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VICTIMS OF CRIME

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HEARING

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KANSAS STATE UNIVERSITY BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

H.R. 8777

AND

S. 300

TO PROVIDE FOR THE COMPENSATION OF PERSONS INJURED
BY CERTAIN CRIMINAL ACTS, (TO MAKE GRANTS TO STATES
FOR THE PAYMENT OF SUCH COMPENSATION, AND FOR
OTHER PURPOSES

AUGUST 1, 1973

Serial No. 13



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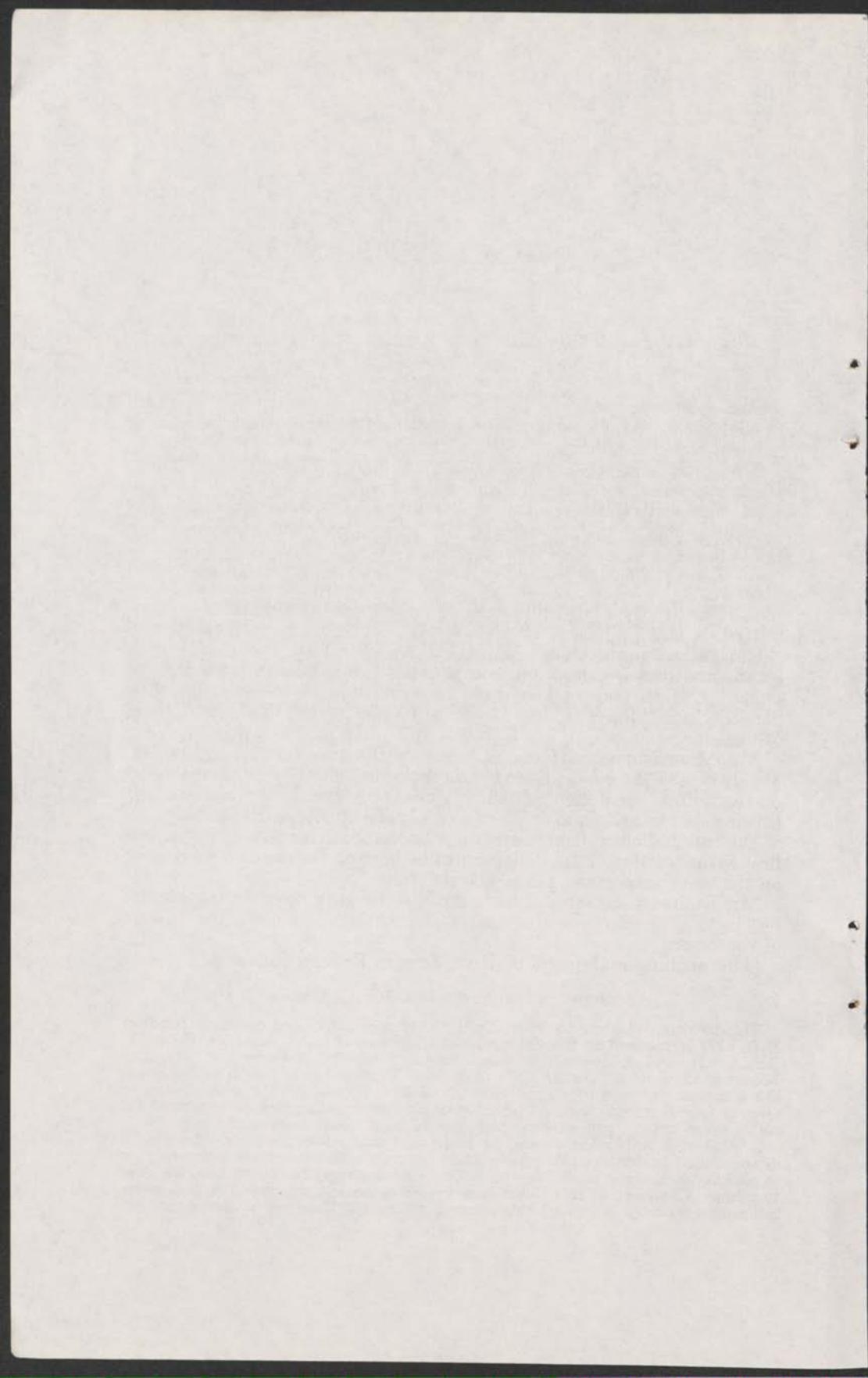
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VICTIMS OF CRIME

WEDNESDAY, AUGUST 1, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
CITIZENSHIP, AND INTERNATIONAL LAW
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to notice, in room 2141, Rayburn House Office Building, Representative Joshua Eilberg [chairman of the subcommittee] presiding.

Present: Representatives Rodino, Eilberg, Flowers, Seiberling, Holtzman, Keating, Wiggins, Fish, and Waldie.

Also present: Garner J. Cline, counsel; Arthur P. Endres, Jr., assistant counsel; and Donald G. Benn, associate counsel.

Mr. EILBERG. The subcommittee will come to order.

Since we have not begun on time, we will proceed right with the witnesses.

It is my pleasure to introduce the chairman of the House Committee on the Judiciary, Hon. Peter W. Rodino, Jr., of New Jersey.

Chairman RODINO. Mr. Eilberg, I am delighted this morning to commence our hearings on compensation for innocent victims of violent crimes. Our first witness this morning is the distinguished Senator from Montana, the Majority Leader of the Senate, Michael Mansfield.

Mr. Mansfield some time ago discussed the need for this legislation. We discussed the concepts and the continuing urgency to move ahead on this bill. I was delighted that my State of New Jersey has enacted this legislation and I am grateful to have the opportunity as chairman of the full Judiciary Committee to welcome Senator Mansfield as our first witness today. I am delighted to be here and serve as a cosponsor on this very important piece of legislation.

Mr. EILBERG. Senator, I have a rather lengthy opening statement; but in view of your pressing obligations, I will just make this a part of the record.

[The opening statement of Hon. Joshua Eilberg follows:]

OPENING STATEMENT OF HON. JOSHUA EILBERG

This hearing will come to order. Today's hearings have been called to consider H.R. 8777 introduced by the distinguished Chairman of this Committee, Peter W. Rodino, Jr. and S. 300 which was introduced by the distinguished Majority Leader of the Senate, Senator Mike Mansfield. These companion bills would establish a federal program to compensate the innocent victims of violent crimes in areas of federal jurisdiction and would provide a matching grant arrangement for states which have or will establish programs to compensate victims of crime.

I think it is important to add at this point that under Senator Mansfield's distinguished leadership, this proposal has passed the Senate either separately or in package form on at least five occasions. Furthermore, I am aware that the distinguished Chairman of this Committee is also extremely interested in this legislation and recently expressed this interest during the Conference discussions on

the LEAA legislation. We are pleased to have both Chairman Rodino and Senator Mansfield with us this morning.

The proposals introduced by these gentlemen recognize that the ever-present threat of violent crime today has directly affected the attitudes and living habits of most Americans. Due to the fear of being assaulted, mugged, robbed and raped, many persons are reluctant to venture from their homes at night—and—according to a Life Magazine poll conducted last year 78% of all urban dwellers do not feel safe within their own homes.

Furthermore, the statistics relating to the increase in violent crime over the last decade certainly justifies this fear. For example, between 1960 and 1970 the rate of violent crime increased by 156% and in 1970 alone 731,402 acts of violence were reported to the police.

Unquestionably, the most serious result of this terrifying problem is the tragic loss of life and the personal injuries which are sustained by the unfortunate victims of violent crime. This problem is compounded by the fact that most victims have limited resources to make up for the economic losses which result from these criminal attacks.

In addition, the criminal element in our society is by and large indigent and if they are apprehended and convicted they will remain judgment-proof for the entire period of their incarceration. In other words, our American system of jurisprudence allows recourse for a victim of crime only if he can: locate the offender, sue him in civil court for damages and then collect after a successful judgment is rendered. As I have mentioned, this method of recovery is generally unavailing and consequently in the vast majority of cases, the unfortunate victim is left to compensate for his own economic losses.

Obviously, in meeting this problem there is no substitute for efficient and effective law enforcement, but when society fails to adequately protect its citizenry, it is reasonable to expect that society should bear some of the obligations and responsibilities which flow from this failure.

The two proposals before this Committee recognize this moral responsibility and attempt to make "financially whole" the innocent victims of violent crimes.

In short, the bills would establish a Federal Violent Crimes Compensation Board for the purpose of providing compensation to the innocent victims of violent crime. In addition, the bills would provide compensation to intervenors, that is, persons who go to the aid of policemen or victims to prevent a violent crime from occurring. Victims would be eligible for compensation to cover his pecuniary losses; namely, his hospital and medical expenses as well as loss of earnings which result from his injury. Such losses could not in any event, however, exceed \$50,000. Furthermore, such victim must demonstrate that he will suffer financial stress from pecuniary losses for which the act giving rise to the claim was the proximate cause.

Intervenors, on the other hand, would be able to recover net losses which are not recoverable by public or private means. This would include the losses embraced by the traditional tort scope of damages but excluding pain and suffering. Although victims and intervenors may both recover losses for personal injury and death, only the intervenors may recover losses for property damage. Moreover, intervenors need not demonstrate financial stress in order to qualify for compensation. The other major provision in these legislative proposals would establish a grant program to be administered by LEAA for those states which have or will institute victim-compensation programs. A 75% matching grant would be provided for the administrative costs of state programs as well as for those portions of the state plans which are substantially comparable to the federal program envisioned by this legislation.

It should be emphasized that the concept of compensating innocent victims for crime is not unique and, in fact, goes back almost 4000 years. Furthermore, in recent times, a number of countries as well as several of our states have established such programs. This legislation draws heavily on the experience of these plans and it appears the concept itself has engendered little opposition in public and private quarters. In this regard, opinion polls of the American people indicate that the vast majority of the public favors a victims compensation plan. In addition, this legislation is supported by the Criminal Law Section of the American Bar Association and the International Association of Chiefs of Police.

I wish to now welcome my distinguished Chairman and I commend him for taking the time to appear before the Subcommittee this morning and for assuming the leadership in this body with respect to this important legislation.

I would also like to take this opportunity to welcome the distinguished Majority Leader of the Senate, and I welcome his testimony on his bill, which has been co-sponsored by 40 of his colleagues. I also want to commend him for his outstanding leadership in this area which is exemplified by the fact that he has obtained Senate approval of this measure on several occasions.

1 “(4) ‘claim’ means a written request to the Board
2 for compensation made by or on behalf of an intervenor,
3 a victim, or the surviving dependent or dependents of
4 either of them;

5 “(5) ‘claimant’ means an intervenor, victim, or the
6 surviving dependent or dependents of either of them;

7 “(6) ‘compensation’ means payment by the Board
8 for net losses or pecuniary losses to or on behalf of an
9 intervenor, a victim, or the surviving dependent or de-
10 pendents of either of them;

11 “(7) ‘dependent’ means—

12 “(A) a surviving spouse;

13 “(B) an individual who is a dependent of the
14 deceased victim or intervenor within the meaning of
15 section 152 of the Internal Revenue Code of 1954
16 (26 U.S.C. 152); or

17 “(C) a posthumous child of the deceased inter-
18 venor or victim;

19 “(8) ‘financial stress’ means the undue financial
20 strain experienced by a victim or his surviving depend-
21 ent or dependents as the result of pecuniary loss from
22 an act, omission, or possession giving rise to a claim
23 under this part, disregarding ownership of—

24 “(A) a residence;

1 “(B) normal household items and personal
2 effects;

3 “(C) an automobile;

4 “(D) such tools as are necessary to maintain
5 gainful employment; and

6 “(E) all other liquid assets not in excess of one
7 year's gross income or \$10,000 in value, whichever
8 is less;

9 “(9) ‘gross losses’ means all damages, including
10 pain and suffering and including property losses, in-
11 curred by an intervenor or victim, or surviving depend-
12 ent or dependents of either of them, for which the proxi-
13 mate cause is an act, omission, or possession enumerated
14 in section 456 of this part, or set forth in paragraph (B)
15 of subsection (18) of this section;

16 “(10) ‘guardian’ means a person who is entitled by
17 common law or legal appointment to care for and man-
18 age the person or property, or both, of a minor or incom-
19 petent intervenor or victim, or surviving dependent or
20 dependents of either of them;

21 “(11) ‘intervenor’ means a person who goes to the
22 aid of another and is killed or injured while acting not
23 recklessly to prevent the commission or reasonably sus-
24 pected commission of a crime enumerated in section 456
25 of this part, or while acting not recklessly to apprehend

1 a person reasonably suspected of having committed such
2 a crime;

3 “(12) ‘liquid assets’ includes cash on hand, savings
4 accounts, checking accounts, certificates of deposit,
5 stocks, bonds, and all other personal property that may
6 be readily converted into cash;

7 “(13) ‘member’ means a member of the Violent
8 Crimes Compensation Board established by this part;

9 “(14) ‘minor’ means an unmarried person who is
10 under eighteen years of age;

11 “(15) ‘net losses’ means gross losses, excluding pain
12 and suffering, that are not otherwise recovered or re-
13 coverable—

14 “(A) under insurance programs mandated by
15 law;

16 “(B) from the United States, a State, or unit
17 of general local government for a personal injury
18 or death otherwise compensable under this part;

19 “(C) under contract or insurance wherein the
20 claimant is the insured or beneficiary; or

21 “(D) by other public or private means;

22 “(16) ‘pecuniary losses’ means net losses which
23 cover—

24 “(A) for personal injury—

25 “(1) all appropriate and reasonable ex-

1 penses necessarily incurred for medical, hos-
2 pital, surgical, professional, nursing, dental, am-
3 bulance, and prosthetic services relating to
4 physical or psychiatric care;

5 “ (2) all appropriate and reasonable ex-
6 penses necessarily incurred for physical and
7 occupational therapy and rehabilitation;

8 “ (3) actual loss of past earnings and an-
9 ticipated loss of future earnings because of a
10 disability resulting from the personal injury at
11 a rate not to exceed \$150 per week; and

12 “ (4) all appropriate and reasonable ex-
13 penses necessarily incurred for the care of minor
14 children enabling a victim or his or her spouse,
15 but not both of them, to continue gainful em-
16 ployment at a rate not to exceed \$30 per child
17 per week, up to a maximum of \$75 per week
18 for any number of children;

19 “ (B) for death—

20 “ (1) all appropriate and reasonable ex-
21 penses necessarily incurred for funeral and burial
22 expenses;

23 “ (2) loss of support to a dependent or de-
24 pendents of a victim, not otherwise compensated
25 for as a pecuniary loss for personal injury, for
26 such period of time as the dependency would

1 have existed but for the death of the victim, at
2 a rate not to exceed a total of \$150 per week for
3 all dependents; and

4 “(3) all appropriate and reasonable ex-
5 penses, not otherwise compensated for as a pecu-
6 niary loss for personal injury, which are in-
7 curred for the care of minor children, enabling
8 the surviving spouse of a victim to engage in
9 gainful employment, at a rate not to exceed \$30
10 per week per child, up to a maximum of \$75
11 per week for any number of children;

12 “(17) ‘personal injury’ means actual bodily harm
13 and includes pregnancy, mental distress, and nervous
14 shock; and

15 “(18) ‘victim’ means a person who is killed or who
16 suffers personal injury where the proximate cause of
17 such death or personal injury is—

18 “(A) a crime enumerated in section 456 of this
19 part; or

20 “(B) the not reckless actions of an intervenor
21 in attempting to prevent the commission or reason-
22 ably suspected commission of a crime enumerated in
23 section 456 of this part or in attempting to appre-
24 hend a person reasonably suspected of having com-
25 mitted such a crime.

"BOARD

1

2 "SEC. 451. (a) There is hereby established a Board
3 within the Department of Justice to be known as the Violent
4 Crimes Compensation Board. The Board shall be composed
5 of three members, each of whom shall have been members of
6 the bar of the highest court of State for at least eight years,
7 to be appointed by the President, by and with the advice and
8 consent of the Senate. The President shall designate one of
9 the members of the Board to serve as Chairman.

10 "(b) No member of the Board shall engage in any other
11 business, vocation, or employment.

12 "(c) The Board shall have an official seal.

13 "(d) The term of office of each member of the Board
14 shall be eight years, except that (1) the terms of office of
15 the members first taking office shall expire as designated by
16 the President at the time of appointment, one at the end of
17 four years, one at the end of six years, and one at the end of
18 eight years and (2) any member appointed to fill a vacancy
19 occurring prior to the expiration of the term for which his
20 predecessor was appointed shall be appointed for the re-
21 mainder of such term.

22 "(e) Each member of the Board shall be eligible for
23 reappointment.

24 "(f) Any member of the Board may be removed by
25 the President for inefficiency, neglect of duty, or malfeasance
26 in office.

1 and statistics) of Federal agencies and those of State
2 and local public agencies and private institutions, with
3 or without reimbursement therefor;

4 “(6) enter into and perform, without regard to
5 section 529 of title 31 of the United States Code, such
6 contracts, leases, cooperative agreements, or other trans-
7 actions as may be necessary in the conduct of its func-
8 tions, with any public agency, or with any person, firm,
9 association, corporation, or educational institution, and
10 make grants to any public agency or private nonprofit
11 organization;

12 “(7) request and use such information, data, and
13 reports from any Federal agency as the Board may from
14 time to time require and as may be produced consistent
15 with other law;

16 “(8) arrange with the heads of other Federal agen-
17 cies for the performance of any of its functions under
18 this part with or without reimbursement and, with the
19 approval of the President, delegate and authorize the
20 redelegation of any of its powers under this part;

21 “(9) request each Federal agency to make its serv-
22 ices, equipment, personnel, facilities, and information
23 (including suggestions, estimates, and statistics) avail-
24 able to the greatest practicable extent to the Board
25 in the performance of its functions;

1 “(10) pay all expenses of the Board, including all
2 necessary travel and subsistence expenses of the Board
3 outside the District of Columbia incurred by the mem-
4 bers or employees of the Board under its orders on the
5 presentation of itemized vouchers therefor approved by
6 the Chairman or his designate; and

7 “(11) establish a program to assure extensive and
8 continuing publicity for the provisions relating to com-
9 pensation under this part, including information on the
10 right to file a claim, the scope of coverage, and pro-
11 cedures to be utilized incident thereto.

12 “COMPENSATION

13 “SEC. 453. (a) The Board shall order the payment of
14 compensation—

15 “(1) in the case of the personal injury of an in-
16 tervenor or victim, to or on behalf of that person; or

17 “(2) in the case of the death of the intervenor or
18 victim, to or on behalf of the surviving dependent or de-
19 pendents of either of them.

20 “(b) The Board shall determine the amount of compen-
21 sation under this part—

22 “(1) in the case of a claim by an intervenor or his
23 surviving dependent or dependents, by computing the
24 net losses of the claimant; and

25 “(2) in the case of a claim by a victim or his sur-

1 viving dependent or dependents, by computing the pe-
2 cuniary losses of the claimant.

3 “(c) The Board may order the payment of compensa-
4 tion under this part to the extent it is based upon anticipated
5 loss of future earnings or loss of support of the victim for
6 ninety days or more, or child care payments, in the form of
7 periodic payments during the protracted period of such loss
8 of earnings, support of payments, or ten years, whichever
9 is less.

10 “(d) The Board may order the payment of compensa-
11 tion under this part to a victim or his surviving dependent or
12 dependents held in abeyance until such time as the victim
13 or his surviving dependent or dependents has exhausted his
14 liquid assets.

15 “(e) (1) Whenever the Board determines, prior to tak-
16 ing final action upon a claim, that such claim is one with re-
17 spect to which an order of compensation will probably be
18 made, the Board may order emergency compensation not to
19 exceed \$1,500 pending final action on the claim.

20 “(2) The amount of any emergency compensation or-
21 dered under paragraph (1) of this subsection shall be de-
22 ducted from the amount of any final order for compensation.

23 “(3) Where the amount of any emergency compensa-
24 tion ordered under paragraph (1) of this subsection exceeds
25 the amount of the final order for compensation, or if there is

1 no order for compensation made, the recipient of any such
2 emergency compensation shall be liable for the repayment of
3 such compensation. The Board may waive all or part of such
4 repayment.

5 “(f) No order for compensation under this part shall
6 be subject to execution or attachment.

7 “(g) The availability or payment of compensation
8 under this part shall not affect the right of any person to
9 recover damages from any other person by a civil action for
10 the injury or death, subject to the limitations of this part—

11 “(1) in the event an intervenor, a victim, or the
12 surviving dependent or dependents of either of them who
13 has a right to file a claim under this part should first
14 recover damages from any other source based upon an
15 act, omission, or possession giving rise to a claim under
16 this part, such damages shall be first used to offset gross
17 losses that do not qualify as net or pecuniary losses; and

18 “(2) in the event an intervenor, victim, or the sur-
19 viving dependent or dependents of either of them re-
20 ceives compensation under this part and subsequently
21 recovers damage from any other source based upon an
22 act, omission, or possession that gave rise to compensa-
23 tion under this part, the Board shall be reimbursed for
24 compensation previously paid to the same extent com-
25 pensation would have been reduced had recovery pre-

1 ceded compensation under paragraph (1) of this
2 subsection.

3 “(h) The Board may reconsider a claim at any time
4 and modify or rescind previous orders for compensation
5 based upon a change in financial circumstances of a victim
6 or one or more of his surviving dependents that eliminates
7 financial stress.

8 “LIMITATIONS

9 “SEC. 454. (a) No order for compensation under this
10 part shall be allowed to or on behalf of a victim or his sur-
11 viving dependent or dependents unless the Board finds that
12 such a claimant will suffer financial stress from pecuniary
13 losses for which the act, omission, or possession giving rise
14 to the claim was the proximate cause.

15 “(b) No order for compensation under this part shall
16 be made unless the claim has been made within one year
17 after the date of the act, omission, or possession resulting in
18 the injury or death, unless the Board finds that the failure to
19 file was justified by good cause.

20 “(c) No order for compensation under this part shall
21 be made to or on behalf of an intervenor, victim, or the
22 surviving dependent or dependents of either of them unless
23 a minimum pecuniary or net loss of \$100 or an amount equal
24 to a week's earnings or support, whichever is less, has been
25 incurred.

1 “(d) No order for compensation under this part shall
2 be made unless the act, omission, or possession giving rise to
3 a claim under this part, was reported to the law enforcement
4 officials within seventy-two hours after its occurrence, unless
5 the Board finds that the failure to report was justified by good
6 cause.

