In a rape case, for example, if it's an issue of identification, and the victim knows in her heart that there sits the man who raped her; if she has been threatened, I can prepare her from now till the cows come home and it won't do any good. Because she's going to go into the courtroom and clam up. We deal with lay jurors. They can't understand why she's so reluctant to identify the man. They're going to translate her reluctance into a doubt.

In Part 4 of the Model Act, a reference appears which disturbs me, and represents our challenge as prosecutors: You state—and rightly so—that successfully intimidated witnesses account for a large drop in the number of cases disposed of, and with our crowded court schedules, it is a needed safety valve. That's a terrible commentary on our system. We should never lose any case because a victim or witness has been intimidated.

Mr. CARRINGTON. Thank you.

Mr. LENNOX. We commend the ABA for getting into an issue which is long neglected. Because Philadelphia is surrounded by four neighboring counties that vary from metropolitan Montgomery and Delaware to rural Bucks and Chester, we held four meetings on this issue with some 37 representatives, ranging from a presiding judge to prosecutors, public defenders, and those dealing with victims and witnesses. My testimony is a collection of these individuals' observations. There was disagreement in some cases and, in others, general agreement.

There was universal consensus that a need exists for action. Fortunately, in Pennsylvania our criminal code was updated recently. We're perhaps not in as bad shape as some other jurisdictions. But there are some things that could be done.

Taking your proposal's definition section, you distinguish malice from persuasion, which may be exercised by family members. The subtleties of family relationships are such that it is often difficult to determine when persuasion by family members becomes malicious. However, in cases of sexual or marital abuse, malicious intent could clearly be involved. We recognize it would be difficult to delineate situations in which family members's word or actions should not be considered blameless; however, this issue should be addressed. If, indeed, the complexities of familial interaction make it impossible to legislate as to when persuasion by family members would be considered malicious, then perhaps the statute should give the prosecutor the right to exercise his or her discretion in determining how to interpret "persuasion" by family members.

We concur with the definition of witness allowing protection of both subpoenaed and non-subpoenaed witnesses. Although informants, as potential witnesses, could conceivably come under the protection of the statute, officials from two counties with serious problems protecting this type of witness felt that informants should be specifically included in the definition section.

Under the misdemeanor intimidation of witnesses section, the types of individuals protected should, we believe, include persons who may not become witnesses but who are cooperating with law enforcement authorities. We suggest revision as follows:

> "Except as provided in Section 3, every person who willfully and maliciously prevents or dissuades, or who attempts to so prevent or dissuade any witness from attending or giving testimony *or cooperating with law enforcement authorities . . .*"

Under the felonious intimidation of witnesses section, we recognize the problems inherent in defining narrowly enough the types of individuals who should be

protected from felonious intimidation. However, we feel that protection should be extended to non-family members as well. In one recent case the girl friend of a potential witness was shot to death.

Under the section on court orders: Effective screening by the Victim/Witness Protection Unit could resolve many of these cases out of court. The statute should clearly provide that this unit should be responsible for screening.

The model statute attempts to cover subtle intimidation which occurs in a courtroom, while recognizing the fine line between forms of acceptable and unacceptable courtroom conduct. The problem here is one of preventing intimidation and still maintaining an open courtroom. Some county officials felt that if an action would be considered intimidating in any context—not just a victim/witness situation—then the conduct should be penalized; otherwise it should not.

We also have some concern about coverage, since much intimidation is of a more minor nature, of the magistrate's level. The problem here is that an order on a bail form is the only sanction. Therefore, at least in Pennsylvania, if we were to adopt the model statute, we would have to provide for contempt power for these inferior courts which they do not now possess.

Another major concern is that your statute should apply equally to juveniles as well as adults. Much intimidation of the elderly is done by juveniles. Even if the proposal were applicable to juveniles, procedural changes must be made to make it enforceable. With adults, you are adding to the bail requirement. But since bail is not applicable in juvenile matters, one possible remedy would be to expedite cases involving juveniles and give judges the right to hand down stiffer penalties to juveniles found guilty of intimidation. Still another approach would be certification to adult court for juveniles who violate the intimidation statute.

On the Victim/Witness Protection Units, a number of suggestions were made. For the most part, it is fear of retaliation rather than actual intimidation that is the problem. Therefore, the need is not great enough to justify a Victim/Witness Protection Unit in each county. We would thus propose in some rural areas in the U.S. that Victim/Witness Units be created on a regional basis.

There was consensus that the primary responsibility of the local police department should be in indentification of the problem and assessment of the seriousness of the intimidation. But here again we encountered some other situations; in Chester County, for example, vast areas of the county have no police protection whatsoever. They are technically covered by the State Police, but that amounts to one patrol car and one officer covering many square miles. We're puzzled how such a unit could operate in a rural county unless it was housed in the District Attorney's Office. We're thinking of minor areas of intimidation—where all that's required is extra police patrol in and around the house.

Another thing we suggest is the creation of regional safe houses, with multi-county units going together and creating and staffing a safe house at which the intimidated victim or witness could be placed during trial. This would save enormous amounts of money now spent to keep these people in motels.

The Federal Witness Protection Program has been somewhat discredited in our part of the country, especially in one county where a key witness in the program was executed to prevent his testifying. The reaction to creation of victim/witness protection units was positive from representatives of these two counties, but they felt a safe house is needed, too.

Here you encounter the problem of funding. The concept is good. We need these approaches. But who's going to fund them?

The proposal suggests that referrals to the Victim/Witness Protection Unit be made by the District Attorney, law enforcement personnel, attorneys, and/or private citizens. The success of this unit will depend to a great extent on effective interaction and communication among the agencies involved and with the public at large. One concern was that once the unit's existence is known, unless the limits of protection are explained clearly, you're going to be inundated with complaints from people with real or imagined fears. You must cover that in the commentary—the need to explain to the public what the purpose of this unit is.

The proposal states that individuals eligible for services would include victims, witnesses, jurors, defendants, and co-conspirators in both criminal and civil cases. Our group felt that extending the Unit's Services to civil litigants could work a hardship on it and other organizations providing victim/witness services.

In closing, the 37 people we involved in this program felt this is pioneering work, and encourage you to continue.

Mr. CARRINGTON. Thank you. On eliminating threats in civil cases, wouldn't it be more appropriate to focus on the nature of the threat, rather than the nature

of the case in which threatening occurs: If somebody threatens to take somebody's life in a civil suit, the threat itself, rather than the underlying reason for the threat, should be the key.

Mr. LENNOX. I agree, but our concern was the need to have this unit protect in criminal cases. We didn't envision that finances would be there to extend it. If one must cut back anywhere, cut back in the civil.

PANELIST. What do you do when you have a severely threatened witness; you have reason to believe the perpetrator can execute the threat; you lack the resources to protect that witness; and the witness comes to you and says, "I've been threatened and I'm very frightened." What do you do?

Mr. HEIMAN. It's a difficult problem. We get two or three dozen such cases each year where it's a legitimate, real threat of serious injury or death. Our responses range from trying to talk up their courage (which is doing nothing), to contacting the Police Department to announce at every roll call that platoons should drive by the person's house—that may not be any more than every two hours.

In one very serious organized crime case, we kept the witnesses in a hotel room 24 hours a day with detectives guarding them. But that was the rare exception. In the majority of cases you cited, we can only talk up a good talk.

PANELIST. I was a local prosecutor. We had a case involving a victim of a taxicab robbery. While he was in the hospital, the perpetrator's girlfriend shot him pointblank in the ear. He recovered. She was arrested and charged with attempted murder. But after that incident we were still afraid there were people in the community quite willing to finish the job she had botched. The prosecutor involved thought she was going to have to take the man home. We could not get funds from the local authorities to protect him. It seems there are cases where the best advice a prosecutor can give a victim is, "We can't protect you. If you have a grandmother in Tuscaloosa, get on the first airplane and get out of the city."

In terms of the criminal justice system that's not good advice. In terms of the safety of the victim that's very good advice. Do you ever do that?

Mr. HEIMAN. Most reluctantly. But if the people ask us for our candid opinion, we'll tell them. Obviously we want to encourage them to hang in there and prosecute. But that's why we need the unit outlined today to handle the very serious threats.

PANELIST. Mr. Condon described abuse by prosecutors. Do you think that's an issue?

Mr. HEIMAN. I have had 7½ years experience in the DA's office in trial units dealing with street crime. Now I administer the Rape and Sexual Assault Unit. I deal with police and victims on a one-to-one basis. I haven't had any personal experience in investigations and grand jury action—but certainly what he's talking about, if it's being committed, is very deplorable. As a prosecutor, I want the truth to come out in the courtroom, win or lose. Let everybody have their say tell the truth, let the chips fall where they may. For a prosecutor to intimidate a witness is as bad as for a defendant to intimidate a witness. In dealing with victims of street crimes like rape, we counsel them to tell the truth and try to recollect exactly what happened.

PANELIST. Part of the problem we can reach best is the anxiety born of ignorance about how the criminal justice system operates: The person who comes to court has no idea the defendant will be there; and worse, the defendant's brother and cousins will be there; and worse, the victim will have to face them; and even worse, they may ride the elevator down with one another. Clearly, prosecutors are in the hot seat on that one because they have control over information to witnesses. What would you suggest is an appropriate response for prosecutors?

Mr. HEIMAN. We work with victims on a one-to-one basis. We keep them informed as to what's happening in the courtroom at all stages of the proceedings. We believe that a better informed witness will make a better and more credible witness. That's not our main problem. We can explain to the victims what is happening. I'm more concerned about serious death-type threats.

Mr. LENNOX. I'd like to suggest something we tried in Philadelphia. It has some merit—how you deal with the witness after the case is through. The element of retaliation still exists in some cases even though the person has gone to jail.

We have attempted this on a modest low-cost scale, when we have a former witness who must be relocated, but where it is not necessary to change his identity. We have contacted corporate supporters of our organization to provide jobs in other states; you find out the individual's skill, you arrange a job for him, and promise if he travels from Pennsylvania to Nebraska there will be a job waiting. This is an intermediate kind of help. It gets him out of the area at no taxpayer expense.

One of the problems we have run into in the past two years is our heavy reliance on government funding. There are some intermediate things the corporate community can do if properly approached.

PANELIST. Under the present Pennsylvania statute, do you point out to the jury why a witness seems fearful on the stand?

Mr. HEIMAN. No. It's all hearsay and not admissible. All we do is suffer the problems occasioned by the poor witness.

Judge YOUNGER. Thank you.

Next, we have a 3-party team. Howard Safir is Assistant Director for Operations of the U.S. Marshals Service. He previously held executive posts with the Drug Enforcement Administration. Gerald Shur is here on behalf of the U.S. Department of Justice. He was formerly with the Department's Organized Crime and Racketeering Section and is now Associate Director of the Office of Enforcement Operations. John C. McCurnin, II, has been a special agent in the FBI since 1962. He's now Assistant Section Chief in the Organized Crime Section here. Thank you all.

Mr. SHUR. With respect to the Department of Justice's Witness Relocation Program, it's a very extensive program. It now encompasses approximately 3,000 witnesses. It began in about 1969. It's an extraordinarily expensive and extensive program. It's extraordinarily disruptive to the lives of the relocated witnesses—but we hope very effective in resulting in conviction of many individuals who would not otherwise be convicted.

The program works this way: The U.S. Attorney receives information from an investigative agency that a witness who is going to testify or an associate or family member will be harmed physically. He conveys that information to us. We evaluate the threat. We evaluate the significance of the case. We make the judgment that the case should proceed and that there is truly danger to the witness and the witness should be relocated. We in turn notify the U.S. Marshals Service that this danger exists. It takes steps to relocate the witness.

We believe in relocation as opposed to "in place" protection, which is highly dangerous. It's done on a very limited basis. The best way to protect an individual is to move him some place so that no one knows he's there and he can walk down the main street without having to look over his shoulder. This involves considerable trauma to the family—taking teenagers away from friends, taking elementary school children and telling them their names are changed. It involves arranging for health records transfers. School records have to be transferred so that racketeers or evil-doers cannot go to the school, ask where the records have gone, and trace them. It's very traumatic.

When the family arrives they must receive subsistence. They can't survive without food, housing. That has to be arranged. They must find employment. The Marshals make considerable effort to find them employment, and we have cooperation from perhaps 150 corporations.

If you can imagine everything you go through moving from one city to another, and understand that it must be done covertly—with an overriding threat of death upon the family—you'll have some measure of the impact.

Three thousand people have done this. They've done it successfully. There are always problems associated with relocation. It is difficult to make it go smoothly.

An analysis of the program over a year and a half ago indicated it had many problems, and we were not doing our job well: We didn't have enough people; we weren't tending to the needs of the witnesses well enough. So major changes were made in the program. Now the complaints we receive have dropped in excess of 95 percent. So there's marked improvement in our own efforts.

After the witness is relocated, it is imperative an arrangement be made with the investigative agency to allow us to be notified whenever any threat is made against that witness. We on occasion receive information that a witness has been tracked down, but they haven't yet caught up with him. This necessitates moving the family again.

It's also imperative to insure that a relocated witness who may commit a crime doesn't receive immunity by anonymity. We place stops with the FBI so that we can assist local law enforcement in the event a witness has again committed a crime. Approximately 15 percent of the witnesses relocated engaged in crime after relocation.

Mr. MCCURNIN. I represent 1,300 FBI agents, investigating organized crime cases throughout the U.S. We have found over the last five years that more and more defendants are going to trial rather than pleading guilty; as a result we must provide more competent witnesses in the grand jury stage, as well as at

trial. Prosecution of individuals associated with organized crime carries with it the necessity of absolute protection of the witness, victim, and families.

There are two ways in which the FBI does this. We have obstruction of justice statutes and obstruction of criminal investigation statutes. Last year, out of 904 organized crime convictions, 6 were for obstruction of justice. That's out of a substantive case of police corruption, public corruption, or interstate transportation of stolen property.

Without these two statutes and the benefit of the Marshals Service and Mr. Shur, we feel that we couldn't have persued most of these prosecutions and obtained convictions.

Mr. SAFIR. Mr. Shur gave a good overview of the Marshals Service witness protection program. I emphasize it's an incredibly complex program. The reconstruction of a family's life in a new area depends not only on the expertise of the Marshals Service, but upon state, local, and other federal agencies which assist us.

Mr. Shur mentioned there are 3,000 witness—those are 3,000 principals. On an average each of those principals has two to three dependents, so we're talking about some 8,000 people who have been relocated.

Mr. Shur also mentioned the recidivism rate among witnesses. This raises the problem of weighing the rights of the witness and of the community. We have wrestled with this.

Let me discuss now the establishment of state and local witness protection programs. Since we have the most experience—and it is a pioneering program which started seven years ago with no data base or history—we have found, first that community-based safe houses are not effective. We found that all of our safe houses somehow were compromised—usually by a witness himself. When this happens you are not only endangering that witness, you are endangering all the witnesses. The best way to protect the lives of witnesses is through anonymity, by relocation and new identity. We do not issue false documents. All documentation is provided under a new legal name from the agencies normally issuing such documentation.

There have been some serious problems in the program. One is post-trial witness relocation. You can protect a witness 24 hours a day in his relocation area through trial, but unless you have enormous resources—which most state and local jurisdictions do not and nor does the federal government—the only long-term solution for protection of an intimidated witness is relocation and a new identity. Thank you.

PANELIST. Mr. McCurnin, you said you had about 900 organized crime prosecutions last year, and 6 obstruction of justice prosecutions.

Mr. MCCURNIN. Yes. They were separate indictments.

PANELIST. If that's the size of the federal problem with organized crime, isn't the real problem down at the state level where some witnesses this morning reported that one-quarter of all cases involve intimidation? Do you know whether the problem exists, or are you just spitting into the wind with your 6 prosecutions?

Mr. MCCURNIN. I mentioned that figure to show that in relation to the total figure it was a very minor percentage of prosecutions. However, with certain organized criminal groups—notwithstanding whether you get a threat—you anticipate the threat. It's that anticipation that results in the relocation of our witnesses, particularly in organized crime cases.

In all of the 3,000 relocations, we made a determination that the witness would likely be harmed physically if he testified. The charges you're talking about are limited to certain situations where there was in fact a violation of that statute.

I can give you one statistic illustrating the importance of this. Of the first 800 witnesses relocated, the first 200 who have completed testimony, 4,487 indictments and 3,071 convictions have resulted. In each case we made the judgment that there was considerable danger to the witness, enough so that had we not decided to relocate the witness we would have asked the prosecutor to dismiss the case.

PANELIST. This morning we had an American Corrections Association representative discuss witness intimidation in prisons. I believe the Witness Protection Program has had considerable experience protecting incarcerated witnesses testifying under a grant of immunity for other crimes which they have committed. Does your program work in the same way in prison? Has your success in protecting incarcerated witnesses with new identities and new institutions been the same?

Mr. SAFIR. We currently have approximately 200 witnesses in the program who are prisoners. I don't have a total figure of those who have been released.

Some are from state institutions and have cooperated either with state or federal authorities. We have not to this day had a prisoner witness in the program harmed. I say that with trepidation, but that has been the success so far. I suppose in due course I won't be able to make that statement. It requires very special care and it's costly. It requires placing witnesses in institutions where they can enjoy anonymity or are in confined quarters and can't enjoy all the facilities available in a regular institution.

PANELIST. Could you give us the cost of relocating 8,000 persons?

Mr. SAFIR. The program has a budget of approximatly $11 million a year. Depending of course on the witness' family size and particular needs—every witness' family has different needs ranging from medical care to employment resources—it can range anywhere from $12,000 to $35,000 per witness for effective relocation.

PANELIST. Over the entire existence of the program, what has been the cost?

Mr. SAFIR. I don't have that figure. It's about $11 million a year. The first year would have been lower when we had 20 or 25 witnesses. The next year we may have had 100 or 120. Now we have approximately 500 witness per year added.

PANELIST. I have a question about the problem of relocated witnesses who have committed crimes after relocation. I gather they were prosecuted. I gather whether they are prosecuted depends on balancing of the interest between the witness' safety and community safety.

Mr. SAFIR. No. I was referring to at what stage in a state and local agency's investigation we provide full cooperation. If such an agency is investigating a relocated witness at the "fishing expedition" stage, we don't want to compromise the witness' identity. However, if any witness commits a crime of which we are made aware, we will assist the agency in prosecuting.

PANELIST. So a witness is never protected from his own criminal conduct because of the relocation?

Mr. SAFIR. Yes. That's a firm policy within the Department and has been since the program originated. We don't want relocated witnesses to think that because they changed their names and have assistance from the federal government that they can prey on the local community. What we do typically when a witness is charged with a crime is ask the FBI to send an agent to the local law enforcement agency and advise them of the true nature of the individual that's under suspicion or arrest.

PANELIST. Would you recommend that states or regions or metropolitan areas give serious consideration to establishing their own witness protection and relocation units?

Mr. SAFIR. I would recommend against it at the local level, except in situations where a witness is going to testify and everyone believes the threat will exist only for as long as the testimony is needed, and then will terminate. Then local law enforcement can go in and provide the protection—if that works—although I have considerable doubt about the effectiveness of protection in place. I don't think local law enforcement can effectively handle the burden of relocating the witness and providing long term protection needed. The states can do that. It's imperative that the states become much more involved in furnishing the mechanism to local law enforcement so that they can, within their own jurisdiction, move people.

We in the federal establishment oppose the relocation of a witness intra-city. We don't like taking the witness from Brooklyn to Manhattan. It's not effective. He should be moved out of the area.

PANELIST. I'm concerned that to have an effective state program it's got to be costly.

Mr. SAFIR. Not always. You can take a witness out of Brooklyn and move him to other parts of New York. Delaware or Rhode Island would find it more difficult. California will find it easier. California, I understand, has had a successful program. At the state level, it can be done. The states can exchange witnesses and help each other.

The federal government, too, has a role to play. We should not leave the burden solely with the states—nor can we, with the money appropriated, absorb the entire burden. There has to be a joint working relationship. But I am convinced at the local level it would be totally ineffective. There are not enough guards to guard the witnesses that need to be guarded. Indeed, we are helping local law enforcement right now in large jurisdictions.

PANELIST. What, if any, is the effect of relocation upon the maintenance of the family unit?

Mr. SAFIR. It has an extremely traumatic effect both on those relocated and those who are not. Although we do have a procedure—a secure procedure—through which they can communicate, there is no substitute for face-to-face visits. This is a last resort program. We put individuals in this program when they're in absolute danger. It's never going to make those relocated happy. We try to make them reasonably content. It has a tremendous psychological effect. We provide psychological and social counseling for the relocated families.

Judge YOUNGER. What proportion of your 3,000 witnesses are charged with crime?

Mr. SAFIR. I would say a substantial number have been charged with crimes; almost all.

Judge YOUNGER. Almost all. That is probably a significant difference between your federal program and many of the state and local programs discussed today. It may, because of that distinction, be more realistic for the very occasional relocation of a citizen witness, somebody not involved in criminal activity—and that will telegraph itself to the potential victim community and criminal community.

Mr. SAFIR. I think that's correct. There is a substantial difference.

Judge YOUNGER. We had a relocated woman from Milwaukee this morning, a presentable, articulate, young woman. In our day-to-day criminal justice work, it is not always that way.

Mr. SHUR. Our witnesses would run a cross-section from very sophisticated to considerably less sophisticated. We probably have a high ratio of individuals charged with murder or other serious crimes. They present a difference in terms of long-term threats versus short-term threats. Almost all are long-term.

PANELIST. The principal focus for us has been the model state statute. What is the interplay between a legislative response to intimidation and the programmatic responses like a victim/witness relocation program, which is more tangible and less legalistic.

Mr. SHUR. You need both. Obviously a legislative response is imperative. That certainly is not a deterrent to the individuals it's aimed at. A murder statute is not a deterrent to a person bent on killing a witness. There may be ample legislation. What we need is to have people enjoy the confidence that we can successfully locate them.

PANELIST. It sounds like you're saying that the people you relocate are not going to be helped by a modest piece of legislation which makes it a crime to intimidate. And that the kind of people who are going to be helped by that kind of legislation are not going to have problems that rise to the level of massive relocation and change of identity.

Mr. SHUR. I think the people we're talking about are individuals in situations where legislation is now ample, as opposed to the killer who is going to be charged with an obstruction of justice statute and a possible 5-year sentence. You're certainly not going to deter him any more than the possibility of being convicted of murder is going to deter him.

Judge YOUNGER. I can't thank you enough, and the other officials of the Department of Justice, George Gilinsky and Parks Stearns from the FBI.

Our next speaker is Senator Michael A. O'Pake from the Pennsylvania State Senatorial District of Reading. He is Chairman of the Pennsylvania Senate Judiciary Committee.

Senator O'PAKE. Thank you. My Senate Judiciary Committee counsel, Joseph Harbaugh, a Professor at Temple University School of Law is here with me.

