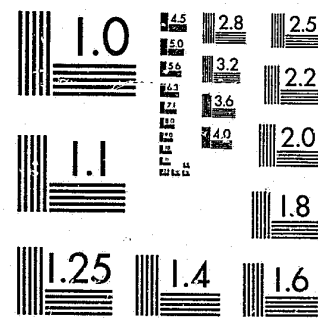


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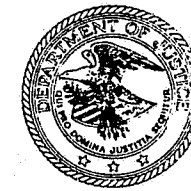
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Washington, D. C. 20531

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Department of Justice

STATEMENT OF

JAY B. STEPHENS
DEPUTY ASSOCIATE ATTORNEY GENERAL

NCJRS

BEFORE THE

JUL 11 1983

ACQUISITIONS

COMMITTEE ON LABOR AND HUMAN RESOURCES
SUBCOMMITTEE ON AGING
UNITED STATES SENATE

CONCERNING

THE VICTIM AND WITNESS PROTECTION ACT OF 1982

ON

JUNE 28, 1983

90118

U.S. Department of Justice
National Institute of Justice

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Mr. Chairman and Members of the Subcommittee:

It is a pleasure to be here today to discuss with you the Department of Justice's implementation of the Victim and Witness Protection Act of 1982 which was passed by the Congress last session and signed by the President in October. This legislation is a milestone in the continuing effort to ensure that victims and witnesses of criminal offenses are given the level of attention and consideration they deserve. For too long our legal system has ignored the devastating financial, emotional, and physical impact which a criminal offense can have upon the victim, and has focused all its attention instead upon ensuring that every concern of the accused is accommodated. Similarly, witnesses to offenses too often have been treated with indifference and disregard, even though they frequently make genuine personal sacrifices to do an important civic duty.

The impact of crime is especially traumatic with respect to elderly crime victims who I know are of particular concern to this Subcommittee. I would like to take a moment to focus on those special concerns of the elderly. Although the actual incidence of crime may be less with respect to our senior citizens, the overall impact of crime on this group is dramatic. The sense of vulnerability among many elderly people magnifies

their fear of crime which in turn results in a significant alteration of their lifestyle. When a purse is snatched or a home burglarized, the elderly person frequently experiences great fear even though no physical injury results. Indeed, the pervasive fear of crime suffered by the elderly has been identified in one nationwide survey as a more serious personal problem than poor health, lack of financial resources, loneliness, and many other complaints frequently associated with advancing age. This fear of crime is an indirect form of victimization since it can lead to serious restrictions on the elderly's daily activities and can significantly impoverish their lives. Furthermore, the elderly appear to be more susceptible to crime that is motivated by economic gain, and the economic loss involved may be particularly disturbing to a person on a fixed income, as many of our elderly are. The inescapable conclusion of victimization studies is the realization that the trauma and economic impact of crime weigh more heavily upon the elderly.

The Victim and Witness Protection Act is, of course, designed to benefit all our citizens who may suffer the tragedy of being a crime victim or who step forward to do their civic duty when they are a witness to a criminal offense. The Act contains a number of provisions each of which is designed to provide a particular type of assistance to victims and witnesses. I would like to address the most significant aspects of this legislation, and to advise the Subcommittee of the status of our implementation of this Act. In particular, I would like first to

discuss our efforts to implement those provisions of the Act which relate to victim impact statements, obstruction of justice offenses, and restitution, and then to review the status of the guidelines mandated by Section 6 of the Act.

One of the most significant aspects of the new Victim and Witness Protection Act is Section 3 which requires the inclusion of a victim impact statement as part of a presentence report filed pursuant to Rule 32(c)(2) of the Federal Rules of Criminal Procedure. Prior to the enactment of this Act, the general practice of probation officers and the courts was to rely upon a presentence investigation which focused substantially upon the convicted defendant and his or her particular family, social, economic, and criminal background. While most presentence reports included a brief official version of the offense, they did not specifically address the physical, economic, and psychological trauma suffered by the victim or victims of the offense. Consequently, a sentencing court, particularly in a case where the court was not exposed to the victim because the case was resolved by plea disposition instead of a trial, did not always have a complete or accurate picture of the impact of the offense upon the victim.