7 “(e) No order for compensation under this part to or on
8 behalf of a victim, his surviving dependent or dependents, as
9 the result of any one act, omission, or possession, or related
10 series of such acts, omissions, or possessions, giving rise
11 to a claim, shall be in excess of \$50,000, including lump-sum
12 and periodic payments.

13 “(f) The Board, upon finding that any claimant has not
14 substantially cooperated with all law enforcement agencies
15 incident to the act, omission, or possession that gave rise to
16 the claim, may proportionately reduce, deny, or withdraw
17 any order for compensation under this part.

18 “(g) The Board, in determining whether to order com-
19 pensation or the amount of the compensation, shall consider
20 the behavior of the claimant and whether, because of provo-
21 cation or otherwise, he bears any share of responsibility for
22 the act, omission, or possession that gave rise to the claim for
23 compensation and—

24 “(1) the Board shall reduce the amount of compen-
25 sation to the claimant in accordance with its assessment

1 of the degree of such responsibility attributable to the
2 claimant, or

3 “(2) in the event the claimant’s behavior was a
4 substantial contributing factor to the act, omission, or
5 possession giving rise to a claim under this part, he shall
6 be denied compensation.

7 “(h) No order for compensation under this part shall
8 be made to or on behalf of a person engaging in the act,
9 omission, or possession giving rise to the claim for compensa-
10 tion, to or on behalf of his accomplice, a member of the
11 family or household of either of them, or to or on behalf of
12 any person maintaining continuing unlawful sexual relations
13 with either of them.

14 “PROCEDURES

15 “SEC. 455. (a) The Board is authorized to receive
16 claims for compensation under this part filed by an inter-
17 venor, a victim, or the surviving dependent or dependents of
18 either of them, or a guardian acting on behalf of such a
19 person.

20 “(b) The Board—

21 “(1) may subpoena and require production of docu-
22 ments in the manner of the Securities and Exchange
23 Commission as provided in subsection (c) of section
24 (18) of the Act of August 26, 1935, except that such
25 subpoena shall only be issued under the signature of the

1 Chairman, and application to any court for aid in en-
2 forcing such subpoena shall be made only by the Chair-
3 man, but a subpoena may be served by any person desig-
4 nated by the Chairman;

5 “(2) may administer oaths, or affirmations to wit-
6 nesses appearing before the Board, receive in evidence
7 any statement, document, information, or matter that
8 may, in the opinion of the Chairman, contribute to its
9 functions under this part, whether or not such statement,
10 document, information, or matter would be admissible in
11 a court of law, provided it is relevant and not priv-
12 ileged;

13 “(3) shall, if hearings are held, conduct such hear-
14 ings open to the public, unless in a particular case the
15 Chairman determines that the hearing, or a portion
16 thereof, should be held in private, having regard to the
17 fact that a criminal suspect may not yet have been
18 apprehended or convicted, or to the interest of the claim-
19 ant; and

20 “(4) may, at the discretion of the Chairman, ap-
21 point an impartial licensed physician to examine any
22 claimant under this part and order the payment of rea-
23 sonable fees for such examination.

24 “(c) The Board shall be an ‘agency of the United
25 States’ under subsection (1) of section 6001 of title 18 of

1 the United States Code for the purpose of granting immunity
2 to witnesses.

3 “(d) The provisions of chapter 5 of title 5 of the
4 United States Code shall not apply to adjudicatory pro-
5 cedures to be utilized before the Board.

6 “(e) (1) A claim for compensation under this part may
7 be acted upon by a member designated by the Chairman to
8 act on behalf of the Board.

9 “(2) In the event the disposition by a member
10 as authorized by paragraph (1) of this subsection is
11 unsatisfactory to the claimant, the claimant shall be
12 entitled to a de novo hearing of record on his claim
13 by the full Board.

14 “(f) (1) Decisions of the full Board shall be in accord
15 with the will of a majority of the members and shall be based
16 upon a preponderance of the evidence.

17 “(2) All questions as to the relevancy or privileged na-
18 ture of evidence at such times as the full Board shall sit shall
19 be decided by the Chairman.

20 “(3) A claimant at such times as the full Board shall
21 sit shall have the right to produce evidence and to cross-
22 examine such witnesses as may appear.

23 “(g) (1) The Board shall publish regulations providing
24 that an attorney may, at the conclusion of proceedings under
25 this part, file with the Board an appropriate statement for a

1 fee in connection with services rendered in such proceedings.

2 “(2) After the fee statement is filed by an attorney
3 under paragraph (1) of this subsection, the Board shall
4 award a fee to such attorney on substantially similar terms
5 and conditions as is provided for the payment of representa-
6 tion under section 3006A of title 18 of the United States
7 Code.

8 “(3) Any attorney who charges or collects for services
9 rendered in connection with any proceedings under this part
10 any fee in any amount in excess of that allowed under this
11 subsection shall be fined not more than \$1,000 or imprisoned
12 not more than one year, or both.

13 “(h) The United States Court of Appeals for the Dis-
14 trict of Columbia shall have jurisdiction to review all final
15 orders of the Board. No finding of fact supported by substan-
16 tial evidence shall be set aside.

17 “CRIMES

18 “SEC. 456. (a) The Board is authorized to order com-
19 pensation under this part in any case in which an intervenor,
20 victim, or the surviving dependent or dependents of either of
21 them files a claim when the act, omission, or possession giving
22 rise to the claim for compensation occurs—

23 “(1) within the ‘special maritime and territorial
24 jurisdiction of the United States’ within the meaning of
25 section 7 of title 18 of the United States Code;

1 “(2) within the District of Columbia; or

2 “(3) within ‘Indian country’ within the meaning
3 of section 1151 of title 18 of the United States Code.

4 “(b) This part applies to the following acts, omissions,
5 or possessions:

6 “(1) aggravated assault;

7 “(2) arson;

8 “(3) assault;

9 “(4) burglary;

10 “(5) forcible sodomy;

11 “(6) kidnaping;

12 “(7) manslaughter;

13 “(8) mayhem;

14 “(9) murder;

15 “(10) negligent homicide;

16 “(11) rape;

17 “(12) robbery;

18 “(13) riot;

19 “(14) unlawful sale or exchange of drugs;

20 “(15) unlawful use of explosives;

21 “(16) unlawful use of firearms;

22 “(17) any other crime, including poisoning, which
23 poses a substantial threat of personal injury; or

24 “(18) attempts to commit any of the foregoing.

25 “(c) For the purposes of this part, the operation of a

1 motor vehicle, boat, or aircraft that results in an injury or
2 death shall not constitute a crime unless the injuries were
3 intentionally inflicted through the use of such vehicle, boat,
4 or aircraft or unless such vehicle, boat, or aircraft is an
5 implement of a crime to which this part applies.

6 “(d) For the purposes of this part, a crime may be
7 considered to have been committed notwithstanding that by
8 reason of age, insanity, drunkenness, or otherwise, the per-
9 son engaging in the act, omission, or possession was legally
10 incapable of committing a crime.

11 “SUBROGATION

12 “SEC. 457. (a) Whenever an order for compensation
13 under this part has been made for loss resulting from an act,
14 omission, or possession of a person, the Attorney General
15 may, within three years from the date on which the order
16 for compensation was made, institute an action against such
17 person for the recovery of the whole or any specified part of
18 such compensation in the district court of the United States
19 for any judicial district in which such person resides or is
20 found. Such court shall have jurisdiction to hear, determine,
21 and render judgment in any such action. Any amounts re-
22 covered under this subsection shall be deposited in the Crim-
23 inal Victim Indemnity Fund established by section 458 of
24 this part.

25 “(b) The Board shall provide to the Attorney General

1 such information, data, and reports as the Attorney General
2 may require to prosecute actions in accordance with this
3 section.

4 "INDEMNITY FUND

5 "SEC. 458. (a) There is hereby created on the books of
6 the Treasury of the United States a fund known as the
7 Criminal Victim Indemnity Fund (hereinafter referred to as
8 the 'Fund'). Except as otherwise specifically provided, the
9 Fund shall be the repository of (1) criminal fines paid in
10 the various courts of the United States, (2) additional
11 amounts that may be appropriated to the Fund as provided
12 by law, and (3) such other sums as may be contributed to
13 the Fund by public or private agencies, organizations, or
14 persons.

15 " (b) The Fund shall be utilized only for the purposes
16 of this part.

17 "ADVISORY COUNCIL

18 "SEC. 459. (a) There is hereby established an Advisory
19 Council on the Victims of Crime (hereinafter referred to as
20 the 'Council') consisting of the members of the Board and
21 one representative from each of the various State crime vic-
22 tims compensation programs referred to in paragraph (10)
23 of subsection (b) of section 301 of this title, each of whom
24 shall serve without additional compensation.

25 " (b) The Chairman of the Board shall also serve as
26 the Chairman of the Council.

1 COMPENSATION OF BOARD MEMBERS

2 SEC. 103. (a) Section 5314 of title 5 of the United
3 States Code is amended by adding at the end thereof the
4 following new paragraph:

5 “(58) Chairman, Violent Crimes Compensation
6 Board.”

7 (b) Section 5315 of title 5 of the United States Code is
8 amended by adding at the end thereof the following new
9 paragraph:

10 “(95) Members, Violent Crimes Compensation
11 Board.”

12 CRIMINAL VICTIM INDEMNITY FUND FINES

13 SEC. 104. (a) Chapter 227 of title 18 of the United
14 States Code is amended by adding at the end thereof the
15 following new section:

16 **“§ 3579. Fine imposed for Criminal Victim Indemnity
17 Fund**

18 “In any court of the United States, the District of
19 Columbia, the Commonwealth of Puerto Rico, a territory or
20 possession of the United States, upon conviction of a person
21 of an offense resulting in personal injury, property loss, or
22 death, the court shall take into consideration the financial
23 condition of such person, and may, in addition to any other
24 penalty, order such person to pay a fine in an amount of not
25 more than \$10,000 and such fine shall be deposited into the

1 Criminal Victim Indemnity Fund of the United States.”

2 (b) The analysis of chapter 227 of title 18 of the United
3 States Code is amended by adding at the end thereof the
4 following new item:

“3579. Fine imposed for Criminal Victim Indemnity Fund.”.

5 PART B—FEDERAL GRANT PROGRAM

6 SEC. 105. Subsection (b) of section 301 of part C of
7 title I of the Omnibus Crime Control and Safe Streets Act of
8 1968, is amended by adding at the end thereof the following
9 new paragraph:

10 “(10) The cost of administration and that portion of
11 the costs of State programs, other than in the District of
12 Columbia, to compensate victims of violent crime which are
13 substantially comparable in coverage and limitations to part
14 F of this title.”

15 SEC. 106. Paragraph (a) of section 601 of part G
16 (redesignated part K by this Act) of title I of the Omnibus
17 Crime Control and Safe Streets Act of 1968 is amended by
18 striking “and” the second time it appears, striking “or” the
19 sixth time it appears, striking the period, and inserting the
20 following: “, or programs for the compensation of victims of
21 violent crimes.”

22 SEC. 107. Section 501 of part F (redesignated as part I
23 by this Act) of the Omnibus Crime Control and Safe Streets
24 Act of 1968, as amended, is amended by inserting “(a)”

1 immediately after "501" and adding at the end thereof the
2 following new subsection:

3 " (b) In addition to the rules, regulations, and proce-
4 dures under subsection (a) of this section, the Administra-
5 tion shall, after consultation with the Violent Crimes Com-
6 pensation Board, establish by rule or regulation criteria to
7 be applied under paragraph (10) of subsection (b) of sec-
8 tion 301 of this title. In addition to other matters, such
9 criteria shall include standards for—

10 " (1) the persons who shall be eligible for compen-
11 sation;

12 " (2) the categories of crimes for which compensa-
13 tion may be ordered;

14 " (3) the losses for which compensation may be or-
15 dered; and

16 " (4) such other terms and conditions for the pay-
17 ment of such compensation as the Administration deems
18 necessary and appropriate."

19 PART C—MISCELLANEOUS PROVISIONS

20 SEC. 108. Section 569 of the Omnibus Crime Control
21 and Safe Streets Act of 1968, as amended and as redesign-
22 ated by this Act, is amended by inserting "(a)" immedi-
23 ately after "569" and by adding at the end thereof the fol-
24 lowing new subsection:

25 " (b) There is authorized to be appropriated for the

1 fiscal year ending June 30, 1973, \$5,000,000 for the pur-
2 poses of part F."

3 SEC. 109. Until specific appropriations are made for
4 carrying out the purposes of this Act, any appropriation
5 made to the Department of Justice or the Law Enforcement
6 invalid, the provisions of the other parts and their applica-
7 tion shall, in the discretion of the Attorney General, be
8 available for payments of obligations arising under this
9 Act.

10 SEC. 110. If the provisions of any part of this Act
11 are found invalid or any amendments made thereby or the
12 application thereof to any persons or circumstances be held
13 invalid, the provisions of the other parts and their applica-
14 tion to other persons or circumstances shall not be affected
15 thereby.

16 SEC. 111. This Act shall become effective upon the
17 date of enactment.

Passed the Senate March 29, 1973.

Attest: FRANCIS R. VALEO,
Secretary.

1 lent crime or their surviving dependents and intervenors act-
2 ing to prevent the commission of crime or to assist in the
3 apprehension of suspected criminals.

4 PART A—FEDERAL COMPENSATION PROGRAM

5 SEC. 102. The Omnibus Crime Control and Safe Streets
6 Act of 1968, as amended, is amended by—

7 (1) redesignating sections 451 through 455, re-
8 spectively, as sections 421 through 425;

9 (2) redesignating sections 501 through 522, re-
10 spectively, as sections 550 through 571;

11 (3) redesignating parts F, G, H, and I of title I,
12 respectively, as parts I, J, K, and L of title I; and

13 (4) adding at the end of part E of title I, as
14 amended by this Act, the following new part:

15 "PART F—FEDERAL COMPENSATION FOR VICTIMS OF
16 VIOLENT CRIME

17 "DEFINITIONS

18 "SEC. 450. As used in this part—

19 "(1) 'Board' means the Violent Crimes Compensa-
20 tion Board established by this part;

21 "(2) 'Chairman' means the Chairman of the Vio-
22 lent Crimes Compensation Board established by this
23 part;

24 "(3) 'child' includes a stepchild, an adopted child,
25 and an illegitimate child;

1 “(4) ‘claim’ means a written request to the Board
2 for compensation made by or on behalf of an intervenor,
3 a victim, or the surviving dependent or dependents of
4 either of them;

5 “(5) ‘claimant’ means an intervenor, victim, or the
6 surviving dependent or dependents of either of them;

7 “(6) ‘compensation’ means payment by the Board
8 for net losses or pecuniary losses to or on behalf of an
9 intervenor, a victim, or the surviving dependent or de-
10 pendents of either of them;

11 “(7) ‘dependent’ means—

12 “(A) a surviving spouse;

13 “(B) an individual who is a dependent of the
14 deceased victim or intervenor within the meaning of
15 section 152 of the Internal Revenue Code of 1954
16 (26 U.S.C. 152) ; or

17 “(C) a posthumous child of the deceased inter-
18 venor or victim;

19 “(8) ‘financial stress’ means the undue financial
20 strain experienced by a victim or his surviving depend-
21 ent or dependents as the result of pecuniary loss from
22 an act, omission, or possession giving rise to a claim
23 under this part, disregarding ownership of—

24 “(A) a residence;

1 “(B) normal household items and personal
2 effects;

3 “(C) an automobile;

4 “(D) such tools as are necessary to maintain
5 gainful employment; and

6 “(E) all other liquid assets not in excess of one
7 year’s gross income or \$10,000 in value, whichever
8 is less;

9 “(9) ‘gross losses’ means all damages, including
10 pain and suffering and including property losses, in-
11 curred by an intervenor or victim, or surviving depend-
12 ent or dependents of either of them, for which the proxi-
13 mate cause is an act, omission, or possession enumerated
14 in section 456 of this part, or set forth in paragraph (B)
15 of subsection (18) of this section;

16 “(10) ‘guardian’ means a person who is entitled by
17 common law or legal appointment to care for and man-
18 age the person or property, or both, of a minor or incom-
19 petent intervenor or victim, or surviving dependent or
20 dependents of either of them;

21 “(11) ‘intervenor’ means a person who goes to the
22 aid of another and is killed or injured while acting not
23 recklessly to prevent the commission or reasonably sus-
24 pected commission of a crime enumerated in section 456
25 of this part, or while acting not recklessly to apprehend

1 a person reasonably suspected of having committed such
2 a crime;

3 “(12) ‘liquid assets’ includes cash on hand, savings
4 accounts, checking accounts, certificates of deposit,
5 stocks, bonds, and all other personal property that may
6 be readily converted into cash;

7 “(13) ‘member’ means a member of the Violent
8 Crimes Compensation Board established by this part;

9 “(14) ‘minor’ means an unmarried person who is
10 under eighteen years of age;

11 “(15) ‘net losses’ means gross losses, excluding pain
12 and suffering, that are not otherwise recovered or re-
13 coverable—

14 “(A) under insurance programs mandated by
15 law;

16 “(B) from the United States, a State, or unit
17 of general local government for a personal injury
18 or death otherwise compensable under this part;

19 “(C) under contract or insurance wherein the
20 claimant is the insured or beneficiary; or

21 “(D) by other public or private means;

22 “(16) ‘pecuniary losses’ means net losses which
23 cover—

24 “(A) for personal injury—

25 “(1) all appropriate and reasonable ex-

1 penses necessarily incurred for medical, hos-
2 pital, surgical, professional, nursing, dental, am-
3 balance, and prosthetic services relating to
4 physical or psychiatric care;

5 “(2) all appropriate and reasonable ex-
6 penses necessarily incurred for physical and
7 occupational therapy and rehabilitation;

8 “(3) actual loss of past earnings and an-
9 ticipated loss of future earnings because of a
10 disability resulting from the personal injury at
11 a rate not to exceed \$150 per week; and

12 “(4) all appropriate and reasonable ex-
13 penses necessarily incurred for the care of minor
14 children enabling a victim or his or her spouse,
15 but not both of them, to continue gainful em-
16 ployment at a rate not to exceed \$30 per child
17 per week, up to a maximum of \$75 per week
18 for any number of children;

19 “(B) for death—

20 “(1) all appropriate and reasonable ex-
21 penses necessarily incurred for funeral and burial
22 expenses;

23 “(2) loss of support to a dependent or de-
24 pendents of a victim, not otherwise compensated
25 for as a pecuniary loss for personal injury, for
26 such period of time as the dependency would

1 have existed but for the death of the victim, at
2 a rate not to exceed a total of \$150 per week for
3 all dependents; and

4 “(3) all appropriate and reasonable ex-
5 penses, not otherwise compensated for as a pecu-
6 niary loss for personal injury, which are in-
7 curred for the care of minor children, enabling
8 the surviving spouse of a victim to engage in
9 gainful employment, at a rate not to exceed \$30
10 per week per child, up to a maximum of \$75
11 per week for any number of children;

12 “(17) ‘personal injury’ means actual bodily harm
13 and includes pregnancy, mental distress, and nervous
14 shock; and

15 “(18) ‘victim’ means a person who is killed or who
16 suffers personal injury where the proximate cause of
17 such death or personal injury is—

18 “(A) a crime enumerated in section 456 of this
19 part; or

20 “(B) the not reckless actions of an intervenor
21 in attempting to prevent the commission or reason-
22 ably suspected commission of a crime enumerated in
23 section 456 of this part or in attempting to appre-
24 hend a person reasonably suspected of having com-
25 mitted such a crime.

1 "BOARD

2 "SEC. 451. (a) There is hereby established a Board
3 within the Department of Justice to be known as the Violent
4 Crimes Compensation Board. The Board shall be composed
5 of three members, each of whom shall have been members of
6 the bar of the highest court of State for at least eight years,
7 to be appointed by the President, by and with the advice and
8 consent of the Senate. The President shall designate one of
9 the members of the Board to serve as Chairman.

10 "(b) No member of the Board shall engage in any other
11 business, vocation, or employment.

12 "(c) The Board shall have an official seal.

13 "(d) The term of office of each member of the Board
14 shall be eight years, except that (1) the terms of office of
15 the members first taking office shall expire as designated by
16 the President at the time of appointment, one at the end of
17 four years, one at the end of six years, and one at the end of
18 eight years and (2) any member appointed to fill a vacancy
19 occurring prior to the expiration of the term for which his
20 predecessor was appointed shall be appointed for the re-
21 mainder of such term.

22 "(e) Each member of the Board shall be eligible for
23 reappointment.

24 "(f) Any member of the Board may be removed by
25 the President for inefficiency, neglect of duty, or malfeasance
26 in office.

1 and statistics) of Federal agencies and those of State
2 and local public agencies and private institutions, with
3 or without reimbursement therefor;

4 “(6) enter into and perform, without regard to
5 section 529 of title 31 of the United States Code, such
6 contracts, leases, cooperative agreements, or other trans-
7 actions as may be necessary in the conduct of its func-
8 tions, with any public agency, or with any person, firm,
9 association, corporation, or educational institution, and
10 make grants to any public agency or private nonprofit
11 organization;

12 “(7) request and use such information, data, and
13 reports from any Federal agency as the Board may from
14 time to time require and as may be produced consistent
15 with other law;

16 “(8) arrange with the heads of other Federal agen-
17 cies for the performance of any of its functions under
18 this part with or without reimbursement and, with the
19 approval of the President, delegate and authorize the
20 redelegation of any of its powers under this part;

21 “(9) request each Federal agency to make its serv-
22 ices, equipment, personnel, facilities, and information
23 (including suggestions, estimates, and statistics) avail-
24 able to the greatest practicable extent to the Board
25 in the performance of its functions;

1 viving dependent or dependents, by computing the pe-
2 cuniary losses of the claimant.

3 “(e) The Board may order the payment of compensa-
4 tion under this part to the extent it is based upon anticipated
5 loss of future earnings or loss of support of the victim for
6 ninety days or more, or child care payments, in the form of
7 periodic payments during the protracted period of such loss
8 of earnings, support of payments, or ten years, whichever
9 is less.

10 “(d) The Board may order the payment of compensa-
11 tion under this part to a victim or his surviving dependent or
12 dependents held in abeyance until such time as the victim
13 or his surviving dependent or dependents has exhausted his
14 liquid assets.

15 “(e) (1) Whenever the Board determines, prior to tak-
16 ing final action upon a claim, that such claim is one with re-
17 spect to which an order of compensation will probably be
18 made, the Board may order emergency compensation not to
19 exceed \$1,500 pending final action on the claim.

20 “(2) The amount of any emergency compensation or-
21 dered under paragraph (1) of this subsection shall be de-
22 ducted from the amount of any final order for compensation.