Since the onset of the criminal justice revolution in the 60's, considerable attention has been given to the protection of those accused of crime. Throughout the country, including Pennsylvania, legislation, court rules and decisions have directed that each criminal suspect and defendant be accorded fair and impartial treatment so that the guarantees of due process and equal protection will apply in every case.

In more recent years, the practical problems of detection, apprehension, prosecution, and conviction of criminal offenders have been addressed by legislators and judges. In Pennsylvania, for example, last year we passed a strong anti-crime package.

However, such reforms have by-passed in substantial part some of the most important people affected by the process—the silent and forgotten ones, the victims and witnesses of crime. For that reason, I strongly supported enactment of the Pennsylvania Crime Victim Compensation Act. That fund has generated a surplus in the first few years of its existence.

I also introduced legislation last month to establish a statewide Office of Crime Victims in the Governor's Office to coordinate services and programs to help the victims of crime, specifically rape and domestic violence victims. We have about 26 rape crisis centers throughout Pennsylvania, many manned by volunteers. Now the concern is the adequacy and permanency of funding, because if we don't do something soon many of those programs will wither because of lack of funding. We are thus suggesting a $10 add-on to sentences, and a $5 increase in the marriage license fee—which is now $3. This would generate about $1.8 million per year to assure funding for these victim centers.

I'm here to generally support and comment on your efforts to reduce intimidation of victims and witnesses. Pennsylvania has a number of statutes that follow the Model Penal Code approach for the protection of victims and witnesses. In addition, the Pennsylvania Rules of Criminal Procedure allows the trial judge to issue protective orders in appropriate cases in a manner similar to that in the ABA Standards Relating to Discovery and Procedure Before Trial.

Despite these efforts, however, there are cracks and crevices in Pennsylvania law into which may fall cases of crime victims or witnesses who are threatened or intimidated. Indeed, my review of Pennsylvania case law reveals that few if any defendants are prosecuted for interfering with the administration of criminal justice by tampering with victims or witnesses.

To fill in these gaps and consolidate protection of victims and witnesses, I will be introducing Wednesday in the Pennsylvania Senate a "Criminal Victim and Witness Intimidation Act" that follows the general outline of your proposed model statute. I am providing copies of that bill to the committee (Text of bill follows this testimony.) and I will comment on some of the differences between our proposal and yours.

Under definitions, Section 1, I have deleted your definition of malice and instead relied on the Pennsylvania/Model Penal Code formulation of "intentionally and knowingly." The committee's use of the term "wish" creates the possibility of punishing an individual for his hopes or dreams rather than for specific conduct linked to his express intention or knowledge. My bill also modifies the definition of witness slightly by making it clear that the object of the legislation is the protection of criminal victims and witnesses to crimes. The model statute under Section 1(6) (ii) and (iv) would permit application of the procedures to civil matters. While this may be a legitimate concern, I prefer to allow existing law to deal with noncriminal matters and to focus attention on criminal justice problems.

I agree, however, that it is absolutely necessary to broadly define the terms witness and victim. Pennsylvania law, for example, presently defines witness to include only those who make written or oral statements in any judicial proceedings. Although there are court decisions that hold that the term witness covers one not yet under subpoena—that was the *Morrison* decision in 1957—it is best to carefully define those to whom the proposed protections flow. The term victim is virtually undefined in Pennsylvania law and requires an explanation similar to that set forth in your model statute.

One final note on definitions: the committee's proposed model statute limits severely the territorial applicability of the protection afforded. In states such as Pennsylvania with a high concentration of people near the borders of several contiguous states, it is very possible one of our residents will be the witness to or the victim of a crime in a neighboring jurisdiction. Therefore, I have clarified the definition to allow application of the substantive offenses to protect witnesses and victims of crimes committed elsewhere from acts of intimidation within Pennsylvania. I urge the committee to make similar changes in your statute.

Section 2 of my bill differs in two marked ways from your proposed statute. The first may be stylistic but the second is clearly substantive.

Your model act—Sections 2 through 5—sets out the crime of intimidation in four separate sections, dividing first by witnesses and victims and then again by felony and misdemeanor. Though the differences may be simply ones of legislative drafting style, my bill combines witnesses and victims and felony and misdemeanor into a single section—my bill, Section 2.

I understand the committee's desire to emphasize that two distinct parties—witnesses and victims—are to be protected by the legislation. However, since the goals and protections afforded each are virtually identical, it seems appropriate to merge the crimes related to both into a single section. Moreover, since the aggravating circumstances that elevate the crime from a misdemeanor to a felony are

exactly the same, there appears no reason no divide along such lines. Therefore, I suggest that the committee consider the drafting approach utilized in my bill.

More serious, however, are the substantive differences between our drafts. I fear your proposed statute leaves unfilled some of the cracks and crevices into which may fall intimidation cases. Although your Section 4 on victims is more specific, Section 2,—the key provision concerning witnesses,—is woefully inadequate. It makes it a crime only when a person attempts or succeeds in preventing a witness from testifying in some formal hearing authorized by law. It fails completely to protect against intimidation efforts that occur during the detection and apprehension stages of the criminal justice process.

On the other hand, Section 2(a) of my proposal, relating to both witnesses and victims, tracks the criminal justice process in specific steps. After establishing in the definition the mental state of intentionally or knowingly obstructing criminal justice, it itemizes five prohibited methods of intimidating, inducing, or influencing a witness or victim:

1. Preventing a witness or victim from reporting a crime to the authorities;
2. Forcing a witness or victim to give false or misleading information or testimony that will divert or corrupt the criminal justice system;
3. Inducing a witness or victim to hold back some of the information they may possess;
4. Influencing a witness or victim to avoid service of a subpoena or to ignore a request to come forward; and
5. Tampering with a witness or victim who is under subpoena to the point that he or she skips town to avoid testifying.

The approach in my bill is to focus on the conduct of the witness or victim that resulted from the criminal actions of another. It follows through from detection through prosecution. It is, I suggest, more complete than your proposed model act, and I recommend it for the committee's consideration.

The aggravating circumstances that make a crime a felony in my proposal, Section 2(b), are similar to those outlined in your Section 3. However, there are significant differences. Section 3(a) of the model act limits the force or violence to that applied to a witness or a victim or to a close family member. My bill would extend that to include a prohibition of force or violence against any person if it is done with the intent to intimidate or influence, or with the knowledge that it will intimidate or influence a witness or victim.

Beyond the force and violence covered by the model statute, I have added deception and bribery as aggraving conduct that would elevate the crime to a felony. A person intending to impede justice who accomplishes his or her goal by deceiving a witness or a victim or by buying him or her off is just as reprehensible as one who threatens to use force.

Two other notes on my Section 2. It does not cover attempts specifically, as does Section 6 of your proposal, because the Pennsylvania Crimes Code accomplishes that by a general attempt section. Also, existing Pennsylvania law makes it a crime for a witness to accept or agree to accept a bribe for obstructing criminal justice. You may wish to add a similar section.

Section 3 covers retaliation against a witness or victim. An instance may occur wherein an individual may take no action against a witness or victim prior to trial or hearing but may retaliate against the witness or victim after the testimony. The model act fails to address this serious problem. I urge you to consider adding such a provision.

Sections 4, 5, and 6 of my bill—protective orders, violation, and pre-trial release—are almost exact replicas of Sections 7, 8, and 9 of your model act. It is in these sections that the committee has demonstrated how we can protect witnesses and victims as well as punish offenders.

In conclusion, an important, essential goal of our criminal justice system is protection of each of us from anti-social actions of others. That system breaks down when victims of crime and witnesses to it are prevented from having access to the process because of threats of reprisal and fear for their safety. We must have a mechanism to combat witness and victim intimidation so that the administration of criminal justice has the chance of fulfilling its promise of protecting each of us from the criminal conduct of a few.

I commend President Tate for making this question a priority during his term. And I commend you for all the work you are giving to this cause. I thank the committee for the opportunity to be here.

I hope Pennsylvania can lead the way in this area. I look forward to the time when we can have comprehensive legislation protecting the forgotten participants

in the criminal justice system—the victims of and witnesses to crimes—from threats, intimidation, and harassment.

AN ACT Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for criminal penalites for any intimidation of any victim of or witness to any criminal activity.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The heading of Chapter 49 of Title 18, act of November 25, 1970 (Public Law 707, No. 230), known as the Pennsylvania Consolidated Statutes, is amended and a subchapter designation and heading are added to read:

CHAPTER 49—(PERJURY AND OTHER) FALSIFICATION (IN OFFICIAL MATTERS) AND INTIMIDATION

SUBCHAPTER A—PERJURY AND FALSIFICATION IN OFFICIAL MATTERS

Section 2. Sections 4907 and 4908 of Title 18 are repealed.

Section 3. Chapter 49 of Title 18 is amended by adding a subchapter to read:

SUBCHAPTER B—VICTIM AND WITNESS INTIMIDATION

Sec.
4951. Definitions.
4952. Intimidation of witnesses or victims.
4953. Retaliation against witness or victim.
4954. Protective orders.
4955. Violation of orders.
4956. Pretrial release.

§ *4951. Definitions.*

The following words and phrases when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Victim." Any person against whom any crime as defined under the laws of this State or of any other state or of the United States is being or has been perpetrated or attempted.

"Witness." Any person having knowledge of the existence or nonexistence of facts or information relating to any crime, including but not limited to those who have reported facts or information to any law enforcement officer, prosecuting official or judge, those who have been served with a subpoena issued under the authority of this State or any other state or of the United States, and those who have given written or oral testimony in any criminal matter; or who would be believed by any reasonable person to an individual described in this definition.

§ *4952. Intimidation of witnesses or victims.*

(a) Offense defined.—A person commits an offense if, with the intent to or with the knowledge that his conduct will obstruct, impede, impair, prevent or interfere with the administration of criminal justice, he intimidates, induces or influences or attempts to intimidate, induce or influence any witness or victim to:

(1) Refrain from informing or reporting to any law enforcement officer, prosecuting official or judge concerning any information, document or thing relating to the commission of a crime.

(2) Give any false or misleading information or testimony relating to the commission of any crime to any law enforcement officer, prosecuting official or judge.

(3) Withhold any testimony information, document or thing relating to the commission of a crime from any law enforcement officer, prosecuting official or judge.

(4) Elude, evade or ignore any request to appear or legal process summoning him to appear to testify or supply evidence.

(5) Absent himself from any proceeding or investigation to which he has been legally summoned.

(b) Grading.—The offense is a felony of the third degree if:

(1) The actor employs force, violence or deception, or threatens to employ force or violence, upon the witness or victim or, with the requisite intent or knowledge, upon any other person.

(2) The actor offers any pecuniary or other benefit to the witness or victim or, with the requisite intent on knowledge, to any other person.

(3) The actor's conduct is in furtherance of a conspiracy to intimidate, induce or influence a witness or victim.

(4) The actor solicits another to or accepts or agrees to accept any pecuniary or other benefit to intimidate, induce or influence a witness or victim.

(5) The actor has suffered any prior conviction for any violation of this title, any predecessor law hereto, or any Federal statute or statute of any other state, if the act prosecuted was committed in this State, would be a violation of this title.

Otherwise the offense is a misdemeanor of the second degree.

§ *4953. Retaliation against witness or victim.*

(a) Offense defined.—A person commits an offense if he harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or victim.

(b) Grading.—The offense is a felony of the third degree if the retaliation is accomplished by any of the means specified in section 4952(b)(1) through (5) (relating to intimidation of witnesses or victims). Otherwise the offense is a misdemeanor of the second degree.

§ *4954. Protective orders.*

Any court with jurisdiction over any criminal matter may, in its discretion, upon substantial evidence, which may include hearsay or the declaration of the prosecutor that a witness or victim has been intimidated, induced or influenced or is reasonably likely to be intimidated, induced or influenced, issue protective orders including but not limited to the following:

(1) An order that a defendant not violate any provision of this subchapter.

(2) An order that a person other than the defendent, including but not limited to a subpoenaed witness, not violate any provision of this subchapter.

(3) An order that any person described in paragraph (1) or (2) maintain a prescribed geographic distance from any specified witness or victim.

(4) An order that any person described in paragraph (1) or (2) have no communication whatsoever with any specified witness or victim, except through an attorney, under such reasonable restrictions as the court may impose.

§ *4955. Violation of orders.*

Any person violating any order made pursuant to section 4954 (relating to protective orders), may be punished in any of the following ways:

(1) For any substantive offense described in this subchapter, where such violation of an order is a violation of any provision of this subchapter.

(2) As a contempt of the court making such order. No finding of contempt shall be a ban to prosecution for a substantive offense under section 4952 (relating to intimidation of witnesses or victims) or 4953 (relating to retaliation against witness or victim), but:

(i) any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed on conviction of said substantive offense; and

(ii) any conviction or acquittal for any substantive offense under this title shall be a ban to subsequent punishment for contempt arising out of the same act.

(3) By revocation of any form of pretrial release, or the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding him to custody. Revocation may, after hearing and on substantial evidence, in the sound of discretion of the court, be made whether the violation of order complained of has been committed by the defendant personally or was caused or encouraged to have been committed by the defendant.

§ *4956. Pretrial release.*

(a) Conditions for pretrial release.—Any pretrial release of any defendant whether on bail or under any other form of recognizance shall be deemed, as a matter of law, to include a condition that the defendant neither do, nor cause to be done, nor permit to be done on his behalf, any act proscribed by section 4952 (relating to intimidation of witnesses or victims) or 4953 (relating to retaliation against witness or victim) and any willful violation of said condition is subject to punishment as prescribed in section 4955(3) (relating to violation of orders) whether or not the defendant was the subject of an order under section 4954 (relating to protective orders).

(b) Notice of condition.—From and after the effective date of this subchapter, any receipt for any bail or bond given by the clerk of any court, by any court,

by any surety or bondsman and any written promise to appear on one's own recognizance shall contain, in a conspicuous location, notice of this condition.

Section 4. This act shall take effect in 60 days.

PANELIST. Do you think your bill will pass?

Senator O'PAKE. We're going to give it a good effort. As Chairman of the committee, we're going to consider it pretty quickly.

PANELIST. Have you heard from the defense bar on it yet?

Senator O'PAKE. Mr. Harbaugh, our committee counsel, has been in contact with some members of the defense bar, I think. The way the system works in Pennsylvania is that we will list it and invite members of the defense and any members of the bar to come forward, and there will be ample time to consider and possibly amend it in committee before it reaches the floor.

PANELIST. The issue I'm speaking to is one raised by Mr. Condon representing the National Association of Criminal Defense Lawyers—prosecutorial and police intimidation.

Mr. HARBAUGH. The defense bar has expressed the same concern expressed earlier today by Mr. Condon. We intended in the legislation to cover that very issue in both the definition section and in the substantive crime section, Section 2. I'm not sure we have done it specifically enough, because we have isolated prevention or intimidation or influence as it relates to withholding of evidence given to law enforcement, prosecuting, and judicial authorities. With a minor amendment—by adding defense counsel or the defense structure to that process—we can cover that issue. We hope to amend that in committee.

PANELIST. Mr. Condon commented that prosecuting the prosecutor was a waste of time and that exclusionary rule is the proper approach where prosecutorial or police misconduct is alleged and proven. Would you agree?

Mr. HARBAUGH. In this particular era, where the exclusionary rule is in major jeopardy, even though Pennsylvania has a very liberal Supreme Court on procedural issues, it seems doubtful that that is the appropriate approach legislatively. I'm not sure it is politically feasible to pass that kind of legislation.

Judge YOUNGER. Let us know what this committee can do to assist you with your bill.

Senator O'PAKE. One or two of your panelists will be invaluable lobbying influences.

Mr. YARES. I think the Philadelphia Bar Association will probably support your bill.

During the morning we have heard testimony and pleas for funding of local or state programs to help relocate victims or witnesses. Could your proposed Office of Crime Victims be expanded to provide protection for victims on a statewide basis?

Senator O'PAKE. Yes, I guess it could. That proposal is geared to two specific crimes, rape and domestic violence.

Mr. YARES. The reason I'm raising the question is that the representative here from the Philadelphia District Attorneys Office says they are short of funding to provide protection to witnesses whose lives have been threatened. Other persons testifying here have also indicated there is a shortage of funds for protection programs. Your method of funding is unique and seems to produce a sizable amount of funds. I'm curious if the Office of Crime Victims could provide a service where a victim could be relocated, let's say, from the eastern part of the state to the western.

Senator O'PAKE. It's something we ought to consider. Our committee has not yet refined the bill or reported it out; we intend to do that sometime in June. We'll take a look at that. It's an excellent suggestion.

PANELIST. In a domestic violence situation, how could a judge order the defendant not to go within a certain geographical area of the victim, as in your provision. Is that feasible?

Senator O'PAKE. We also have in Pennsylvania a spouse abuse law. It gives authority to a judge to order a defendant spouse out of the premises temporarily—and perhaps even more than temporary in the long run. It has been effective in some areas.

PANELIST. In your proposed Section 4952, Intimidation of witnesses or victims, (a)(iv), I see language in there on a witness who eludes, evades, or ignores any request to appear. Is that language broad enough so that a detective can make a phone call to someone and say, "Hey, we want you down at our office at 3:00 o'clock this afternoon," and if the person fails to appear, that they would be guilty of a violation?

Senator O'PAKE. No. The language is intended so that if such a request is made by a law enforcement officer and the witness or victim is inclined to respond favorably to that, and other person attempts to intimidate, induce, or influence them not to do that with the intent to obstruct or prevert the administration of justice, the action of the other person is criminal. It doesn't mandate that any person must appear just because a police officer calls him. If that person is so inclined, and someone else attempts to impede the administration of criminal justice in prohibited ways, then that person is guilty of a crime.

PANELIST. What if an attorney says to somebody who has been requested to appear, "Wait for official process"?

Senator O'PAKE. That is not with the requisite criminal intent. That's how we change your statute—by putting in specifically the intentional or knowing conduct, and linking it with the obstruction of justice.

Judge YOUNGER. Senator, we want to thank you very much for being here. Your draft, looks superb.

Senator O'PAKE. Thank you. Again, I commend your efforts.

Judge YOUNGER. Our next witness is Dr. Robert Reiff on behalf of the American Psychological Association.

Dr. REIFF. I am pleased to be here as the American Psychological Association representative. For 14 years I was professor of Psychiatry and Psychology at New York's Albert Einstein College of Medicine and was Director of the Division of Psychology and of the Center for the Study of Social Intervention.

The plight of crime victims has been a major interest of mine. Our demonstration/research center received an LEAA Grant in 1973 from the Mayor's Criminal Justice Coordinating Committee of New York City to conduct a service for violent crime victims in the high crime areas of the Bronx, and to determine their needs in order tc design a citywide service. It was the first government-sponsored victim assistance program, and generated data from detailed computerized records of actual services to victims rather than from surveys.

I am also the author of a book, The Invisible Victim: The Forgotten Responsibility of the Criminal Justice System, to be released by Basic Books in October. It contains the report of our service program, an analysis of the FBI Uniform Crime Report for 1976, policy recommendations, and a Bill of Rights for Victims.

I am pleased the ABA is taking the initiative to remedy the paradox of hundreds of thousands of crime victims and witnesses living in terror in a free democractic nation. The direction and intent of your proposed package is on the mark. I would like, however, to raise some questions to consider when fleshing out the proposals.

First, with respect to the court's role in dealing with victim/witness intimidation, I heartily agree with this recommendation. I do not presume to be a legal authority. My expertise is in social and psychological matters; and from that point of view, I recommend—in addition to contempt proceedings and revocation pre-trial release—a policy that violation of a court order automatically disqualifies the defendant from plea bargaining on the intimidation felony, as well as the substantive charge.

To have intimidation charges plea bargained away will weaken the impact of the procedure and increase the feeling of victims and witnesses that there is no justice in the criminal justice system. The effectiveness of these proposals depends upon the certainty in the mind of the offender as well as victim/witnesses that the court and the district attorney are seriously determined to enforce them. To permit plea bargaining on the original charge after an act of felonious intimidation will seriously weaken this statute's effect.

The proposal for a Victim/Witness Protection Unit is long overdue. Properly designed with properly trained personnel it can lead to significant changes in the attitude of the victim/witnesses toward the criminal justice system. In the ghettos of the large metropolitan cities it is street wisdom that the less contact one has with the police the better. This attitude of victims is itself an encouragement to the offender that physical threat can be successful.

On the other hand, there is considerable evidence that victim consciousness on the part of the police—an attitude of caring and concern for the victim—produces radical changes in citizen attitudes. Citizens want to believe the police are concerned about them and they are appreciative when they see that. The success of the change in attitude of the elderly toward the police in New York City as a result of the Senior Citizens Robbery Unit attests to the efficacy of this proposal. The New York Times reports that the officers assigned to this unit have won the affection of many of the elderly.

I cannot stress too strongly the importance of training personnel of such a unit. It is almost a universal law of organizational change that slippage will occur between the conceptualization of a new function requiring new attitudes and skills and the way personnel operate in that new function. If the new unit is manned by personnel with old attitudes and skills they are already familiar with and want to continue to practice, the danger of slippage will be greatly increased. Inevitably the new police protection unit will be nothing more than "old wine in a new bottle."

I suggest, therefore, that the proposal stress the necessity of training personnel for this unit—providing them with the concepts, attitudes, and skills necessary to successfully carry out its mission—before the unit becomes operational. This won't eliminate slippage entirely, but would minimize it.

One function of the unit not mentioned in your proposal would be to develop procedures for securing and maintaining accurate records of victim/witness names and addresses. We found that the records of victims kept by New York City police are inaccurate and incomplete. As many as 20 to 25 percent of the victims' names and addresses given to the police were false or obsolete. If the police needed to find these victims, they had to institute a search.

In the paragraph on liaison it would be expeditious to mention specifically the importance of using Victim-Assistance programs and Rape Crisis and Battered Women's Centers as adjunctive supports to the Police Protection Unit.

The importance of public information about the existence of the Police Protection Unit must not be underestimated. Public relations to enlist community support can make a significant difference in the degree of its utilization. Making a service does not automatically guarantee it will be utilized. We learned that a wide gap exists between victims' needs and what they are able and willing to do to get those needs satisfied. Victims with great needs were often too suspicious or distrustful to utilize our offers of hlep. It is therefore necessary not only to plan what protection services are to be made available but the outreach activities necessary to increase utilization, as well. For example, police officers can carry a small card containing a description of the unit and its phone number to give to victims on their first contact at the time of the crime or complaint.

In some areas the card should be printed in both Spanish and English. Some 22.4 percent of the victims we served only spoke Spanish.

Most law enforcement agencies' present policy with respect to intimidation is reactive. A major function of the Police Protection Unit should be the primary prevention (to borrow a term from mental health) of intimidation. The role of the Police Protection Unit as a proactive rather than a reactive arm of the law is crucial to its success.

The Prosecution Procedures section is the weakest of your proposed package. While each of the roles spelled out in it are essential, no mechanism is suggested that would make is possible for an already overworked district attorneys office to carry out these additional tasks. While many district attorneys may endorse this directive intellectually it will have little effect on their work habits.