The Victim and Witness Protection Act requires that effective March 1, 1983, presentence investigations include an appropriate section describing the impact of the offense upon the victim. Since the Act mandates that this information be filed

with the court pursuant to Federal Criminal Rule 32(c)(2) as part of the presentence report, the primary obligation to ensure that the information on victim impact is brought before the court rests with the probation office. Nonetheless, the prosecutor has an important obligation to assist the probation office in obtaining complete and accurate information regarding the impact of the crime on the victim since frequently the prosecutor or investigator may have more ready access to this evidence at an early stage of the investigation. Moreover, the prosecutor has a responsibility to advise the victim about communicating with the probation office. And, in the last analysis, where courts permit, the prosecutor should be a vigorous advocate for the victim at the time of sentencing to ensure the court is fully cognizant of the extent of injury suffered by the victim. We have preliminarily advised our prosecutors of their obligations with respect to victim impact statements, and I fully expect that the formal guidelines which will be issued by the Department shortly will address this issue and underscore the investigative agent's and prosecutor's responsibility of assisting the probation office in bringing this very important information to the attention of the sentencing judge.

With respect to Section 4 of the Act which involves obstruction of justice and witness tampering provisions, we have made a comprehensive analysis of these new statutes and the important changes entailed in this legislation. We have communicated to the United States Attorneys in the field as well

as to Department of Justice attorneys the important changes in the obstruction of justice laws and have provided them with detailed guidance on the application of these provisions. The Department, of course, views the changes in the obstruction statutes as significant improvements for the protection of witnesses who may be threatened or intimidated, and we have encouraged our prosecutors to utilize the new provisions vigorously to prosecute any individuals who interfere with or intimidate witnesses to criminal offenses.

Significantly, Section 4 of the Act provides for a civil injunctive remedy to restrain harassment of witnesses, and Section 8 of the Act makes non-violation of these intimidation and harassment statutes a condition of any release on bail. Equally important, punishment for violation of the new obstruction statutes now extends to ten years imprisonment and a \$250,000 fine, and the new provisions cover the intimidation of a witness even though a case has not yet been formally filed. The Criminal Division of the Department has maintained ongoing supervision of these statutes to provide necessary advice to prosecutors and to resolve issues which may arise in the application of these new statutes. We expect these statutes to be an important tool in providing witnesses the kind of security from intimidation that they deserve.

Section 7 of the new Act requires that the Attorney General report to Congress within a year of enactment of the Act

regarding necessary legislation to ensure that a federal felon derives no profit from his crimes until any victim of his offenses receives restitution. The Department currently has this issue under consideration, and will report to the Congress its recommendations on this matter in the next few months.

The Department currently is finalizing detailed instructions to all our criminal prosecutors regarding the important restitution provisions of the new Act. Significantly, Section 5 of the Act requires a sentencing court specifically to consider the issue of restitution, and to state on the record any reasons for failing to impose restitution. In addition, the Act gives the court authority to impose a sentence of both restitution and incarceration, and it provides for a civil judgment enforcement mechanism for victims awarded restitution. The issue of restitution for criminal offenses raises a number of difficult legal and administrative issues which we have been attempting to resolve. As noted, we are finalizing a set of instructions to our prosecutors, and anticipate that within the next 30 to 60 days, we will have detailed instructions to them to assist them in dealing with some of these very difficult questions.

The restitution issue has raised concerns among participants in the criminal justice system regarding the process by which restitution is imposed and the procedures which must be followed. Many of these issues surfaced in a nationwide teleconference hookup this Spring which involved members of the bench, probation

officers, defense counsel, and federal prosecutors. Within prosecutors offices, concerns have been raised regarding the resolution of certain restitution issues; for example, where there are multiple victims in a major securities fraud scheme, and where there may be a plea disposition involving a limited number of indicted counts, victims of counts that are not charged or which are dismissed as part of the disposition may not receive restitution. In addition, we need to be vigilant regarding the procedures employed in imposing restitution so as to avoid unduly encumbering the sentencing process. As I noted previously, however, we have encouraged our prosecutors consistent with their overall prosecutorial responsibilities to press for restitution in all appropriate cases, and to assist the probation office in developing documentation and evidence of injuries suffered by a victim.

Restitution through the criminal process at best may provide only a partial solution to compensating victims of crime. In many cases there are victims of crimes for which no one is apprehended or convicted, and consequently, restitution from the defendant is totally unavailable. In other circumstances where the perpetrator is convicted, he may be unable to pay. In many cases a convicted defendant may be incarcerated for a substantial period of time, and any payment to a victim may be delayed for many years. In still other circumstances as noted above a victim may be one of several victims of a complex scheme in which a defendant has engaged, but may not receive restitution because of

a disposition which involves a limited number of counts. The limitations on the effectiveness of restitution through the criminal process suggest that additional thought should be given to other types of victim compensation programs. I know that this issue has been of particular concern to the Chairman of this Subcommittee who previously introduced S. 704, a bill to provide federal financial assistance to qualifying state victim compensation funds and victim and witness assistance programs. Similarly, the President's Task Force on Victims of Crime addressed this problem, and made a number of recommendations regarding victim compensation programs and the critical role they can play in making victims whole again. The Department of Justice currently is doing an indepth study of all of the Task Force proposals, including the proposal for a federal victim compensation program, to determine what legislative proposals, if any, merit support.