23 “(3) Where the amount of any emergency compensa-
24 tion ordered under paragraph (1) of this subsection exceeds
25 the amount of the final order for compensation, or if there is

1 no order for compensation made, the recipient of any such
2 emergency compensation shall be liable for the repayment of
3 such compensation. The Board may waive all or part of such
4 repayment.

5 “(f) No order for compensation under this part shall
6 be subject to execution or attachment.

7 “(g) The availability or payment of compensation
8 under this part shall not affect the right of any person to
9 recover damages from any other person by a civil action for
10 the injury or death, subject to the limitations of this part—

11 “(1) in the event an intervenor, a victim, or the
12 surviving dependent or dependents of either of them who
13 has a right to file a claim under this part should first
14 recover damages from any other source based upon an
15 act, omission, or possession giving rise to a claim under
16 this part, such damages shall be first used to offset gross
17 losses that do not qualify as net or pecuniary losses; and

18 “(2) in the event an intervenor, victim, or the sur-
19 viving dependent or dependents of either of them re-
20 ceives compensation under this part and subsequently
21 recovers damage from any other source based upon an
22 act, omission, or possession that gave rise to compensa-
23 tion under this part, the Board shall be reimbursed for
24 compensation previously paid to the same extent com-
25 pensation would have been reduced had recovery pre-

1 ceded compensation under paragraph (1) of this
2 subsection.

3 “(h) The Board may reconsider a claim at any time
4 and modify or rescind previous orders for compensation
5 based upon a change in financial circumstances of a victim
6 or one or more of his surviving dependents that eliminates
7 financial stress.

8 “LIMITATIONS

9 “SEC. 454. (a) No order for compensation under this
10 part shall be allowed to or on behalf of a victim or his sur-
11 viving dependent or dependents unless the Board finds that
12 such a claimant will suffer financial stress from pecuniary
13 losses for which the act, omission, or possession giving rise
14 to the claim was the proximate cause.

15 “(b) No order for compensation under this part shall
16 be made unless the claim has been made within one year
17 after the date of the act, omission, or possession resulting in
18 the injury or death, unless the Board finds that the failure to
19 file was justified by good cause.

20 “(c) No order for compensation under this part shall
21 be made to or on behalf of an intervenor, victim, or the
22 surviving dependent or dependents of either of them unless
23 a minimum pecuniary or net loss of \$100 or an amount equal
24 to a week's earnings or support, whichever is less, has been
25 incurred.

1 “(d) No order for compensation under this part shall
2 be made unless the act, omission, or possession giving rise to
3 a claim under this part, was reported to the law enforcement
4 officials within seventy-two hours after its occurrence, unless
5 the Board finds that the failure to report was justified by good
6 cause.

7 “(e) No order for compensation under this part to or on
8 behalf of a victim, his surviving dependent or dependents, as
9 the result of any one act, omission, or possession, or related
10 series of such acts, omissions, or possessions, giving rise
11 to a claim, shall be in excess of \$50,000, including lump-sum
12 and periodic payments.

13 “(f) The Board, upon finding that any claimant has not
14 substantially cooperated with all law enforcement agencies
15 incident to the act, omission, or possession that gave rise to
16 the claim, may proportionately reduce, deny, or withdraw
17 any order for compensation under this part.

18 “(g) The Board, in determining whether to order com-
19 pensation or the amount of the compensation, shall consider
20 the behavior of the claimant and whether, because of provo-
21 cation or otherwise, he bears any share of responsibility for
22 the act, omission, or possession that gave rise to the claim for
23 compensation and—

24 “(1) the Board shall reduce the amount of compen-
25 sation to the claimant in accordance with its assessment

1 of the degree of such responsibility attributable to the
2 claimant, or

3 “(2) in the event the claimant’s behavior was a
4 substantial contributing factor to the act, omission, or
5 possession giving rise to a claim under this part, he shall
6 be denied compensation.

7 “(h) No order for compensation under this part shall
8 be made to or on behalf of a person engaging in the act,
9 omission, or possession giving rise to the claim for compensa-
10 tion, to or on behalf of his accomplice, a member of the
11 family or household of either of them, or to or on behalf of
12 any person maintaining continuing unlawful sexual relations
13 with either of them.

14 “PROCEDURES

15 “SEC. 455. (a) The Board is authorized to receive
16 claims for compensation under this part filed by an inter-
17 venor, a victim, or the surviving dependent or dependents of
18 either of them, or a guardian acting on behalf of such a
19 person.

20 “(b) The Board—

21 “(1) may subpoena and require production of docu-
22 ments in the manner of the Securities and Exchange
23 Commission as provided in subsection (c) of section
24 (18) of the Act of August 26, 1935, except that such
25 subpoena shall only be issued under the signature of the

1 Chairman, and application to any court for aid in en-
2 forcing such subpoena shall be made only by the Chair-
3 man, but a subpoena may be served by any person desig-
4 nated by the Chairman;

5 “(2) may administer oaths, or affirmations to wit-
6 nesses appearing before the Board, receive in evidence
7 any statement, document, information, or matter that
8 may, in the opinion of the Chairman, contribute to its
9 functions under this part, whether or not such statement,
10 document, information, or matter would be admissible in
11 a court of law, provided it is relevant and not priv-
12 ileged;

13 “(3) shall, if hearings are held, conduct such hear-
14 ings open to the public, unless in a particular case the
15 Chairman determines that the hearing, or a portion
16 thereof, should be held in private, having regard to the
17 fact that a criminal suspect may not yet have been
18 apprehended or convicted, or to the interest of the claim-
19 ant; and

20 “(4) may, at the discretion of the Chairman, ap-
21 point an impartial licensed physician to examine any
22 claimant under this part and order the payment of rea-
23 sonable fees for such examination.

24 “(c) The Board shall be an ‘agency of the United
25 States’ under subsection (1) of section 6001 of title 18 of

1 the United States Code for the purpose of granting immunity
2 to witnesses.

3 “(d) The provisions of chapter 5 of title 5 of the
4 United States Code shall not apply to adjudicatory pro-
5 cedures to be utilized before the Board.

6 “(e) (1) A claim for compensation under this part may
7 be acted upon by a member designated by the Chairman to
8 act on behalf of the Board.

9 “(2) In the event the disposition by a member
10 as authorized by paragraph (1) of this subsection is
11 unsatisfactory to the claimant, the claimant shall be
12 entitled to a de novo hearing of record on his claim
13 by the full Board.

14 “(f) (1) Decisions of the full Board shall be in accord
15 with the will of a majority of the members and shall be based
16 upon a preponderance of the evidence.

17 “(2) All questions as to the relevancy or privileged na-
18 ture of evidence at such times as the full Board shall sit shall
19 be decided by the Chairman.

20 “(3) A claimant at such times as the full Board shall
21 sit shall have the right to produce evidence and to cross-
22 examine such witnesses as may appear.

23 “(g) (1) The Board shall publish regulations providing
24 that an attorney may, at the conclusion of proceedings under
25 this part, file with the Board an appropriate statement for a

1 fee in connection with services rendered in such proceedings.

2 “(2) After the fee statement is filed by an attorney
3 under paragraph (1) of this subsection, the Board shall
4 award a fee to such attorney on substantially similar terms
5 and conditions as is provided for the payment of representa-
6 tion under section 3006A of title 18 of the United States
7 Code.

8 “(3) Any attorney who charges or collects for services
9 rendered in connection with any proceedings under this part
10 any fee in any amount in excess of that allowed under this
11 subsection shall be fined not more than \$1,000 or imprisoned
12 not more than one year, or both.

13 “(h) The United States Court of Appeals for the Dis-
14 trict of Columbia shall have jurisdiction to review all final
15 orders of the Board. No finding of fact supported by substan-
16 tial evidence shall be set aside.

17 “CRIMES

18 “SEC. 456. (a) The Board is authorized to order com-
19 pensation under this part in any case in which an intervenor,
20 victim, or the surviving dependent or dependents of either of
21 them files a claim when the act, omission, or possession giving
22 rise to the claim for compensation occurs—

23 “(1) within the ‘special maritime and territorial
24 jurisdiction of the United States’ within the meaning of
25 section 7 of title 18 of the United States Code;

- 1 “(2) within the District of Columbia; or
2 “(3) within ‘Indian country’ within the meaning
3 of section 1151 of title 18 of the United States Code.
4 “(b) This part applies to the following acts, omissions,
5 or possessions:
6 “(1) aggravated assault;
7 “(2) arson;
8 “(3) assault;
9 “(4) burglary;
10 “(5) forcible sodomy;
11 “(6) kidnaping;
12 “(7) manslaughter;
13 “(8) mayhem;
14 “(9) murder;
15 “(10) negligent homicide;
16 “(11) rape;
17 “(12) robbery;
18 “(13) riot;
19 “(14) unlawful sale or exchange of drugs;
20 “(15) unlawful use of explosives;
21 “(16) unlawful use of firearms;
22 “(17) any other crime, including poisoning, which
23 poses a substantial threat of personal injury; or
24 “(18) attempts to commit any of the foregoing.
25 “(c) For the purposes of this part, the operation of a

1 motor vehicle, boat, or aircraft that results in an injury or
2 death shall not constitute a crime unless the injuries were
3 intentionally inflicted through the use of such vehicle, boat,
4 or aircraft or unless such vehicle, boat, or aircraft is an
5 implement of a crime to which this part applies.

6 " (d) For the purposes of this part, a crime may be
7 considered to have been committed notwithstanding that by
8 reason of age, insanity, drunkenness, or otherwise, the per-
9 son engaging in the act, omission, or possession was legally
10 incapable of committing a crime.

11 "SUBROGATION

12 "SEC. 457. (a) Whenever an order for compensation
13 under this part has been made for loss resulting from an act,
14 omission, or possession of a person, the Attorney General
15 may, within three years from the date on which the order
16 for compensation was made, institute an action against such
17 person for the recovery of the whole or any specified part of
18 such compensation in the district court of the United States
19 for any judicial district in which such person resides or is
20 found. Such court shall have jurisdiction to hear, determine,
21 and render judgment in any such action. Any amounts re-
22 covered under this subsection shall be deposited in the Crim-
23 inal Victim Indemnity Fund established by section 458 of
24 this part.

25 " (b) The Board shall provide to the Attorney General

1 such information, data, and reports as the Attorney General
2 may require to prosecute actions in accordance with this
3 section.

4 "INDEMNITY FUND

5 "SEC. 458. (a) There is hereby created on the books of
6 the Treasury of the United States a fund known as the
7 Criminal Victim Indemnity Fund (hereinafter referred to as
8 the 'Fund'). Except as otherwise specifically provided, the
9 Fund shall be the repository of (1) criminal fines paid in
10 the various courts of the United States, (2) additional
11 amounts that may be appropriated to the Fund as provided
12 by law, and (3) such other sums as may be contributed to
13 the Fund by public or private agencies, organizations, or
14 persons.

15 "(b) The Fund shall be utilized only for the purposes
16 of this part.

17 "ADVISORY COUNCIL

18 "SEC. 459. (a) There is hereby established an Advisory
19 Council on the Victims of Crime (hereinafter referred to as
20 the 'Council') consisting of the members of the Board and
21 one representative from each of the various State crime vic-
22 tims compensation programs referred to in paragraph (10)
23 of subsection (b) of section 301 of this title, each of whom
24 shall serve without additional compensation.

25 "(b) The Chairman of the Board shall also serve as
26 the Chairman of the Council.

1 COMPENSATION OF BOARD MEMBERS

2 SEC. 103. (a) Section 5314 of title 5 of the United
3 States Code is amended by adding at the end thereof the
4 following new paragraph:

5 “(58) Chairman, Violent Crimes Compensation
6 Board.”

7 (b) Section 5315 of title 5 of the United States Code is
8 amended by adding at the end thereof the following new
9 paragraph:

10 “(95) Members, Violent Crimes Compensation
11 Board.”

12 CRIMINAL VICTIM INDEMNITY FUND FINES

13 SEC. 104. (a) Chapter 227 of title 18 of the United
14 States Code is amended by adding at the end thereof the
15 following new section:

16 **“§ 3579. Fine imposed for Criminal Victim Indemnity**
17 **Fund**

18 “In any court of the United States, the District of
19 Columbia, the Commonwealth of Puerto Rico, a territory or
20 possession of the United States, upon conviction of a person
21 of an offense resulting in personal injury, property loss, or
22 death, the court shall take into consideration the financial
23 condition of such person, and may, in addition to any other
24 penalty, order such person to pay a fine in an amount of not
25 more than \$10,000 and such fine shall be deposited into the

1 Criminal Victim Indemnity Fund of the United States.”

2 (b) The analysis of chapter 227 of title 18 of the United
3 States Code is amended by adding at the end thereof the
4 following new item:

“3579. Fine imposed for Criminal Victim Indemnity Fund.”.

5 PART B—FEDERAL GRANT PROGRAM

6 SEC. 105. Subsection (b) of section 301 of part C of
7 title I of the Omnibus Crime Control and Safe Streets Act of
8 1968, is amended by adding at the end thereof the following
9 new paragraph:

10 “(10) The cost of administration and that portion of
11 the costs of State programs, other than in the District of
12 Columbia, to compensate victims of violent crime which are
13 substantially comparable in coverage and limitations to part
14 F of this title.”

15 SEC. 106. Paragraph (a) of section 601 of part G
16 (redesignated part K by this Act) of title I of the Omnibus
17 Crime Control and Safe Streets Act of 1968 is amended by
18 striking “and” the second time it appears, striking “or” the
19 sixth time it appears, striking the period, and inserting the
20 following: “, or programs for the compensation of victims of
21 violent crimes.”

22 SEC. 107. Section 501 of part F (redesignated as part I
23 by this Act) of the Omnibus Crime Control and Safe Streets
24 Act of 1968, as amended, is amended by inserting “(a)”

1 immediately after "501" and adding at the end thereof the
2 following new subsection:

3 “(b) In addition to the rules, regulations, and proce-
4 dures under subsection (a) of this section, the Administra-
5 tion shall, after consultation with the Violent Crimes Com-
6 pensation Board, establish by rule or regulation criteria to
7 be applied under paragraph (10) of subsection (b) of sec-
8 tion 301 of this title. In addition to other matters, such
9 criteria shall include standards for—

10 “(1) the persons who shall be eligible for compen-
11 sation;

12 “(2) the categories of crimes for which compensa-
13 tion may be ordered;

14 “(3) the losses for which compensation may be or-
15 dered; and

16 “(4) such other terms and conditions for the pay-
17 ment of such compensation as the Administration deems
18 necessary and appropriate.”

19 PART C—MISCELLANEOUS PROVISIONS

20 SEC. 108. Section 569 of the Omnibus Crime Control
21 and Safe Streets Act of 1968, as amended and as redesign-
22 ated by this Act, is amended by inserting “(a)” immedi-
23 ately after “569” and by adding at the end thereof the fol-
24 lowing new subsection:

25 “(b) There is authorized to be appropriated for the

1 fiscal year ending June 30, 1973, \$5,000,000 for the pur-
2 poses of part F.”

3 SEC. 109. Until specific appropriations are made for
4 carrying out the purposes of this Act, any appropriation
5 made to the Department of Justice or the Law Enforcement
6 invalid, the provisions of the other parts and their applica-
7 tion shall, in the discretion of the Attorney General, be
8 available for payments of obligations arising under this
9 Act.

10 SEC. 110. If the provisions of any part of this Act
11 are found invalid or any amendments made thereby or the
12 application thereof to any persons or circumstances be held
13 invalid, the provisions of the other parts and their applica-
14 tion to other persons or circumstances shall not be affected
15 thereby.

16 SEC. 111. This Act shall become effective upon the
17 date of enactment.

Mr. EILBERG. Would you be kind enough to proceed, sir.

Excuse me, Senator, the ranking Republican Member, Hon. William Keating of Ohio, would like to add something at this point.

Mr. KEATING. Senator Mansfield, I am going to follow the lead of the subcommittee chairman and not make an opening statement in view of your time. I want to thank you for testifying on this very important topic and I hope we can go forward.

TESTIMONY OF HON. MIKE MANSFIELD, A U.S. SENATOR FROM THE STATE OF MONTANA

Mr. MANSFIELD. Thank you, Mr. Keating.

Chairman Rodino, an old friend of mine with whom I served many years in the House, Chairman Eilberg, Mr. Keating, gentlemen of the committee, I think that we in the Senate have learned a great deal with respect to the way you conduct your affairs in this committee, and for the most part it is very impressive.

I am grateful for this opportunity to appear before you this morning. I do so on behalf of the countless thousands of innocent victims of crime. I do so as well out of a deep sense of personal concern for the effects of violence upon society today. Indeed, it is a society where attitudes of concern and compassion have been replaced too often recently by those of apathy and indifference. I doubt that any person in this room today will forget the matter of Kitty Genovese—a young New Yorker put to death by violence not too many years ago as some 32 of her so-called fellow citizens looked on. In short, America has suffered deeply and in many different ways from the ravages of crime. The daily press across this land documents seemingly endless stories of violence, of aggravated assault and arson, of burglary and murder, of rape, riot, and robbery.

To help meet this condition the Constitution and the law books of this Nation provide a carefully framed system of law enforcement and criminal justice. I speak not as a lawyer but simply as one who is deeply alarmed when I say that my concern chiefly is that recent efforts by the Congress and other institutions to stimulate new approaches to stemming and even reversing the rate of crime and violence have utterly and without justification ignored the criminal victim. Under our code there are but two parties: the people and the criminal. It is a system that too often finds the Government bogged down in court. It is a system that finds the criminal—if convicted—more hardened and even more expert at his trade as he resides in a penal institution ill-equipped and unable to perform its basic task of rehabilitation. And what of the criminal victim? What of his injury and suffering, his personal loss and financial impairment? As a practical matter he is left to pursue a course of action for damages against a defendant who if apprehended is typically destitute and judgment proof. I do not know the figure today, but 2 or 3 years ago according to the President's Commission on the Causes and Prevention of Violence, a bare 1.8 percent of the victims ever collected anything from their attackers.

In effect, under our system, the criminal victim is virtually separated from the crime. And it is to restore the victim to his proper position within our code of justice that I proposed Senate bill 300, the Victims of Crime Act of 1973. S. 300, or for that matter, any such victims

proposal, revives a concept that finds its historical base in the very first criminal justice code. But without belaboring its traditional validity, I would just say that the justification for such a program stems today from a number of diverse yet totally compelling notions. There is first the idea that once society undertakes to furnish protection to its members by way of police and safety facilities, it should, if those protection efforts fail, assume a responsibility that recognizes the victim and his loss. Beyond this contractual arrangement there are numerous precedents based on similar recognized social responsibilities. A number of steps have been taken in the past 30 years or more which demonstrate governmental obligations with respect to collective community need.

In fact, there is a great similarity in rationale and origin between the idea of compensating workers, assuring them a reasonably safe place in which to work and compensating victims of crime, assuring them a reasonably safe society in which to live.

Social security and medicare; aid to dependent children, assistance for the handicapped, the aged, and the blind; notions of no-fault insurance and national health insurance—all reflect a recognition of collective responsibility. Fulfilling this responsibility with regard to victims of crime is no easy task. Senate bill 300 attempts to face the problem. If adopted at the Federal level, however, it would by no means represent the first such step taken in modern times. Indeed, within the last 10 years, New Zealand, England, particular provinces in Canada and Australia—all have enacted government programs to compensate innocent victims of violence. In addition, the States of California, Hawaii, Nevada, Maryland, Massachusetts, New York and most recently, New Jersey and Alaska and Rhode Island, all have enacted some type of program along these lines.

May I say that I have endeavored to study this problem as deeply as any that has gained my interest and concern in all my years in public life. In my judgment I believe Senate bill 300 by and large represents the best approach. However, since its passage by the Senate, I have become convinced that certain modifications are in order. To reflect my views I have prepared a draft substitute bill that incorporates the modifications. I now submit this draft substitute for the record and with your leave, Mr. Chairman, ask that it be included following my remarks.

Mr. EILBERG. It will be included. [See p. 61.]

Mr. MANSFIELD. In thrust and complexion, my draft substitute makes one most significant change. It structures this program along the lines of reimbursement rather than compensation. Reimbursement, in my judgment, Mr. Chairman, reflects a more accurate characterization of what is here involved. What we are seeking to do is to restore the innocent victim to his financial status immediately before the crime which caused loss. We therefore are reimbursing him for those losses that are not covered otherwise—either by insurance, by judgments obtained in a court of law or by whatever means. A second major change would eliminate the so-called "means test." Under Senate bill 300, to qualify for recovery an injured victim of crime would have to suffer what is defined as, "undue financial stress." That test has been patterned upon standards set forth in the New York State statute.

In practice it is not a valid test simply because most of those victims of crime to whom it applies are covered by insurance and for that reason would be ineligible to obtain recovery under this act.

In practice, I would say, too, that the New York experience has shown that only a very small fraction of claims are denied for failure to meet the undue financial stress standard. I am confident that the able chairman of the New York Crime Victim Compensation Board scheduled to testify later today will bear this out.

In this respect, also, it should be noted that all citizens of this Nation are equal before the bar of justice. I would hope that the same concept of equality might exist for victims of crime; when seeking to assert his rights and redress his wrongs the victim of crime deserves similar equity.

A third change that I have proposed in this draft involves the matter of the indemnity fund which is designed to provide the centerpiece for the financial base of this program at the Federal level. There is provided in S. 300 a criminal victim indemnity fund comprised mainly of fines paid into the Federal criminal system by convicted criminal defendants. It is contemplated that supplemental amounts would be provided by way of appropriations. In my draft modification I suggest that the idea of placing the victims economic burden directly on the criminal be carried one step further. I suggest that the fund also contain moneys earned by the convicted criminal in the U.S. prison industries program. Part B of the draft—the State grant portion of the bill—would impose upon the States a similar undertaking so that in all criminal jurisdictions which recognize the victims' rights, the criminal is compelled to work—in part at least—to pay—truly pay—for his crime. This requirement ultimately would be a condition to the receipt of any Federal moneys by States under part B of the proposal.

This brings me to another point which I believe is of some concern. In my judgment the core of the Federal program or of any Federal program in this area for that matter must necessarily be provided by the District of Columbia. I certainly would agree with the sentiment that local people and local personnel ought to be depended upon for their particular expertise and knowledge and awareness of crime and its effects within the District of Columbia when administering this type of program. Such a notion, however, would not be inconsistent with or preclude the inclusion of the District of Columbia in part A—the Federal part—of this bill. Indeed, I think it is indispensable to the viability of a Federal program that the District be so included.