I do not mean to imply that district attorneys are indifferent to victims. But they have other priorities which make it difficult to give a victim or witness the same primary consideration an attorney gives a client he reperesents; and that is what the victim wants and expects. Because of the built-in tension inherent in the district attorney's office between the role of prosecutor for the state and role of legal representative of the victim, district attorneys often consider such victim/witness demands as impositions interfering with the pursuit of their case as a crime against the State.

Your document points out that administrative priorities often result in toleration of offender intimidation scaring off victims or witnesses. But it does not address itself to the fact that victims or witnesses are often scared off by discouraging and frustrating experiences with the policies, practices, and procedures of the district attorney or the court itself—a form of institutional intimidation more subtle but equally effect as an offender's threat.

I have a suggestion which would provide an effective mechanism to carry out the proposed rules without placing an undue burden on the district attorney's office. Since the court provides a public defender for offenders, and since prosecutors find it difficult to provide victims with needed legal services. I propose that the appropriate court appoint an attorney as a Victim's Advocate whose duty it is to represent the victim with respect to all of his rights.

The idea of an ombudsman or advocate is not new. The difficulty with implementing the concept has been largely one of providing a power base that makes

it possible for them to have some clout when pleading a cause. A court-appointed advocate who has the power of the court to back him up. While he would have no enforcement power, his position as an arm of the court would give him sufficient stature to make an official plea for the victim's cause. Putting forward the victim's view for the judge or jury to consider would be a great leap forward toward a more balanced criminal justice system. It would fill a gap too long empty—giving the victim his day in court.

By the very act of appointing a Victim's Advocate with sanction to intervene on behalf of the victim, the court provides itself with a form of quality control. The advocate makes the work of the court with victims smoother. He functions to aid both the court and the victim by providing a human link, a line of communication—facilitating the involvement of the victim. He symbolizes to the victim the court's break with past practices and its sincere intention to provide justice.

In the case of threat by the offender and the need for police protection, the advocate could assist the victim in the necessary procedure to secure a protection order. He can follow the process assuring that each step is properly carried out, keep the police informed of any attempted violation, and in the event of violation follow through together with the district attorney in prosecuting it.

The advocate can inform the victim of his case's status through each stage of the prosecution. In addition, the advocate can: represent the victim in plea bargaining; if restitution becomes part of the sentencing procedure the victim's advocate can represent the victim's interest in determining the amount and manner of restitution; and plead the victim's cause before the judge to prevent interminable and abusive use of postponements. He can also be the link between the victim and community resources outside the criminal justice system.

Your proposed package mentions three general forms of intimidation, each requiring a different response. I suggest institutional intimidation is a fourth form which demands yet a different response. Institutional intimidation exists where the system's policies, practices, and procedures are intimidating in their psychological effect upon witnesses and victims because they discourage and dissuade the victim and witness from participating in the legal process. Your package's introduction implies this kind of intimidation when it notes that when intimidation is allowed to exist "our system appears only to take care of the powerful and secure; its impact is particularly harsh on the poor and disadvantaged."

The totality of my experiences with victims has convinced me that the tragedy that begins with the offenders' criminal act propels many victims into a life style of victimization. Once you become a victim of a violent crime you may be launched on a career of social injustices, of post-crime victimization by the police, the courts, and the human service agencies as well as by the offender. Post-crime victimization is one of the most excruciating and psychologically damaging experiences victims suffer. It results in a feeling that to seek justice is futile and often produces the attitude that the criminal justice system is as threatening as the threat of an offender.

PANELIST. Your idea of an advocate, this would necessitate a whole staff—one lawyer couldn't handle it in a large jurisdiction. Also, many times the postponement problem is the judge. Where the courts are backlogged in my community to insure that they are busy all day, they schedule six or seven juries. All the witnesses are on standby. I've pleaded with judges not to do that—inconveniencing all these people. Nevertheless, in the interest of keeping busy and disposing of cases, the judge insists on it.

In terms of protection, the only relief a judge could give would be to proceed after a complaint and court order to get a court order to the police department to provide protection. Very few judges would be willing to do this. You'd have to do it by litigation. In my experience judges are very loath to direct a police chief how to allocate limited resources.

Dr. REIFF. There is no question that the court's administrative problems make it difficult to implement anything for witnesses. However, if the victims were aware that there is somebody pleading their cause, it would make a tremendous difference in their attitude toward the system. I have sat in court and watched victims sit there all day long, lose a day's pay, and then be told the case has been postponed. That happens one time, two times, three times, they don't show up and that's the end of the case. That might be attenuated if the victim were kept informed of what is going on by the advocate. It might improve judges in some respects. Judges are reluctant to do this, but it is a matter of reeducating the whole criminal justice system—not just simply judges or the courts or the police.

The problem of victim intimidation is not one that can be solved by any one proposal. The problem is one which has its roots in policies, practices, and procedures of the criminal justice system as a whole and it has to be tackled on that basis.

PANALIST. The courts are the problem. To appoint an advocate to say there are too many postponements—he's taking on the judge's appointment system; and if you take on that you're not reappointed very often.

The courts are really run first for the convenience of the judges, then for the defense attorneys—and on down. Do you think the special advocate will change that when he's appointed and controlled by the judge, and not independently elected like a district attorney?

Dr. REIFF. I don't think a special advocate would change that just by his being there. But an advocate had access to the community might in some cases mobliize a constituency to change it. That's part of what an advocate's job would be.

PANELIST. The mobilization would be against the judge that appointed him and against the elected district attorney. You haven't mentioned confrontation but isn't that implicit in your suggestion?

Dr. REIFF. Confrontation is implicit in any advocacy proceeding. There is no advocate that we can operate without confrontation. That is part of advocacy.

PANELIST. You speak to the role of victims—signing off on dispositions; not so much being able to bottle up a disposition but at least having the victim's views presented to the court. From the standpoint of a psychologist, do you think most victims will exercise such a right responsibly, or vindictively? Or how exactly do you expect them to exercise that right?

Dr. REIFF. It's impossible to generalize about victims in those situations. There is one factor mentioned in this hearing that makes a big difference—the class nature of victims. Many victims come from the poor, and the poor have different attitudes than the middle class about the criminal justice system. If you were discussing with a middle class victim the problem of sign-off you would have a good effect. You might run into trouble if you were discussing that with a poor victim. You might increase the resistance to the criminal justice system in some cases among the poor, who already are antagonistic toward the system.

To speak of crimes as a general category detracts from possible solutions. One has to consider types of victims.

I was enumerating some of the institutional intimidation that exists in the criminal justice system. One is the abuse of police discretion in making arrests. Police training manuals, for example, advise the police to discourage arrests by advising battered women about possible loss of time, postponements, and uncertainties of court appearances. There are also cases in which plea bargaining takes place without the participation of the victim. Continuous postponements until the victim gives up are another form. Postponements and plea bargaining are two of the most frequent causes of institutional intimidation by the courts. Physical hardship and loss of income, as well as defeat of justice, are routinely imposed on victims by the way postponements are permitted in criminal court, and plea bargaining takes place without the victim's knowledge and participation.

I hope you will address this form of intimidation. I can suggest some simple partial remedies—such as making the police accountable for abuse of their discretion. Austin, Texas, for example, has released its law enforcement personnel from immunity and has instead indemnified them against suits by the citizens. That's one way. Encouraging victim participation in plea bargaining is another and I propose that the victim be given "sign-off" power.

I thank you for the opportunity to present these thoughts. The American Psychological Association and I am ready to cooperate fully, to encourage our members to engage in research on victim and witness issues, and to offer consultation to the criminal justice system not only on intra-psychic psychological problems but also on social-psychological issues in victim intimidation.

Mr. CARRINGTON. Thank you.

PANELIST. I agree that the victim should know about plea bargaining and perhaps participate in it in an advisory sense—or at least victims should be informed and asked what their feelings are. But the judge does not participate in plea bargaining. The judge has discretion in the area of sentencing, but plea bargaining belongs to the prosecutor. At least in Michigan judges have been prohibited by the Supreme Court from participating in plea bargaining.

Dr. REIFF. In many cases, judges do consent to plea bargains.

Judge YOUNGER. Thank you very much, Dr. Reiff.

Our next two participants are Judge Nancy Ann Holman and Judge Joseph Ryan. Judge Holman has been a Judge of the Superior Court of King County, Washington, since 1970. She was the first woman to serve on that court. Judge Ryan is on the Washington, D.C. Superior Court which is the court of general jurisdiction here. He has an extensive background in private practice and as an Assistant U.S. Attorney here.

Judge HOLMAN. I developed an interest in the plight of the victim in serving on the Superior Court. While I had done some defense work in Massachusetts, I was then in product liability until I went on the bench, and had not realized the problems one encounters in the criminal justice system. I have now served as the judicial representative on the Washington Criminal Justice Training Commission which draws together state criminal justice system segments for training and, developing standards.

As Superior Court Judges, we have rotating jurisdictions. I'm also president-elect of the Association of Family Conciliation Courts, so I'm interested in domestic violence. I'm pleased your committee has broadened its perspective to include that area.

I have felt frustrated as a sitting judge with the problem of the victim's not having the benefit of any advocacy. I like Dr. Reiff's suggestion of a victim advocate. We have nothing present other than a prosecutor's office perhaps providing victim assistance. That is not the same thing as standing, when one has the maximum opportunity to present one's position. If a prosecutor or judge is not so inclined, the victim is not going to be informed, not going to participate, can hardly press any kind of position, whether they're cooperative or not. The burden of assistance must be to provide a system where we can maximize cooperation of witnesses, provide the protection they need, an atmosphere in which they will be willing to cooperate. The present system is fragmented. It is difficult to provide assistance from the inception of the process through the trial and post-trial stages where, of course, witnesses and victims are still concerned about their safety. We do not have an effective mechanism to deal with that.

I hope your model act will be broadened to make it more comprehensive, with some opportunity for an advocacy position. In addition, some guidance should be given in the model legislation for a framework in the judicial system for a special court to deal with these kinds of problems throughout the entire process. Unfortunately, in a very heavily burdened metropolitan court we do our work by avalanche. It is time to address the situation for what it is. It must receive the priority and funding it requires.

And where is the funding going to come from? Perhaps the answer is to tax the users of the criminal justice system to provide expanded resources. Adding to the filing fee, for example, for marriage licenses is supporting the development of family courts in some communities. The Washington State Criminal Justice Training Commission has been funded by a segment of bail forfeitures.

I have some questions on the legislation—for example the standard of substantial evidence. At an initial hearing, if the prosecutor comes to me and there is a threat or some concern over protection, I would not want to be burdened with the standard of "substantial evidence." I would like to go with a "preponderance of the evidence" standard. I would rather give the benefit of the doubt to the person who is afraid rather than the person accused of intimidation.

Thank you.

Judge RYAN. My interest in witnesses was not developed in court. During the 82nd and 83rd Congress I was Assistant Counsel to a committee then investigating Internal Revenue. I was very impressed with the fair play rules that the House side adopted under Sam Rayburn and which the House has adopted in most succeeding Congresses. (The Senate has always refused to adopt these.) If any of you has ever been a witness and you take that witness stand, it's a lot different from sitting up there as a judge or sitting down there as counsel. The psychological changes you feel coming over you are quite significant. The fair play rules in the House don't allow klieg lights, motion pictures—or any pictures at all—except with consent of the witness. There is a profound effect. Even a witness properly called can undergo some physical discomfort so that sometimes they say things prejudicial to their own interest. That is a different context from what you're interested in. But the main germ here is that the witness should be protected in our society. I do not feel that our laws are presently expansive enough to protect all witnesses.

My presentation here will be narrow in scope because I feel this is an area which should be addressed. An empirical study of victim/witness intimidation crimes

reveals an area of our system of criminal justice which has been grossly neglected. The present state of the law in this area is antiquated, totally inadequate, and because of its deficiencies has served to perpetuate an injustice upon those individuals in a position requiring statutory protection. In many jurisidictions, under the penumbra of obstruction of justice statutes, provision has been made to cover victims of intimidation crimes who are witnesses in an ongoing criminal proceeding. However, there has been no attempt to insure the safety or protection of crime victims subjected to intimidation before the commencement of legal proceedings—or even before the crime can be reported.

As part of the solution it is first necessary to identify and legally define what constitutes victim/witness intimidation. This involves many subtle distinctions to distinguish it from an act of mere persuasion. It is necessary to grapple with such nebulous criteria as an individual's thoughts or the subjective reasoning motivating his actions. However, specific statutory standards have been developed which facilitate the determination that a victim/witness intimidation crime has been committed.

A primary element of a victim/witness intimidation crime is malice. You have malice defined as a wish to vex, annoy, or injure another person or an intent to do a wrongful act or to thwart or interfere with the orderly administration of justice—malice being that necessary ingredient which changes a non-culpable act of persuasion into the crime of victim/witness intimidation. Though often rigorous, persuasion without malice can never be a victim/witness intimidation crime. Whatever the motivation for attempting to persuade an individual not to testify, it is blameless, providing malice cannot be shown.

The specific intent implicit within the meaning of malice when referring to a victim/witness intimidation crime is defined as "that state of mind which exists when the circumstances indicate that the offender actively desired the proscribed criminal consequences to follow his act or failure to act." It is contradistinguished from general criminal intent which exists "when the circumstances indicate that the offender, in the ordinary course of human experience, must have averted to the proscribed criminal consequences as reasonably certain to result from his act or failure to act."

Succinctly enunciated, specific intent is present when, considering all the circumstances the offender must have subjectively desired the proscribed results—as opposed to general intent, where, from a consideration of the totality of circumstances, the proscribed result may reasonably be expected to follow from the offender's voluntary act, without necessarily any subjective desire to have accomplished such result. Specific intent is not present in the mere act of persuasion alone; but, it is the subjective intention of the offender to impede the reporting of a crime or to alter the testimony of a witness.

Where a specific intent is an element of a crime, the specific intent must be proved as an independent fact and cannot be presumed from the commission of the unlawful act. The statutory crime is thus not the intentional use of force or threats upon an individual, but rather their use with the specific intent to influence his conduct in relation to his legal obligation to the court.

Once specific intent has been shown, it becomes unnecessary to further prove that the testimony of the victim/witness was actually altered or impeded. It is the endeavor to bring about the forbidden result and not sucess in achieving the result that constitutes a crime.

To prove the existence of specific intent, two criteria must be met: First, the individual must possess a reasonable belief that his actions will result in victim/witness intimidation; secondly, the individual's motivation must have been for the specific purpose of impeding or altering the testimony of the individual intimidated.

Establishment of these criteria requires careful consideration of many different variables surrounding the alleged act of intimidation. Actions of the accused are set in time and place in many relationships. Environment illustrates the meaning of acts, as context does that of words. What a man is up to may not be clear from considering his bare acts by themselves; often it is made clear when we know the reciprocity and sequences of his acts with those of others, the interchange between him and another, the give and take of the situation. Intent may and generally must be proved circumstantially; normally, the natural probable consequences of an act may satisfactorily evidence the state of mind accompanying it, even when a particular mental attitude is a crucial element of the offense. The inference may be drawn that the defendant intended all of the consequences which one standing in similar circumstances and possessing like knowledge should reasonably have expected to result from intentional act or conscious omission.

In attempting to ascertain from the surrounding circumstances the mental attitude of the defendant, inquiry should be made as to the degree and relevance of the intimidated individual's testimony. If his testimony is vital to a case, with the defendant having a stake in the outcome, the likelihood that specific criminal intent was present is greatly enhance. Conversely, if the victim, witness' testimony is merely cumulative or corroborative, then a greater degree of proof is required to establish the requisite intent.

Another consideration is the status of the intimidated individual as a witness. The degree of certainty as to whether an individual will be called to testify has a direct bearing on the extent to which the offender will be motivated to alter or impede such testimony.

Evidence showing that an individual is under subpoena to testify or in all probability will be called as a witness, lends greater weight in the establishment of specific intent than does the status of a mere standby witness.

In further distinguishing actionable victim/witness intimidation from the use of persuasion, varying factors which assist in evaluation of victim/witness vulnerability to intimidation must be considered: the age and sex of the intimidated individual. The very young and very old are to a greater degree more susceptible to intimidation. The sex of the individual also should be considered where dominant physical characteristics of an individual could intimidate one of lesser stature.

Only be carefully analyzing both the apparent and underlying circumstances surrounding the offender's act of intimidation can the existence of specific intent be ascertained. The color of the act determines the complexion of the intent in those situations where common experience has found a reliable correlation between a particular act and a corresponding intent. The intent with which a harmful act is done is usually not expressed in words, and a jury is permitted to draw such inferences of intent as is warranted under all the circumstances of the particular case.

Additional factors which are beneficial in revealing the complexion of the defendant's intent are the relative education and intelligence of the intimidated and the intimidator. The superior education and intelligence of a defendant naturally bespeaks a greater vulnerability to intimidation by a lesser educated and intelligent victim. Concomitantly, the comparative physical characteristics of the individuals must be taken into account. A more subtle and less easily ascertained distinction than that of the individual's physical traits is the economic status of the defendant vis-a-vis the intimidated victim/witness. In cases where expert testimony is critical, a highly volatile area for intimidation exists when there is a marked disparity between the economic status of the intimidating party and the expert witness. Fee considerations play an important role in bidding for the valuable time of expert witnesses. The opportunity to manipulate fee arrangements is substantially enhanced when an effort is made to intimidate a less economically advantaged witness into aligning his testimony with the wishes of a more economically stable defendant.

Once the evaluation of victim/witness vulnerability to intimidation is completed, consideration should be given individual reactions to intimidation attempts. The victim/witness' emotional stability is a primary determinant of how an individual will react to intimidation attempts. If it can be shown the defendant knew of a victim/witness' emotionally unstable or disturbed condition at the time of the alleged intimidation crime, that fact can be used as evidence to aid in establishing specific intent. The relative emotional stability of the defendant to that of the victim/witness also will serve as viable evidence in further establsihing that an intimidation crime has been committed.

It is next necessary to look at the situation at the time of the alleged crime to determine if, in fact, a crime has been committed. For it is that subjective wish to vex, annoy, or injure another person, or that intent to do a wrongful act, which the law makes a crime, and not the mere act of persuasion, no matter how rigorous.

As the Supreme Court has said, an endeavor (when used in a context relating to intimidation crimes) describes any effort or essay to accomplish the evil purpose that the Federal Witness Intimidation and Obstruction of Justice Statute was enacted to prevent. Therefore, in the absence of an evil purpose of a subjective wish to vex or injure another person, the requisite proof for establishing the crime of victim/witness intimidation is not present.

There are several types of relationships where it is extremely difficult to show that an evil intent—limited to the meaning within the definition of malice—existed. Close ramily relationships with their intimate associations require close

and careful scrutiny to determine if the act of persuasion is based upon a desire to protect the best interests of the individual, or done with the specific intent of effecting a change in the testimony for ulterior motives reflecting an evil and unlawful purpose. The employer-employee relationship is also an area which escapes an easy detection of intimidation crimes. Usually the business relationship entails sundry pressures which can be controlled by a manipulative employer to keep an employee from reporting a crime or to thwart or alter scheduled testimony.

The majority of intimidation crimes perpetrated by employers are rarely discovered and are even less likely to be reported.

Professional, fraternal, and union relationships also pose a difficulty in establishing intimidation crimes. The nature of such organizations leads to a unique camaraderie among its members, which leaves them highly vulnerable to peer pressure, inhibiting the reporting and prosecution of victim/witness intimidation crimes. The intimidation tactics employed by members of such organizations include fear of losing membership privileges and the threat of disassociation by by other members.

Does the proposed model statute effectively provide for the detection, reporting, and prosecution of such crimes? The statute's purpose should be two-fold: First, to protect the participants in a specific judicial proceeding, filling the gaps left by previous legislation, by providing for protection of victims and witnesses; and, secondly, to prevent a miscarriage of justice by corrupt and unlawful ploys in a pending case, such culpable actions being the gravamen of cases presently being prosecuted under obstruction of justice statutes.

To accomplish these purposes the model statute must define what constitutes a victim/witness intimidation crime with clarity and specificity. The drafting of the model statute must be accomplished in a manner understandable to the prosecutors, attorneys, and trial courts who must enforce it and to the courts of appeals who must interpret and, I hope, uphold it.

Because of the uniqueness of intimidation crimes, a primary objective of the model statute should be to promote the reporting and prosecution of both successful and unsuccessful acts and attempted acts of intimidation. This can be accomplished by providing statutory safeguards which are realistic and enforceable and not merely theoretical to protect victims/witnesses who report intimidation. To insure that the model statute will succeed in promoting an orderly and fair administration of justice, it is imperative that the American Bar Association alert its membership to recognize and report victim/witness intimidation and provide for action to be taken against those members who condone or ignore such acts.

If the proposed model statute serves to fill the vacuum existing in our present legislation and brings a new awareness of the current unresolved problems relating to victim/witness intimidation, then its purposes will have been accomplished. It will then be incumbent upon the respective states to enact new legislation. Thank you.

Judge YOUNGER. Thank you both.

Our final witness today is Professor LeRoy L. Lamborn, a professor of law at Wayne State University.

Professor LAMBORN. Thank you for the opportunity to share my thoughts with you.

I am not overly optimistic about the success of your efforts, at least in terms of the model statute. This is for a number of reasons. First, our knowledge of the extent and nature of victim/witness intimidation is rather scanty. Often it seems to be based largely on anecdotal experiences rather than being scientifically based.

Second, we should be concerned about the lack of deterrence that might be expected from such a statute, since it is obviously aimed at people who have already committed serious crimes. If they weren't deterred by the threat of the law regarding, e.g., rape, why would they be deterred by the threat of a law regarding intimidation? From a slightly different perspective, statutes already deal with the substantive crime of hurting persons after they have testified. If the intimidator is not deterred by such statutes, why would he be deterred by another statute saying "Thou shalt not threaten?"

Finally, any criminal with a slight amount of imagination can readily make a threat anonymously, or vaguely, or where witnesses are not present in an attempt to avoid liability under the statute.

But, if on balance, it's thought that there should be a model statute, I have these comments for your consideration.

With regard to the mens rea of the act I would suggest that, for two reasons, it be "purpose" or perhaps "purpose" or "knowledge." First, these are terms that have been rather clearly and consistently defined by the drafters of the Model Penal Code and followed in the many states that have adopted the Model Penal Code. They avoid the rather unorthodox definition of "malice" or even a lack of definition of "willfulness" that we find in the model statute.

Second, I think that the harm to society from the lack of the witness' testimony is the same whether it is the organized crime figure or the loved one who suggests that a witness not testify because of what the organized crime figure will do to him. Any difference in terms of blameworthiness of the intimidator can be handled by the discretion of the prosecutor, the jury, or the judge.