Finally, I would like to discuss with you the status of the victim and witness guidelines which are mandated by Section 6 of the Act. These guidelines entail a significant administrative directive to Department of Justice components to ensure the delivery of victim services and assistance contemplated by the Act. Section 6 of the Act directs the Attorney General to issue within 270 days of enactment guidelines for the fair treatment of victims and witnesses in the federal criminal justice system. I can report to the Subcommittee that since the enactment of this Act, hundreds of hours have been devoted to drafting, reviewing,

and perfecting guidelines covering federal prosecutors and investigators within the Department, and that these draft guidelines are now undergoing final review prior to issuance by the Attorney General in early July. I emphasize that the proposed guidelines are still under final review, and that, therefore, my comments regarding them of necessity reflect only the general outlines which I anticipate they will take, and that even these outlines are still subject to modification.

The guidelines which the Department expects to issue shortly will apply to all those components of the Department of Justice which are engaged in the detection, investigation, and prosecution of crimes; responsibility for the delivery of services or the provision of consultation and information will be assigned based upon the stage of development of a particular investigation. In general, the guidelines will incorporate both the victim assistance concepts set out in Section 6 of the Act and a number of recommendations of the President's Task Force on Victims of Crime regarding the fair treatment of victims and witnesses. In particular, I expect the guidelines will require that crime victims and witnesses be provided with information about various services, including the availability of emergency medical and social services, compensation for which the victim may be entitled, and the availability of various counseling and treatment facilities. In addition, I anticipate the guidelines will require the responsible Department component to keep a victim or witness fully advised of the various stages of the

criminal justice process involving his case; victims and witnesses of serious crimes will be advised of steps that can be taken to protect them from intimidation, of the arrest of the accused, of court scheduling changes, of the release of the accused from custody, of an acceptance of a disposition in the case, of the victim's role in preparation of the victim impact statement, and of sentencing procedures, among others.

Furthermore, I anticipate that the guidelines will direct responsible components, whether they be investigators or prosecutors, to consult with victims of serious crimes regarding significant stages of their criminal case. In particular, I expect Department personnel will be instructed to consult with a victim about, among other things, release of an accused pending further judicial proceedings, decisions regarding dismissal of charges, plea negotiations, sentencing recommendations, and restitution which may be available.

With respect to the victim impact statement which I discussed previously, I anticipate that the guidelines will direct Department personnel to cooperate fully with the appropriate probation officer by providing all relevant information in the possession of the prosecutor to assist in the preparation of an accurate and comprehensive victim impact statement. Also, the victim will be advised regarding how to communicate directly with the probation officer in order to assist in the preparation of a victim impact statement. With

respect to restitution, as I discussed earlier, the guidelines will direct federal prosecutors to advocate fully the rights of victims on the issue of restitution unless such advocacy would unduly prolong or complicate the sentencing proceeding or unless such advocacy would be inconsistent with their other responsibilities as prosecutors.

Finally, I anticipate that the guidelines will provide for training of personnel concerning their new responsibilities under the guidelines and the Victim and Witness Protection Act. The task of ensuring that all Department personnel who are involved in the investigative and prosecutorial aspects of the federal criminal system are fully apprised of their additional responsibilities under this Act and that they understand how to deal with those new obligations is, of course, not an easy task. I expect that following the issuance of the guidelines by the Attorney General in early July, the various field components, including United States Attorneys and the investigative agencies, will need a period of time in which to develop compliance procedures and mechanisms. During the next few months, responsible components of the Department will resolve operational problems, gather additional data regarding available community resources, receive appropriate training, and design forms and pamphlets to assist in the effort of providing victims and witnesses with necessary information. Consistent with available resources, I anticipate we will encourage the development of a victim/witness coordinator in the larger United States Attorneys

Offices to assist in the implementation of the guidelines and provide oversight on the treatment of victims and witnesses. In smaller offices, we expect it may be more appropriate to designate existing personnel who can be trained appropriately to deliver the victim/witness services contemplated by the Act and the guidelines.

In sum, the Department has pursued aggressively the implementation of this new legislation and is committed to continuing its efforts in an effective and expeditious manner. We believe that this Act is an important first step on the path to fair treatment of victims and witnesses who have for too long been neglected by our criminal justice system. While the Act imposes significant additional obligations and responsibilities upon Department personnel, we believe that the fulfillment of those obligations will result not only in substantial benefits to victims and witnesses of crime, but ultimately will redound to the benefit of the entire criminal justice system.

That completes my statement, Mr. Chairman. If there are any questions, I will be happy to answer them.

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