Mr. Chairman, this whole matter of crime victims' reimbursement or compensation has undergone exhaustive study by the Senate Committee on the Judiciary. I feel confident that I speak on behalf of that committee in saying that the investigation that your subcommittee and the full House Judiciary Committee is undertaking here is most welcome. With the study that has already transpired and with these hearings and the investigation that undoubtedly will follow, I am certain that many of the features of this proposal will undergo change—as they have already. This of course is the essential purpose of the legislative process. May I say, too, that it would be in order in my judgment to consider President Nixon's recommendation for special compensation for injured policemen and firemen and their

survivors along with this proposal. I think it most appropriate that both programs be considered in the same vehicle since both are so similarly and in many ways inextricably related.

One final note, Mr. Chairman. It was 5 years ago this summer that a young marine named Thaddeus Lesnik who happened to come from Fishtail, Mont., was shot down as he was about to pay for his dinner in a restaurant here in the District of Columbia. Thad died and this wanton killing touched me deeply and compelled me to review and reshape my attitude toward crime and its effects on society. Having occurred here in the District of Columbia, Thad's pain and suffering, and the rest of the cost of his murder, were not covered by compensation, by reimbursement, or by anything at all. Nor would they have been in Montana. Had the murder occurred in New York, however, or indeed in New Jersey today—the home State of the able and distinguished chairman of the House Committee on the Judiciary—recognition would have been provided for Thad and for his loss as an innocent victim of violence.

Before this session adjourns this year, it is my hope and prayer that hereafter victims will be treated alike throughout the land. It is my hope that the legislative process will have been completed and that there will be established on the Federal level the principle that violent crime is not just a two-party affair, but that it includes three parties—the victim, the criminal, and the State.

In the last 100 years the criminal and the State have dominated the arena of crime and punishment to the injurious exclusion of the victim. To revive at this time the proposition that citizens are entitled to protection, and failing such protection, that citizens are entitled at least to be reimbursed for the losses they suffer from violence, can only serve to strengthen the social fiber of our Nation.

I know this is a proposition in which the distinguished Chairman of the House Committee on the Judiciary concurs, because we have discussed this on a personal basis many times. Believe me, his leadership—and yours, Mr. Eilberg—on this issue is greatly appreciated. I could not be more pleased than to join with this committee today in voicing support for the victims of violence so that beyond today the victim may assume his proper place in this Nation's system of criminal justice.

Thank you very much.

Mr. EILBERG. Senator Mansfield, I am sure that I express the appreciation of our entire subcommittee for your statement here today. Recognizing your leadership in this very important field of legislation, I assure you, sir, that we will consider the matter thoroughly. We will examine the proposed changes which you have advocated here this morning and, in view of the very compelling pressures on you in the Senate, I suggest that you may leave, sir. If we need you back at some other time for questions, I am hopeful that you would be able to come back.

Senator, we are very indebted to you.

Mr. MANSFIELD. Thank you very much, Mr. Chairman, and gentlemen of the committee. If I can be of service at any time, I will be at your service.

Chairman RODINO. Thank you, very much, Senator Mansfield. I want to assure you that I will be keeping in close touch. We certainly

will do whatever we can to hasten the enactment of this legislation; and I want to again applaud you for your initiative, leadership, and worthwhile efforts.

Mr. MANSFIELD. Thank you, Mr. Chairman, gentlemen of the committee.

[The draft substitute bill submitted by Senator Mansfield follows:]

A BILL To provide for the reimbursement for losses sustained by persons injured by certain criminal acts, to make grants to States for the payment of such reimbursement, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Victims of Crime Act of 1973".

REIMBURSEMENT FOR VICTIMS OF VIOLENT CRIME

DECLARATION OF PURPOSE

SEC. 101. It is the declared purpose of Congress in this Act to promote the public welfare by establishing a means of meeting the financial needs of the innocent victims of violent crime or their surviving dependents and intervenors acting to prevent the commission of crime or to assist in the apprehension of suspected criminals.

PART A—FEDERAL REIMBURSEMENT PROGRAM

SEC. 102. The Omnibus Crime Control and Safe Streets Act of 1968, as amended, is amended by—

- (1) redesignating sections 451 through 455, respectively, as sections 421 through 425;
- (2) redesignating sections 501 through 522, respectively, as sections 550 through 571;
- (3) redesignating parts F, G, H, and I of title I, respectively, as parts I, J, K, and L of title I; and
- (4) adding at the end of part E of title I, as amended by this Act, the following new part:

"PART F—FEDERAL REIMBURSEMENT FOR VICTIMS OF VIOLENT CRIME

"DEFINITIONS

"SEC. 450. As used in this part—

"(1) 'Board' means the Violent Crimes Reimbursement Board established by this part;

"(2) 'Chairman' means the Chairman of the Violent Crimes Reimbursement Board established by this part;

"(3) 'child' includes a stepchild, an adopted child, and an illegitimate child;

"(4) 'claim' means a written request to the Board for reimbursement made by or on behalf of an intervenor, a victim, or the surviving dependent or dependents of either of them;

"(5) 'claimant' means an intervenor, victim, or the surviving dependent or dependents of either of them;

"(6) 'reimbursement' means payment by the Board for net losses or pecuniary losses to or on behalf of an intervenor, a victim, or the surviving dependent or dependents of either of them;

"(7) 'dependent' means—

"(A) a surviving spouse;

"(B) an individual who is a dependent of the deceased victim or intervenor within the meaning of section 152 of the Internal Revenue Code of 1954 (26 U.S.C. 152); or

"(C) a posthumous child of the deceased intervenor or victim;

"(8) 'gross losses' means all damages, including pain and suffering and including property losses, incurred by an intervenor or victim, or surviving dependent or dependents of either of them, for which the proximate cause is an act, omission, possession enumerated in section 456 of this part, or set forth in paragraph (B) of subsection (18) of this section;

"(9) 'guardian' means a person who is entitled by common law or legal appointment to care for and manage the person or property, or both, of a minor or incompetent intervenor or victim, or surviving dependent or dependents of either of them;

"(10) 'intervenor' means a person who goes to the aid of another and is killed or injured while acting not recklessly to prevent the commission or reasonably suspected commission of a crime enumerated in section 456 of this part, or while acting not recklessly to apprehend a person reasonably suspected of having committed such a crime;

"(11) 'member' means a member of the Violent Crimes Board established by this part;

"(12) 'minor' means an unmarried person who is under eighteen years of age;

"(13) 'net losses' means gross losses, excluding pain and suffering, that are not otherwise recovered or recoverable—

"(A) under insurance programs mandated by law;

"(B) from the United States, a State, or unit of general local government for a personal injury or death otherwise compensable under this part;

"(C) under contract or insurance wherein the claimant is the insured or beneficiary; or

"(D) by other public or private means;

"(14) 'pecuniary losses' means net losses which cover—

"(A) for personal injury—

"(1) all appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional, nursing, dental, ambulance, and prosthetic services relating to physical or psychiatric care;

"(2) all appropriate and reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation;

"(3) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury at a rate not to exceed \$150 per week; and

"(4) all appropriate and reasonable expenses necessarily incurred for the care of minor children enabling a victim or his or her spouse, but not both of them, to continue gainful employment at a rate not to exceed \$30 per child per week, up to a maximum of \$75 per week for any number of children;

"(B) for death—

"(1) all appropriate and reasonable expenses necessarily incurred for funeral and burial expenses;

"(2) loss of support to a dependent or dependents of a victim, not otherwise compensated for as a pecuniary loss for personal injury, for such period of time as the dependency would have existed but for the death of the victim, at a rate not to exceed a total of \$150 per week for all dependents; and

"(3) all appropriate and reasonable expenses, not otherwise compensated for as a pecuniary loss for personal injury, which are incurred for the care of minor children, enabling the surviving spouse of a victim to engage in gainful employment, at a rate not to exceed \$30 per week per child, up to a maximum of \$75 per week for any number of children;

"(15) 'personal injury' means actual bodily harm and includes pregnancy, mental distress, and nervous shock; and

"(16) 'victim' means a person who is killed or who suffers personal injury where the proximate cause of such death or personal injury is—

"(A) a crime enumerated in section 456 of this part; or

"(B) the not reckless actions of an intervenor in attempting to prevent the commission or reasonably suspected commission of a crime enumerated in section 456 of this part or in attempting to apprehend a person reasonably suspected of having committed such a crime.

"BOARD

"Sec. 451. (a) There is hereby established a Board within the Department of Justice to be known as the Violent Crimes Reimbursement Board. The Board shall be composed of three members, each of whom shall have been members of

the bar of the highest court of State for at least eight years, to be appointed by the President, by and with the advice and consent of the Senate. Not more than two members shall be affiliated with the same political party. The President shall designate one of the members of the Board to serve as Chairman.

"(b) No member of the Board shall engage in any other business, vocation, or employment.

"(c) The Board shall have an official seal.

"(d) The term of office of each member of the Board shall be eight years, except that (1) the terms of office of the members first taking office shall expire as designated by the President at the time of appointment, one at the end of four years, one at the end of six years, and one at the end of eight years and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

"(e) Each member of the Board shall be eligible for reappointment.

"(f) Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

"(g) The principal office of the Board shall be in or near the District of Columbia, but the Board or any duly authorized representative may exercise any or all of its powers in any place.

"ADMINISTRATION

"SEC. 452. The Board is authorized in carrying out its functions under this part to—

"(1) appoint and fix the compensation of an Executive Director and a General Counsel and such other personnel as the Board deems necessary in accordance with the provisions of title 5 of the United States Code;

"(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5 of the United States Code, but at rates not to exceed \$100 a day for individuals;

"(3) promulgate such rules and regulations as may be required to carry out the provisions of this part;

"(4) designate representatives to serve or assist on such advisory committees as the Board may determine to be necessary to maintain effective liaison with Federal agencies and with State and local agencies developing or carrying out policies or programs related to the provisions of this part;

"(5) request and use the services, personnel, facilities, and information (including suggestions, estimates, and statistics) of Federal agencies and those of State and local public agencies and private institutions, with or without reimbursement therefor;

"(6) enter into and perform, without regard to section 529 of title 31 of the United States Code, such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its functions, with any public agency, or with any person, firm, association, corporation, or educational institution, and make grants to any public agency or private nonprofit organization;

"(7) request and use such information, data, and reports from any Federal agency as the Board may from time to time require and as may be produced consistent with other law;

"(8) arrange with the heads of other Federal agencies for the performance of any of its functions under this part with or without reimbursement and, with the approval of the President, delegate and authorize the redelegation of any of its powers under this part;

"(9) request each Federal agency to make its services, equipment, personnel, facilities, and information (including suggestions, estimates, and statistics) available to the greatest practicable extent to the Board in the performance of its functions;

"(10) pay all expenses of the Board, including all necessary travel and subsistence expenses of the Board outside the District of Columbia incurred by the members or employees of the Board under its orders on the presentation of itemized vouchers therefor approved by the Chairman or his designate; and

"(11) establish a program to assure extensive and continuing publicity for the provisions relating to compensation under this part, including information on the right to file a claim, the scope of coverage, and procedures to be utilized incident thereto.

"REIMBURSEMENT

"Sec. 453. (a) The Board shall order the payments—

"(1) in the case of the personal injury of an intervenor or victim, to or on behalf of that person; or

"(2) in the case of the death of the intervenor or victim, to or on behalf of the surviving dependent or dependents of either of them.

"(b) The Board shall determine the amount of reimbursement under this part—

"(1) in the case of a claim by an intervenor or his surviving dependent or dependents, by computing the net losses of the claimant; and

"(2) in the case of a claim by a victim or his surviving dependent or dependents, by computing the pecuniary losses of the claimant.

"(c) The Board may order the payment of reimbursement under this part to the extent it is based upon anticipated loss of future earnings or loss of support of the victim for ninety days or more, or child care payments, in the form of periodic payments during the protracted period of such loss of earnings, support of payments, or ten years, whichever is less.

"(d) (1) Whenever the Board determines, prior to taking final action upon a claim, that such claim is one with respect to which an order of reimbursement will probably be made, the Board may order emergency reimbursement not to exceed \$1,500 pending final action on the claim.

"(2) The amount of any emergency reimbursement ordered under paragraph (1) of this subsection shall be deducted from the amount of any final order for reimbursement

"(3) Where the amount of any emergency reimbursement ordered under paragraph (1) of this subsection exceeds the amount of the final order for reimbursement, or if there is no order for reimbursement made, the recipient of any such emergency reimbursements shall be liable for the repayment of such reimbursement. The Board may waive all or part of such repayment.

"(e) No order for reimbursement under this part shall be subject to execution or attachment.

"(f) The availability or payment of reimbursement under this part shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death, subject to the limitations of this part—

"(1) in the event an intervenor, a victim, or the surviving dependent or dependents of either of them who has a right to file a claim under this part should first recover damages from any other source based upon an act, omission, or possession giving rise to a claim under this part, such damages shall be first used to offset gross losses that do not qualify as net or pecuniary losses; and

"(2) in the event an intervenor, victim, or the surviving dependent or dependents of either of them receives reimbursement under this part and subsequently recovers damage from any other source based upon an act, omission, or possession that gave rise to reimbursement under this part, the Board shall be reimbursed for reimbursements previously paid to the same extent reimbursement would have been reduced had recovery preceded reimbursement under paragraph (1) of this subsection.

"LIMITATIONS

"Sec. 454. (a) No order for reimbursement under this part shall be made unless the claim has been made within one year after the date of the act, omission, or possession resulting in the injury or death, unless the Board finds that the failure to file was justified by good cause.

"(b) No order for reimbursement under this part shall be made to or on behalf of an intervenor, victim, or the surviving dependent or dependents of either of them unless a minimum pecuniary or net loss of \$100 or an amount equal to a week's earnings or support, whichever is less, has been incurred.

"(c) No order for reimbursement under this part shall be made unless the act, omission, or possession giving rise to a claim under this part, was reported to the law enforcement officials within seventy-two hours after its occurrence, unless the Board finds that the failure to report was justified by good cause.

"(d) No order for reimbursement under this part to or on behalf of a victim, his surviving dependent or dependents, as the result of any one act, omission, or possession, or related series of such acts, omissions, or possessions, giving rise to a claim, shall be in excess of \$50,000, including lump-sum and periodic payments.

"(e) The Board, upon finding that any claimant has not substantially cooperated with it or with all law enforcement agencies incident to the act, omission, or possession that gave rise to the claim, may proportionately reduce, deny, or withdraw any order for reimbursement under this part.

"(f) The Board, in determining whether to order reimbursement or the amount of the reimbursement shall consider the behavior of the claimant and whether, because of provocation or otherwise, he bears any share of responsibility for the act, omission, or possession that gave rise to the claim for reimbursement and—

"(1) the Board shall reduce the amount of reimbursement to the claimant in accordance with its assessment of the degree of such responsibility attributable to the claimant, or

"(2) in the event the claimant's behavior was a substantial contributing factor to the act, omission, or possession giving rise to a claim under this part, he shall be denied reimbursement.

"(g) No order for reimbursement under this part shall be made to or on behalf of a person engaging in the act, omission, or possession giving rise to the claim for reimbursement to or on behalf of his accomplice, a member of the family within the third degree of affinity or consanguinity or household of either of them, or to or on behalf of any person maintaining continuing unlawful sexual relations with either of them.

"PROCEDURES

"Sec. 455. (a) The Board is authorized to receive claims for reimbursement under this part filed by an intervenor, a victim, or the surviving dependent or dependents of either of them, or a guardian acting on behalf of such a person.

"(b) The Board—

"(1) may subpoena and require production of documents in the manner of the Securities and Exchange Commission as provided in subsection (c) of section (18) of the act of August 26, 1935, except that such subpoena shall only be issued under the signature of the Chairman, and application to any court for aid in enforcing such subpoena shall be made only by the Chairman, but a subpoena may be served by any person designated by the Chairman;

"(2) may administer oaths, or affirmations to witnesses appearing before the Board, receive in evidence any statement, document, information, or matter that may, in the opinion of the Chairman, contribute to its functions under this part, whether or not such statement, document, information, or matter would be admissible in a court of law, provided it is relevant and not privileged;

"(3) shall, if hearings are held, conduct such hearings open to the public, unless in a particular case the Chairman determines that the hearing, or a portion thereof, should be held in private, having regard to the fact that a criminal suspect may not yet have been apprehended or convicted, or to the interest of the claimant; and

"(4) may, at the discretion of the Chairman, appoint an impartial licensed physician to examine any claimant under this part and order the payment of reasonable fees for such examination.

"(c) The Board shall be an 'agency of the United States' under subsection (1) of section 6001 of title 18 of the United States Code for the purpose of granting immunity to witnesses.

"(d) The provisions of chapter 5 of title 5 of the United States Code shall not apply to adjudicatory procedures to be utilized before the Board.

"(e) (1) A claim for reimbursement under this part may be acted upon by a member designated by the Chairman to act on behalf of the Board.

"(2) In the event the disposition by a member as authorized by paragraph (1) of this subsection is unsatisfactory to the claimant, the claimant upon notification to the Board within 30 days of such disposition shall be entitled to a de novo hearing of record on his claim by the full Board.

"(f) (1) Decisions of the full Board shall be in accord with the will of a majority of the members and shall be based upon a preponderance of the evidence.

"(2) All questions as to the relevancy or privileged nature of evidence at such times as the full Board shall sit shall be decided by the Chairman.

"(3) A claimant at such times as the full Board shall sit shall have the right to produce evidence and to cross-examine such witnesses as may appear.

"(g) (1) The Board shall publish regulations providing that an attorney may, at the conclusion of proceedings under this part, file with the Board an appropriate statement for a fee in connection with services rendered in such proceedings.

"(2) After the fee statement is filed by an attorney under paragraph (1) of

this subsection, the Board shall award a fee to such attorney on substantially similar terms and conditions as is provided for the payment of representation under section 3006A of title 18 of the United States Code.

"(3) Any attorney who charges or collects for services rendered in connection with any proceedings under this part any fee in any amount in excess of that allowed under this subsection shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(h) The United States Court of Appeals for the District of Columbia shall have jurisdiction to review all final orders of the Board. No finding of fact supported by substantial evidence shall be set aside.

"CRIMES

"Sec. 456. (a) The Board is authorized to order reimbursement payments under this part in any case in which an intervenor, victim, or the surviving dependent or dependents of either of them files a claim when the act, omission, or possession giving rise to the claim for reimbursement occurs—

"(1) within the 'special maritime and territorial jurisdiction of the United States' within the meaning of section 7 of title 18 of the United States Code;

"(2) within the District of Columbia; or

"(3) within 'Indian country' within the meaning of section 1151 of title 18 of the United States Code.

"(b) This part applies to the following acts, omissions, or possessions:

"(1) aggravated assault;

"(2) arson;

"(3) assault;

"(4) burglary;

"(5) forcible sodomy;

"(6) kidnapping;

"(7) manslaughter;

"(8) mayhem;

"(9) murder;

"(10) negligent homicide;

"(11) rape;

"(12) robbery;

"(13) riot;

"(14) unlawful sale or exchange of drugs;

"(15) unlawful use of explosives;

"(16) unlawful use of firearms;

"(17) any other crime, including poisoning, which poses a substantial threat of personal injury; or

"(18) attempts to commit any of the foregoing.

"(c) For the purposes of this part, the operation of a motor vehicle, boat, or aircraft that results in an injury or death shall not constitute a crime unless the injuries were intentionally inflicted through the use of such vehicle, boat, or aircraft or unless such vehicle, boat, or aircraft is an implement of a crime to which this part applies.

"(d) For the purposes of this part, a crime may be considered to have been committed notwithstanding that by reason of age, insanity, drunkenness, or otherwise, the person engaging in the act, omission, or possession was legally incapable of committing a crime.

"SUBROGATION

"Sec. 457. (a) Whenever an order for reimbursement under this part has been made for loss resulting from an act, omission, or possession of a person, the Attorney General may, within three years from the date on which the order for reimbursement was made, institute an action against such person for the recovery of the whole or any specified part of such reimbursement in the district court of the United States for any judicial district in which such person resides or is found. Such court shall have jurisdiction to hear, determine, and render judgment in any such action. Any amounts recovered under this subsection shall be deposited in the Criminal Victim Indemnity Fund established by section 458 of this part.

"(b) The Board shall provide to the Attorney General such information, data, and reports as the Attorney General may require to prosecute actions in accordance with this section.

"INDEMNITY FUND

"SEC. 458. (a) There is hereby created on the books of the Treasury of the United States a fund known as the Criminal Victim Indemnity Fund (hereinafter referred to as the 'Fund'). Except as otherwise specifically provided, the Fund shall be the repository of (1) criminal fines paid in the various courts of the United States; (2) amounts withheld in accordance with the provisions of section 4129, title 18, of the United States Code, (3) additional amounts that may be appropriated to the Fund as provided by law, and (4) such other sums as may be contributed to the Fund by public or private agencies, organizations, or persons.

"(b) The Fund shall be utilized only for the purposes of this part.

"ADVISORY COUNCIL

"SEC. 459. (a) There is hereby established an Advisory Council on the Victims of Crime (hereinafter referred to as the 'Council') consisting of the members of the Board and one representative from each of the various State crime victims compensation or reimbursement programs referred to in paragraph (10) of subsection (b) of section 301 of this title, each of whom shall serve without additional compensation.

"(b) The Chairman of the Board shall also serve as the Chairman of the Council.

"(c) The Council shall meet not less than once a year, or more frequently at the call of the Chairman, and shall review the administration of this part and programs under paragraph (10) of subsection (b) of section 301 of this title and advise the Administration on matters of policy relating to their activities thereunder.

"(d) The Council is authorized to appoint an advisory committee to carry out the provisions of this section.

"(e) Each member of the advisory committee, other than a member of the Board, appointed pursuant to subsection (d) of this section shall receive \$100 a day, including traveltime, for each day he is engaged in the actual performance of his duties as a member of the committee. Each member of the Council or advisory committee shall also be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

"REPORTS

"SEC. 460. The Board shall transmit to the Congress an annual report of its activities under this part. In its third annual report, the Board upon investigation and study shall include its findings and recommendations with respect to the operation of the overall limit on reimbursement under section 454(d) of part F of this title and with respect to the adequacy of State programs receiving assistance under section 301(b) of this Act."

COMPENSATION OF BOARD MEMBERS

SEC. 103. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new paragraph:

"(60) Chairman, Violent Crimes Reimbursement Board."

(b) Section 5315 of title 5 of the United States Code is amended by adding at the end thereof the following new paragraph:

"(98) Members, Violent Crimes Reimbursement Board (2)."