Another point is that the proposed statute perhaps should take into account the intimidator who acts on the basis of an unreasonable belief that the subject of intimidation is a victim or witness. That person is amply demonstrating dangerousness and the next time around, if not stopped at this point, he could intimidate someone who is actually a witness or victim.

Fourth, I would suggest that the act should clearly extend to those who are victims or witnesses in civil proceedings. Certainly someone bringing a civil action for a substantial amount of money might well have as much incentive to intimidate witnesses as the person who is being brought before the criminal court. And we are interested in having testimony in both situations. At the least, the protections of the act should extend to juvenile delinquency proceedings and civil commitment proceedings.

Finally, I would suggest that the penalty for intimidation be specified as being consecutive with the penalty for the substantive crime that has been committed. Otherwise the deterrent value is rather minimal.

Judge YOUNGER. Thank you very much.

PANELIST. I agree with you that the deterrent effect of the proposed statute upon defendents would be miniscule. However, what effect would the statute have upon victims or potential victims who learn of its existence? Would that be a help to them in coming forward to testify?

Professor LAMBORN. My reaction is that it would be minimal.

JUDGE YOUNGER. A problem with that point is that you could say the same thing about almost any substantive crime. The fact that someone is breaking the law doesn't scare them much morally and doesn't seem to deter them much. But that strikes me as a loose argument for dropping the robbery statute. As you indicated many jurisdictions presently have witness intimidation laws. We haven't found any that aren't defective in a number of ways. So I guess I come full circle by saying you're right that statutory improvement in this area surely won't do anything all by itself. But we still feel we ought to give it a shot and if we can cut down some on what we think is a rather severe problem then that's still progress.

PANELIST. There's also the point that relatives and friends of a defendant will try to influence a witness to drop charges. I think that happens more often than a direct threat from the defendant.

PANELIST. On the question of *mens rea* are you saying that you would reduce it just to cover someone who has a purpose? It may be a relative who doesn't want the person to testify because of the harm to that person.

Professor LAMBORN. Loss of testimony is just as detrimental to society regardless of whether it is caused by intimidation by a member of organized crime or by the persuasion of a loved one.

PANELIST. And that person under your recommendation would be guilty of the crime of intimidation?

Professor LAMBORN. He would be guilty if it was his conscious object to prevent the testimony.

PANELIST. Regardless of the purpose?

Professor LAMBORN. The motive is irrelevant if the purpose is to prevent the testimony.

PANELIST. You suggested that a statute would be inefficacious in having a deterrent effect. Would it be efficacious with respect to subtle prosecutorial and police intimidation? My theory is that most deputy DA's are not anxious to even come close to going to jail. They have a different attitude about the prohibition.

Professor LAMBORN. But they are also not likely to be prosecuted.

Let me respond to the question about my attitude toward the proposal. My comments were not meant to be destructive, overly negative, or to suggest that work on this proposal should not go forward. I merely suggest that we should not be overly optimistic about solving the problem by enactment of a statute of this sort. Our expectations should not rise to such a high level that we'll be disappointed five years hence.

Judge YOUNGER. I think that's extremely well taken. I would note that it was very advertent that the title of our proposal is Reducing Victim/Witness Intimidation. We never thought we would crush or wipe it out.

PANELIST. I've encountered in several contexts cultural prohibitions against cooperation with the established civil authority—for instance, in a Chinese Tong gambling robbery where a young man robs older men in a private club. There are apparently some rabbinical prohibitions in certain orthodox communities against giving testimony against other members of those communities. In keeping with those cultural kinds of rules people do frequently discourage other members of their group from cooperating. Is this something that can be covered by this kind of legislation?

Professor LAMBORN. To the extent that the statute is going to be effective, it will be as effective in those situations as otherwise. Regarding my preference for use of "purpose" rather than "malice," it may be that there will be difficulties of proof, as I suggested that there will be throughout the statute. Going back to my previous point, if we need the testimony of witnesses, as we do in criminal trials, we have to attempt to get it regardless of whether someone is persuading for good or for bad reasons. The difficulty with the use of the terms of "malice" and "willfulness" as defined in the statute is that they are not inclusive enough.

PANELIST. So you would make this a strict liability offense?

Professor LAMBORN. No.

PANELIST. If the purpose were to prevent the witness from presenting testimony for whatever reason, then a citizen in one of the cultural groups I mentioned recommending to another member that it is in contravention of the canons of their belief to cooperate in prosecution in the courts against another member of that group—this would fall under the purpose of preventing them from testifying, but I don't believe it would be malice. So in effect if we only look to the purpose we're talking about strict liability.

Professor LAMBORN. Not strict liability, but certainly greater liability than under the proposed statute. The mere existence of religious or sub-group moral rules does not mean that the state cannot enter the field and say that those rules must be disregarded in the interest of the state.

Judge YOUNGER. Let me offer the committee's thanks to Professor Lamborn. At this time we would like to hear questions or comments.

PARTICIPANT. My name is George McCarthy. I am from the Burlington County Prosecutors Office, Victim/Witness Assistance, in Mount Holly, New Jersey. I'd like to say something about Mr. Dogin's earlier comments this morning. In encouraging LEAA to fund this, we knew at the start of our program that we had approximately two years to prove the program, and to further sustain it we had to show something to interest our local government. And I suggest to those aspiring to a protective or victim/witness program, the easiest way to do it is to start slowly.

Know your capabilities, what you can provide both in victim/witness services and protection. Then I think you'll find out that you come out stronger. Your chief source of strength is the district attorney. To do this you must get good coverage. At the end of almost three years of operation our program has now been picked up by our local government.

I hope this is beneficial to some of you in the throes of starting a protective or victim/witness unit. I have communicated with many units through the U.S. and provided them with information on how we got started. Thank you.

Judge YOUNGER. Mr. McCarthy, thank you for being here.

PARTICIPANT. My name is Marilynne Brandon Hampton, sociologist, University of California, Riverside. I was troubled when it said in your proposal that a family trying to persuade someone would in fact be blameless. I do not think encouragement of apathy is blameless. I don't know how we can handle that legally. But I think we have an obligation to the state from which we receive certain benefits and protections. It may be that religious convictions or whatever have to be put aside. But I think apathy is not acceptable in this society.

Judge YOUNGER. Thank you. We have a member of our committee—Eric Smith, recently a member of the Florida State Legislature and recently elected to the City/County Government Council in Jacksonville, Florida.

Mr. SMITH. I wanted to make one observation. I'm one who is very enthusiastic about the "model law". But there's one thing we need to stress—the need for competent people in the system. We can write the best laws in the world, but without

52-407 O - 81 - 14

people to provide legislative oversight, without citizens who insist upon enforcement of those laws; and without the proper attitude, it's worthless.

The victim still basically remains powerless and lobbyless. If you get involved in the legislative process you'll find out who's got clout. It's not the victim of crime. It's the defense bar. (And I'm a member of the defense bar—so I don't say that without a little bit of affection for it.) It's the bankers. It's the realtors. We set up so many programs for victims and yet when, on occasion, we find those programs don't work, we find they're trying to throw out the baby with the bath water. Florida's victim compensation act which passed last year was my bill. It was a good bill. And the Governor made an appointment of three people, two of whom were political appointments. The Commission hasn't worked very well. There has been squabbling, and the reaction in the Legislature this year was to kill it.

In Jacksonville, in a victim advocate program there, they didn't have the right people. So, with all the competition for LEAA money, guess what happened? It was terminated. As important as it is to hammer out a model law we must continue to generate enthusiasm; and get competent people.

Judge YOUNGER. Thank you.

(Adjournment of Afternoon Session.)

TUESDAY, JUNE 5, 1979, 9 A.M.

Judge YOUNGER. This morning, we have a three-person panel on domestic violence.

The panelists are Jeanine Ferris Pirro, an Assistant District Attorney in Westchester County, N.Y. and Marilynne B. Hampton, a doctoral candidate at the University of California at Riverside, and Co-chairperson of the NOVA Domestic Violence Committee.

Ms. PIRRO. It is only a theory of recent vintage which places emphasis on the victim as a legitimate concern of the criminal justice system. Even more recent is the concern over the victim of domestic violence. Yet, physical violence occurs between members of the same family more often than it does between any other category of individuals or in any other setting except in wars and riots. Domestic violence—physical assault, verbal harassment, and sexual abuse—has been estimated to involve from 50 to 60 percent of American families. Thus, the inquiry into the special problems encountered by the crime victim in the home is crucial because domestic violence destroys the family, the unit which is the basis of our society.

In November 1978, the Westchester County District Attorney's Office in White Plains, New York, under District Attorney Carl A. Vergari, established an LEAA-funded Domestic Violence Unit to investigate and prosecute crimes within the family structure. It was apparent to us that a prosecution unit alone would not be sufficient to provide necessary support a victim would need to go through the criminal justice system; a whole line of support services and a specialized unit would be necessary to assist the traumatized victim who chose to proceed through the criminal justice maze.

Within the criminal justice system spouse assault has been primarily regarded a personal problem, often more effectively treated by social service methods which emphasize keeping the family unit together. However, the criminal justice system can and does play a crucial role in aiding women to extricate themselves from violent relationships.

In six months of operation, the Domestic Violence Unit has serviced approximately 450 victims, approximately one third of whom chose to press criminal charges. Of those, approximately 25 percent thereafter withdrew charges. Of the percentage that eventually did go to trial the conviction rate was approximately 90 percent.

I would like to tell you about the typical pressures brought upon a family violence victim. In New York, the victim of a family offense has the right to choose the court in which her case will be heard. She can choose Family Court (which is civil) or Criminal Court. If she chooses the latter, she is often the recipient of much pressure.

The initial strength she gained to enter the criminal justice system (as opposed to the Family Court system) often weakens as time goes on, because of pressures by members of her family and friends and because of subtle intimidation from the people closest to her. She is told that she should not do this to the children. She is told that she will be responsible for the break up of the family.

Society as a whole places blame on this victim. Why does she stay? She must have asked for it. Victim precipitation of violence is a unique theory which has gained acceptance in the family violence arena. If she hadn't nagged her husband, she wouldn't have gotten beaten. Victims are aware of this community intimidation which often prevents them from even admitting the violence.

If a police officer who responds to the scene does not adequately advise the victim of her rights or support her, she may be afraid even to look for help. And, if he does not provide the protection she most desperately needs, she may be the victim of further violence. She is often told by the police to go to her mother's and he is often asked simply to go for a walk.

A victim of domestic violence is often the victim of real intimidation. She is told by her abuser that she will be killed if she goes to the police. And once in the justice system, she is told that her children will be harmed or taken away from her if she does not withdraw her charges. She may indeed have no other choice. Thus fear of the offender and possible retaliation can force her to drop the charges. And this fear can lead to psychological paralysis and eventually culminate in a desperate self-defensive homicide.

More pressure is brought upon the victim by the attorney for her abuser. Often he will contact her in an effort to get her to withdraw charges.

Judge YOUNGER. You've cited the fears. I wouldn' quibble with that. But the issues you are citing are real ones—the economic issues, the family split-up issues. Are we misleading our women to some extent if we reduce their fear of those issues? Is there something distrurbing about reducing fear of that which is legitimate?

Ms. PIRRO. It's not just reducing the fear in her own mind; it's taking accurate precautions within the system—providing protection for her throughout. Just by saying to her," Don't be afraid," isn't going to solve the problem. She is in desperate need of services that many other victims are not.

Judge YOUNGER. Yesterday we talked about perceived intimidation. Many witnesses said that much of the intimidation problem is being afraid of things that probably people don't need to fear, and with a certain amount of hand-holding service it can be handled. But some of the fears you're talking about are real.

Ms. PIRRO. They're very real.

Judge YOUNGER. To say to a woman "Don't worry about his stopping supporting you," may be a little artificial—because he probably will stop supporting her.

Ms. PIRRO. I am talking about real and community intimidation—not perceived intimidation. The crucial point is that she must be assisted, not as any other victim, but in many additional ways. She has to be told, if he's going to stop his support or try to get custody of the children, we can do this for you; we can go into Family Court; we can get you emergency funding; we can get you to a shelter; we can do all these things which will help her through the system.

PANELIST. You said pressure is brought on the victim by the abuser's attorney. We've heard this several times in the hearings, severe criticism of the bahavior of defendants' attorneys. But there is a problem—these attorneys have a tough row to hoe. One wouldn't want to deprive them of legitimate opportunities to intercede on behalf of their client, with witnesses, to have a discourse. This is a delicate point when we start focusing in on defense counsel.

Ms. PIRRO. I have been an Assistant District Attorney for four years. I have been involved in the domestic violence area for six or seven months. What I see defense attorneys doing in these cases is quite different from what I see them doing in other cases—not just verifying what the facts are, but much pressure is brought upon the victim; her emotions are played upon to withdraw the charges. One of the first things a defense attorney tries to do in many cases is to get the victim to withdraw the charges—that does not occur in stranger criminal activity. That's a great cause for women dropping criminal charges.

PANELIST. Apart from the role of counsel as defense counsel, you could make a good point that any lawyer attempting to get family violence out of the judicial system is doing everyone a favor—because the judicial system will botch it as badly as the rest of the social service system has.

Ms. PIRRO. I don't think the social service system people are the only ones who should handle these cases. There are violent crimes that occur within the home, and civil and family courts do not have the authority to mandate counseling or put the offender in jail. It's about time these offenders were brought into the criminal justice system because they are committing violent criminal acts in the home.

PANELIST. Is it true that if these were acts among strangers that they would be arrested immediately?

Ms. PIRRO. Absolutely. Because the victim is related to the abuser there is hesitation on the part of the police or district attorney to bring charges.

PANELIST. Is it a viable alternative to indicate to the victim that if the defense attorney wants to speak to her that you'd be glad to sit with her at any such interviews?

Ms. PIRRO. That's very, important.

PANELIST. Defense counsel has a responsibility to a defendant, in a family violence situation to probe that particularly peculiar element in a family violence situation that's not present in a stranger situation—the past history of the relationship. That changes the chemistry of family violence from stranger-to-stranger violence. I'm not sure you want to impose the same standards on all the participants in the process that you would in the ordinary automobile accident or stranger assault. The standards are significantly different.

Judge YOUNGER. Almost any conduct to dissuade somebody from bringing charges in the first place is fair game under the law of most states. In California you can do anything you want to somebody to keep them from filing charges in the first place, without coming under our intimidation statutes. The point you're making that the pre-charge pressure may be quite different in the domestic setting than a stranger setting is an important one.

PANELIST. I have a question about the interplay between victim intimidation statutes and family violence. For too long women's complaints of abuse by their spouses have not been handled unless they can be transformed into an offense against society. The woman will call the police, the police will come, they will badger the husband until the husband takes a swing at them, and then they'll arrest him for assaulting a police officer. They won't arrest him for assaulting his wife. Victim intimidation can be perceived as a crime against the society. You would arrest the husband for intimidating the victim or obstruction of justice, which can be perceived as a crime against the society. One major problem is recognizing that it's a serious crime against the woman. Do you think our statute has a dark, alternate side for the victims of domestic violence in that regard?

Mr. PIRRO. There's no question about that. It has been my expereience that statutes such as tampering with a witness are never used in these types of cases. I don't believe the justice system will respond unless there is specific legislation relating to victims of domestic violence. In New York the legislation specifically says no one shall prevent or hinder a victim of domestic violence from having access to the courts. There were a number of lawsuits brought against the NYC. Police Department for failure to act in these cases.

Mr. CARRINGTON. In most cases victims don't have a continuing relationship with the defendant after the act. Do you have any statistics of what percentage of those victims went back with their spouses?

Ms. PIRRO. I do not. We are now putting together some data. Offhand, there are a number of victims who resume their relationship with the offender after they bring their husband into the criminal justice system. What we do with some of these cases is use a statutory remedy called adjournment in contemplation of dismissal—a kind of diversion. We have control over the offender for six months. Then the victim often feels more comforatble going back, knowing that that control is over the offender and he will probably not assault her. It's unfair to say to a victim—if you want to use the criminal justice system you must stop all relations with the offender. That's just not a reality of life.

PANELIST. I feel you want it both ways. I said earlier that domestic violence is a different breed of crime from stranger-stranger violence, and you've just confirmed that with the fact that you have a special adjournment in contemplation of dismissal. Now I ask my question again: What if your client's desire is to preserve the relationship? "O my God, I beat my wife, I made a mistake, I'm completely guilty, but I want to go back to her because she's a good woman." Defense counsel presented with that kind of a client is in a different situation than presented with a client who said, "I knocked off a liquor store but I don't want to spend the rest of my life in jail." It's a totally different client relationship.

Ms. PIRRO. There's no question that it's a totally different type of client relationship. But adjournment in contemplation of dismissal is not just used in domestic violence cases. It's used in all cases where we want to divert the defendant and dismiss the charges. We take the victim's desire into consideration. If it's her feeling that she does not want to have the offender sent to jail and a serious crime has not been committed, we will give him the option of having an adjournment in contemplation of dismissal.

PANELIST. That's something the prosecution decides then?

Ms. PIRRO. Yes. But in these cases we usually try to get her consent.

Judge YOUNGER. Where do you draw the line in diverting? When a weapon is used?

Ms. PIRRO. Yes. Or serious physical injury.

Mr. CARRINGTON. Is that a pre-charge or post-charge decision—the adjournment in contemplation?

Ms. PIRRO. The defendent is charged. The case is adjourned for six months, with some kind of condition. But if the conditions are met at the end of the six months, the charges are dismissed and the fingerprints returned.

PANELIST. We have a program somewhat similar to yours. I think there are a lot of DA's that are really trying to conscientiously handle this. I've often wondered—because women are accused of dropping cases—when a woman doesn't appear whether the husband has finally succeeded in thoroughly intimidating her, telling her, "If you go to court, I will kill you,"—or whether they have made up and the case is dropped. People in the system tend to assume that they've made peace.

Ms. PIRRO. In our unit we try to establish rapport with each victim so that if she wants to withdraw the charges she will call the worker on her case. She often says she wants to withdraw charges because she wants to get back with her husband, and after much talking we find out that deep down is a tremendous fear she may not want to admit to us that she's the victim of intimidation; she's afraid he's going to beat her, beat the children, take the children away. It's very difficult to gauge.

I have outlined only a few areas of intimidation experienced by the victim of crime in the home. There are many more. It is more important, however, to direct our attention to change. Our system of justice must provide support and protection to a victim caught in a web of circumstance—circumstance that puts her in inevitable future contact with her abuser.

From the standpoint of the victim of domestic violence, civil and criminal laws have been unable to prevent the recurrence of violence in the home. From the standpoint of the courts; the existing statutes have been inadequate in providing guidance as to the scope of protective orders. As a result, judges are reluctant to order an offender out of the home, even though he has seriously injured his victim. And from the standpoint of law enforcement, the practical problems of enforcement are overwhelming.

The New York State statute on tampering with a witness is more general than your proposed statute in the sense that a person is guilty of tampering with a witness when he knowingly makes any false statement or practices any fraud or deceit with intent to affect the testimony of a person. This is stricter than your Section 2 because it allows for prosecution not only where the witness has been threatened not to appear, but in the more subtle area where false statements are made to affect a witness' testimony.

In Section 7(d), where it is proposed that a defendant have no communication with a victim except through an attorney, it is recommended that even then no contact be made with the domestic violence victim unless and until the prosecutor is present.

Your proposed procedures must include procedures to involve personnel in the resources and support services needed by victims. Mobile crisis teams should be available to assist traumatized victims. Twenty-four hour hotlines must be created. Trained paralegals must be available to monitor pending cases to determine if the victim is in need of support or in danger, and to further monitor the case once the action has been disposed of. Orders of protection should be requested in every case where there is a fear of future retaliation. Offenders must be ordered out of the home where there is a history of abuse.

Cases which involve serious threat of future harm must be expedited through the system to reduce the chance that the victim might drop out prior to trial because of the danger of further assaults. Judges must issue orders of protection to assure that the offender remain away from the victim. Violations of these orders must be strictly enforced. Victim/witness support and advocate programs must be instituted in prosecutors offices to inform victims about the criminal process, refer them to the necessary support services, and assure safety and economic subsistence pending trial. Thank you.

Judge YOUNGER. You mentioned 7(d). You felt that "our except through an attorney" language might be a little broad. I have some hangups about directing an attorney not to talk to anybody in the preparation of the defense—or for that matter the prosecution—of a case unless there is some strong showing that the attorney had already done something bad.

PANELIST. But if that woman were represented by private counsel, counsel for the defendant wouldn't have any right to speak to her directly. He'd have to speak to her through private counsel. If you have a situation where a woman is a victim and, if she's rich enough, retains an attorney, the defense attorney for her husband wouldn't have any right to speak to her without first speaking to her attorney. I don't see that there's an impairment of anybody's rights if she says, "I don't want to speak to the defense attorney without the prosecutor present."

Judge YOUNGER. Yes, but in five years and several dozen domestic violence cases I have not yet met one who can hire an attorney. I have the feeling as a judge I can't tell a defense lawyer that he can't talk to a particular witness.

Ms. PIRRO. A compromise might be that when a victim alleges that she's being harassed by a defense attorney, which is very often the case, then there might be a proviso in this; once she has been threatened, no further contacts will be made with the victim unless a prosecutor is present.

Judge YOUNGER. I agree that if the attorney's conduct had been demonstrably bad then maybe that's a different story.

PANELIST. Isn't the short way to this problem going at attorneys for violations of professional ethics?

Ms. PIRRO. But that doesn't help the victim during the course of the charges.

PANELIST. It depends on how quickly the effort is made to go after his attorney. There aren't a lot of attorneys who are going to do this a second time if they're up on charges for the first.

Judge YOUNGER. Let me now introduce Ms. Hampton.

Ms. HAMPTON. I was excited about presenting testimony here because my personal research interest is interrelationship between domestic violence and societal violence.

As we know, violent crimes are increasing and the age of offenders is decreasing. I have a study on incest that would indicate that violence in the family sets the stage for learning more sophisticated violent behavior in the larger society.

I had a fantastic response of interested people who, through their work and experience, are uniquely familiar with victim/witness intimidation, particularly as it relates to domestic violence cases.

I entitled my presentation Reducing Victim/Witness Intimidation in Domestic Violence Crimes. Violent acts in the home are just as much a crime as if they occurred in the street.

First there is one fundamental thing that we need to do. What is unique to the domestic violence victims is his or her status. From what I define as domestic violence several crimes are subsumed under that term. What we need to do is recognize that certain acts, even though committeed in the privacy of the home, are still crimes. The first point is recognition.

The second is that we must define publicly for this society, and do this by effecting sanctions, that these are criminal acts.

Finally, and perhaps most important—we must accord those who suffer domestic violence their appropriate status as legitimate victims. They are bona fide victims. Just as there are different forms of stealing (burglary, robbery, armed robbery) there are different types of domestic crimes, different degrees. There are people who want an immediate dissolution; there are people who merely want the violence to stop, and are committed to marriage. In the coalition I helped organize that choice must remain with the victim. We must keep the peace. If it is possible to help with diversion programs, great. We need the whole panoply of resolution of these cases. We don't just say, if we have wifebeating, that person should be sent up. That is not necessarily the case. The earlier the intervention the greater the likelihood of change. We just don't accord this type of victim bona fide victim status.

What is unique about domestic violence victims is that in addition to at least the three forms of intimidation you have detailed in your proposal, they experience institutional victimization, as well as another I have identified—self-intimidation. An example is where a young child, fearing that disclosure of incest will destroy the family unit, will try to hang onto the family. And so domestic violence victims are particularly susceptible to intimidation.

What we really need to emphasize is that intimidation is an integral part—perhaps the major ingredient—in crimes of domestic violence. First, all these crimes are perpetrated by the most powerful person in the relationship. Abuse continues over time in such a way as to permit little surcease from trauma. These criminal acts generally occur in the privacy of the home. When we talk of home and family, people expect love and trust. When this is suddenly wiped out, fear and confusion result. We have a pluralistic society. We have liberated women. We have women raised with traditional backgrounds who see their husbands as

head of the household; if suddenly they are injured at the hands of the person whom they perceive as their protector, the confusion is enormous, as is the trauma.

In some cases there is a symbiotic relationship between a violent couple. They want their marriage to go on, but they simply do not know how to handle interpersonal relationships on an effective basis. We have to help them before things have escalated.

In your statute, on perceived intimidation, you make the statement: when no real threat has been made. You must understand a fundamental distinction between domestic violence victims and others, especially in spouse abuse cases. These victims always know the perpetrator, and they know him better than any third party or agency can. They have known this person over time, drunk or sober, irritable or fresh, working or unemployed. As a result their perception of that person's power to carry out a threat is very acute. I hope if you do establish your victim protection unit that it would err on the side of believing the victim's assessment of the amount of danger, because generally the victim has a very good idea of the danger. With respect to your victim protection unit, I would not like to see it located in a police department. I would like to see it as a kind of ombudsman.

You talk in the booklet about good public relations for the criminal justice system. Particularly in California and in Texas many Mexican-American families are horribly intimidated by bureaucracies. There is a very successful program in San Antonio, Texas; its director has done a fantastic job, and has a good working relationship with the criminal justice system. Equally he understands the people in the barrio and is well accepted. What he does is interpret the one group to the other to make understandable what is happening.

I'd like to give you an example dealing with rape but which is perfectly relevant to the domestic violence issue. In Riverside in 1975 a special rape program was established. Someone is with the victim at every step of the way. The extent of the support given that person is tremendous. It's not just shoring them up and saying help us win the case; it is having the person meet the prosecuting attorney out of a courtroom setting. It is explaining to the victim everything that's going to happen, in advance. It is having the victim take an active part in the prosecution. The remarkable statistic is that since 1975, not one case of rape has been dismissed because a victim/witness failed to show up.

I don't think victims are idiots. I don't think victims object to human failings. I think victims can understand that you must have continuances, that those are parts of due process. It's just the way they are told. If they are forewarned they can be forearmed. I would like to see if possible a victim/witness assistance advocacy and protecting unit, so the name itself conveys something, not under the leadership of a law enforcement person. This unit should tie in and have members of the various law enforcement systems actively working with it.

I find some difficulty with specially trained peace officers. The formality involved intimidates victims. I like the San Antonio model.

PANELIST. You don't think it should be in a police department; I assume you also include a prosecutor's department?

Ms. HAMPTON. Harl Haas in Oregon has a very successful program in the District Attorneys Office, but it is run by a so-called civilian.

PANELIST. The police could use some kind of softening agent in their general public visage. If every police officer in the community packs a gun and makes arrests and there are none who help old ladies across the street, then it's a kind of a civil-military operation. The idea that police departments consciously provide services, rather than incidentally as part of their public protection, might be appealing to police departments: here we have an opportunity to represent ourselves as victim advocates. It's going to be difficult to have substantial cooperation by police or prosecutor or any other institutional wing of the criminal justice system if you locate the victim advocate agency outside of one of those branches, for the usual reasons of institutional jealousy and failure of bureaucracies to work through coordinating councils.

Ms. HAMPTON. I have no objection to its being located in the district attorney's office with some civilian—perhaps social and behavioral science people—involved. The thing that disturbs me is you want to sensitize the police, and yet we all agree that police training needs to be changed. I would rather not practice with the victims of domestic violence. We formed a coalition of all the county agencies in Riverside. Our vice president and president elect is a Deputy District Attorney. We have had fantastic interrelationship, and the police are setting up a unit. We are not a huge bureaucracy. It's a community effort. I'm not talking about institutionalization of a gigantic thing.

Judge YOUNGER. Thank you both so much.

Our next witness, Thomas Tait, is on the Board of Directors of the National Association of Pretrial Service Agencies, and is Director of the Clark County (Las Vegas) Victim Witness Assistance Center.

Mr. TATE. Thank you. As a practitioner in victim-witness service for three years, I want to describe my experiences and forecast how implementation of your proposal could impact upon the courts of my county and other jurisdictions.

Academic discussion about witness intimidation, the purported inability of the criminal justice system to curtail dissuasion, and the rather bleak picture of criminal procedure painted by Hollywood film-makers all convince us of the need to improve witness services. Nothing, however, is so dramatically convincing as a prosecution witness genuinely afraid for his/her life, regardless of whether the intimidation exists or is perceived. Victim-witness assistance personnel are not in a position to discount intimidation reports as unfounded perceptions. We cannot ignore these situations or pretend that dissuasion, coercion, or bribery do not exist. They do—we see it often—and it is perhaps the paramount threat to the integrity of our system.

The most visible and dangerous type of intimidation is Primary Intimidation, a threat to the life of a witness, his/her family or friends or the destruction of his/her personal property. It is frequently accompanied by some display of force or power to amplify the witness/fear. It may take forms other than life threats, property destruction or personal injury. Bribery or extortion are very effective methods of dissuasion.

During a recent homicide investigation, it became evident a material witness was in imminent danger of retributive action because of cooperation with law enforcement. The witness was relocated and subsequently twice returned to Las Vegas in complete secrecy to testify. These logistical arrangements were varied and complex, as not only was the witness considered a victim of intimidation but any person who knew the whereabouts of this person was potentially a victim. Although the Clark County victim service staff was not responsible for protective services, we provided logistical support and coordinated the protection effort.

In another case, money and comfort were the initial devices used to dissuade a victim from pursuing prosecution. A bribery report was taken by law enforcement officers and the Victim-Witness Assistance Center staff was contacted. Working in conjunction with the Metropolitan Police, an investigation was initiated to determine the scope of the intimidation. The suspect soon learned of the investigation and traveled to the victim's residence, ostensibly for confrontation purposes. The victim called the police, and because the dispatcher and patrol divisions had been notified of this possibility, police units were on the scene in minutes.

In both instances, the defendants pleaded guilty to the original charge. A felonious intimidation report was filed in the latter case and has considerable bearing on the ultimate disposition.

Because the Clark County victim service staff has demonstrated a high degree of reliability over the past three years, and because of its organizational location within law enforcement, a number of services can be provided to individuals who perceive or experience intimidation. These services include, but may not be limited to relocation of a witness; surveillance; secret transport; escort to court or to police department or to a shelter; filing of an intimidation or dissuasion charge; request for judicial intercession; provision of emergency communication network; and protective custody. These services are essential and must be availabe in any jurisdiction which experiences frequent incidences of primary intimidation.

I compliment you on your careful study of intimidation. There are, however, some areas which I feel require further comment.

A specialized police unit to respond to intimidation reports may satisfy the need to have protective services readily available, but could be a practical impossibility. First, many communities have multiple police jurisdictions in one cohesive geographic area. Unless a victim-witness unit is established in each police entity, some portions of the community will receive a lower level of service. Since the frequency of intimidation calls is slight, a separare witness unit for each jurisdiction may not be cost effective.

A second problem posed by your recommendation is that police officers whose primary duty it is to aid victims and witnesses may encounter role conflict between their responsibility to offer such support and their responsibility to investigate whether intimidation has occurred and collect evidence.

Third, since victim-witness cooperation is critical to the effective prosecution of criminal cases, most prosecutors' offices need to have a victim-witness unit. Transfer of services from the police unit to the prosecutor's office may result in a sudden change in service delivery that is destructive to the consistent supportive aid needed by many affected persons—to say nothing of more red tape!

What is needed is strong cooperation and coordination among all agents that come into contact with victim-witnesses. Specific training in the areas of intimidation identification and control must be developed and standardized. This does not necessarily negate the desirability for a separate police unit to protect and serve intimidated persons, but it may be more effective to augment the staff of an existing victim-witness unit to include lay persons to accompany police officers on calls involving acts of dissuasion.

This type of arrangement would prevent any role conflict for police officers, facilitate consistency in service delivery, keep costs to a minimum, and in areas of multiple jurisdiction, provide equal service to all police departments.

I perceive another difficulty potentially arising from your proposed statute in the area of pretrial release. While advocating placement of a condition on release, the statute does not define sanctions for violation of the condition and the means used to justify the sanctions. There appears to be an implied advocacy of preventive detention which is one of the knottiest areas to face this nation's judiciary. While necessary in some instances, the decision to detain should be made by carefully weighing purported or actual danger of intimidation and the right to release while awaiting trial.

The fact that a person is incarcerated may not solve intimidation. The actual intimidation can be carried out by a person other than the defendant—someone the defendant hired or obligated, a friend, or family member. Access to these potential intimidators is available to the defendant, whether or not he/she is in lockup.

I suggest that on pretrial release the statute be expanded to include preventive detention standards much like what is proposed in the ABA and the National Association of Pretrial Services Agencies Standards on Pretrial Release.

Second, intimidation may be preventable in many instances through close supervision of the defendant during the pretrial period—certainly a less costly and more desirable mechanism than placing the defendant in custody.

In suggesting that intimidation be treated through detention hearings, I do not wish to appear lenient as to threats to the victim or the judicial system. Intimidation is one of the most dangerous and noxious insults to the justice system.

On the other side of the coin, however, intimidation can be difficult to prove, may be more perceived than real, and is a very serious allegation. Any statute established for service to victims and witnesses should, like other standards for the criminal justice system, facilitate a balanced delivery of fair treatment for all persons involved—and not diminish constitutional guarantees.

Another issue is the apparent inconsistency in judicial handling of intimidation charges. In some cases the courts prefer to deal with intimidation as a contempt situation, requiring judicial intervention, whereas in others the preference is toward filing of criminal charges. From the victim's standpoint, the handling of intimidation as a contempt violation may be unsatisfactory, having the appearance of a slap on the hand rather than a serious violation of the victim's rights or threat to his safety. If this is the case, the victim may be reluctant to report further instances of intimidation, choosing instead to refrain from testifying. Further investigation in this area may be warranted to determine if standards on the courts' handling of intimidation matters would be helpful.

Finally, the issues of privacy and security pose an ongoing problem for victim-witness services. Throughout the handling of a reported intimidation, great care must be taken to assure that the defendant's right to privacy and/or security are not violated. Thus, normal investigation procedures may not be feasible in some cases of reported intimidation. The majority of intimidation reports cite "phone calls received in the night," and by their content have little or no prosecutorial merit, but must be investigated.

The staff of a victim services agency must be competent enough to blend active investigation techniques with victim advocacy in these instances. Actions taken by victim services staff or a communication with the victim or family which results in the release of criminal history record information can if unchecked lead to actions which may infringe upon the rights of the defendant.

I have used the operating definition of witness intimidation as those acts which by design result in the reluctance of a witness to testify. I have given two examples of Primary Intimidation, one involving threat, the other involving bribery and subsequent confrontation. There is another form of intimidation which, although

not readily visible, is equally devastating to the prosecution process. I call this Secondary Intimidation.

This type of dissuasion manifests itself in the perceived or actual dissatisfaction a person has or develops as a result of past and present association with agencies he/she comes into contact with after the crime's occurrence. For example: a sexual assault victim questioned insensitively by the police or treated harshly by hospital staff probably will not wish to continue the prosecution. Likewise, if no attempt by the police, prosecutor, or court is made to keep witnesses informed as to the case's status each responsible person may be dissuading that witness.

If, however, a victim or witness is allowed to feel that he/she is an essential part of the system designed to protect him/her, that person will respond more readily to the needs of that system. This has been demonstrated in most cities that have implemented victim-witness assistance centers. These programs have personnel who, for the most part, are sensitized to the difficulty which can be imposed upon victim-witnesses by rigid system requirements. Because a rapport has most likely been established between a victim-witness and a Center staff person, the intimidated party may be more likely to contact the Center representative to report any threatening, coercive, or dissuading device.

All the agencies a crime victim or witness contacts can influence his/her decision to report a crime or testify—and may be intimidating. It is important to address these problems in conjunction with those of Primary Intimidation if an effective intimidation reduction package is to be presented by the ABA.

Primary Intimidation is a serious problem. For every incidence of Primary Intimidation we encounter, there are over four hundred services provided non-threatened persons in an effort to eliminate Secondary Intimidation.

Unless practitioners are congizant that witnesses are more than just a means by which evidence is introduced and that their intimidation is potentially contributed to by all persons with whom they come in contact, both types of dissuasion will continue to prevent justice from prevailing. Thank you.

Judge YOUNGER. Mr. Tait, thank you very much.

We have another two-person presentation devoted to post-trial intimidation.

We are honored to have Gordon A. Pinder, Chairman of the Board of Directors of the American Probation and Parole Association, (APPA), from Ottawa, Canada. Testifying with him is Judge Lawrence Waddington of the Los Angeles Municipal Court, a former Assistant Attorney General in California, and a former Deputy District Attorney in Los Angeles.

Mr. PINDER. Thank you. Let me introduce Mrs. Scotia Knouff (Waite), Co-Director of the APPA-sponsored project, Improving Victim/Witness Services Through Probation. Mrs. Waite conducted an extensive international survey on intimidation.

The American Probation and Parole Association feels that the area of victim/witness services is a priority for attention. The victim and the witness should have at least equal rights with the offender. If the victim, witness were able to receive at least a quarter of the services we provide to offenders, that would indeed be progress.

APPA strongly supports the ABA initiative for a model statute. On Section 4 we make several recommendations to bring probation and parole practitioners and the violation reports into the statute that would allow the parole and probation practioner a greater scope in dealing more effectively with victim-witness intimidation. Probation and parole practitioners have a role to play in providing victim/witness services. We do not feel that it is a question of "limited ownership." It is a question of collective and cooperative ownership, a problem that must be dealt with effectively by prosecutors, laypersons, the police, social service practitioners, and probation and parole practitioners. We do have a role to play.

APPA also supports the establishment of a Bill of Rights for Victim/Witnesses. I fully endorse Judge Waddington's proposition calling for full attention to the victim/witness after the case is disposed of. This is often left to no one because the problem magically "disappears" once the case has been disposed of. The offender has been dealt with according to law. The victim still is no less satisfied in terms of the judicial resolution of the case and is no less supported in terms of the real fear of further retribution by the offender.

Judge Waddington also proposes a statutory responsibility on parole and probation practitioners to warn potential victims in the community of pending danger. Professional probation/parole practitioners morally accept this, and to a great degree demonstrate that in their day-to-day work. Accordingly, we have no difficulty supporting that kind of statutory promulgation, but I caution those drafting such a statute about the ability for its broad misinterpretation or abuse.

We cannot lose sight of the client in this particular case. Much time has been spent defending our various interests. I'm sure we can develop a model statute. I'm equally convinced we can develop a bill of rights. I'm equally confident we can promulgate viable processes for service delivery.

However, the result of these efforts must be perceived by victim/witness as meaningful—I'm afraid the soundness of the project intellectually or conceptually gives no assurance that it will be successful when implemented.

The serious problem of intimidation may be insoluble. It may be that we must admit this and recognize the need to provide viable support services to the victim/witness over a very long period of time, expecting no great decrease in the no-show rate. Perhaps we need simply to establish a base to demonstrate to the community that protection and support services are available.

If we accept this, resources must be made available. Our expectations must be realistic and conservative. Simultaneously, an effort must be made to streamline the bureaucracies within the criminal justice system. If we're not prepared to do that, our efforts will go unrewarded. This may mean looking at some areas of change that have been sacrosanct to date. I'll give you an example.

Judge Waddington shared a proposition with me, a sound proposal to better insure the timely appearance of witnesses at four or five points in the judicial process. My question to him was why the victim whose car was stolen must appear four or five times throughout the system to answer such questions as: are you the registered owner of Vehicle X; was Vehicle X missing on such and such a day? Why could not the sworn statement given to the police, notarized if necessary, be videotaped, and the evidence simply presented by the investigating officer?

Judge Waddington responded that it would be futile to attempt such a change, challenging an entrenched constitutional right to face one's accuser. That's fine, except that in such cases the victim is not really the accuser. He's simply there four or five times making statements of facts. This is an example which illustrates our propensity for putting people in situations where they are instantly subject to unnecessary intimidation. If we're not prepared to look at the impact the demands of the system impose and to change the system, I doubt we can seriously expect to promote greater public understanding or ultimate cooperation.

Let's recognize the trauma generated for the victim who is usually in a state of apprehension or terror and usually alone. Judges, prosecutors, defense attorneys—and in most cases offenders—are all well trained. We know the rules of the game; we play it often. What can be said about the victim or the witness?

I hope these hearings represent a beginning of our getting our criminal justice act together, to deal effectively not only with intimidation of victim/witnesses but more global services to victims. Thank you.

Judge WADDINGTON. I foresee in the drafting of legislation in this area some very substantial substantive and due process concerns. The very work "intimidation" is of sufficient vagueness that I'm certain that I can find several Supreme Court Justices who could write volumes on the meaning. "Void for vagueness" is alive and well in that word. From a trial judge's standpoint, if such a statute were enacted, it would require some of the following:

First, the commitment of police resources to investigate the act; second, the rearrest of the defendant; third, since it's a misdemanor, a separate warrant; fourth, an appearance before a magistrate; fifth, an arraignment. He must handle appointment of counsel and if the defendant is indigent or has retained counsel, whether counsel on the main charge will defend him on this charge, the serious possibility of conflict of interest between respective attorneys; and the problem of severance of individual defendants in multiple trials. It will also require another appearance by the person intimidated before another court. Any defendant charged with an arrest for intimidating a witness must appear, with the victim, and the victim must testify at another hearing, along with the main charge, subjecting that person to additional court appearances—with the possibility again of cross-examination, questions of admissibility of evidence. And in this kind of case there is likely to be little or no physical evidence or corroborating evidence. It is likely to be a classic case of one-on-one.

Every defendant will demand a jury trial. Our experience as trial judges is that one-on-one, particularly where there has been a prior relationship, with no corroboration and seldom any confessions or admissions, is a guaranteed hung jury or not guilty.

So I simply point out the difficulties in judicial administration in formulating yet another criminal charge. That is not to say the task should not be tried, but that's what it will do to criminal courts and to victims.

I encourage the committee if legislation is drafted that the word witness be given a broad interpretation. We usually think of witness as pre-arraignment; but once the judgment is in, assuming a verdict of guilty has been reached, there is no assurance that the defendant will be committed. Under those circumstances and given the ability of appeal, a defendant is likely to be at large for two or three years in serious cases. That person should still be regarded as a witness within the statute's meaning. Until the case's final conclusion, that person should still be regarded as a witness. Any post-judgment threats or intimidations should be within the scope of this statute. The trial may be finished for the public but not for the witness.

If the judgment is reversed and there is new trial, that witness is again a witness. So I encourage you to broaden the statute.

Last with respect to probation. There are many controls already available to a trial judge concerned about making a trial a forum for appearance of all witnesses. The majority of trial judges would not be satisfied with any trial being fair unless all witnesses had an opportunity to be heard before the trier of fact. To the extent that that opportunity is diminished, trial judges have a responsibility to assure that witnesses are not intimidated. Contempt powers are available. Regardless of their efficacy, they are available. Injunctive powers are available, but once again constitutional implications are foreseen.

I do see a possibility in a newly-emerging field in the civil area. There is now, at least in California, a possibility of civil relief, admittedly too late and perhaps too little. It ought to be explored. Once a defendant is convicted and placed on probation, the trial judge now has supervisory control over the defendant. It is the responsibility of the probation department to report probation violations to the judge to determine whether a probation revocation hearing should ensue. It is then the responsibility of every probation officer to report threats to witnesses who have already testified. From the probation officer's standpoint, to report a threat is of grave concern—they are concerned about a breach of a confidential relationship. They are attempting legitimately to build rapport between themselves and their clients, to disclose information revealed to them in confidence diminishes their ability to supervise the probationer.

Our courts have said that howsoever that communication is to be regarded—it is not statutorily protected like attorney-client or physician-patient—it must be reported, because the risk of harm to the probationer is outweighed by the potential risk of harm to the victim. Any probation officer if asked the ultimate question—suppose the probationer says he will assassinate the President, would you report that to the court?—I assume everyone would answer "yes." If you do answer "yes," what is the difference between the President and another innocent person?

That special relationship is the vehicle for some kind of civil litigation where the probation officer should be under a duty to report threats. By the same token, a parole officer must be and should be under those kind of duties. Breach of that duty, despite the doctrine of sovereign immunity, offers the victim a cause of action in the civil courts against the county or state or local agent.

I will concede that this is not a suitable remedy for a wrong that should never have happened. But I suggest it is a broadening of the area of responsibility in the tort field to suggest that that kind of thinking can be brought into the criminal law—that parole and probation officers, who have admittedly a difficult responsibility in supervising a violent client, may have to reassess their priorities. I suggest this not as a statement which cannot be rebutted, but as a point of exploration for the committee.

I urge the committee to consider that there are some supplements to legislation which may avoid some of the problems of a new criminal statute, which will give trial judges the powers they need to control the threats or potential threats. Thank you.

Mr. CARRINGTON. Thank you both.

Our next witness is Richard P. Lynch. He has served as Executive Director of the National District Attorneys Association Victim/Witness Assistance Program, and is currently President of COMLEX Associates, Inc., in Washington, D.C.

Mr. LYNCH. Thank you. One way, as has frequently been said, to judge the quality of any society is to look at the way that society treats its criminal outcasts. I suggest that another way to judge that is to look at the way in which that society treats the victims of its criminal outcasts. On that latter scale, we here in America today would get low marks. I am pleased your committee is trying to draft legislation which perhaps can improve our grades on that scale.

There are three forms of intimidation that need to be looked at. The first kind of intimidation is of course that which occurs when a criminal perpetrates a criminal act upon a victim. That leaves scars. The second form of intimidation is that caused by subsequent acts of intimidation designed to prevent that victim or witness from presenting testimony in open court.

A third level of intimidation should be looked at by your committee—what I refer to as the institutional intimidation wrought by the criminal justice system itself upon crime victims and witnesses. That should be, to a group of lawyers such as you, especially repugnant, because it is inflicted upon people by those of us who ought to know better. Our training should have taught us that a different kind of treatment ought to be accorded. Regretfully, none of us know the extent to which actual or perceived acts of intimidation complicate the system.