CRIMINAL VICTIM INDEMNITY FUND FINES

SEC. 104. (a) Chapter 227 of title 18 of the United States Code is amended by adding at the end thereof the following new section:

"§ 3579. Fine imposed for Criminal Victim Indemnity Fund

"In any court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, upon conviction of a person of an offense resulting in personal injury, property loss, or death, the court shall take into consideration the financial condition of such person, and may, in addition to any other penalty, order such person to pay a fine in an amount of not more than \$10,000 and such fine be deposited into the Criminal Victim Indemnity Fund of the United States."

(b) The analysis of chapter 227 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"3579. Fine imposed for Criminal Victim Indemnity Fund."

SEC. 104A. (a) Chapter 307 of title 18, of the United States Code, is amended by adding at the end thereof the following new section:

“§ 4129. Criminal Victim Indemnity Fund, Contributions

“The Federal Prison Industries is authorized to withhold from the wages of any offender employed in such Industries, an amount not to exceed 10 percent of such wages. The amounts withheld under this section shall be deposited in the Criminal Victim Indemnity Fund established by section 458 of the Omnibus Crime Control and Safe Streets Act of 1968.

(b) The table of contents of chapter 307 of title 18, of the United States Code, is amended by adding at the end thereof the following new item:

“4129. Criminal Victim Indemnity Fund, Contributions.”

PART B—FEDERAL GRANT PROGRAM

SEC. 105. Subsection (b) of section 301 of part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968, is amended by adding at the end thereof the following new paragraph:

“(10) The cost of administration and that portion of the costs of State programs, other than in the District of Columbia, to reimburse victims of violent crime which are substantially comparable in coverage and limitations to part F of this title.”

SEC. 106. Paragraph (a) of section 601 of part G (redesignated part K by this Act) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking “and” the second time it appears, striking “or” the sixth time it appears, striking the period, and inserting the following: “, or programs for the reimbursement of victims of violent crimes.”

SEC. 107. Section 501 of part F (redesignated as part I by this Act) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, is amended by inserting “(a)” immediately after “501” and adding at the end thereof the following new subsection:

“(b) In addition to the rules, regulations, and procedures under subsection (a) of this section, the Administration shall, after consultation with the Violent Crimes Reimbursement Board, establish by rule or regulation criteria to be applied under paragraph (10) of subsection (b) of section 301 of this title. In addition to other matters, such criteria shall include standards for—

“(1) the persons who shall be eligible for reimbursement;

“(2) the categories of crimes for which reimbursement may be ordered;

“(3) the losses for which reimbursement may be ordered; and

“(4) such other terms and conditions for the payment of such reimbursement as the Board deems necessary and appropriate.”

SEC. 107. Section 301 of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding at the end thereof the following new subsection:

“(e) Notwithstanding any other provision of law, no grant may be made under the provisions of subsection (a)(10) of this section after June 30, 1975 to any State, unless the Attorney General has determined that such State has enacted legislation of general applicability within such State establishing a fund similar to the Criminal Victim Indemnity Fund established under section 458 of this Act.”

PART C—MISCELLANEOUS PROVISIONS

SEC. 108. Section 569 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended and as redesignated by this Act, is amended by inserting “(a)” immediately after “569” and by adding at the end thereof the following new subsection:

“(b) There is authorized to be appropriated for the fiscal year ending June 30, 1973, \$5,000,000 for the purposes of part F.”

SEC. 109. Until specific appropriations are made for carrying out the purposes of this Act, any appropriation made to the Department of Justice or the Law Enforcement Assistance Administration shall, in the discretion of the Attorney General, be available for payments of obligations arising under this Act.

SEC. 110. If the provisions of any part of this Act are found invalid or any amendments made thereby or the application thereof to any persons or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

SEC. 111. This Act shall become effective upon the date of enactment.

Mr. EILBERG. Next we will call on our distinguished colleague and Chairman of the Judiciary Committee, Congressman Peter Rodino.

**TESTIMONY OF HON. PETER W. RODINO, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW JERSEY, CHAIRMAN,
HOUSE COMMITTEE ON THE JUDICIARY**

Chairman RODINO. Mr. Chairman, and members of the subcommittee, I am delighted to have this opportunity to appear here this morning following the distinguished Senator from Montana, the Majority Leader, who initiated this proposal which I was happy to co-sponsor. I think this legislation is long past overdue. I would ask unanimous consent, Mr. Chairman, to insert my prepared remarks in the record.

Mr. EILBERG. It will be granted.

[The prepared statement of Chairman Rodino follows:]

STATEMENT OF HON. PETER W. RODINO, JR.

It is a pleasure for me to appear here today before this Committee to urge my support for the legislation that is under consideration this morning—the Victims of Crime Act of 1973. In recent years both legal and legislative efforts have focused attention on the rights of the accused but have given little thought to the needs of the innocent victims of violent crime. The average citizen who unwillingly falls prey to such an unfortunate act many times must bear the burden of outrageous medical expenses or suffer temporary or permanent disability. Such an individual is often unable to make a car or mortgage payment and must radically alter his life style because of this unfortunate occurrence. This legislation co-sponsored with Senator Mansfield is an attempt to fulfill a legislative moral obligation to deal mercifully and compassionately with the innocent victims of crime.

S. 300 and H.R. 8777 mark the first time the United States House of Representatives has ever formally considered this issue—that of compensating a victim for the effect of a violent crime. This legislation would reimburse the victim for personal injuries, loss of earning power and incurred costs of major medical care. It would also allow an “intervenor”, that is, one who assists his fellowman or a law enforcement officer, for any personal or property injuries suffered from this well-intentioned effort. The rationale for allowing the intervenor broader coverage is to encourage the average citizen to assist in the fight against crime.

I am very proud to point out that my own State of New Jersey took the initiative in 1971 and with great foresight passed the Criminal Injuries Compensation Act of 1971. It is my sincere hope that each and every state in this great country adopt a system to compensate innocent victims. As an incentive to the states to do this, a provision in my bill allows states having victim compensation programs to receive matching grants amounting to 75% of the cost of the state programs. This new grant program would be administered by LEAA.

In order to qualify for compensation, victims would have to demonstrate undue financial strain resulting from the crime. However, the victim would not be disqualified from compensation for owning a home, normal household items, personal effects, a car, tools of trade or liquid assets not in excess of one year's income or \$10,000, whichever is less. The concept of financial stress is introduced not to serve as a means test, but to concentrate resources in the area of greatest need.

Under the legislation, the victim must report the offense within 72 hours of its occurrence and fully cooperate with law enforcement agencies. The victim or his dependents would have to file a claim for compensation within one year from the date of the injury or death. A minimum loss of \$100 would be required before a claim could be made. At the other extreme, compensation for any one crime could not exceed \$50,000. In the event a claimant bore any share of responsibility for the act, giving rise to the claim for compensation, a reduction in the amount of compensation would be authorized. Also, accomplices of the offender or a member of the household of the offender would be ineligible for crime compensation.

A victim could be compensated for a crime without having to wait for conviction of the offender. If the offender were prosecuted, convicted and fined, the courts would be authorized to direct that the fine be paid into an indemnity fund that would be administered by the Board.

Under the legislation, a Violent Crime Compensation Board would be established within the Department of Justice. The Board, however, would be independent in its function of passing on claims. Each of the three board members would be lawyers with at least eight years of membership in the highest bar of a state. The President, with the advice and consent of the Senate, would appoint the Board, designating one of the members to serve as Chairman. A board member's term of office would be eight years.

The bill would authorize \$7 million for the program's first year of operation. Thereafter, it is estimated, costs would rise consistently for seven years when annual federal costs would stabilize at approximately \$28 million.

In conclusion, Mr. Chairman, I want to urge support for this legislation to fulfill the moral obligations of the federal government for a society that continually fails to adequately protect its citizens.

Chairman **RODINO**. I would merely like to make some comments concerning the need for the legislation and then perhaps go on with some questions.

Mr. Chairman and members of the committee, as you have heard, Senator Mansfield has given long and thorough study to the need for recognizing the innocent victims of crime who are being neglected by society.

Somewhere along the line the State has failed in its primary obligation in this area. I was happy to hear Senator Mansfield has gone beyond the initial proposal and has now described this to be reimbursement to the innocent victim of crime or the intervenor instead of compensation.

I recall during the interview with the press that some time ago, long before the Kitty Genovese case, that a young black man somewhere in the area of New York had intervened when he saw a young lady being attacked by a number of assailants. I recall that this young black man was hospitalized with injuries which disabled him for a long time. I was in communication with him and I don't recall that there was any effort to assist him except maybe by some charity-minded individuals who recognized that he was a person who out of compassion for his fellow man felt the need to go to his assistance and suffered these tremendous injuries. I wonder whether we will ever recognize the need to do something for this individual.

I talked and corresponded with him and then lost sight of him. But, I recall that there was never any compensation or reimbursement and this individual was disabled to the extent that he was hospitalized for a long period of time. From that point on, I recognized the need and continued my interest in this effort. The State of New Jersey in 1971 saw the need to enact this kind of legislation; and I am happy to state that it has written legislation to compensate individuals who are victims of crime and intervenors and it is similar to the proposal being considered today by this committee.

Mr. Chairman and members of the committee, I feel that questions may be asked as to why are we undertaking this effort. I say it is time that we recognize a certain sense of morality, a certain sense of obligation, on the part of society to do something for these innocent victims of crime.

We recognize that these individuals, after they have been victimized in this way and injured and disabled, sometimes find themselves

unable to continue a normal life. They are unable to pay for the very modest things that any individual might require. Their way of living might be altered to a degree where they can no longer really enjoy life because of the disability received. I think we have to recognize this obligation and responsibility and, therefore, I applaud the action of this subcommittee and hope that we will be able to enact this legislation. I hope the subcommittee will consider all the aspects of it.

While I have introduced this legislation, I would like the committee to know that all I have done is provide what I consider to be a framework and a design. I have no pride of authorship other than to say that I am delighted to present this to the committee for its consideration. Hopefully, this legislative proposal will become a reality and the many victims of crime and the people who have been neglected, ignored, and suffered injury will be reimbursed as Senator Mansfield has so well stated.

This is not just a proposition between the individual victim and the criminal, but instead it involves society—the Nation at large—the individual victim and the criminal.

I believe this is a beginning and I am hopeful the committee will enact and adopt this legislation and report it favorably to the full committee.

Thank you very much, Mr. Chairman.

Mr. EILBERG. Thank you very much for that statement, Mr. Chairman. I have one or two questions.

There are various legal theories on which compensation statutes are based. One is the social welfare theory of compensation based upon the concept that the 20th century conscience cannot tolerate suffering which befalls the victim of crime.

Another theory is that the implied contract between the State and the citizens and by failing to protect the citizens—the State breaches its duty.

Chairman Rodino, what in your opinion is the justification for a Federal program to compensate the victims of crime?

Chairman RODINO. Mr. Chairman, I believe that you have outlined two concepts. I think it is a legislative concept which entails and recognizes a moral obligation to deal mercifully, compassionately, and with justice to the innocent victims of crime. The justification is simply that our society has failed to adequately protect its citizens.

Recently the courts and the legislatures seem far more concerned with the offense and too little thought has been given to the innocent victim of crime. I think we can come within this area and, therefore, I say it is between the two legal concepts you outlined that we can predicate and lay a foundation for this legislation.

Mr. EILBERG. Thank you for your answer, Mr. Chairman.

Further, under the bill, each of the three members of the Violent Crimes Compensation Board is required to be an attorney in view of the fact many of the claims which will be presented to the Board will be for medical expenses and personal injuries. Wouldn't it be logical to require that one of the board members be a medical doctor?

Chairman RODINO. I think there is ample merit to a suggestion of that sort. However, recalling the New Jersey statute, it provides, I believe, that the board can convene or assemble a panel of medical specialists, who would be able to advise the board in this area.

I think this might be what is necessary in this case. I think this suggestion should be taken into account. I am sure the New Jersey statute, which provides for such a panel or such an advisory committee of specialists, would be worth while for the committee to consider.

Mr. EILBERG. Thank you, Mr. Chairman.

Mr. Chairman, I know of the pressures upon you this morning, so I will not personally ask you further questions. I will simply ask the other members if they would like to question the chairman.

Mr. Keating?

Mr. KEATING. I want to compliment the chairman for taking his time to testify on a very important bill.

I agree with Chairman Rodino when he makes the point that the States are failing to fulfill their obligations to protect their citizens.

It certainly seems to me, therefore, that if the States have failed in this responsibility of law enforcement, that we must find a way to compensate the victims of crime from a Federal level. I would agree with the contention that the many people who suffer great hardships as a result of a violent assault on a member of the family should be compensated in some way. There are quite a few questions, however, concerning this bill.

I think, Mr. Chairman, Senator Mansfield indicated one. As a lawyer, I am a little concerned about the composition of the panel to be established. If the panel consists of three lawyers that might be judging the issue very narrowly. It seems to me that you need someone on the panel who has a broader range of view. The panel should not be enlarged, but have a broader range. I am not satisfied, having served as a judge for 9 years and a lawyer for more than 20, that lawyers appreciate this kind of a situation in the manner I would envision.

Therefore, I think it might be well to have a panel proposed, as the chairman indicated, of a medical man, a lawyer, if you will, and someone from the public sector who knows something about compensation, perhaps a businessman or a labor leader.

Having made that statement, Mr. Chairman, I will not ask any questions at this time because I have used my 5 minutes.

Mr. EILBERG. Thank you very much.

Are there any other questions of Chairman Rodino.

Mr. Waldie?

Mr. WALDIE. Does the bill just compensate for victims of crime. Would it include embezzlement, would the victim be entitled for compensation for that?

Chairman RODINO. Now as the title indicates, this is compensation or reimbursement, which is a better term. As Senator Mansfield stated what we are trying to do is to reimburse the victim of a crime of violence and the crimes are indicated in the bill. I think these may be enlarged upon, but these are the crimes with which we are primarily concerned.

Mr. WALDIE. In a crime of violence committed by a law officer against a citizen, would the citizen be able to recover?

Chairman RODINO. I think if one is talking about illegal acts, as such, it is a crime. If one is talking about a law officer's actions in the course of duty I do not think this would come within the purview of this legislation, unless it was an illegal act.

Mr. WALDIE. No further questions, Mr. Chairman.

Mr. EILBERG. Are there any other questions?

Mr. Seiberling?

Mr. SEIBERLING. I have no questions but I certainly want to commend the chairman of the Judiciary Committee for his excellent statement and for pushing this legislation. I have quite a few questions in my own mind that I am not going to raise at this point because I know how pressed for time he is. I think probably some of the other witnesses will be able to handle them too. I am not at all convinced in my own mind as to the answers to some of these questions concerning finances and various other problems.

I think this is an extremely important subject for us to be considering and I hope we can resolve these questions to the satisfaction of our members and the satisfaction of the Congress.

I thank the chairman for appearing.

Mr. EILBERG. Thank you, Mr. Seiberling.

Mr. Keating has another question.

Mr. KEATING. Mr. Chairman, I thought I understood Senator Mansfield to indicate that the victim of crime bill might very well be a part of a total piece of legislation including the bill that provides compensation to law enforcement and fire officials.

Do you feel that is an appropriate approach that they should be considered together as one bill, or concurrently, and brought to the floor as independent bills?

Chairman RODINO. It is my personal view that they should be considered as separate matters. We are dealing in situations here in which individual civilians are assailed and assaulted and become innocent victims of crime. We are trying to create a very new concept by attempting to find some way to reimburse for a pecuniary loss for disability that he incurs as a result. In the other situation, as we all know, recognition has already been given to the need to assist policemen, firemen, or other public safety officers who were killed in an effort to carry out their duties. I think the legislation under consideration today is distinct.

So, while it is compensation in both bills, nonetheless, I believe the concepts are entirely different.

Mr. EILBERG. Chairman Rodino, we thank you very much. We thank for your leadership and sponsorship of this bill.

Chairman RODINO. Thank you very much.

Mr. EILBERG. Our next witness will be Hon. James D. McKeivitt, Assistant Attorney General, Department of Justice, accompanied by Mr. Dean Pineles of the Office of Legislative Affairs, Department of Justice.

Gentlemen, we welcome you. We welcome back our colleague, a former Congressman and member of this subcommittee, and good friend. The gentleman has always been quite candid with this committee.

TESTIMONY OF HON. JAMES D. (MIKE) McKEVITT, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE, ACCOMPANIED BY DEAN PINELES, OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE

Mr. McKEVITT. Thank you.

Mr. EILBERG. Are you ready to offer a statement on behalf of your Department?

Mr. McKEVITT. Yes, Mr. Chairman.

I would like to introduce to you, Mr. Dean Pineles, a very capable member of my staff. My friend will be leaving us for Vermont, this month, where he is going to work for the State attorney general. I asked Mr. Pineles to join me today because of his background in this particular subject.

I bring the best wishes and salutations of Attorney General Richardson, who asked me to convey some of his feelings to you because of the fact that one of his initial concerns upon taking on the Office of Attorney General was the question of compensating the victims of crime. As a result, we are in the process now of doing extensive research into the substantive issues.

At the same time, General Richardson would like to stress the fact that we have not taken a position as yet, even though we have a strong interest in it. Really, our testimony today will be directed primarily at raising some of the questions of concern to the Department of Justice. We will also be extremely interested to hear the comments of the gentlemen from New York and Maryland, since they have dealt with the situation already.

General Richardson, as you know, formerly was attorney general of the Commonwealth of Massachusetts and at the time was instrumental in the enactment of legislation dealing with victims of crime. However, we have not had a great deal of time to see what some of the latest problems in Massachusetts have been. Let me proceed, if I may, Mr. Chairman and members of the subcommittee, with some of the points we raise.

May I say, from the outset, that the crux of my statement is to outline to you and members of the subcommittee the Department's present position and the questions which we have on the victims of crime.

The subcommittee is considering S. 300, the Senate-passed bill, sponsored by Senator Mansfield, and H.R. 8777, an identical bill sponsored by Mr. Rodino, chairman of the full committee.

The concept of compensating the innocent victims of crime has received a considerable amount of attention during recent years, both in the United States and abroad. New Zealand enacted the first such compensation program in 1963, and since that time programs have been initiated in other countries, as well as in the following States: California (1965), New York (1966), Hawaii (1967), Massachusetts (1967), Maryland (1968), Nevada (1969), New Jersey (1971), and Rhode Island, Alaska, Georgia, and Louisiana just last year, 1972.

Congress has also studied the relevant issues of victim compensation in some detail. The original congressional proponent of the proposal was Senator Yarborough who first introduced legislation on the subject during the first session of the 89th Congress in 1965. During the

92d Congress, hearings were held by the Senate Subcommittee on Criminal Laws and Procedures on a bill introduced by Senator Mansfield. S. 750 eventually passed the Senate on September 18, 1972, by a vote of 60 to 8.

Hearings were also held last Congress before the House District Committee on a bill by Congressman Mikva to compensate victims of crimes that occur in the District of Columbia. No legislation was reported, however.

During the 92d Congress, in addition to the aforementioned Senate action, further hearings have been held by the House District Committee. The bill under consideration is H.R. 3264, introduced by Delegate Fauntroy, which is identical to Mikva's bill. To the best of my knowledge, today's hearing is the first conducted by a subcommittee of the House Judiciary on victims of crime legislation.

The substantive features of S. 300 and H.R. 877 are as follows:

The bills under consideration today are divided into two parts. Part A of each bill would amend the Omnibus Crime Control and Safe Streets Act of 1968 to establish a three member Violent Crimes Compensation Board which would be responsible for making awards of up to \$50,000 to the victims of violent crimes or their dependents when the crimes occur in Federal jurisdictions. The jurisdictions include the "special maritime and territorial jurisdiction of the United States," the District of Columbia and "Indian country." "Victims" is defined to include those who suffer death or personal injury as the proximate result of an enumerated crime as well as those who intervene to prevent the commission of such a crime or to apprehend a person suspected of having committed such a crime.

The crimes for which compensation is available include the common law crimes of violence as well as the unlawful sale or exchange of drugs, the unlawful use of explosives or firearms, and "any other crime, including poisoning, which poses a substantial threat of personal injury." In addition, attempts to commit any of the enumerated crimes would also be included within the definition. Compensable losses include among other things, expenses necessarily incurred for medical care and hospitalization as well as loss of past and anticipated future earnings.

Before an award of compensation is made, the Board would have to find that a claimant will suffer "financial stress." That term is defined to mean the "undue financial strain" experienced by a victim or his dependents as a result of pecuniary loss from the crime giving rise to a claim, disregarding ownership of a residence, an automobile, normal household items and personal effects, tools necessary for employment and all other liquid assets not in excess of 1 year's gross income of \$10,000, whichever is less. This is significant because it abandons a strict "needs" test, and permits recovery for middleclass victims even though they might be able to absorb any losses.

In order to be eligible for compensation, an individual would have to show a minimum pecuniary loss of \$100. In addition, no award would be permitted unless the crime was reported within 72 hours of its occurrence. Moreover, the Board could deny or reduce any order of compensation unless the claimant had substantially cooperated with law enforcement agencies. It should also be noted that the Board would be required to consider the behavior of the claimant and to determine if he bears any responsibility for the crime. If so, the Board

may reduce or deny compensation depending upon the degree of involvement.

Part A would also provide that the rights of a claimant to recover from his assailant would be subrogated to the Attorney General once an award of compensation has been made. Furthermore, the legislation would establish a Criminal Victim Indemnity Fund which would be a repository of criminal fines, additional amounts appropriated to the Fund by law, and contributions made to the Fund. The Fund would be used only for the purpose of part A.

Part B of the bills would establish a Federal grant program whereby those States which have programs substantially comparable to the program established in part A would be permitted to use LEAA funds to cover the program costs. This would be accomplished by an amendment to part C of the Safe Streets Act of 1968.

Until specific appropriations are made, any appropriation made to the Department or to LEAA would be available, in the discretion of the Attorney General, for payments arising under this Act.

Mr. Chairman, I would now like to outline to you and members of this subcommittee some of the questions we have under consideration.

Proponents of victim compensation argue that the Government, having the obligation to prevent crime and provide security for its citizens, is responsible for crimes that do occur and should therefore compensate the victims.

Another familiar argument is that the Government's concern for the care and rehabilitation of the criminal has not been matched by like concern for his victim, who has all but been forgotten. Finally, it is argued that crime is endemic to our society and that it is only decent and proper for society to share the burden which has fallen on certain individuals, the innocent victims of crime.