It is frequently said that the intimidation of crime victims is the leading cause of case dismissals within our system. I do not think that statistics bear that out. We clearly need to do more research on that.

I would like to address briefly some typical ways in which the criminal justice system intimidates crime victims and witnesses. Let me give you a few examples. There are what I refer to as adversary interviews, those made by investigating agencies and/or prosecutors which take the form of such questions to a crime victim or witness as: What did you do to provoke him? Why were you dressed in provocative attire? What were you doing there at 2:00 a.m. in the morning? I suppose sociologists would refer to that as the "guilty victim" syndrome. It's still common. More senstivity training can help alleviate that.

We frequently threaten victims and witnesses. It's not untypical to have victims and witnesses told that they will be subpoenaed and their failure to appear will result in arrest. There are frequent trial delays and postponements. They are frequently unexplained. Few agencies take the time to keep victims and witnesses informed about the progress of a criminal case. There are many false promises made such as, "We'll protect you if you testify." I submit that most law enforcement agencies are unable to keep that kind of promise at present. There is a general lack of save physical facilities for crime victims and witnesses; that's especially the case in courthouses across America. And finally, there's generally indifferent treatment that we accord to crime victims and witnesses. That's something that can be remedied.

These and other acts of omission and commission by officers of the court and other criminal justice agencies are, I submit, acts of intimidation. Those and similar acts reinforce the feeling of crime victims and witnesses that the system doesn't care.

Your committee is now proposing a statutory package to prevent intimidation directed at victims and witnesses by those accused of crime. Those acts are—or at least should be—anathema to our concept of criminal justice. Those acts can and should now be prosecuted under existing laws.

The first question one would raise on the proposed statute is why should it be enacted; why, that is, should we encourage the enactment of a statute which makes unlawful that which is presently unlawful. I have given that some thought. It seems to me the real value, if any, in your proposed statute resides in the fact that it would provide a clear and unequivocal statement of legislative intent. In addition, in those jurisdictions where some ambiguity may now exist in the law, your statute would clearly cover crime victims.

In principle I endorse the underlying concept of your statute in much the manner I endorsed, when with the NDAA Commission on Victim/Witness Assistance, enactment of victim compensation statutes across the country. Both those bills, however, trouble me for one specific reason. We as a society have a propensity for enacting legislation and then washing our hands of the subject, feeling that we have handled the matter. In a rush to give the appearance of action, we pass statutes without devoting enough thought to the new resources needed to enforce such statutes; indeed, we offtimes do not even determine whether such statutes will be enforceable in the first instance.

The most attractive features of your statute are your suggestions as to how law enforcement and criminal justice agencies can help implement the thrust of your new law. I'd like to make several suggestions as to the statute. First, I encourage you to include language to make it a misdemeanor for a law enforcement officer or a prosecutor willfully to fail to promptly report allegations of victim/witness intimidation or attempted intimidation to the judicial tribunal having jurisdiction over that case.

Secondly, I suggest you consider requiring the court after receipt of such allegation to promptly convene an ex parte hearing to specifically advise the defendant of the report of such allegations and to issue a formal order prohibiting the defendant from engaging in any conduct designed to intimidate the victim or witness. Such an ex parte hearing could be presided over by a docketing assignment or presiding judge. Appropriate mechanisms could be included to prevent confidentiality issues from arising. For example, one would not wish to disclose the identity of an informant in a narcotics matter.

Third, I suggest you consider adding language to require law enforcement officials to formally advise those charged with crime as to their obligations toward victims and witnesses involved or who may be involved in their case. In addition to reading defendants their rights, we might usefully read them their obligations.

Fourth, I suggest that Section 3(a) include a seventh class against whom acts of force or violence, or attempted acts, may be committed. I suggest language covering any third party. As revised, your statute would therefore make it a felony to prevent or dissuade a witness or victim from attending or giving testimony where such dissuasion were to be accompanied by force or violence against any other third party. Suppose a defendant tells a witness that if he testifies a bomb will be placed in a local elementary school? Or suppose the act is directed against a neighbor of the witness? Clearly living in an age of increasing terrorism, some thought should be given to including that class of persons.

Finally, I suggest your statute might propose that every grand jury indictment and every criminal information, in addition to providing a defendant with specific information about the criminal charge, further advise that defendant by repeating the black letter state law regarding prohibition against intimidation of crime victims or witnesses.

PANELIST. As to your first three suggestions—is there a constitutional basis on which they could be predicted? I'm sure the defense bar would see these as additional weapons in the unethical prosecutor's arsenal.

Mr. LYNCH. I'm not a constitutional lawyer, but I don't see any overriding prohibition constitutionally against any of those suggestions. I don't think they are over-reaching. They would do not more than formally advise criminal defendants of their obligations. Having language printed on the indictment would give defense counsel in some cases a legitimate excuse to go over that with their client. In some cases that's an awkard issue. I'm, sure defense counsel do not always recite to a client what the obligations of that client are in regard to intimidating witnesses.

PANELIST. I wonder whether police officers are going to be enthusiastic about reading a second list of particulars to a defendant.

Mr. LYNCH. I wouldn't think most police officers would object to an opportunity to advise someone placed under arrest as to his obligations toward victims and witnesses.

One of the attractive features in your proposed package are the proposed initiatives which criminal justice agencies can take.

Judge YOUNGER. Thank you, Dick. You are obviously uniquely welcome, as one of the early people involved in this project.

Let me now introduce an additional representative of the National Association of Criminal Defense Lawyers, Clyde Woody from Texas. He is on the NACOL Board of Directors and a former Chairman of the Criminal Law and Procedure Section of the State Bar of Texas.

Mr. WOODY. Thank you. Several members of our Association have written comments on your proposed legislation. Mr. Condon expressed generally the apprehension of our Association. We certainly appreciate what the ABA is trying to do in this area.

What we are concerned about is that we have enough problems in defending individuals who are both outcasts of the community and the judicial system. We come onto court heavily burdened as it is. We start off in a disadvantageous position. The prosecution starts off its case the instant that the crime is committed. The police associate with them. The prosecution police cooperation throughout the proceedings, which we do not get. The prosecution calls the shots as to who will be indicted, who will be called before the grand jury. We don't have in the federal or state system the right to present our witnesses to the grand jury.

Our concern is this: we are ourselves intimidated; our witnesses are intimidated. There are many unscroupulous individuals in the prosecution using their position with the grand jury to launder our witnesses and to launder their case to the point where it is difficult enough today to discharge the burden—and it is a very serious burden—in representing a defendant. That is particularly true where that defendant is accused of a heinous crime.

I have been involved in some so-called organized crime cases and I have been the subject of some of this intimidation on the part of the prosecution so I can speak of it first-hand. I have been in this business for 25 years. I know what the federal Strike Forces do. In the first case I ever tried, *Giordenello* v. *United States;* I was advised: if you don't get out of this case you're going to go before the grand jury, because you know that Giordenello is a dope peddler. Giordenello has a right to a fair trial and he has a right not have his lawyer intimidated, not to have his witnesses intimidated.

And it is not unsual for the Strike Force and for the government to call a defense lawyer before the grand jury. They'll call our witnesses before the grand jury to clean up their testomony. We don't have an effective way of combatting this.

We certainly would assist this committee in any way possible to draft a statute that would include prosecutors, that would cause them to give us a fair shot at the evidence.

We are ethical lawyers and if we did some of the things the prosecution does, we would be charged before we got out of the courtroom.

I have been amazed as I have sat here over the past two days at some of the suggestions that have been made. The Congressman was going to do away with bail.

We need reform, of course. And we need some type of legislation such as you are proposing. But what we also need is moderation. We need the statute to be uniform and we need to have all the erring individuals—prosecution and defense alike—be subject to those penalties. That is what we are seeking.

We are not in any way trying to hinder the efforts of this committee. We want to help the committee. But we don't want any additional burdens put on us as defense lawyers trying to so our duty. We are ethically following the cannons of professional ethics. If you will recommend enactment of such a statute, that will put an end to the abuse that we have suffered.

When we are involved in a controversial case, we get the threatening phone calls and poison pen letters. And so do our witnesses. It is defense witnesses as well as the defense counsel who get these ugly phone calls and threats against our families.

It's a two-way street. From most of the evidence that you've heard, you have to assume the defense bar is an irresponsible group; that they are intimidating victims and causing these poor victims to come back in to court time after time after time. Our witnesses are having to do the same thing. We are victims of the system just as the prosecution is. By and large it is the crowded docket of the courts that is causing that.

I submit to you that unless this statute is substantially revised, our organization and defense organizations at county, state, and national levels will be protesting and lobbying against its enactment.

Judge YOUNGER. I appeared before the Texas Bar several years ago. But after hearing C. Anthony Friloux, the NACDL President, from Texas talk about direct action against defense attorneys, and listening to you—is intimidation of defense lawyers a Southern phenomenon? That's a simplistic question.

Mr. WOODY. It does not just occur in Texas. I've practiced in other jurisdictions. As a matter of fact, with respect to grand jury abuse, there's a case going on in Washington right now with a fellow named Guy Goodwin—a grand jury specialist in the Wounded Knee case. He got half the bar of Texas indicted and failed to get any of them convicted. There are grand jury abuses going on. Most of it originates here in Washington.

It's not just in Texas. Maybe we speak out more than other defense lawyers. Such abuses destroy effective assistance of counsel.

Judge YOUNGER. Judge Marullo says it happens in Louisiana, as well.

PANELIST. It happens in Michigan, too.

You referred to ethics. Are no complaints filed against prosecutors for that type of conduct? And in terms of suppressing statements of witnesses, the canons of ethics for lawyers clearly indicate that a prosecutor cannot tell witnesses not to confer with defense attorneys. In my policy handbook in my office, we say you can't tell a witness not to talk with a defense attorney. I think it's observed.

It's been my experience that rarely are prosecutors represented on ethics panels conducted by the bar association. Typically those are dominated by private practitioners who presumably would be more willing to identify with the defense attorney than they would with the prosecutor. If that vehicle exists, is it being used?

Mr. WOODY. You are obviously a seasoned prosecutor. You know there are ways of suggesting to a witness, "You can talk to the defense if you want to, but

you don't have to." When you as a prosecutor tell him that nine times out of ten, in my experience, he's not going to talk. Maybe that's tantamount to telling that witness "Don't talk to the defense." At least that is my experience.

Yes, we have the canons of ethics against prosecutors. Let me tell you about a situation that happened to me three or four weeks ago. I discovered in the course of cross-examination of a policeman that he had filed a false complaint. I established it on the stand. I suggested to the presiding judge that he should recommend this for prosecution. The policeman had perjured himself on the stand unequivocally; he had filed a false affidavit. Do you know what the judge did? He said, "I think that's somebody else's business."

I told the court reporter: "You take this down, you identify this exhibit, and we will see what can be done with it." She did. I advised the District Attorney, "You had better take care of this matter or I will." We have the authority to go to the grand jury the same as the District Attorney does. Before I had an opportunity to go to the grand jury, the District Attorney went and had him no-billed. I have to start all over and disqualify the District Attorney and ask the grand jury to appoint a special prosecutor to look into this matter.

If we had a statute that had some teeth in it I think we might preclude such activities.

PANELIST. Earlier we discussed whether defense counsel in domestic violence cases ought to act differently than in stranger-to-stranger violence cases—whether defense counsel ought to be permitted to approach the complaining spouse about dropping charges. What is your view? Is it something that ought to be restrained?

Mr. WOODY. I do a great deal of domestic relations work also. If there is a criminal charge pending then I think the complaining spouse is just like any other witness. I have a duty, and I think I have breached that duty if I don't approach that witness just as I would any other witness.

If, of course, it is a domestic relations matter in the Court of Domestic Relations, and the individual has a lawyer, the canons of ethics preclude me from approaching that individual without her counsel being present.

PANELIST. We discussed that. It was suggested that there be some kind of representation for a complaining witness in a spouse violence case. I was wondering about the extent to which your inability to approach a witness—particularly a complaining witness in a spousal violence case—would do violence to your preparation of your case.

Mr. WOODY. Of course it would. It would make it impossible for me to adequately prepare my case if I couldn't talk to the witness on a one-to-one basis. In the first place if you have a lawyer sitting there the spouse is likely to be intimidated by her own lawyer and will not respond as they otherwise would.

PANELIST. How would you answer the criticism that without a lawyer there defense counsel is going to chew up the complaining witness until he can get an agreement to drop charges or moderate some of the testimony.

Mr. WOODY. I don't think any ethical lawyer would take advantage of a witness in this manner.

PANELIST. You would assume ethical behavior by a defense attorney but not by a prosecutor?

Mr. WOODY. I don't think an ethical prosecutor would do that to defense witnesses either, but I know it happens. And I know from my own experience in domestic relations cases in Texas that this does not happen.

PANELIST. We keep getting back to the problem of lawyer discipline. There seems to be a lot going on which an ethical lawyer wouldn't do—which everyone is quick to admit that they don't do—but that somebody is doing because your clients and your witnesses and you yourself have experienced some of this. Maybe it's the lawyer disciplinary mechanism that's failing.

Mr. WOODY. That certainly is a serious problem.

PANELIST. We have reached the point where I want to say I am in complete accord with Mr. Condon yesterday and Mr. Woody today. In the statement of Mr. Condon for the National Association of Criminal Defense Attorneys there is an exhibit which is extremely important as to the issues being discussed here. I refer to an article in the Wall Street Journal, by Jim Drinkhall on April 11, 1979. What do we see the government involved in? Defense attorneys being the victims themselves of harassment. Here is the government Strike Force saying it—not as discovered by but as told to and reduced to writing in the Wall Street Journal. The headline is "Federal Law Men Plan an Unpleasant Future for Sam Ray Calabrese." Sam Ray Calabrese is a prisoner at McNeil Island. This is what the Strike Force is putting in the papers. I quote from Exhibit 1:

"Officials of the prison—at McNeil Island—and Michael Kramer, an attorney with the Justice Department's Organized Crime Strike Force in San Francisco, deny that any attacks on Calabrese have taken place or that he has been hospitalized. But Mr. Kramer offhandedly concedes, "McNeil is a very bad place and things like that happen."

Going on further: "One thing that Mr. Kramer doesn't deny is that the federal strike force has launched a planned campaign to force Calabrese to give them information they believe he has about one of the government's most elusive targets, Las Vegas casino owner Morris Shenker.

"We're going to get Sam to give us Shenker or we're going to bury him." Mr. Kramer says bluntly"—representing, apparently, the Justice Department.

"Among the tactics that have been used or are being considered for use against Calabrese, according to strike-force lawyers and other sources, are new indictments based on a case the Justice Department dropped earlier for lack of evidence, what one source calls 'harassment and destroying his family's income,' Internal Revenue Service audits of his friends and the spreading of false rumors about him in prison which may endanger him."

I think these are some of the things that worry the National Association of Criminal Defense Lawyers and Mr. Woody and Mr. Condon.

Judge YOUNGER. I appreciate your comments. This matter is one of which the Section of Criminal Justice is well aware. Mr. Woody, thank you very much. I have a hunch that the committee will buy your recommendation as to equality and reciprocity.

PANELIST. One thing NCADL might want to do is document your side of the intimidation problem a little bit better; I think it's lurking but hasn't been substantiated with numbers. The other side is starting to come up with some information and it makes for pretty gruesome reading. We need to know more about it from a true professional discipline standpoint.

Mr. WOODY. We don't have the facilities that the other side has for documentation. We certainly can and we will document our position and the abuses that are reflected thereby.

Judge YOUNGER. The National District Attorneys Association asked to be officially represented at these hearings and designated Edward C. Cosgrove to appear. The District Attorney of Erie County, New York—Buffalo. He's Vice President of the New York State DA's Association and a member of the NDAA Executive Committee.

Mr. COSGROVE. I am here on behalf of the National District Attorneys Association. I've been District Attorney of Buffalo for six years. Prior to that time I was a Special Agent for FBI for 2½ years and for 15 years a practicing criminal defense lawyer before I was elected six years ago as the District Attorney. Erie County is a jurisdiction of some 1,300,000 persons whose principal city and county seat is Buffalo. The county contains urban, suburban, and rural areas with the usual social and economic problems. My office includes 75 Assistant District Attorneys. Last year we prosecuted some 35,000 misdemeanors and felonies.

NDAA's position with respect to the serious problem of victim/witness intimidation is that our criminal justice system does not provide adequate protection for victims or witnesses who are being harassed and intimidated.

A survey taken by NDAA prior to these hearings indicates that such intimidation affects our criminal justice system in all geographical areas. It occurs in dense population centers and in rural jurisdictions alike. Further, it is apparent that local prosecutors are ill-equipped to deal effectively with it.

Generally the intimidated victim or witness may need several forms of assistance. He may require police protection, relocation, new employment, living expenses, and in some cases a new identity. At best, the prosecutor can provide some police protection and a limited amount of money to spirit a given witness out-of-town. However, there is not one District Attorney's Office with the financial or administrative resources to furnish combinations of these necessities to a number of witnesses on a regular basis.

In some cases the Federal Witness Protection Program may be available to provide safety and security for eligible victims and witnesses. This program has been a great benefit to our work against organized crime and public corruption in Erie County. It is, however, a restricted program that can in no way adequately address the problems we are discussing here this morning.

Victim/witness intimidation problems must be resolved by extending the concept of a witness protection program to the state and local levels. Adequate funding must be provided so that each state can establish a comprehensive witness protection plan.

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Two separate incidents in my own experience convinced me there was a need for such a program and that it could work effectively. Several years ago in the Buffalo area a witness in a narcotics case against the largest heroin dealer in that community was brutally murdered together with four other persons. Attempts had been made to provide for her protection but they were obviously unsuccessful. I believe that had a local witness protection program been available to monitor that witness' activities she would not have been slain. I am equally confident that this occurrence is not unique to the Buffalo area. For this reason I believe there is a real need for a state-local witness protection program.

Within the last several years my office has participated in several highly successful joint federal-state undercover operations against organized crime. Due to the very nature of these investigations it was essential that the witnesses receive maximum protection. Under normal circumstances my office would only have been able to provide limited assistance. Fortunately the investigations were funded by a grant from the Criminal Conspiracies Division of the Law Enforcement Assistance Administration. Since a portion of that grant has been set aside for that purpose, necessary victims and witnesses received adequate maintenance and protection. This demonstrated to me that the concept of a local witness unit can be administered effectively. This concept of a local-state witness protection program should be carefully considered by your ABA committee.

The prosecutor who has to deal with victim-witness intimidation situations also has needs. He must have the basic statutory tools available to solve his problems. There is nothing more frustrating for a prosecutor than to have evidence of such activity and to have no viable charge to combat it.

Your proposed model statute does provide a solid framework within which witnesses and victims can be protected. It will be particularly helpful in organized crime and public corruption cases, for the possibility of intimidation is very real.

At present in New York State the only statute addressing this problem makes it a misdemeanor to tamper with a witness. Your proposed legislation would make this a felony. This would benefit prosecutors and witnesses alike. The legislation would be equally helpful in violent street crime. At present the defendant on bail has the opportunity to go right back into his neighborhood to harass and threaten those who would testify against him. The threat of another felony charge could have a positive deterrent effect.

Finally, this committee should examine the New York State District Attorneys Association's proposed legislation which would allow the conditional examination of a victim or witness under oath with full cross-examination prior to trial. This would be permitted only in cases where someone has wrongfully tempted to induce such a witness to absent himself or otherwise avoid appearing or testifying at a criminal action or proceeding. Once that testimony was taken it would then be admissible at trial as evidence-in-chief should something happen to that witness. This would certainly reduce the amount of pressure on any victim or witness. Perhaps it would have saved the lives of my witness and her four companions in the narcotics case I described.

I have reviewed the survey from our NDAA Office, and it appears that, as you assert in your brochure, the statistics are not available to support the solid belief of prosecutors throughout the U.S. that this is a serious problem. When asked specifically how many cases were dismissed, how many witnesses were intimidated or harassed, and how many charges were brought wherever available statutes like obstruction of justice and tampering are available these statistics weren't available.

This kind of activity doesn't come to the prosecutor's attention or to the public's until it has been successful or unearthed in some way. Too often when it's done—in my experience as both a criminal defense lawyer and as a prosecutor—we never know about it. It's unusual when we do.

NDAA supports your recommendations with respect to this model legislation and the victim/witness protection unit in the local police department. NDAA agrees that the public, victims, witnesses, should be more aware of available remedies to intimidation and harassment.

It's a very serious problem and one that should be addressed. I applaud this committee.

PANELIST. What are you doing in Erie County to protect witnesses today?

Mr. COSGROVE. We have a program in our Police Department. When someone comes in and files a complaint he is advised that if he experiences a problem that he should contact the detective in the precinct. It's rather informal.

PANELIST. There are no ongoing, specially assigned officers?

Mr. COSGROVE. No.

PANELIST. It was our experience in Milwaukee when we started our unit that suddenly there was a substantial increase in the number of intimidation cases reported and prosecuted.

Mr. COSGROVE. Did that mean there were more cases, or just more uncovered?

PANELIST. I think just more uncovered. As we all know, successful intimidation cases escape detection.

Mr. COSGROVE. I agree.

PANELIST. Do you think legislation will help? Is making intimidation a misdemeanor or a felony or requiring consecutive sentences doing something significant?

Mr. COSGROVE. I think it will stop it. I think if you bring another charge and that additional charge laid on the charge that's now pending will probably have a judge with respect to bail be a little more conservative and the fellow will be put in jail. An indictment is nothing more than an accusation in a democracy. That strikes me as being wrong on an accusation. I don't think it's going to do any good.

PANELIST. Would you comment on some of the defense bar views on prosecutorial conduct.

Mr. COSGROVE. I'm familiar with the Wall Street Journal article. I might advise you that I have represented organized crime figures in the defense. I think both sides share the blame for this conduct. I don't know that anybody has the full responsibility. Our system which is pretty good, sometimes has its faults. It's not always necessarily with the system—it's more with the people in the system.

The answer to that is not to correct the legislation. I suggest it requires many more ethical and hard working people—both prosecution and defense. There is some of this going on; I'm sure there is. And there's problem on the other side too.

PANELIST. The real problem is simply this: If I am a prosecution witness and I'm intimidated, I can go to you or to the police. What can I do if the intimidating is by my own government, the United States of America? Who do you complain to?

Mr. COSGROVE. Make sure those enforcing the laws understand their ethical responsibilities. To be specific, yesterday I indicted a former Buffalo police officer who had been assigned to my Organized Crime Bureau.

I've indicted wiretappers in my own office. The answer is making sure everybody is treated equally. This is difficult to do at times.

I have seen abuses on both sides. I have tried cases in Federal and District Court where witnesses have been abused. I have been maligned by prosecutors—and now I'm on the other side of the fence and I understand that. The answer does not lie in changing all the laws, but in getting better people who understand the difference between right and wrong and who understand their office as lawyers, their obligations to democracy first, then secondarily their obligations to their client.