The opponents principal arguments are that in addition to the cost of a Federal compensation program, the primary responsibility for injuries received as a result of a criminal act rests with the offender and not with society. Moreover, these programs undermine the doctrines of individual responsibility for crime and its corollary, reparation by the offender.

It is also argued that victims compensation may increase violent crimes and hinder rehabilitative efforts since offenders will feel lowered moral restraint if potential victims receive compensation for their injuries and convicted criminals will feel less remorse, hence, rehabilitation is more difficult. Opponents assert that compensation programs will, with the passage of time and an increase in claims, evolve into another bureaucratized personal welfare program. Opponents also note that many of the jurisdictions which adopted compensation schemes had in existence other programs of welfare and that victim compensation simply added another benefit.

If it is decided that the Federal Government should provide compensation for the victims of crime, then a decision must be made as to the extent of Federal responsibility. Crimes of violence are essentially of common law origin, and are for the most part, State and local offenses, with the exception of offenses committed within the District of Columbia, Indian country and the special maritime and territorial jurisdictions of the United States; only a small percentage of Federal

offenses result in personal injuries. Where injuries do result from Federal offenses committed elsewhere, the act will probably have violated State law as well. In those situations, the Federal Government is under much less, if any, obligation to provide compensation for the victims of offenses for which the States are responsible.

Therefore, it can be argued that a Federal program for compensating victims of crime should be limited to those areas where the Federal Government exercises exclusive jurisdiction.

Even though the Federal Government's responsibility could be limited to areas of exclusive jurisdiction, there appears to be no prohibition from extending coverage to all Federal offenses, or from participation in the funding of State compensation programs.

These are some of the questions that we face in determining the scope of the victim compensation program, and we feel these things should be considered by the subcommittee as well.

What crimes should be covered? All common law crimes? Property crimes? Violent crimes? Which victims should be eligible for compensation? All victims? Should this be determined by a relationship to the offender? Should it be determined by the circumstances of the crime or should it be determined by financial need?

What are the projected costs of a program with restricted eligibility? What are the possible effects of a victim compensation program on the criminal justice system, on private insurance, etc.?

How can such a program be best administered by the Federal Government? Would this be through its social welfare program, through LEAA, or through the courts? Should the Federal Government establish stringent guidelines for State-administered programs? Should it consider victim compensation part of the revenue sharing program, with a few guidelines? Should it use Federal legislation as a model, but not a requirement of State legislation?

I now would like to touch on some of these issues.

Take property crimes. Early indications from LEAA's victim survey research suggests that annual uninsured losses due to common theft, such as burglary, robbery and larceny, exceed \$2 billion. The amount stolen during the period, July 1971 through June 1972, approached \$2.5 billion, of which \$300 million or 12 percent was eventually recovered through insurance. The bulk of the uninsured losses were for burglary, nearly \$1.4 billion. Other statistics also show the extremely low clearances and recovery rate in property crimes. Only 19 percent of the 1971 reported burglaries and larcenies were cleared by arrests. And an analysis of the burglaries in Denver, for example, in 1972 found that less than 10 percent of the stolen property was recovered.

Now, given that property crimes and consumer frauds involve major financial losses, perhaps a greater burden from losses than many violent crimes, should they be compensated? Given the number of property crimes, the financial losses involved, the difficulties inherent in estimating losses and the possibilities for fraud, should property crimes be compensated?

Next, I would like to address the question of violent crimes. In 1971, there were 810,200 reported violent crimes of which 17,630 were murders. An analysis of violent crimes in 1970 found that approximately one-third resulted in serious injuries requiring an individual

to miss one or more days of work. If this same ratio were applied to the latest uniform crime report data, that is of 1971, about 287,630 serious injuries and deaths would have been eligible for compensation. Using the experience of two of the States with victim compensation—Maryland and New York—to estimate costs, approximately \$3 billion could have been awarded. These figures are based on reported crimes. A compensation program may increase crime reporting. Does this admittedly rough estimate of costs suggest that a viable program would need to be substantially restricted?

Let us talk about our restriction programs. What about the relationship between the victim and the offender? In many violent crimes, the victim and offender are related, well known or acquainted with one another. This was true in approximately 70 percent of the reported murders and aggravated assaults in 1971. It has commonly been thought that forcible rape also followed this pattern.

However, rape is probably the most underreported of the violent crimes and therefore difficult to characterize. A recent analysis in one city estimated that 64 percent of the reported rapes were stranger to stranger crimes. In another 14 percent, the parties were only casual acquaintances. Only 18 percent of the offenders were related or well known to the victim.

Of the violent crimes, robbery is the most clearly a stranger to stranger crime. In the LEAA analysis of crimes in 1970, based on actual rather than reported crimes, there were an estimated 598,000 physical injuries and 23 homicides. Adjustments for relationships would reduce the number with significant injuries to 549,000 which are not related, or 362,000 strangers, and 15,000 not related, or 6,000 stranger homicides, depending on the definition of relationship.

Should the fact of a relationship between the victim and offender preclude compensation? If so, how should that relationship be defined?

In many jurisdictions, some crimes involving family members have been removed from the criminal courts. Does this suggest that such cases—including victim compensation—should be differentiated from stranger-to-stranger crimes? Does the fact of death or serious injury override the relationship question? What about mitigating circumstances? Determining the exact circumstances of crimes, who is guilty or innocent, whether a victim incited or provoked a crime, is very difficult particularly in those instances where the perpetrator is not found and tried. As noted above, certain crimes involve family and friends. It is also estimated that about one-fourth of the violent crimes are alcohol related. A study of homicides found that alcohol was a factor in 64 percent of the crimes and in most of these cases both victim and offender were under the influence of alcohol. The relationship of drug use to crime is under examination by our Department as well.

Can the issue of provocation be adequately examined by a quasi-judicial method such as a compensation board? Do the mitigating circumstances surrounding many violent crimes suggest a no-fault medical insurance approach to compensation?

What about financial hardship? The purposes of victim compensation are more clearly reflected in the debate on the role of need in such a program. Of the 12 States with victim compensation, 10 require proof of financial hardship as a condition of recovery. Critics of this practice maintain that the compensation should not be simply another

welfare program. Others see such efforts as welfare for the middle class. Upper and lower classes would be eliminated because financial stress would not be a direct result of a crime.

Estimates of the resources of victims, and thus, the amount of unreimbursed medical costs requiring compensation very considerably. A 1965 survey estimated that 91 percent of the victims of violent crime had an income of less than \$6,000 per year. A more conservative estimate is that in 1970, about half of those with serious injuries—which would be a potential of 97,000—had incomes of less than \$7,500. Approximately 35 percent of those with incomes under \$7,000 had hospitalization insurance. Less than half of the total under 65 population had insurance coverage. It may be that many of these individuals would be eligible for welfare or other compensation programs.

So, therefore, the questions arise, does the hardship requirement conflict with the principal of equity?

Should compensation be afforded only those with limited resources? Would a State compensation program result in major modifications of private insurance programs? Should established welfare programs be amended to include victim compensation?

Another question comes up for your consideration, and ours as well, on the problem of restitution. It has been suggested that offenders, rather than the State, should compensate victims; that restitution not only assist victims but helps to rehabilitate offenders. Proponents note that restitution has not been adequately tested and that as the corrections system moves towards alternatives to incarceration, there is an increased potential for the use of restitution.

On the other hand, in a number of violent crimes there is no one to provide restitution. Of the reported crimes in 1971, 84 percent of the murders, 66 percent of the aggravated assaults, 55 percent of the forcible rapes, and 27 percent of the robberies were cleared by arrests. Most offenders are from the lower social economic stratum. Many are juveniles. Nearly one-third of those arrested for robberies in 1971 were under 18. A Pennsylvania Board of Parole study of robberies found that in 1950, 67 percent of those arrested were unemployed at the time of the crime. In 1965, the figure was 74 percent. Potential for employment, particularly as ex-offenders seems limited.

Given the number of unsolved crimes, is restitution a viable alternative to victim compensation? Given the characteristics of offenders, should restitution be considered an important factor of a compensation program? Given the economic potential of most offenders, would restitution help to rehabilitate or simply be an additional burden which could be quite overwhelming?

As far as costs are concerned, there are two categories of costs that need to be considered and they are financial and the possible side-effects of the program. As far as the financial costs are concerned, the difficulties involved in estimating the cost of a victim compensation program are formidable. They depend in large part on the scope of the program and limitations placed on eligibility.

They also depend on public awareness and hence, participation. To date, very few have taken advantage of the program in those States with victim compensation. As a result, the costs have been minimal, given the potential. LEAA's analysis of S. 2994 projected that a program with numerous restrictions on eligibility could cost the Federal Government between \$182 and \$326 million in 1974. On the other

hand, estimates based on the experiences of New York and Maryland predict such costs as \$22 million to \$24 million.

Therefore, these questions come out. Would a federally supported program result in expanded public interest and participation? Do the costs as experienced by the States truly reflect the potential costs? Would an estimate based on victimization provide a better measure of cost? Do the cost estimates support a restricted program rather than a broader one? Given the wide variations amongst State-existing programs, should the Federal Government establish broad or narrow guidelines for such an effort?

Finally, I would like to touch on the possible side effects. If the Federal Government chooses to support a program of victim compensation, how should it be administered? This depends basically on whether the program should be considered part of the existing welfare program or whether it is part of the criminal justice system. Proponents have viewed it both ways. The present proposals would administer victim compensation through LEAA. This raises several questions about the possible effects of such a decision. Given the block-grant concept of LEAA, would victim compensation drain resources from other pressing criminal justice needs? Does the addition of victim compensation further particularize LEAA's programs to the detriment of the administration's revenue sharing policy? How might the criminal justice system itself be effected, to its detriment, such as increased corruption, falsification of records, allegations of perjured testimony—to its benefit. What about increased crime reporting, increased victim participation in investigation and prosecution and so forth?

Should the Federal Government set guidelines for State administration of the program? Should such guidelines be reflected in legislation?

I am sorry to be so lengthy in my remarks, Mr. Chairman, but you are always one in particular, insistent about a background of facts and figures and that is the reason I gathered these, as much as we have available for the subcommittee's deliberation.

That completes my statement. As I have said in the past, and the Attorney General so stated, that we would be more than delighted to assist the subcommittee in any way in its deliberations and preparations of this legislation.

Mr. EILBERG. Mr. McKeivitt, we thank you for your full and lengthy statement and the cooperation of the Attorney General. I must comment that during this session and during my Chairmanship here, our relationship has been most cordial and most cooperative and I am aware that you personally have had very short notice of this morning's hearing, and as is proper you asked many questions, many of which you have not resolved. Your department has not resolved. I hope you will provide us with the answers to those questions that you raised at the earliest possible time.

The hearings will resume on this subject in September and we are looking forward to the answers to the questions that you yourself have raised. The members of the subcommittee have some questions but do not be concerned if you do not have the answers now. You can timely provide us with them after the recess.

Mr. McKEVITT. All right, sir.

Mr. EILBERG. So I will begin with a few questions.

Mr. McKEVITT, if you know would you briefly describe the reasons for distinguishing between the coverage which is provided for victims and interveners?

Mr. McKEVITT. The problem that comes up is this. What are you going to do with the good Samaritan or the good intervener, so far as compensating him? Should he, for example, get property reimbursement damages, say, for his automobile, when it is damaged as a result of or in the course of his intervention to prevent a crime or apprehend the wrongdoer? Oftentimes, intervention is a split-second deliberation. I think it would be more equitable to compensate the intervener for property loss in a like manner as would be provided for the victim.

Mr. EILBERG. I did not understand your last sentence. It would be more equitable to do what?

Mr. McKEVITT. Well, much discussion goes to the fact that the intervener should be allowed, or should be compensated for his property loss as well as his personal injury.

Mr. EILBERG. The bill so provides. What is the justification for that? I understood your answer to be humanitarian reasons.

In other words, do you feel that the bill should distinguish between pilferage and allowing property damage to the intervener in a humanitarian way. It would have a very vivid effect in encouraging interveners, knowing they would get the recovery of the property damage?

Mr. McKEVITT. There may be some incentive in doing this, if we open the field to property damage for interveners. However, the costs may preclude doing it. Then of course, the other problem comes up, what about insurance carriers? Are they going to start excepting out coverage in these types of situations. I'm sorry if that does not answer your question.

Mr. EILBERG. Do not apologize.

Mr. McKEVITT. I am sort of chatting about this, but these are some of the concerns which we have at the Department of Justice. For example, should we perhaps consider legislation that insurance carriers cannot except out coverage, because you can see, I am sure, where it would be very tempting for them to do it.

Mr. EILBERG. What are the reasons for providing losses for property damage to interveners? Would you like to explain this further?

Mr. McKEVITT. I am going to be very interested in what your subsequent witnesses have to say on this subject, having dealt with it firsthand. You can talk in a mercenary tone about the victims or interveners, either one of them. This is a delicate subject matter. I do not think I can answer any further than I have.

Mr. EILBERG. Do you know the reason for establishing a maximum amount of \$50,000 for victims and at the same time failing to provide a maximum limit to interveners?

Mr. McKEVITT. As we did not draft the legislation, I do not know what reasons there are for that, Mr. Chairman.

Mr. EILBERG. All right.

I assume that the reason for requiring a financial stress showing is to prevent unjust enrichment under the program. It has been a great concern, however, that the imposition of a financial need requirement will prevent the vast majority from benefiting by this legislation. Would you have any objection to the total elimination of the financial aid requirement and if this requirement were eliminated, would the Federal cost increase substantially?

Mr. McKEVITT. I think the cost would increase. However, the Justice Department does not have an answer on this particular question.

I think the markup session is going to be quite interesting for this bill, because basically that is a political question. You can see the ramifications of the potential abuse. I think distinguishing at a certain economic level might have great merit.

Mr. EILBERG. You understand the theory of reimbursement as presented in the bill?

Mr. McKEVITT. Yes.

Mr. EILBERG. That is, compensation should not be given only to the people on welfare or those in a desperate financial need but also to people who have a moderate income, who suffer a financial strain as a result of the crime. In addition to being a political question, as you pointed out, it is also an economic question.

Mr. McKEVITT. Yes.

Mr. EILBERG. Is it your view or the views of your Department that you are relaying at this time?

Mr. McKEVITT. Yes, as I say, we do not have a position on that particular question. We have a lot of facts and figures on offenders. I think we will need more facts and figures on the victims as well. This has been sort of an unreported area in the past.

Mr. EILBERG. I wonder if you can help us with this one. What is the method for computing the loss of future earnings under the bill? When Congressman Mikva appeared before the Senate committee last year, he suggested that it be based on the standard of average monthly earnings for the 6 months prior to the injury or \$500 per month whichever is less.

He indicated, however, that a problem may be created in relation to students, housewives, and other people who are about to enter the labor market at the time of the injury. Would you briefly expand on his observations?

Mr. PINELES. Mr. Chairman, I am not really sure. I do not think that the Department is sure as to what Mr. Mikva had in mind as determining the future losses. It seems as though that this could be done through insurance company actuarial tables or something of this nature. I think that is the best explanation that we have right now.

Mr. EILBERG. Finally, Mr. McKeVitt, can you estimate to the subcommittee what will be the projected Federal cost of this program under part A, and part B? I am aware of what appears in the committee report. Do you agree with those figures or do you have any other estimates?

Mr. McKEVITT. I think that those figures are conservative. We did give some figures, or cited figure for consideration from the LEAA report. This is another thing that we are wrestling with. Of course, a lot depends on the scope of the coverage.

Mr. EILBERG. Mr. Keating?

Mr. KEATING. Thank you, Mr. Chairman.

I want to compliment Mr. McKeVitt. I know it must have taken a great deal of time and effort to prepare his statement with all of the valuable details it contained.

Would you consider that if we did have a compensation for victims of crime that it would improve crime reporting to such an extent that it would be an assist to law enforcement generally?

Mr. McKEVITT. Either way, I think you are going to see possible changes in crime reporting.

Mr. KEATING. It certainly will increase.

Mr. McKEVITT. Yes, it will, very much. This would no doubt have benefit. As I mentioned earlier, we know a lot about the defendant but not much about the victim.

Interestingly enough, society is directing and turning its attention more toward the victim, who has not been totally forgotten, but certainly somewhat overlooked.

Mr. KEATING. I would say that I would not support a bill that would not compensate all classes for victims of crimes. I think I would say that at the outset.

Mr. McKEVITT. Then, the next question is, "What is the middle class?"

Mr. KEATING. That will have to come out in the markup session that you indicated should be very interesting.

Mr. McKEVITT. Please let me know. I would love to be here.

Mr. KEATING. What about the fact that the family relationship between the victim and the perpetrators might in some States, prohibit recovery? Would you recommend that we get out of family squabbles, family injuries, and family deaths by prohibiting recovery and in those instances involving relationships?

Mr. McKEVITT. Well, I do not have a definite answer for you. I think you certainly—once again, if you open the broad doors of coverage on the family situation, the question becomes, "What about the husband that beats his wife over and over again?"

As a former district attorney, I was amazed at how many battered wife and battered child situations we were involved in.

Mr. KEATING. Well, my question would be that any bill, considered by the Congress, should not include interfamily affairs. The bill would be unlimited in this extent.

Mr. McKEVITT. Perhaps if this legislation did not cover these situations, there would be some incentive.

Mr. KEATING. I do not know about that. I do not think you are ever going to cure this problem.

Mr. McKEVITT. You may be right.

Mr. KEATING. What about the safeguards involving fraudulent attempts of recovery, would you have strong penalties in the bill for perjured testimony.

Mr. McKEVITT. I think you definitely have to have that in there, because look at the abuse you are going to have if you do not.

Mr. KEATING. I would think that, too, and I think that it is an area that would require some attention at the outset because I think this is susceptible to misuse, which can involve quite a lot of dollars. I agree that the actuarial tables on compensation on wages and so on presently used by the court would not be satisfactory, and the establishment of wages, I think there is enough base in the law now that you could arrive at some meaningful way of reimbursement.

Mr. Chairman, there are a great many questions that Mr. McKEVITT has so ably stated regarding this legislation and I was happy to hear

you state that there would be additional hearings in September because there are a lot of guidelines that we have to provide in this bill and regulations. I think that Mr. McKeVitt performed a real service in raising many questions that I think we have to help answer and I think he can help us.

Thank you, very much.

Mr. McKEVITT. Thank you, Congressman Keating.

Mr. EILBERG. Mr. Waldie.

Mr. WALDIE. Would you turn to page 20? [See p. 50 of hearing.]

Mr. McKEVITT. What page?

Mr. WALDIE. Page 20.

Let me start somewhat at the end of the line of questions that I wanted to ask you.

Beginning on page 21 to 25 and going through paragraph C on page 21, it excludes from, I guess, negligent homicides by the operation of motor vehicles, boats, aircraft, resulting in injury or death. What does it leave in? I presume that is—

Mr. McKEVITT. What line are you on?

Mr. WALDIE. Well, line 25 on page 20.

Mr. McKEVITT. Yes.

Mr. WALDIE. Going up through the first paragraph on page 21.

Mr. McKEVITT. Yes.

Mr. WALDIE. It excludes the operation of motor vehicles, boat, or aircraft that results in an injury or death. That is fine, but if it is intentionally inflicted, I guess that is a qualification of number 10 on page 20, on the list of crimes.

Mr. McKEVITT. Yes.

Mr. WALDIE. Now, do you have any idea why they excluded those? No. 1, why would you include negligent homicide and No. 2, they do include negligent homicide. Why would they exclude the very instruments that create most of the death?

Mr. McKEVITT. Which is the classic homicidal case. I think you raise a very good point.

Mr. WALDIE. You would not know the answer to that?

Mr. McKEVITT. No, I do not.

Mr. WALDIE. OK.

Let us keep that for the record.

On page 20, again, crimes one and three, aggravated assault and assault, why would you necessarily have to include aggravated assault and not assault and included aggravated assault.

Mr. McKEVITT. Probably from a terminology standpoint and the differences in many State laws in applying both.

Mr. WALDIE. Is it your understanding that this crime or this bill is limited to the definition of what constitutes a crime in the U.S. Code?

Mr. McKEVITT. That is our interpretation of it, yes.

Mr. WALDIE. Well, forcible sodomy, I am interested why you would include that as the only sexual act rather than rape, which is a forcible crime, and would not forcible sodomy include assault?

Mr. McKEVITT. Yes, but once again, it goes to the terminology of the criminal law. However, there is no doubt of inclusion by putting it in there.

Mr. WALDIE. Well I guess then it is because—by not including it, the effects of it, what about other sexual acts.

Mr. McKEVITT. That is a good point too, they would be cases of statutory interpretation it would have to be—

Mr. WALDIE. Would have to be?

Mr. McKEVITT. Right.

Mr. WALDIE. Now, how does an unlawful sale or exchange of drugs—

Mr. McKEVITT. Where are you now, sir?

Mr. WALDIE. Crime number 14, page 20.

Mr. McKEVITT. Yes.

Mr. WALDIE. How would that be a crime of violence. What consequences result from that crime of violence or principle in your understanding.

Mr. McKEVITT. Well, it was probably put in the bill because of the tragedy that flows from this crime.

Mr. WALDIE. Well, have we compensated for all crimes that flow from criminal conduct under this act, is that your understanding?

For example, protection as an exchange of drugs, would we compensate for that consequence? We would not, would we?

Mr. McKEVITT. We would not, it is not our bill.

Mr. WALDIE. What violence would flow from the unlawful sale of drugs that would be compensatory in this bill?

Mr. McKEVITT. This would be sort of a Palsgraf situation.

Mr. WALDIE. A what?

Mr. McKEVITT. I mean a chain of circumstances situation.

Mr. WALDIE. Well, it is impossible because of the definition of an unlawful sale or exchange of drugs.

Mr. McKEVITT. I cannot say.

Mr. WALDIE. I cannot either.

Mr. McKEVITT. It is a question of whether you are going to confine compensation to the scope of crimes of violence or whether you are going to go beyond that.

Mr. WALDIE. Then of course, you use No. 17, on page 20, which is the catch-all for everything that you may have overlooked. The Commission can include that, any other crime, including poisoning. It would seem to be a favorite cliché after while.

Mr. McKEVITT. That one intrigues me.

Mr. WALDIE. I have no further questions. I went through this line of questioning to point out to the members, it seems to me that this was incredibly poorly drafted and the House bill would require an awful lot of attention before we could pass on it, before we could give it serious consideration.

I have no further questions.

Mr. EILBERG. Mr. Waldie. The committee hopes you will assist us in redrafting the bill so that in the event we consider it, it will be in its best possible form.