Judge YOUNGER. Thank you very much.

Let me introduce Paul Friedman, representative of the ABA Section on Litigation.

He has served as an Assistant U.S. Attorney in D.C. and as an Assistant to the Solicitor General of the U.S., and is now in the private law firm of White & Case.

Mr. FRIEDMAN. President Tate, Judge Younger, ladies and gentlemen of the Criminal Justice Section Victims Committee. I am Paul L. Friedman, and I am testifying today on behalf of the Litigation Section of the American Bar Association.

I am a former Assistant United States Attorney for the District of Columbia who, because of the unique jurisdiction of that Office, had the experience of prosecuting common law street crimes in a state-like court of general jurisdiction as well as federal statutory crimes in Federal District Court. As a former Assistant to the Solicitor General with responsibility primarily for criminal cases, I also have had the opportunity to study the records in criminal cases from federal courts around the country. While my criminal law experience in private practice had been primarily in the white collar field, I have on occasion represented individuals charged with street crimes in the District of Columbia. Based on these experiences, it seems clear to me that there are few more important—and, until recently, overlooked—problems in the criminal justice system than the one with which these hearings are concerned, reducing victim and witness intimidation.

LACK OF COOPERATION AND VICTIM/WITNESS INTIMIDATION

Over a decade ago, the President's Commission on Law Enforcement and the Administration of Justice commented that "one of the most neglected subjects

in the study of crime is its victims." [1] And even the casual observer of the criminal justice system in this country knows that our system has shown far greater concern for the criminal than for the victim. It quite properly has emphasized procedural and substantive fairness, under the Constitution, in arresting, processing and trying those accused of crime, and the rehabilitation of those convicted and sentenced.[2] At the same time, it has viewed the police, the prosecutor, the defendant and defense counsel, and the judge as the primary players in the criminal justice drama. The victim and the witness have been considered supporting players at best, incidental and sometimes logistically troublesome adjuncts—in short, the forgotten men and women of the criminal justice system.[3]

The citizen whose house has been burglarized or who has been assaulted is the person for whose protection the criminal justice system is supposed to exist; he or she is intended to be the system's "real client".[4] But in many practical respects, the system compels the police and the prosecutor to view victims and witnesses no differently from tangible, physical evidence or confessions. Like seized evidence or elicited confessions, victims and witnesses are seen as sources of evidence necessary to bring the accused to justice or, in more practical terms, to make the arrest or get the conviction. When the arrest is made or the trial is over, the policeman or prosecutor believes he has done his job. Both their personal satisfaction and the rewards and values of the institutions served by police and prosecutors depend upon the punishment of the offender, not service to the victim.[5]

This is a very shortsighted view indeed. The victim and citizen witness should be the focal point of the criminal justice system for at least two good reasons. First, there is no purpose in having a criminal justice system if not to protect the community from crime. And the community, after all, is made up of those individuals who become the victims of crime. Second, even the apparently primary law enforcement goals of successful arrests and prosecutions would be furthered by greater support and cooperation of witnesses and victims; the cooperation of victims and witnesses is absolutely essential if arrests are to be made and successful prosecutions to be concluded. But, as one former Justice Department official has noted, such citizen cooperation will remain "an elusive goal" so long as the system continues to view victims and witnesses merely as "intervening actors" in the process.[6]

Victims and witnesses perceive very well the attitudes which the police and prosecutors have towards them. They know that their convenience, comfort and well-being are not of major concern. They know that if they take the time to report a crime, an arrest will rarely result. They know that the system is so fragmented that a successful arrest often does not lead to a conviction and rarely to incarceration. They know that bail laws and practices often permit the perpetrator of a crime to return home from the courthouse before the victim or witness has finished the process of interminable waiting necessary to process a case. In short, the public lacks confidence in the criminal justice system. Because citizens have no confidence that the system works effectively to combat crime, they see little or no benefit in cooperating with it. And the problem of getting victims and witnesses to cooperate is directly tied to the problem of intimidation being addressed here today.

As was stated by this Section in announcing these hearings, victim and witness intimidation takes three general forms.[7] The first is the traditional threat. The second is "community intimidation," a particularly difficult problem in the inner city which produces by far the largest number of both victims and perpetrators of urban street crime. And the third is perceived or anticipated intimidation, the most prevalent of the three. This is the area I wish to discuss today, because it is this type of intimidation which most impedes the successful functioning of the

[1] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967).
[2] W. F. McDonald, *Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim*, 13 Amer. Crim. L. Rev. 649 (1976).
[3] *Id.* at 650. An excellent general reference on victim-witnesses problems and studies relating to them is W. F. McDonald, *Criminal Justice and the Victim* (Sage Publications 1978).
[4] *See Introduction to Victim/Witness Assistance: A Selected Bibliography* (compiled by A. A. Cain & M. Kravitz) (National Criminal Justice Reference Service, June, 1978), p. v.
[5] *See* R. D. Knudten, A. C. Meade, M. S. Knudten & W. G. Doerner, *Victims and Witnesses: Their Experiences with Crime and the Criminal Justice System (Executive Summary)* (National Institute of Law Enforcement and Criminal Justice, October, 1977) [hereinafter, *"Victims and Witnesses"*], p. 1. *See also* W. F. McDonald, *supra*, 13 Amer. Crim. L. Rev. at 661–662.
[6] Gerald M. Kaplan, former Director, National Institute of Law Enforcement and Criminal Justice, in Foreward to *Victims and Witnesses*, *supra*, p. iv.
[7] ABA Section of Criminal Justice Committee on Victims, *Reducing Victim/Witnesses Intimidation: A Proposed Package*, p. 1.

criminal justice system and which most relates to witness cooperation and citizen confidence in the system. At the same time, it is the kind of intimidation about which the police and prosecutor can most easily and effectively do something, even in the absence of the kind of model statute being considered by this Committee.

We know much more about victims and witnesses today than we did when the President's Crime Commission issued its report in 1967.[8] Much of our knowledge comes from the work of a non-profit, highly professional criminal justice think tank in the District of Columbia, the Institute for Law and Social Research. Its study of witness cooperation, under the directon of the late Frank Cannavale, which was done during my tenure in the United States Attorney's Office and which used our cases as a data base, produced a startling statistic: 28 percent of all witnesses in cases of reported crime in the District of Columbia feared reprisals.[9] While some of the reasons for this fear were unexplained, among the facts listed by those interviewed which led witnesses to fear reprisals were (1) that in the investigation of street crimes, police officers often asked witnesses to reveal their identities within earshot of the suspect, and (2) that witnesses reporting to court to testify were often directed to sit in the very room where defendants, free on bond, also waited trial.[10] The study concluded that victims and witnesses would be more cooperative with law enforcement officials if something could be done about this fear. Specifically, it concluded that witnesses would be more cooperative with law enforcement authorities if (1) there were better protection of witnesses, (2) witnesses' identities were kept from the defense, and (3) witnesses were assured protection even after they had testified.[11]

These statistics and the concerns of those who either reported a crime or owned up to having witnessed a crime reported by another are only the tip of the iceberg. The vast majority of crimes go unreported. They go unreported because of lack of public confidence that the criminal justice system can effectively abate crime. Additional studies by the Institute for Law and Social Research indicate that only 42 percent of crimes against the person are reported in the District of Columbia, a jurisdiction whose crime reporting rate is higher than many.[12] When crimes are reported and arrests result, of every 100 arrests in the District of Columbia, only 39 result in conviction, and less than 40 percent of all persons arrested for violent or property offenses who are convicted are subsequently incarcerated.[13] And because so many reported crimes do not result in arrests, the public sees that only 4.7 percent of all reported crimes result in guilty verdicts and only 3.5 percent of all reported crimes result in incarceration.[14] As one of the studies noted: "It may be difficult, especially for victims, to see how justice is done in a system in which the majority of offenders are not arrested, the majority of arrestees are not convicted, and the majority of convicted defendants are not punished."[15]

A greater degree of attention to intimidation of victims and witnesses, perceived or anticipated as well as real, necessarily would help in solving the problem because it would increase public confidence in the criminal justice system. As another study has concluded: "In the long run, benefit seen from increased attention to victim/witness problems," [16] including, of course, the problem of victim and witness intimidation in particular.

I will turn now to a few specific proposals (I confess, none of them particularly novel) for the police and prosecutor, as well as some comments on the model statute proposed by this Committee.

PROPOSALS FOR POLICE AND PROSECUTOR

There are a number of things the police and prosecutor could do, even in the absence of legislative changes, to decrease the amount of actual and (perhaps more importantly) anticipated or feared intimidation and thereby to help increase

[8] *See supra* footnote 1.
[9] F. J. Cannavale & W. D. Falcon, *Witness Cooperation* (D. C. Heath & Co. 1976), pp. 52, 55.
[10] *Id.* at 32–33, 89, 95.
[11] *Id.* at 55. While I do not wish to emphasize the point today and state it here only as a personal opinion, it may be time, in view of these findings, to reconsider the wisdom of Section 2.1(a)(i) of the ABA Standards Relating to Discovery and Procedure Before Trial, which requires pre-trial disclosure of names, addresses and statements of government witnesses.
[12] K. M. Williams, *The Role of the Victim in the Prosecution of Violent Crimes* (Institute for Law and Social Research, 1978), p. 1; B. Forst, J. Lucianovic, S. Cox, *What Happens After Arrest?* (Institute for Law and Social Research, 1977), p. 17.
[13] *What Happens After Arrest?*, *supra* at 17–18.
[14] K. B. Brosi, *A Cross-City Comparison of Felony Case Processing* (Institute for Law and Social Research, 1979), p. 1.
[15] *What Happens After Arrest? supra* at 17–18.
[16] *Victims and Witnesses*, *supra* at 11.

confidence in the criminal justice system. Many of these suggestions relate to better management of the system by the police and prosecutor, better coordination among law enforcement agencies, and better follow-up and follow-through by the police officer and the line prosecutor. Only if the public is given the impression that law enforcement officials care about victims and witnesses and that they are effective in decreasing crime will citizens begin to cooperate in the efforts to solve the crime problem.

First, I suggest the development of training programs for the police and prosecutor to teach them how to communicate with, better serve and otherwise interact with victims and witnesses. The training would emphasize interview and investigative techniques, including such matters as keeping witnesses separate from victims at the crime scene and providing special treatment for victims of violent and sex crimes. The police and prosecutors also should be trained in counseling victims and witnesses, in better explaining the facts of the case and court procedures to witnesses, in better explaining the bail system (particularly the reasons for personal recognizance) and law enforcement policies and practices respecting witness intimidation.

Second, I propose the institution of police and prosecutor counseling of reluctant witnesses. At the initial interview with the police and/or prosecutor, and subsequently in specially earmarked cases, the reluctant witness should be counseled in such matters as the importance of witnesses to law enforcement generally and the critical importance which he or she has in this particular case. Police and prosecutors should advise the witness that any threats or acts of intimidation should be reported immediately and that protection is available. With respect to important cases involving reluctant witnesses, extra efforts should be made with respect to efficiency in scheduling, witness notification, and other procedures involving the witness's comfort and convenience. A system should be established to assure that there are follow-up phone calls and visits by police officers or prosecutors in cases where intimidation is either most likely to take place or most likely to be feared by witnesses, as well as in those cases most important to law enforcement because of the seriousness of the offense or the prior record of the defendant. Similarly, victims and witnesses should be provided with phone numbers to call any time of the day or night to discuss with the police or prosecutor their case-related problems, including intimidation.

These are suggestion which can be accomplished only through better management and better coordination of police and prosecution efforts. And together, they are suggestions which may help increase public confidence in the criminal justice system and thereby help ameliorate the problem of victim and witness intimidation After all, if a victim or witness has no confidence in such relatively minor components of the system as the witness notification system or in the likelihood that he will in fact testify on the day he is called rather than being told to come back again and again, he will have no confidence that the system cares about or can deal effectively with intimidation. Instilling confidence in the system by treating the particular case and the particular witness as important will lead to greater citizen cooperation.

Third, I recommend stricter enforcement of existing bail laws and witness intimidation statutes. A special police-prosecutor unit should be established to monitor cases of violent crimes or crimes involving the possession of a weapon and of defendants who have been arrested before for violent crimes or weapons offenses. This unit would assure that, in cases where there is the potential for intimidation, specific conditions of bail would be requested from the court to keep the defendant away from the victim and witnesses. The unit would promptly investigate and prosecute violations of such bail conditions and reports of witness intimidation. Such efforts could be undertaken by special career criminal units in offices where they exist. Not only would an emphasis on such prosecutions ameliorate the problem of intimidation for the immediate case, but wide publicity of the enforcement of sanctions against those who intimidate witnesses would be likely to encourage greater witness cooperation in the future.

Fourth, where career criminal units do not exist or have a more limited function, I suggest the creation of a police-prosecutor witness protection unit. If protection is promised, it must be provided. This unit should assure that victims and witnesses are protected during the investigative, pre-trial and trial stages, particularly where the defendant is free on bond. Some follow-up and continued contact with the victim or witness should also be provided after trial, at least in cases of violent crimes and in all cases where intimidation is reported.

Fifth, I propose the development of a comfortable witness facility at the courthouse, wholly separate from the place where defendants free on bond await trial. This facility should be a clean, comfortable, secure place for witnesses to wait for their cases to be called.[17] If possible, it should be staffed by law enforcement paraprofessionals, who would be available to explain various aspects of the process, follow up on the victim or witness's inquiries about the case and, where intimidation is a real or potential problem or court proceedings do not terminate until after dark, arrange for transportation home for victims and witnesses, babysitters for their children and similar services.

In my view, many of these proposals would be better implemented if undertaken as joint or coordinated efforts by the police and prosecutor and if these joint efforts were able to proceed across jurisdictional lines and geographic boundaries. Joint federal and state efforts often are essential in order to effectively provide victim-witness services and deal with problems of intimidation. In the District of Columbia, for example, much has been possible in the way of coordinated law enforcement activities because the United States Attorney is both the federal and the local prosecutor.

Moreover, many of these proposals will cost money if they are to be done well. The agencies responsible for funding law enforcement offices must be persuaded of the importance of such proposals to more effective crime control. Citizen confidence in the criminal justice system would only be further undermined if victims and witnesses were alienated even more because of false promises which, for lack of funding, went unfulfilled. And, as I have said, public confidence in the system is essential to effective crime control.

THE PROPOSED MODEL STATUTE

As this Committee properly has pointed out, there is also the need for legislation in the area of victim and witness intimidation. Some states have no witness intimidation statutes, and many others have statutes inadequate to protect victims and others who are not yet under subpoena as "witnesses" in the technical sense of the term.[18] The Committee's proposed model statute would go a long way towards remedying the situation, and I support it. My comments today consist not of criticism of the proposal or any of its parts, but of minor suggestions for improvement.

First, the definition of the term "malice" in section 1 should be narrowed or eliminated. It is always more difficult for a prosecutor to prove a criminal offense having an added mental element beyond general criminal intent, because it is so difficult to prove what is in another person's mind. Witness intimidation is a more subtle act than is most other criminal conduct. It may take many subtle forms. Requiring proof that the perpetrator of the crime acted with "a wish to vex, annoy or injure another person," as this Committee's proposal does, may mean that the promise of sure and swift prosecution of those who attempt to intimidate will not become a reality. A string of acquittals under this statute could do more to impede witness cooperation than having no statute at all. At most, the witness intimidation statute should require a willful and intentional act, not malicious conduct.

Second, section 2, which defines the misdemeanor of intimidation of a witness should be broadened so it reads more like section 4, relating to intimidation of victims. Section 2 prohibits only interference with a witness "attending or giving testimony at any trial, proceeding or inquiry." Depending upon whether one defines the terms "proceeding" and "inquiry" in the formal sense, as is likely in a criminal statute which must be strictly construed, section 2 may well be limited to the formal stages of the criminal justice process after one formally becomes a witness. While the Committee properly had broadened the term "witness" to include "any natural person having knowledge of the existence or nonexistence of facts relating to any crime" and one "who would be believed by any reasonable person to be [such] an individual," the broadening of the definition may accomplish little if section 2 does not cover making a report to a police officer or a prosecutor, or responding to questions of a law enforcement officer canvassing a neighborhood in the course of his investigation. Despite the clear intention of the Committee in defining the term "witness" broadly, section 2 may not accomplish its intended goal in a case where there is not already in progress a formal trial, proceeding or other inquiry. One way to resolve this problem is to combine section 2 with the

[17] *See* W.F. McDonald, *supra*, 13 Amer. Crim. L. Rev. at 670.
[18] *Reducing Victim/Witness Intimidation: A Proposed Package*, *supra* at 3.

broader section 4, so that the conduct described in both would constitute the misdemeanor offense, whether directed against a witness, a victim or a person acting on behalf of either. If this were done, sections 3 and 5, relating to felonies, also could be consolidated.

Third, section 3(a) should be amended to make express that the term "spouse" includes "common law spouse."

Fourth, section 7 may inadvertently narrow the inherent authority of judges with respect to defendants. Read literally, it would permit the imposition of certain conditions on defendants only if there is "substantial evidence . . . that intimidation . . . has occurred or is likely to occur." While such an evidentiary requirement may be necessary to place restrictions on witnesses or relatives of defendants, there is no similar requirement in law or in logic with respect to the defendant himself. Once the defendant ic charged on the basis of probable cause, the judge or magistrate may set bail and may impose whatever conditions of bail seem reasonable. The judge has inherent authority to order that the defendant not violate other sections of this proposed model statute, that he or she stay away from and not communicate with victims and witnesses, and the like; there need not be "substantial evidence" of the likelihood of intimidation as a precondition. The problem with section 7, as drafted, is that it may be interpreted as limiting the judge's inherent power and as imposing a requirement that the judge make a finding of fact, on substantial evidence, that is not and should not be required. Section 7 should be redrafted to limit its reach to persons other than the defendant. Those portions of section 7 relating to the defendant should be incorporated in section 9, which already recognizes that such conditions may be included in pretrial release orders, presumably without any evidentiary finding.

In conclusion, let me reiterate my earlier statement that solving the problem of victim and witness intimidation is extremely important to the better functioning of the criminal justice system and to improving citizen confidence in the system. This Committee is to be congratulated for its efforts to solve this problem. On behalf of the Litigation Section, it has been a pleasure to be here today and to participate in these hearings.

Thank you.

PANELIST. I worked with a large affluent law firm before I became District Attorney. What you're speaking of is a question of resource allocation.

Mr. FRIEDMAN. There are some things that can be done with limited resources. Career criminal units or such simple things as having the prosecutor and police chief meet on a regular basis. That doesn't require additional resources. With several prosecutors and police officers assigned, you can develop a Career Criminal Unit. The same kind of thing—perhaps as an adjunct—with another two or three prosecutors and police officers, we can do something about intimidation, too—, not only to highlight the problem with statistics, but also to learn the kind of case where intimidation is more likely.

PANELIST. You made a comment about the district attorney and chief of police getting together. It's good for them to be cordial, but I think each has a certain part to play in the system and that you may do more harm than good by these acquaintances. They each must be independent in the system.

Mr. FRIEDMAN. I agree with what you've said, but I don't think the two are mutually exclusive. Based on experience in the District of Columbia, that kind of cooperation has been fruitful in such operations as the Sting. At the same time this prosecutor's office—and I think this is a partial answer to what Mr. Woody was saying earlier—and many other officers around the country are much less reluctant to scrutinize police conduct than perhaps in the 60's, and to be more independent, and where there is perjury taking place to prosecute. The independence must be maintained, but there can be cooperation.

Judge YOUNGER. Our next witness is the representative of the National Organization for Victim Assistance, Dr. Marlene A. Young-Rifai. She is Executive Director of Applied Systems Research and Development, Inc., in Oregon and an attorney.

Dr. YOUNG-RIFAI. I appreciate the opportunity to address you on behalf of the National Organization of Victim Assistance (NOVA). It is a national organization of persons dedicated to working for and advocating for victims. It was started in 1974 to develop grass roots support to provide advocacy for victims, attempting to fill the gap of victim needs being addressed at legislative, state, local, and federal levels.

I join with others in commending the Committee on Victims and the ABA for addressing the important question of victim/witness intimidation, because despite an encouraging public trend of recognition that intimidation exists there still has

not been a general recognition of the real plight of victims and witnesses in our society. However, although this hearing is an encouraging affirmation of attention to the problems of victims, I do see some problems with your definition of intimidation and proposed solutions in terms of their limitations to the problems of victims.

Although you defined intimidation in terms of three types—traditional, community, and perceived intimidation—the solutions presented primarily address traditional intimidation and do not address community or perceived intimidation.

I agree with you that traditional intimidation is a serious matter. I lived through the horror of knowing that a victim whom I got involved in the criminal justice system and persuaded to go to the police, was found dead three days later in an alley as the result of a brutal beating. At the same time, however, I also have suffered personally from being the victim of community and perceived intimidation. Over ten years ago I was the victim of sexual assault by an instructor from whom I was taking a class. There were then no victim/witness programs and no victim assistance programs and certainly no public knowledge of the problems of victims and of reporting.

I was outraged at the time. But in trying to find somewone to turn to, neighbors and friends encouraged me not to report the crime to the police. They said it would destroy my educational career, opportunities for employment, and eventually destroy my possibilities of becoming a state bar member. I confronted the instructor and he assured me that if I attempted to report the crime that I would not only fail his class but other instructors would also fail me, that I would be prevented from transferring to another institution because of my academic record, and that he would make sure because of his prestige in the community that I would not be admitted to the state bar if I wanted to become an attorney.

Being somewhat naive—and also realistic about my opportunities in the 1960's—I chose not to report the crime. That is an example of community intimidation which still exists today. I do not see any decrease in that type of intimidation in cases with which I have worked with elderly, domestic violence, and rape victims. I have often been told by law enforcement officers that they attempt to dissuade victims from reporting rape and domestic violence incidents because they do not think that the publicity will do either them or others any good, and that the case will not go through the criminal justice system with any great success. In the *Rideout* case in Oregon, my colleagues including fellow attorneys joked about the situation. That kind of humor is a sample of community intimidation; it affects the determination of whether or not one should report if one becomes a crime victim. Therefore, we need to look at solutions for that kind of problem, as well as traditional intimidation. I will confine my testimony to that problem.

First, the statute's limitation to willful and malicious persuasion specifically restricts its enforcement to traditional forms of intimidation. On the other hand, it is precisely those forms of community intimidation that present some of the most abusive types of physical suffering of victims in our society today. By so limiting the statute, we make it impossible for some victims to report crimes. I see no reason to sanction cultural intimidation because of some morals which supposedly are placed higher than our system of justice.

PANELIST. Are you proposing that we prosecute neighbors and friends who tell a victim not to bring charges?