Mr. Flowers?

Mr. FLOWERS. Thank you, Mr. Chairman. I would like to express my appreciation to the witness for his help on this and I would completely identify myself with the comments of the gentleman from California, Mr. Waldie. I have grave reservations about, first of all, the direction that this takes us in, the amount of money that might be involved here could further bankrupt the country, I think, and we might end up doing some things that we ought not to be doing and it will leave things undone that we ought to be doing.

I question whether the whole direction of the bill would be better solved under the welfare benefits programs of various government agencies rather than having an omnibus crime legislation.

Mr. McKEVITT. What you just touched on is under serious consideration at the Department of Justice.

Mr. FLOWER. I just do not see how you can at this point—it may be we can arrive at some definition that would be reasonable, just and helpful without excluding the other people and be acceptable to the general public as something the Federal Government ought to be doing.

I think, Mr. Chairman, we certainly need some extensive consideration in further hearings before we embark or attempt to write up a bill of this nature.

Mr. EILBERG. Mr. Siberling?

Mr. SEIBERLING. Thank you, Mr. Chairman.

I have some of the same misgivings that were expressed by Mr. Flowers, and I would associate myself with some of Mr. Waldie's questions about the drafting of this bill. There are two things bothering me most. One is financing this program. The estimate of \$28 million a year, when the program is fully operational, is not a great deal of money, when compared to other Federal Government funding. But so many of these programs start out small and end up pretty huge.

I would think that we ought to have a pretty good idea of what the total expenditure is likely to be and also of the possibilities of keeping this program limited, because I can see pressure, once you get started on this, from constituents, from people who are victims of nonviolent crimes coming in and asking why they should not be compensated, and pretty soon you get to a program of astronomical proportions. So I think that we do have to be careful about this.

I wonder what you think, Mr. McKevitt, of the possibility of keeping this thing in bounds.

Mr. McKEVITT. I think, Congressman Seiberling, you make a very good point. If there are not strict restrictions accompanying this legislation, the costs involved could be tremendous.

Mr. SEIBERLING. When you get to financing, I suppose that taking the money that is paid in the criminal fines to the Federal Government is a logical thing to do. I do not know whether that money goes to the general revenue now or whether it goes to a specifically supported course or other activities, do you?

Mr. McKEVITT. It varies from State to State.

Mr. SEIBERLING. Now, this is just the Federal fund I am talking about. Do you know where it is?

Mr. McKEVITT. I do not have that.

Mr. SEIBERLING. I assume it goes into the general revenue so if you take that money and earmark it, that means that there would still be a couple of million more dollars that you would have to get somewhere else.

I am not saying it is not the right way to go, but maybe this program should be financed from the general revenues. I happen to think that social security should be financed from general revenues because at least it is based on the ability to pay, rather than being a regressive tax. I do think we need to think a lot more about the equities for building up a fund and levying some kind of a charge to pay for any

such program and I think your point is very well taken about exploring what can be done to keep insurance companies from putting in a clause which excludes coverage where it is covered by this type of legislation.

The other thing that bothers me equally is the possibility for fraud and abuse under this kind of legislation. I can see all kinds of lazy characters cooking up schemes to have phoney crimes committed, or maybe not committed against them, but just enough to get them some sort of compensation.

I can even see some lawyers perhaps coming up with genius schemes. I will not say unethical, but ingenious schemes to take advantage of this kind of legislation. I wonder if you have any thoughts on whether we can curb that sort of thing?

Mr. McKEVITT. Well, I think Congressman Keating made a good point on strict penalties. They have to be part of the legislation to prevent abuses taking place.

Mr. SEIBERLING. Well, they are going through the courts at least.

Mr. McKEVITT. But I think you have to have strict penalties, for one thing.

Mr. SEIBERLING. This is more of an administrative process.

Mr. McKEVITT. Yes, you have to think about staffing. How big of a staff are you going to have to have to administer this?

Mr. SEIBERLING. I think this is a worthwhile subject for us to study, but I think we all agree there are a lot of unanswered questions still. I will certainly agree that we should not mix this up with the indemnity for police or firemen. We should really separate the subject to help attract topnotch people into law enforcement and that is quite a different problem.

I have no further questions, Mr. Chairman.

Mr. EILBERG. Thank you, Mr. Seiberling.

Mr. SEIBERLING. Do you agree this should not be mixed up with the law enforcement officers indemnity.

Mr. McKEVITT. Yes, I do.

Mr. SEIBERLING. Thank you.

Mr. EILBERG. Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I wanted to thank Mr. McKeVitt for his testimony and for raising in some of his testimony some very crucial issues. They are all issues that the subcommittee will have to ponder very hard.

I have a few questions. First, going to whether or not this program ought to be part of LEAA. It is my understanding that the whole purpose of the LEAA program was to try to give incentives to States to improve their capacity to prevent crime, to improve and upgrade law enforcement. Do you think that having this kind of program would undermine the primary purpose of that program?

Mr. McKEVITT. I think it is a very good possibility that they could occur. I think that Congressman Seiberling makes a very good point from that standpoint. We certainly have been looking very close at this particular question.

It is a very serious question as to whether LEAA should get into this.

Ms. HOLTZMAN. I certainly appreciate your comments on that. It seems we are trying to make a national effort to improve local law enforcement and I hate to see that program in any way diluted or the goals of that program deflected.

The second question I have, goes to the conceptualization of this bill. Perhaps you have some comments. Is it your understanding that before a victim is to be compensated there would have to be a finding that a crime took place? Would somebody have to be convicted of the crime first?

Mr. McKEVITT. It is my understanding of the bill that conviction is not necessary for compensation to result.

Ms. HOLTZMAN. Is this bill drafted in such a way?

Mr. McKEVITT. I do not know. I do not recall reading it in there Ms. Holtzman.

Ms. HOLTZMAN. Do you think it should? What kind of evidence of a crime ought to be required before someone could receive compensation for being a victim of it?

Mr. McKEVITT. I hate to curbstone that one for you, but you are giving me a lot of good thoughts to take back to Elliot Richardson, I will tell you that. He is extremely interested in what your thoughts and queries are on this, as well.

Mr. EILBERG. Would the gentlewoman yield?

Ms. HOLTZMAN. I would be happy to yield.

Mr. EILBERG. I believe there is a section of the bill providing emergency payment subject to further investigation, and the full amount might be paid subsequently and the amount paid would be recovered if it is not properly due.

Ms. HOLTZMAN. I understand that. The point I am getting at here is that compensation seems to be based on the following acts. Let us take the example of riot. Does that require a finding that a legal definition of a riot took place. And in an assault situation where a person is accused of assault and subsequently, on appeal, it is found that no assault took place. How does that affect the victim who is claiming compensation here? Does the court need a conviction with respect to the commission of a crime so the victim can receive compensation? I do not know if that point is thought out.

I was asking Mr. McKeVitt on that point and what the policy ought to be in that respect.

Mr. McKEVITT. What is a riot, two or more, three or more? No. 1, I think one of the things you have to do from this political question standpoint is how are you going to take that isolated little case with the victim, the classic case that we all think of, or are we going to get into a very broad sophisticated sweep. Look at the expenditures you could have from a riot situation.

Ms. HOLTZMAN. I think that raises a questionable point. Going into the other question, who is the victim of a crime, what would you do in the instance of a family of somebody who was in fact accused and convicted of kidnaping or arson? Would they become victims of the crime? Assuming that it is the breadwinner who is engaged in criminal activity, his family is deprived of the benefits of the salary of that person. Does his family become eligible for compensation?

Mr. McKEVITT. Congresswoman Holtzman, this goes back to the point that Congressman Seiberling brought up. You might want to look at this from a welfare or social concept, because otherwise, look at the constituent mail you are going to be getting.

I think, to me, it goes beyond. I am talking personally now, beyond the concept of victims of crime to say that it effects the loss of the breadwinner status or the whole works.

Ms. HOLTZMAN. I do not know if that question was answered in this legislation. I was wondering if you felt that this legislation would be that broad. It is a point you were raising as to what is the philosophy of who should be compensated and I appreciate your thoughts on that score and I want to say, I agree with my colleagues that we do need to give this legislation careful thought, I have no further questions, Mr. Chairman.

Mr. EILBERG. Thank you, Ms. Holtzman.

Mr. McKEVITT, we sincerely welcome your testimony here. We hope that, and know that you will help us to try to find answers to the questions raised to see if we can move this legislation. There is a great deal of popular support for the idea and the concept. It is one that seems to be popularly acceptable. Obviously there are many and difficult legal questions, many fine points that have to be resolved if this bill is to move. We know we can count on your cooperation.

Thank you, too, Mr. Pineles. We are sorry that you are leaving the ranks, that your help will not be available too much longer.

Mr. McKEVITT. Mr. Chairman, thanks to you and the members of the subcommittee. I deeply value my relationship with the members on this subcommittee more than words can describe and I am always pleased anytime to come up here on this situation and I will be more than glad, as I am sure—as I say, General Richardson pointed out, that we welcome any more thoughts that you have on this because, obviously, they will be a great help to us.

Thank you.

Mr. EILBERG. Our next witnesses will be officials from the States of New York, New Jersey, and Maryland.

TESTIMONY OF STANLEY L. VAN RENSSELAER, CHAIRMAN, CRIME VICTIMS COMPENSATION BOARD, ALBANY, N.Y., AND GILES K. RILEY, MEMBER OF THE BOARD, VIOLENT CRIMES COMPENSATION BOARD, NEWARK, N.J., ACCOMPANIED BY CARL J. JAHNKE, MEMBER OF THE BOARD, AND MARTIN I. MOYLAN, EXECUTIVE DIRECTOR, CRIMINAL INJURIES COMPENSATION BOARD, BALTIMORE, MD., ACCOMPANIED BY JOSEPH PICKUS, AND GEORGE H. C. ARROWSMITH

Mr. EILBERG. Starting from our left to our right, Mr. Stanley L. Van Rensselaer, chairman, Crime Victims Compensation Board, Albany, N.Y.

Mr. VAN RENSSELAER. Thank you, Mr. Chairman.

Mr. EILBERG. Could you hold up for 1 minute, I want to identify everyone here.

Then we have Mr. Giles K. Riley, member of the board, Violent Crimes Compensation Board, Newark, N.J., accompanied by Carl J. Jahnke, member of the board.

Next we have Mr. Martin I. Moylan, Executive Director, Criminal Injuries Compensation Board, Baltimore, Md., accompanied by Joseph Pickus, chairman of the Maryland Criminal Injuries Compensation Board, and also Mr. George H. C. Arrowsmith, Commissioner of the Criminal Injuries Compensation Board.

Mr. Van Rensselaer, I understand you have a statement.

Mr. VAN RENSSELAER. Thank you, Mr. Chairman.

Let me say first that we are happy to be here to aid whatever we can with respect to this bill. I think it is fair to also state, in our New York State, that they wholeheartedly support the concept of this bill and I think it also might be well to state, recognize perhaps that there are many associations including the American Bar Association, the International Associations of Chiefs of Police, the National Committee on Causes and Prevention of Crime made a recommendation for such a program.

In addition to that, public polls, both by Gallup and Reader's Digest reflect that this group of States, as well as the Provinces of Canada, and England, also now have an international conference, and needless to say the concept was advocated by us at our last meeting.

Perhaps we should look at this first, in the light of who are the victims of a crime with whom we are concerned.

The President's Commission on Law Enforcement and the Administration of Justice reflected victimization by income, that most of the victims are of the low-income bracket and that the rate of crime against males was three times as great as those for women. In addition, there was considerably higher number of crimes committed against nonwhite than the white. One of the previous speakers has also given you the facts and figures with respect to the relatives and the number of crimes and compensation awards that would not be allowed by reason of the definition of the family relationship.

I think heretofore there have been exactly three remedies that I know of that were available to victims. One was compensation, part payment by the criminal which emanated by the early ages, restitution by the defendants, and no one can quarrel with that theory but from a practical point of view, of course, it has little if any merits because they generally are judgment proof.

Then of course, we have what is known as partial restitution by the white collar offender, the offender where actually anything done for the victim was in mitigation of his sentence, or it was to avoid his going to jail and maybe paying a fine, but giving the victim something.

I think the first question that is important for all of us to recognize is what is the responsibility of the government with respect to these innocent victims? I think here we have three theories that have been discussed in any number of publications. One was the social welfare theory of compensation which rests on the idea that society's conscience cannot tolerate the suffering of a victim.

Two, compensation which assumes an inherent duty of the sovereign to indemnify those whom it fails to protect and three, the theory of legislative grace, which is between the two extremes and recognizes the methods that we would call a moral obligation. I would like to say however, that to rationalize or rely upon any one philosophy would seem to be really evading the question. What we have to look at is the individual and the condition to which he has been placed through no fault of his own.

I would also like to say, insofar as the criminal justice administration is concerned, there seems to be a great inequity on the part of the general breakdown of the trust and respect which our citizens hold for the democratic legal process. It has been enunciated that aiding

victims of crime should be a part of the criminal justice process that the victim, whom I choose to call the "forgotten man," certainly in our society, rightly feels that his government is spending tremendous sums of money on behalf of the defendant, whereas he, the victim, has been left alone with his own bills to pay and hardly has been recognized except by the article in the newspaper.

The law-abiding citizens of this country deserve more from their government. Certainly the victim should receive some aid from his government, and is a more willing witness for the prosecution than one who receives nothing. Then if we can examine it from one other standpoint also. The victim is actually contributing to the support of his assailant without any hope of retribution. He contributes to the cost of the investigation, the arraignment, prosecution, and even the subsequent maintenance of the criminal throughout his term of incarceration and he also assists him in the support of his family.

The victim or his widow must consider these costs almost as penalizing them, and I think we can say here, we certainly do not take the position and there is no presumption of any constitutional right of the defendant being restricted, certainly we must recognize that he has some rights also, the victim. Perhaps legislation or this type will aid to eliminate the existing injustices if we are to achieve the ideals and win the respect and cooperation of our taxpaying citizens. Perhaps the most important, and I have heard here from not only the witnesses, but from your committee, Mr. Chairman, financing. Where is the financial impact for reimbursement of the citizens? I have heard all kinds of figures given, and of course this is the main problem. I can recall when New York passed this on the floor of the assembly, there were all kinds of remarks made that we are opening Pandora's box. I take exception to that. That has not been true in the State of New York, and I cannot speak for the other States. They can take care of their own in that respect. I set up a schedule in the statement which I filed with you, Mr. Chairman, showing the amount of money that we paid out in the State of New York for the last—not the last 4 years, because my last report is at the printers, and I will file that with you later if you care to have it. Now, it is true and someone raised it here this morning that since New York has no serious financial hardship, therefore, it is way down. That is not the truth of the matter, because if you look at the next schedule, you will see that the number of claims that were turned down for no serious financial hardship were relatively few in comparison with the number of claims that were filed. Our reports will show many, many other reasons for a claim being disallowed and no award made. Now, it is also dangerous to talk about the cost of one program or a prospective program as against what we already have. But let me just for one second take the time here to recite in New York State, as you can see from the schedule here, the year before last we paid out \$2,245,751 which included everything.

Mr. EILBERG. Mr. Van Rensselaer, I am assuming you are more or less representing the other members of the different States sitting at the table?

Mr. VAN RENSSELAER. That am I what?

Mr. EILBERG. That you are representing the viewpoints of the other members sitting at the table—you are more or less a spokesman for the group?

Mr. VAN RENSSLAER. I think they will more or less agree with me.
Mr. EILBERG. I wanted the subcommittee to know that. Please proceed.

Would you hold a minute?

Mr. Waldie?

Mr. WALDIE. At this point, would it be fair to say that in your view every victim of a violent crime in New York last year was entitled to compensation under the act, that they received it?

Mr. VAN RENSSLAER. Every victim that was entitled to file a claim, is that what you mean?

Mr. WALDIE. Yes.

Mr. VAN RENSSLAER. Of course not.

Mr. WALDIE. What percent of those entitled have filed?

Mr. VAN RENSSLAER. I do not have any figures, because until a claim is filed, you have no reason to know whether it is valid for any one of a number of reasons, Mr. Congressman. So therefore, I cannot answer that.

Mr. WALDIE. How do you know that every individual has filed?

Mr. VAN RENSSLAER. Only by reason of the FBI reports which show the number of claims reported, and that is the basis for us.

Mr. WALDIE. You are using that as a basis in making an assumption that if the FBI has this as a violent crime, that the person would be entitled to receive benefits, what percentage of those have filed?

Mr. VAN RENSSLAER. I think we have to go back and look at it from one other standpoint. If we take the total number of crimes that were reported, and if we compare them with our reports in here showing the number that were filed, the number that were turned down and the reason for it, and if you used that same thing, you are not talking about 18,000 awards, or anything like that. But I do not have any of those figures in my head, and I do not know if I could tell you. Of course, there are a lot—a great many crimes, as was said here, that were not reported.

Mr. WALDIE. I do not want to prolong this. If there is passage of legislation like this, and it was available to all of those victims of violent crimes, where in fact it is only available to a very small percentage, for whatever reason, the necessity of the legislation would not seem to justify it. What I am trying to find out, is of the victims of violent crime in New York, how many of those victims have found some relief from this sort of legislation? Do you know that?

Mr. VAN RENSSLAER. I can only tell you from the various reports for the various years, that we are now about 2,000 claims a year. That is what we are receiving.

Mr. WALDIE. That would seem to me, without knowing very much about the incidents in New York, an infinitesimally small number of the violent crime victims—

Mr. VAN RENSSLAER. I think that is true, but I think if you relate it to the number of people who received awards, it would amount to between 30 and 35 percent, and that is by reason of the statute, its limitation that only one-third are actually receiving anything.

Mr. WALDIE. One-third of those that apply for it.

Mr. VAN RENSSLAER. Right.

Mr. WALDIE. And we do not know how many of those who apply for it, what percentage of those entitled to it apply for it?

Mr. VAN RENSSELAER. I see no reason why, with 2,000 claims, why we cannot use the same percentages that over the years, that is what we have been running right along for the past 3 years—

Mr. WALDIE. No, you misunderstood me. The 2,000 claims that were filed, they do not represent all of those entitled to file.

Mr. VAN RENSSELAER. That is right. No.

Mr. WALDIE. Do you know what percentage of those who could apply actually apply and receive compensation?

Mr. VAN RENSSELAER. It would be a very small percentage.

Mr. WALDIE. We get down to a very small percentage that are entitled to file or do file, and out of that only 35 percent receive an award.

Mr. VAN RENSSELAER. That is true.

Mr. WALDIE. The beneficiaries of this legislation, given the total problem, just the victims of violent crimes statistically are almost unmeasurable.

Mr. VAN RENSSELAER. I do not know. If you go on the basis, as we have, our reports will reflect approximately one-third are getting some relief under the statute. I do not think we can call that an infinitesimal number.

Mr. WALDIE. I do not want to prolong this, Mr. Chairman. Later I would like to know why everybody does not file and I have no further questions.

Mr. EILBERG. Please proceed, Mr. Van Rensselaer.

Mr. VAN RENSSELAER. In New York State this past year, there were—

Mr. EILBERG. We are rapidly running out of time.

Mr. VAN RENSSELAER. I can sum it up very quickly.

Mr. EILBERG. We will be glad to put your statement in the record, and if you could sum it up, that would be fine.

Mr. VAN RENSSELAER. I would be very glad to do that.

Considering what I have already stated and you have heard from the other gentleman who is able to state the cost that these programs in the States—who can possibly question the amount of money necessary for a project and program when we examine the course of the criminal administration cost, and who is more entitled to aid, care, and comfort than the innocent victim of a crime. I think it can therefore be concluded by reasonable methods, and it ought to be accepted by the Government that the reimbursement to the victim of an innocent crime for his medical expenses and loss of earnings is the least this Government can do for him. I would like to file our report, annual report, with you. There is much more in there that I do not want to go through now.

Mr. EILBERG. We will make your statement a part of the record and a part of the file.

[The prepared statement of Mr. Van Rensselaer follows:]

STATEMENT OF STANLEY L. VAN RENSSELAER, CHAIRMAN, CRIME VICTIMS
COMPENSATION BOARD, STATE OF NEW YORK

First of all, Mr. Chairman, let me express my appreciation for the opportunity to appear at this hearing on reimbursement to innocent victims of crime.

It has been my privilege to have furnished information to aid in the drafting of several Federal bills since about 1971.

Needless to say, the states, including New York, which have adopted a program to aid the innocent victims of crime wholeheartedly endorse the Federal bill and particularly the state aid that is set forth.

Perhaps it is well at this point to recognize that this concept of reimbursement to victims has received the endorsement of many associations, such as the American Bar Association, The International Association of Chiefs of Police and others. In addition, the National Committee on Causes and Prevention of Crime made a recommendation for such a program.

The public has also endorsed this concept as was reflected in the Gallup Poll of October 29, 1965 which reflected 62% were in favor. The Reader's Digest poll conducted in 1967 also reflected approval of 90% of judges, law enforcement officials, correction officials, and professionals. The International Conference on Compensation to Victims of Crime comprising the states as well as England and the Provinces of Canada have also endorsed this program and urged its expansion. At the present time California, New York, Massachusetts, Maryland, Hawaii, New Jersey and Alaska have such a statute to aid victims and Nevada has a Good Samaritan program. It is interesting to note that Rhode Island has adopted a statute but the same is to become effective only upon the passage of the Federal bill. New York City likewise has a limited Good Samaritan program.

WHO ARE THE VICTIMS OF CRIME WITH WHOM WE ARE CONCERNED?

The data developed by the President's Commission on Law Enforcement and Administration of Justice reflected victimization by income that most of the victims are of the lower income and that the rate of crime against males was three times as great as those for women. In addition, there was considerably higher number of crimes committed against the non-white than the white.

It should also be noted with respect to various types of crime, particularly murder, that 27% were by members of the family and are excluded. With respect to rape victims 14% were relatives, family friends or boyfriends. In the aggravated assault cases 10% were attacked by relatives. Accordingly, a large number of victims are ineligible to receive any award.

Location of the crime reflected that in the residence 20% were males and 46% were females. On the street 46% were males and 30% females. In taverns and liquor stores there were nearly 6% for males and nearly 3% for females. These latter figures are closely related to the characteristic patterns of interaction among men and women in our society.

WHAT ARE THE REMEDIES AVAILABLE TO VICTIMS?

Essentially there have been three possible avenues.