Dr. YOUNG-RIFAI. I will propose a solution which to some extent meets that problem. I am not suggesting we prosecute friends. I am suggesting we recognize the problem. To recognize and attempt to address the problem of community intimidation I propose two things:

The statute could include a positive duty for a witness and/or victim to report certain critical offenses; a positive duty in the sense that the statute would insist that someone actually reports crime of which they are aware related to physical suffering or abuse. This would thus take into consideration those offenses which have done the most harm to the victim and may in many instances, such as domestic violence, be the ones that often are not reported. We have examples of this type of positive duty in child abuse statutes in many jurisdictions.

A clause such as that could be included, providing immunity for those people making such a report from any liability; and also to some extent making them immune from participating in any judicial proceedings unless it was determined at the discretion of the court that that person was the witness absolutely necessary for the case. There is also a possibility of putting an anonymity clause in the statute so that that person can report and remain anonymous.

Thus the statute could include a positive duty to report which would reinforce the fact the community would not sanction intimidation attempts; it would give

a duty to witnesses and the opportunity to refer to institutional support for his action.

Judge YOUNGER. How would you enforce the positive duty? Take your case, when you were the victim of the assault in college. Should you have been subject to some sort of penalty for not reporting?

Dr. YOUNG-RIFAI. No. In fact the statute itself would suggest the positive duty for witnesses to report, and if witnesses under certain professional categories—law enforcement, possibly social service agencies—did not report, there would be sanctions. The reason that sounds ineffective is that as in child abuse situations, you do not want to arrest those people who don't report but you do want to give statutory support to them as to a duty to report so that they can then point to the statute as their justification for reporting. In community intimidation people suggest to you that if you report, you're going to violate their standards. Unless you have an equally solid base from which to report, you run into severe problems with the community in which you live.

PANELIST. As prosecutors, we've talked frequently about white collar crime—requiring people to report it. But even among prosecutors there's a reluctance to turn at least certain of the population into informers. "You have to inform, or you've committed a crime, and the government will come after you if you don't inform." You're talking about informers; a 1984 mentality.

Dr. YOUNG-RIFAI. Yes, I understand. A positive duty to report the types of crimes I'm speaking of, which involve direct physical abuse and suffering suggests we must decide if those crimes are horrendous enough for the society to do something about. We've already imposed that duty as to child abuse. I see no reason not to apply it to domestic violence cases or age abuse of elderly victims.

PANELIST. You hear your neighbor beating his wife. She may not want to do anything about it. You've got to report it or you have committed a crime.

Dr. YOUNG-RIFAI. You report it. You have anonymity, and you are probably protected from participating in any later proceedings. But you give the police or a social service investigator the possibility of investigating that case and following up on it.

PANELIST. I think in the cases you're talking about where there is serious physical injury, your suggestion is certainly well taken, and there is some precedent in existing law.

Dr. YOUNG-RIFAI. One of the reasons I included the suggestion of immunity is that, there has been in some cases civil liability after reporting such crimes. For instance we recently had in Oregon a rape case in which it was found that the man had not raped the woman but had assaulted her—the case was reduced to an assault. The victim is now being prosecuted in civil court, a defamation case, because she brought the suit to begin with. That is another situation which certainly causes someone to think about whether or not to bring a case to trial to begin with.

PANELIST. Would you require a rape victim to report it?

Dr. YOUNG-RIFAI. I limit the duty to witnesses. That would not necessarily include victims, because I recognize the problem you are talking about. Victims should be urged to have access to victim assistance unit even if they do not make a formal police report.

Judge YOUNGER. Thank you. Our next witness is Alan A. Malinchak, an Assistant Professor and Coordinator of the Criminal Justice Program at St. Thomas Aquinas College in Sparkill, New York. He is an expert in the area of crime and the elderly.

Mr. MALINCHAK. I shall address a specific facet of victim/witness intimidation—the elderly. Generally, the elderly victim/witness is easily intimidated due to personal fear and the current criminal justice response to such victim/witnesses. The result is their dismal support of criminal justice efforts to reduce future intimidation.

Elderly fear focuses on three closely related issues—economics, geography, and health. Many elderly are barely surviving on "fixed incomes," which forces them to live in low rent, high crime areas, continually exposing them to the criminal element. Due to their economically based geographical situation and the aging process not lending itself to self-defense, the elderly are quite vulnerable. Criminals realize the elderly's predicament, that they find it difficult to physically fight back or economically relocate. Even when an elderly person refuses to be intimidated, the current criminal justice system's response to the vast majority of victim/witnesses reinforces their fears and stimulates their avoidance of the criminal justice system. Let us examine a few brief components.

Is law enforcement concerned? What is the police officer's attitude toward an elderly victim/witness at the scene? Reports—forms—questions? Is there compassion? Concern? Do the officers fully understand the fears of the elderly and how the officer's initial action toward them will influence future cooperation? How many officers follow up an arrest—communicate the current status of a case to the elderly victim or witness? And what assurance can an officer give to an elderly victim or witness regarding protection from a criminal, his cohorts, his relatives? Days, weeks, months may go by and without notice they receive a subpoena to appear in court.

Prior to the trial, an alleged criminal may receive bail or ROR—putting them on the streets within hours of arrest. Without physically threatening an elderly victim/witness, isn't their presence in the neighborhood enough to intimidate even the most courageous individual? And once the elderly do appear at court, who informs them where to go, who to see, what to do? Unanswered questions and vague responses often result in dissatisfaction and elimination of their testimony. If the defendant is convicted, who informs the elderly victim/witness of the sentence? If sentenced to probation, who reassures the elderly victim/witness then? What protection can the probation officer give to the elderly? Can probation officers supervise their clients 24 hours a day? With our correctional system experiencing such a high recidivism rate, what guarantees can be made to the elderly that the ex-convict won't come after them? Are they informed of the ex-convict's parole or release from prison? Can the parole officers supervise their clients better than the probation officer?

Generally, what assurances can be made to the elderly victim/witness? Can there be testimony without fear of reprisal? Probably not 100 percent. Yet some areas are ripe for development, we hope reducing intimidation and increasing elderly involvement in the criminal justice system.

First, victim/witness programs specifically aimed at elderly concerns should be developed. Law enforcement agencies need to directly or indirectly involve the elderly victim/witness in the progress of the case. The arresting officer or an appointed officer should be responsible for informing the elderly victim/witness of the status of the case. Courts should establish programs which inform the elderly victim/witness of what to expect at trial, where to go and who to see. Questions concerning the case should be answered honestly and fully. Problems—for example, transportation to and from the court—should be solved. Correctional officials should inform the elderly victim/witness of an inmate.s release and whether or not there has been talk of revenge by the criminal. In short, there is a need for communication between the elderly victim/witnesses and the criminal justice components.

PANELIST. My own sense from my own experience is that very often the elderly who are the victims of the most dangerous and the least confined of criminal offenders—juvenile offenders. If that is the reality, what is the response that we should make to old people?

Mr. MALINCHAK. Your concern about the juvenile problem and the elderly is true. I would propose stronger juvenile laws and a definite relocation of elderly victims or witnesses.

The elderly should be directly or indirectly involved in victim/witness programs. We can utilize one of the community's most valuable resources. the elderly themselves. There are a number of elderly who are eager to volunteer their services to the criminal justice system. Their mere presence in a victim/witness program, may alone encourage other elderly victim/witnesses to participate in the system. With increased involvement, that may eliminate their fears of the system, may eliminate their fear of intimidation, because it's a stronger, much more viable victim/witness program.

A second and more classical criminology suggestion to reduce intimidation involves increasing penalties—for juveniles as well—for those who intimidate elderly victim/witnesses. If criminals need to intimidate those who can't fight back, physically or mentally, then society needs to make it difficult on the criminal. I am neither proposing capital punishment nor life imprisonment—rather, an elimination of diversion programs. Don't put that juvenile into a diversion program. Make him face the system. Sentence without parole; use fixed sentences instead of indeterminate sentences; and incarcerate for the maximum time allowed by law for those who do victimize and intimidate the elderly.

Last, the only way to totally eliminate intimidation is to offer the elderly victim/witness viable protection. The criminal justice system can no longer pay lip service to victim/witness protection for the elderly. Is it protection when the

elderly victim/witness must return to the same crime-laden environment? Is 24-hour police protection feasible? The answer to both is no. However we can relocate. Since most intimidators are local, moving an elderly victim/witness to another town or state would eliminate intimidation. A note of caution is needed, however. To relocate an elderly victim or witness to a similar geographical and economic place would not solve anything. It is going to be costly, but a cost which must be incurred. Relocation must be to an area that is economically affordable and not criminally infested. Funding for such a venture can be provided through crime compensation or restitution programs, LEAA grants, AARP grants, or state, local, and private funds.

All that is needed to pull a program of relocation together is an ambitious and innovative agency devoted to eliminating intimidation of victim/witnesses. The cost doesn't have to be that great. Without protection, we may have to face an elderly who lessen their support of the criminal justice system, become repeat victims; or elderly witnesses who will eventually become victims. Our response must be immediate. We all share in this problem. We are all susceptible to victimization and to the aging process as well. How long will we wait: Until we are in the same situation?

I am gratified to see the concern at this hearing being brought to the public, and I am grateful for the opportunity to address the elderly's problems in this area.

Judge YOUNGER. Thank you. Our final witness is Deborah Anderson, founder of the Neighborhood Involvement Program Rape Counseling Center in Minneapolis. She is Director of Sexual Assault Services for the Hennepin County Attorney's Office in Minneapolis, Minnesota.

Ms. ANDERSON. First, I do recognize the ABA's efforts in the new National Legal Resource Center for Child Abuse and Advocacy. At the same time I'm pleased to see that the ABA Criminal Justice Section is also looking here at the needs of children. It's a complex issue. More and more the criminal court is coming in contact with kids, probably specifically in situations of sexual abuse of children.

It's also important to look at the amount of violence that's done to children. As we saw cases coming into our office, we also wanted to know how many kids in the regular population were experiencing some sort of victimization. So we looked at the Minneapolis school system, some 1,200 kids. Six out of 30 kids in every classroom talked about some sort of sexual abuse which had occurred to them. It was on a continuum from somebody exposing to the child to incest. The incest situations were less likely to come out right away—more likely to come out after we had left the class. About two-thirds of the kids didn't tell anybody it had happened. The number one reason was that they wouldn't be believed. "My mom would believe the babysitter before me." "She would wash my mouth out with soap if I told somebody about it." One seven-year-old said, "I was afraid to tell my dad I was being sexually abused by my adolescent cousin because I was afraid he was going to spank me." One boy said about an exposer, "I saw something I shouldn't have seen," instead of, "the exposer was doing something he shouldn't have been doing." About one-half of the children were male victims. We also wanted to look at how many kids were fabricating or lying. About 2 percent of the cases were unfounded, or there was a belief the child had fabricated. But we also see a good number of victims who in fact lie and say they were not abused when they were.

An example of that was a five-year-old who was in the doctor's office and when asked by him, "How did your arm get broken"? she said, "I was pretending I was Superwoman and jumped off something and broke my arm." The mother turned to the five-year-old and said, "You can tell him." And she said, "My dad broke my arm." I see many situations with kids not wanting to get involved and being intimidated to tell what happened.

Also, many of these cases haven't been seen in criminal court. Of about 1,493 cases in Hennepin County that were open from '63 to '76, 92.2 percent of those cases never saw any court action. There were 127 cases that did go to Juvenile Court for dependency, neglect, or termination. Eleven cases went to Criminal Court, even though there were 26 deaths of children during this time. An independent study was done by an investigator in the Medical Examiner's Office and a pediatrician. It found some 60 deaths of children related to possible child abuse.

In 1977 in the Hennepin County Attorney's Office we charged 154 sex cases—we have a population of 1 million—46 percent of the victims were under 14 years old, and another 22 percent under 19. So we were dealing with an entirely new victim population, since previously we had not been charging these cases. About one-fourth of the victims were male. In all the sex cases there was some kind of

court jurisdiction over them. Many times kids are sexually or physically abused by somebody they know: parent, guardian, relative. One year we seemed to be charging more teachers with sex crimes against children than any other single profession. Or it could be Boy Scout leaders, babysitters, ministers, foster parents.

Many kids are told not to tell—"I'll be mad," or "I'll kill you." One seven-year-old was threatened by her stepfather that he would hit her. He had been hitting her. It was not reported to the police, to Protection. He then killed her. Now the county is being sued for wrongful death.

The question of "with malice" sometimes is hard to define with kids. For example, we have a nine-year-old who has been sexually abused by the mother's boyfriend. He's in jail. Mom's visiting him in jail. She wants to withdraw the complaint. In her first withdrawing of the complaint she said, "I don't want my kids to testify because it will be emotionally damaging to them." I was talking to her on the telephone and she said, "Those kids lied; they're getting me in a lot of trouble." I asked who they were getting in trouble. She said, "They're getting Johnny in trouble."

PANELIST. What happens when everybody you're informing on gets together and says nobody is in fact abusing the child. Where does that leave you?

Ms. ANDERSON. Every case has to be looked at. There are three witnesses in this case, two girls and their older brother and mother. So that's a rather strong case. The kind of case you're talking about can be almost impossible.

PANELIST. When the case goes down in a year everybody's going to deny it; they're going to say the kids lied. Then where is your case?

Ms. ANDERSON. Sometimes you just lose them.

Judge YOUNGER. Do you have an affirmative duty on physicians and nursing personnel in Minnesota to report in these cases?

Ms. ANDERSON. Yes. All 50 states do on physical child abuse. About 40 do on sexual abuse. School teachers are mandated to report, too.

PANELIST. Do I understand sometimes school teachers report the incident to the offending parent before they report it to the authorities?

Ms. ANDERSON. That was the Minneapolis school policy that has now been changed. But it was only changed when they had some contact with our office. Before that they saw more of their duty to the parents than the child. And to go home after school when you've found out that's been reported is terrible. And I wonder if lawyers in certain situations should be mandated to report. I would like to look at that in depth.

PANELIST. In incest cases, there's a very complicated interplay of emotional feeling. The child loves the father, the mother wants to retain the father as a husband. There's sometimes sexual jealousy on the part of the mother. And the burden on the child is intense. How can we deal with that? Intimidation seems an inappropriate word. But the burden that a child bears in that situation is extreme. When the mother calls the child a liar, it's terribly damaging. I think it's something that children never outgrow.

Ms. ANDERSON. There's a level of malice in that, the mother not being more interested in caring for her child. Through coordination through the courts and a number of disciplines, this can be dealt with. That's probably the number one way to stop intimidation of kids—social service people can go to Juvenile Court when there's a real reason to believe a child is in danger. We don't know the amount of intimidation that has occurred. We don't know whether the mother is going to get back with the boyfriend again if he gets out of jail. So there is some imminent danger to these kids. Social service people can get in there. But they only can get in there if they know what the court will do. The Juvenile Court can go in and take the kids out if there is reason to.

PANELIST. I've experienced the same problem with social welfare agencies where a child was molested by a boyfriend and taken away by the welfare department. We interviewed the five-year-old child, who was forced to commit fellation on the boyfriend. The report indicated to me that this wasn't a product of the child's imagination. The details although simple were all too clear to tell me she was telling the truth. She said it was also happineng to her three-year-old sister. The social services people refused to allow us to have an interview with the child because they felt it was too upsetting. My understanding was that the children were returned to the mother. And there was no prosecution of the boyfriend.

Ms. ANDERSON. I agree the system itself is often as crazy as the families we're dealing with. And there's often bickering within the system. In setting up a system that functions I've seen so much scapegoating—the social service people

are just bleeding hearts; the police kick everybody's doors down and don't understand. One criminal attorney in our office said that all doctors' testimony is about three weeks out of witchcraft. I thought that was marvelous so I ran off and told a pediatrician friend, who said all lawyers are unethical. There is so much dysfunction in the system. The system is more intimidating to kids and families in many ways than what the end product is. The end product also has to be just—that there's some justice in the final disposition. Certain people who commit violence against children are dangerous and should be imprisoned. They won't change. Other people can change.

Kids in trouble are a mess. We have a terrible time dealing with them in court. Kids will run, lie, commit violent crimes, have school problems. They are higher risk kids who have experienced violence many times. That's an idea of big difficulty.

Looking at children in the future, perhaps we can also reduce some of the intimidation that happens, and also reduce some of the violent offenders. Most hard core violent offenders we deal with have long histories of terrible things happening to them.

PANELIST. You're making a compelling case for treating child victims and witnesses separate from adult victims and witnesses because their personal problems are more intense as a result of the victimization, their personal capacities are less developed to respond to threats. Also, the circumstances are the most sordid of any victim or witness because they are not only involved in a prior relationship, but are subservient in that relationship, and lack any alternative. Relocation is not a positive response for a five-year-old.

Ms. ANDERSON. Kids can do very well in court when you give them an early sense that you don't have to be a silent victim of a crime. Many kids will say to me, "Why can't you do something about it?" Because he's an adult and you're a kid. There is the question as to how kids' testimony is taken, competency issue. Many times kids are very competent in court and the court needs to be more competent in hearing their testimony.

PANELIST. I think it's fitting that we end with Ms. Anderson. Because I do believe that if we can prevent the victimization of children ultimately we would end the victimization of all people.

Judge YOUNGER. Ms. Anderson, thank you very much for being here. We will now have some audience questions.

Mildred PAGELOW. Thank you for giving me this opportunity. I'm a research sociologist. I've been studying the crime of women battering over three years. Before I left to come here, in my county—Orange County, California—two women were killed by their spouses in the past week.

What I've heard throughout these two days is that the system itself intimidates the victims. Several speakers suggested that victim protection units should not be placed in the police department. I'm also concerned about rural areas and services for victims as well as the urban. Mr. Friedman says that the business of prosecutors and law enforcement is in making arrests and getting convictions. Ms. Hampton mentioned the success of units autonomously located and recommended a coordinating council with police and prosecutors as advocates. Victim needs are diversified. They need more than investigation and legal services. They need counseling and knowing that somebody in the system cares for them.

I'd like to suggest that the units not only be autonomous but they be staffed primarily by people in the social sciences and legal fields, with coordination with the prosecutors office and the police department. I know jealousy exists, but we should have them autonomous so that they can serve the full range of the victims' needs.

Further, almost every community, large and small, has some kind of medical services, clinics or hospitals. That is a place where people intimidated not only by the agressor but by the system are not going to fear to go. There is a place where a victim protection unit could be placed.

In a small town a woman walks into the police station, a male-dominated world, or walks into the prosecutor's office, also a male-dominated world, and it's intimidating to her.

Judge YOUNGER. Thank you very much. I don't think that is so radical. The suggestion is a very good one. We appreciate your being here.

Ms. PAGELOW. Thank you.

Lieutenant O'BRIEN. I'm Lieutenant Charles O'Brien of the St. Louis Police Department. A glaring omission is that nothing has been brought out regarding investigation by existing witness intimidation units. Regarding our investigation

technique in St. Louis, our unit was formed in 1973 as a result of an elderly robbery victim being killed on his front porch. I'd like to hand out something to the panel.

Judge YOUNGER. Lieutenant O'Brien has presented us with a 3×5 card advising an individual that a charge is pending against him and that he or she is not to make any contact with any victim or witnesses, directly or indirectly, and citing and threatening prosecution under the state's law. This is a proposal not presently implemented in St. Louis.

Lieutenant O'BRIEN. One wonders how many people following their arrest are aware that if they contact the victim or witness it is a crime. This will bring it to their attention not to contact this victim.

Regarding our investigating techniques, as soon as our unit is notified of a threat we interview the victim. If the identity of the suspect is established, we attempt to apprehend this person. In cases where threats are made and the identity of the suspect is unknown, such as a telephone call or a letter, the investigators then go directly to the defendant of the case involved and advise the defendant of the threat, and that only the defendant could benefit if the victim fails to appear in court to testify as a result of the threat. In many cases the defendant is on bond awaiting trial when located by the investigating detectives following a threat. The defendant is then advised that efforts will be made to have his bond revoked if another threat is received. Or the bond could be raised.

Many intimidations have ceased following this contact with the defendant. Not to contact the defendant may have opposite effects. In other instances the defendant is confined in jail awaiting trial when the victim/witness has received threats not to testify. Our records reveal that defendants themselves have used telephones in the city jails to threaten victims. Crude letters fashioned with cut-out letters from magazines have been prepared by defendants confined in jail. So we certainly need some control when these people use telephones or mail in city jails.

Other techniques used are investigators to confront the suspect believed to have made the threat, usually a friend or relative of the defendant, and to inform this suspect that any additional threats will place the defendant in further jeopardy with the court. This tactic has proved successful in many cases.

In extreme cases, where investigators believe the victim/witness may be in immediate danger, it is suggested they move to a friend's home which is unknown to the suspect. In some cases it may be necessary for the police to supervise the hiding of a victim/witness until the case is disposed of. This has been done in St. Louis and the Police Department assumed the expenses involved—only because the Circuit Attorneys Office said they didn't have any money.

On October 1, 1978, a Victim/Witness Assistance Unit funded by LEAA was formed to furnish expenses in protection of victim/witnesses when change of residence is necessary.

Judge YOUNGER. Thank you very much, Lieutenant. Your comments and the card are helpful.

Mr. ENDERS. My name is Richard Enders and I'm a prosecutor from an Upstate New York County of about 300,000. I would like to add my thank you to the ABA for assuming a leadership role in this area, but I would like to add one typical lawyer caveat. When we take into account all crimes that are committee throughout our country, we should be very careful to preface anything we do in this area with the comment that the odds are that a victim will not be the victim of intimidation or harrassment.

We have had a 2-year-old victim/witness program in my county. There have been few cases of intimidation. We should not create the impression with the public that the entire criminal justice system is one big horror show. We should not create the impression that everybody is going to be the victim of intimidation. Otherwise we may find ourselves driving victims and witnesses further underground with fear.

Judge YOUNGER. That's a very legitimate point. You are certainly correct that a substantial majority of people coming forward in the system never have to fear intimidation. Thank you.

Mr. GRAYSON. My name is Robert Grayson. I testified yesterday. I heard a remark today that I could not go home without answering. The gentleman talking on behalf of defense attorneys said he was uncomfortable with your proposed statute. Most of the victims who come to me find that much of the intimidation does come from defense attorneys, and that witnesses are put through a horrible time when they testify. If defense attorneys find your law tough enough that they are uncomfortable with it, I think you are on the right track.

Judge YOUNGER. Probably Mr. Woody already provided the best response to that. He's seeking equality and reciprocity of the statute—which I think can be delivered when we do further homework in the area. I think it's not inappropriate to end on a note of saying that anybody who is improperly exploiting the fears of anybody else in the system—whether it's a victim or a witness or a defense attorney—who is improperly and hopefully unlawfully doing that should be subjected to some sort of sanction appropriate to the degree of the impropriety and the seriousness of the conduct.

Many of you have been here since yesterday morning. Thank you all. One more word of thanks to the Florence V. Burden Foundation for sponsoring the hearings.

(Adjournment of Tuesday, June 5 session)

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