1. Composition—part payment by the criminal which was adopted in the early ages by the tribes.
2. Restitution by the offender. No one can quarrel with the theory but it is neither feasible nor practical since few are apprehended and convicted and are generally from the lower income group that are judgment proof. Prison earnings afford no help. Employment of a convict prevents anything other than a minimal payment. However, more important is the fact that the costs of administering a system of restitution would exceed the sum collected.
3. Partial restitution by the white-collar offender to avoid prosecution or to mitigate sentence. Certainly none of these affords the victim much more than a theory. None afford the victim any relief except in an insignificant number of cases.

WHAT IS THE RESPONSIBILITY OF GOVERNMENT TO THE INNOCENT VICTIMS OF CRIME?

There are three main theories for compensation to victims:

1. Social welfare theory of compensation which rests on the idea that society's conscience can not tolerate the suffering of a victim.
2. Compensation which assumes an inherent duty of the sovereign to indemnify those whom it fails to protect recognizing the citizen undertakes to pay his taxes and the state undertakes to protect him from criminal failure.
3. The theory of legislative grace which is between the two extremes in that the sovereign has a moral obligation to compensate innocent victims of crime.

To rationalize or rely upon any one philosophy would seem to beg the question. In reality we must look to the individual and the condition in which he is placed

through no fault of his own. At present in criminal justice proceedings there is a common inequity which seems to be a part of the general breakdown of trust and respect which our citizens hold for the democratic legal processes of our nation. It has been enunciated that aiding victims of crime should be a part of the criminal justice process. The victim whom we can call the "forgotten man" of our society rightly feels that his government is spending tremendous sums of money on behalf of the defendant, whereas, he, the victim, has been left alone with his own bills to pay and hardly recognized except by an article in the newspaper. The law-abiding citizens deserve more from their government. Certainly the victim who has received some aid from his government is a more willing witness in the prosecution than one who receives no aid, support and/or comfort from his government.

Perhaps it also should be acknowledged that the victim actually contributes to the support of his assailant and without any hope of retribution. The victim is also contributing to the costs of investigations, arraignments, prosecution and the subsequent maintenance of the criminal throughout his term of incarceration as well as the support for his family. The victim or his widow must consider these costs as penalizing them. Let it be said here that there is no presumption that any constitutional right of the defendant be restricted but certainly we must also recognize the victim and his rights. Perhaps this legislation will aid to eliminate these existing injustices if we are to achieve the ideals and win the respect and cooperation of our taxing citizens.

WHAT IS THE FINANCIAL IMPACT FOR REIMBURSEMENT TO VICTIMS?

The one problem that everyone has faced in discussing payment to victims is the cost. This was the paramount issue for several years before Marjorie Frey was successful in convincing the Parliament of the need.

The same was true when the New York State statute was debated. There were many remarks made to the effect that this was opening "Pandora's Box". Each of the states that have such a program as well as those that are considering it face this problem. The experience in New York State has proven that the cost is neither exorbitant nor prohibitive.

The schedule for the last four years of New York's experience better explains and substantiates the fact that the costs are not exorbitant.

AVERAGE COSTS OF CLAIMS

Year	Number of dec.	Number of awards	Lump sum (80 percent)	Protracted ann. pay. (10 percent)	Death ann. pay. (10 percent)	Actual expenditures
1969-70	826	336	\$1,410.00	\$4,071.00	\$3,000	947,344
1970-71	1,090	632	1,930.00	3,450.00	2,040	1,577,777
1971-72	1,543	552	1,460.00	3,228.00	2,344	1,772,348
1972-73	1,959	715	2,331.52	4,288.56	3,363	2,245,751

New York State statute allows an award only where there is serious financial hardship. Accordingly, there must be taken into consideration the number of claims for the same years as set forth above that were disallowed for the reason that there was no serious financial hardship. It can readily be seen from this number that were disallowed that it would not substantially increase the budget for the New York State program.

Number of claims disallowed, no serious financial hardship

1969-70	104
1970-71	93
1971-72	94
1972-73	107

Although it may not be a comparison, nevertheless, the costs of institutional care will reflect that the cost of a crime victims program is reasonable. New York State at this time has approximately 13,000 inmates in its institutional facilities; 13,000 on parole and 46,000 on probation. The cost per annum for each inmate is approximately \$7,000.00 per year. Even supervision in the community, probation or parole averages out at \$800.00 per year. The budget provides for \$123,000,000.00.

These costs do not take into consideration criminal investigations, arraignments, prosecutions and all of the other expenses in connection with criminal procedures.

Who is therefore able to say that the cost for crime victims is exorbitant?

Who can possibly question the amount of money necessary for a crime victims program when we examine the costs of the criminal administration?

Who is more entitled to aid, care and comfort from the government than the innocent victim of crime?

When we take all of these facts into consideration certainly it can be concluded by reasonable men and must be accepted by the government that the reimbursement to the innocent victim of crime for his medical expenses and loss of earnings is the least that his government can do for him. All of which is respectfully submitted.

Mr. VAN RENNELAER. Thank you, Mr. Chairman.

Mr. EILBERG. I am wondering if there are any more formal statements from the gentlemen at the witness table.

Mr. MOYLAN. We do not have a formal statement, Mr. Chairman.

However, Mr. Pickus and I have been tongue-tied here hearing all of these things, and we do have the answers for these questions, and we would like to respond to some of these questions.

Mr. EILBERG. We are running out of time rapidly and we will have to adjourn the meeting shortly, but please go ahead.

Mr. MOYLAN. There are answers to Mr. Waldie's question—

In Maryland, it is like a pyramid. In Maryland, the average person who is the victim of a crime will have maybe only \$10 or \$15 in bills, he may have that in hospital costs, he may have only a scratch on his face. He may have just been shaken up for a moment, or sustain a \$20 loss of a wristwatch, but we are sure of in Maryland, because we are a very small State, and a paraplegic will not get away from us. There are only three hospitals that he ends up in. None of the homicides can get away from us. We are compensating all the major crimes. We are compensating the big ones. It is true there are small ones, they are at the bottom of the pyramid, and we are getting them all. There are a large number of victims, but the majority of them have small losses.

The ones that do have losses have tremendous losses, they have brain damage, paraplegia, death, those are the ones that the Maryland statute responds to.

Mr. EILBERG. Do you have anything further to add?

Mr. PICKUS. Yes, Mr. Chairman, if I may. I would also like to say that the State of Maryland favors the passage of such legislation. I would like to point out that we believe the need is there. Many of the apprehensions by this subcommittee and Mr. McKevitt and previous witnesses have been addressed to previously by the legislatures of some of those States that are represented here today. The question of finance and revenue is no question about it, is a very serious consideration. It has not turned out to cost us, sitting at this table, the amounts that those opposed to this type of legislation thought it would. It has not even come close. I would also like to give you one very impressive fact, and in approximately $4\frac{1}{2}$ years of physical operation in the State of Maryland, we have not had one single instance of fraud, not one. At least, discoverable fraud, let me qualify it by saying that. We have not discovered any fraud. Yes, at many hearings that we conduct, we feel that perhaps people are stretching the truth, and I will go further and say even lying. However, it is a question of proof as to

any referrals due a prosecutor for prosecution of perjury, we have not had one case.

However, if we feel someone is lying, they are very definitely turned down. I am really at a disadvantage. I think I can say this for everybody sitting at this table, we really have so much to say, we do not know where to begin. I think perhaps we could be more helpful by answering any questions.

Mr. EILBERG. We have many questions, and we are running out of time quickly. We might decide to call you back. You might consider submitting a written statement based on what you have heard here this morning.

Before I call on the other members, I want to see if the representatives from New Jersey have any particular or general observations to make at this time?

Mr. JAHNKE. We of course prepared no formal statement. I am sure that you know how appreciative we are of being here.

There were certain comments made this morning to which I would like to reply, as has the gentleman from Maryland.

I do not know frankly whether Mr. Riley has anything more to add than that, but there are certain things I should like to comment on, if I may, at this point. I will begin, Mr. Keating, the comment you made about the makeup of the board. The statute in New Jersey provides for two lawyers and one nonlawyer. The Governor in his wisdom—the first appointment that he made was an insurance man. That is our Commissioner, Mr. Riley. I mean, the Chairman. I am sorry. He has 27 years for background in the field of claims, and we have in addition to that an impartial medical board at our call, should we need them. I think this is an ideal method of resolving that question. I call that to your attention, since you may not have been aware of it. There was a question raised about the financial need of the claimant, as we refer to him in New Jersey. It may largely be moot concerning the claim because for the large part, that middle class, the middle-class individual has some other provision, has taken other steps, has some other private source of income and the statute clearly sets forth that we must take all of those into consideration. He may not have financial need, we of course do feel that we must take all those into consideration. We may not have financial need. We do of course feel that to deny him access to the benefits of this bill would be in a sense discriminatory. We are nonetheless aware that in most instances, the middle-class individual would have some other source of income and does not become our primary source of concern.

There was a question, I think, Mr. Waldie brought up the question of aggravated assault and assault on a criminal, that the crime is lessened. In New Jersey we list simple assault as a disorderly person offense, which is not a crime. Therefore, the victim of a simple assault would not be compensated, would not qualify for compensation. We also list atrocious assault and battery, which is a high misdemeanor, we make that distinction in our law. We only qualify a victim of an atrocious assault and battery. We leave out the simple assault.

There was a suggestion, I believe, also by Mr. Waldie. You were asking the gentlemen from New York, are you reaching everyone? Are all those qualifying being helped? We find it difficult at the outset,

at least, and we have only been in this about a year, to reach everybody. We have got to let them know that this kind of service is available, and interestingly enough, an awful lot of people cannot believe that someone got around to considering them. So an awful lot of people just do not believe that there is anyplace that they can go for this type of help. We have—we are beginning now a publicity type of campaign, now, if you will, to contact the radio stations, the local television, newspapers, to let the victims in New Jersey know that we are there. Until we can get that message across, we cannot reach all of those people.

I offer this as perhaps some help to answer your questions.

Mr. Seiberling very properly concerns himself with the growth of cost of this kind of an operation. It seems to me that we have to delete any concern for property damage. We cannot concern ourselves with TV sets being stolen, with the money being taken out of the wallet. There is no way to determine what was robbed from the victim. The purpose of the bill initially is to compensate for medical expenses and loss of wages. I do not think we ought to be—we cannot wholly increase the scope of this thing to cover all of these possibilities. That would make the cost prohibitive.

Ms. Holtzman raised the question whether or not a crime has actually been committed. The statute in New Jersey does not require a conviction. It does not require prosecution. It requires some evidence that the crime did in fact occur. For this reason we seek, through our own independent investigations, we have a staff of investigators, as I am sure the Board would have, we determine through them and the cooperation of local enforcement agencies what kinds of events caused the injury. From that viewpoint, we establish whether or not a crime had been committed, or whether there is reasonable cause to believe that there was a crime, and that is enough for us.

Frankly, I will not belabor this much. I want to close with this remark. There has been considerable comment on opposition to this whole concept for many reasons, cost and otherwise. I would suggest this to the persons who oppose it, and I would like to describe very briefly one of the first cases I read on this.

The father of two small children, blind in one eye, was having Christmas dinner with his family, and took a walk, as I suppose we all do, particularly on Christmas. He walked three blocks and was mugged. His money was stolen, he was beaten up pretty bad, and as a parting shot, the perpetrator of this offense put an icepick through his good eye, and rendered him totally blind. When I find cases like that, I cannot in any way, shape or form develop opposition to this kind of legislation.

Thank you for your time.

Mr. EILBERG. Well spoken, sir. I will yield to any member of the committee who would like to ask questions.

Ms. Holtzman?

Ms. HOLTZMAN. Gentlemen, I just have one or two questions.

The first gentleman, the gentleman from Maryland, Mr. Moylan, how is your program publicized? How do you reach the people involved in the most heinous crimes?

Mr. MOYLAN. We have a pamphlet. All of the commissioners and myself try to reach out as much as we can to the legislators and the

public. We have these pamphlets in every hospital, every police station, State attorney office, welfare departments, with various other agencies of government. I cannot believe that this year, now, we missed any serious crimes. There are many small crimes, and victims of crime. If they have a \$35 loss or \$135 loss, they may decide not to take action. That is up to them. I am sure that those individuals would number in the thousands, but the paraplegics, the people with brain damage, the serious loss of sight, loss of spleens, and other various seriously injured individuals, we are getting to them.

We reasonably believe that we are getting compensation to those people.

Ms. HOLTZMAN. With respect to coverage under various States which have these plans, is it true that all of the States represented here exclude compensation for a property loss?

Mr. MOYLAN. Yes. There are certain exceptions to that, Ms. Holtzman, which I think bear mentioning. We do exclude property damage except for such things as eyeglasses, hearing aids, braces, things such as that.

Ms. HOLTZMAN. Is that covered in New Jersey?

Mr. JAHNKE. Yes.

Ms. HOLTZMAN. In New York?

Mr. VAN RENSSELAER. Yes.

Ms. HOLTZMAN. And what are the crimes that are covered in the States that are represented here? Do you have any comparisons? Are they basically the same kinds of crimes?

Mr. MOYLAN. I think we are all relatively close. I think we all sort of say the same thing, that is, a crime within the particular criminal statute of the State or those States that follow the common law of England, anything that is a crime under the law of England, would constitute under our act, and I think we are all relatively close on that.

Incidentally, we compensate for simple assault, and we have made several awards for simple assault. That is, an assault without battery, and an assault with just a threat. We have, I know, two cases of individuals attempting to assault and actually making an assault without battery, and there was no touching, they ran away, and one fellow fell down the steps and broke his leg. We compensated him for that.

Mr. PICKUS. May I back up and add another comment to your previous question, and something that Mr. Waldie seems to be concerned about.

I would say we are very definitely not reaching every person in a crime in our States. I would be prepared to say that we are very definitely making a dent in it. As to percentages, I would hazard a guess around 20 percent, maybe to 25 percent in the State of Maryland. Now, there are reasons for that, and the reasons for that you are talking about a concept that has not been thought of since the time of the Babylonians, No. 1.

No. 2, you are talking about public awareness. We are charged with responsibility of making people aware, and I would suggest to you that is a full-time, everyday job. You know, as politicians, it's not easy to get space in a newspaper, radio, and TV every day. When you have a human interest story, yes, you get a little blip on the

11 o'clock news, or if you have something that interests the general public, you may get a blip. You appear on a radio. You appear on a talk show of some kind. You try to publish periodicals, you do what you can to reach as many of the people as you can. We have our literature, as I am sure everybody else does, all over the State, hospitals, police stations, et cetera. The point is, let's compare it to workman's compensation laws, and they go back approximately to 1938, when most States enacted the workman's compensation, not every workman was familiar with the fact that he could collect compensation benefits. It takes a certain period of time to make our citizenry aware and as a matter of fact, it is our position that until people in Maryland are as aware of this law as they are of workman's compensation laws, we have not fully achieved our goals.

Mr. EILBERG. Mr. Seiberling?

Mr. SEIBERLING. Yes, Mr. Chairman.

I am directing this question to all of you, to whomever wants to answer it.

Are any of you under a law which gives the victim of crime the right to compensation, or do you have some wide latitude in deciding on compensation?

Mr. PICKUS. Well, we may be a little different on that point, Mr. Congressman. For example, in Maryland, we call it compensation and reimbursement. We reimburse for actual expenses and we also compensate for the actual physical injury. One thing we do not have in our statute, which I would suggest to you, not only representing Maryland, but we have an international association, and I think it is consensus of that association and Mr. Van Rensselaer, if I am wrong, that the issue of mental anguish or mental stress is a very real Pandora's box.

I do not think that any of us that are sitting at this table have it in our statutes, that is putting a value on mental anguish and mental stress. Yes, as an attorney, I can give you some suggestions under negligence law, what mental anguish or mental aggravation is worth in the State of Maryland; \$50 per day, at the present time, I think it is. We do not have that in our statutes. We completely stay away from that.

Getting back to the benefits, in Maryland, for example—I am not sure this applies to New Jersey or New York—our benefit section is patterned after the schedule of benefits in the workman's compensation laws. For example, if a man is permanently, totally disabled as a result of a criminal act, and there is medical testimony to that effect, that injury is worth \$45,000. The medical testimony would bear relation to any disability that may be suffered, that is set out in the Workman's Compensation Act, which we follow for the purposes of the benefits.

Mr. VAN RENSSELAER. I would like to add one word, sir. Anything can be said for physical injury. Anyone can claim to be a victim of a crime. They are entitled to file a claim and therefore, after that, he must qualify under the limitations of our statute, so he is entitled to file a claim but not entitled necessarily to reimbursement or compensation because of the other restrictions put in the statute. There must be a crime. We find in our penal law in the State, there must be a police report within 48 hours, unless good cause can be shown, which would be a man rendered unconscious and put in the hospital, he must have a

minimum of \$100 unreimbursed medical expenses, which means any medical coverage he has, we deduct that, and we only pay that part of his expenses that he has to pay out of his pocket, and he is entitled to a loss of earnings if it is 2 weeks or more. Again, this is the loss of earnings, and again we take his debt. We take the gross. We take out taxes, disability, whatever he may have taken for any program, and I do not know if that answers your questions, Mr. Congressman.

Mr. RILEY. Nonetheless, meeting all those requirements, he then shall be paid.

Mr. VAN RENSSLAER. No, wait. We have a couple of other things in here. We have provocation or contribution to determine, so I mean we have got all of these various things, an innocent victim of crime would not receive by reason of that—

Mr. SEIBERLING. If we set up a Federal system, I presume the Administrative Procedure Act is going to be applicable to this proceeding under this system, and I can see a regular bar developing to handling this kind of case. I can see lawyers who are not satisfied with the results taking cases to court, claiming that the board failed to consider certain evidence, and so forth. If that develops, we are going to be off to the races, as far as the exposure.

Mr. VAN RENSSLAER. I do not mean to be facetious, but I would like to answer that. About 10 percent of the cases filed, are filed by attorneys, and we have had nothing but complaints from attorneys, they cannot earn a good fee, they say, handling this type of case, in our State. So it has not been borne out that way, or as—we have been taken to court twice since 1967.

Mr. JAHNKE. I think you hit something right on the nut, if I may. The maximum compensation, 15 percent of that can go for attorney fees. Now, excluding maximum payments in our State of \$10,000, all of the others average \$787 per victim. Fifteen percent of that is not the kind of fee that will induce an attorney to get involved in something like this unless he develops something like a workman's compensation practice, and he walks into our office with 40 files under his arm. I think that is very appropos. We will be developing a whole corps of lawyers specializing in this field. It is not worth while unless they do something like this.

Mr. SEIBERLING. It is possible to write the laws so that there will be sufficient restraints on the board so that the rulings are not arbitrary, and at the same time to prevent the kind of problems of attorneys developing their cases to take to court to contest the rulings in order to get a bigger settlement?

Mr. VAN RENSSLAER. I can only say as far as New York is concerned, once an award is made or a decision is made, the claimant has the right to a full board hearing. He is not given any right to go to court under our statute.

Mr. SEIBERLING. In other words, the decision of the board is final?

Mr. PICKUS. May I add a comment, Mr. Seiberling, in defense of my fellow brother attorneys? I would say in Maryland, 90 percent of our claims are filed by attorneys, and yes, there are a few who, you might say, are building up a sort of a practice in this area. However, in 4½ years of operations, we have had only six cases that have been appealed to the court. We have a procedure similar to New York. We have the discretion to give a claimant a hearing before one member of

the commission. If the claimant is aggrieved by his decision, he can ask for a full board hearing, which is done many times, and I am proud to say that I think most of us can say this, it is not a rubberstamp proceeding. Many of the one-man procedures are overruled as a result of more recent evidence or whatever the case may be. We also do not have a provision in our law that guarantees to a claimant the right to appeal the court. We on our board have always taken the position that in reading our law, you must read our local administrative procedures act, which gives the complainant the right to, before an administrative agency, the right to appeal an action, as you know. Some of the people that have filed appeals have been met with motions for dismissal by our attorney general on the strength that that right is not given in our statute. At this very moment in Montgomery County, that particular section of our law is about to be declared unconstitutional. So I would respectfully suggest that I think claimants should have a right to file an appeal. But perhaps this double system, which is in your bill, the right to a full board hearing, you will embrace many of the appeals that may be going to court. Now, in terms of attorney fees, we stay completely away from the percentage aspect of counsel fees, because in our jurisdiction, many lawyers are used to handling workman's compensation cases, they have claims where they get anywhere from 10 to 20 percent of an award, \$40,000 is what we are talking about, that is a considerable fee, which in a financial need State such as Maryland, may sound a little ridiculous. Here is a guy who needs the money, and you are taking \$4,500 away from him. They have stayed away from that, and it is discretionary with the commissioners to award a counsel fee, and that fee, under our policy, is awarded based upon current bar association rates.

To give you an example, \$30 an hour, \$75 a day for hearing time. That is the way we operate. As I say, it has not been abused, and it has not resulted, as I say, in a lot of court appeals. We have had six in 4½ years.

Mr. SEIBERLING. I think that is very encouraging. I do have the feeling that once you start down this road, and start building up a big body of cases or case law, there tends to be on the part of the courts, a very gradual deviation. Judicially created rights may override legislative efforts to write in restrictions.

Mr. VAN RENSSELAER. Perhaps the best information I could suggest to you on that, Mr. Congressman, is England had this scheme for about 10 years now. They are handling last year, slightly over 10,000 claims, and their experience as far as it bears, does not bear out any great amount of court procedures.

Mr. SEIBERLING. Thank you. I do not want to prolong this.

Mr. EILBERG. Gentlemen, under the total cost of your respective State programs, how much money is spent on administrative costs, and how much is actually awarded to victims?

Mr. VAN RENSSELAER. In New York State, I would say administrative costs run close to 20 percent of our total budget.

Mr. EILBERG. And the other States?

Mr. JAHNKE. In New Jersey, 20 percent.

Mr. PICKUS. Maryland would be less than 10 percent.

Mr. EILBERG. Any other questions for any of the gentlemen?

Mr. WALDIE. What is the maximum payment that they can receive?

Mr. JAHNKE. In New Jersey, it is \$10,000.

Mr. WALDIE. Has the gentleman that you referred to received the maximum?

Mr. JAHNKE. Yes.

Mr. WALDIE. Is there any offset for disability or money that he might receive from any other sources because of the total disability?

Mr. JAHNKE. I cannot answer that.

Mr. WALDIE. I know there is an offset for social security, for assets. Would a case such as the one described have an offset in your social security and other resources that might be received as a result of his disability, would that be taken into account?

Mr. MOYLAN. That would be taken into account.

Mr. WALDIE. Would he, as a result of the crime, would he be entitled to other governmental compensations, would you then account for that and take that into account when making an award?

Mr. MOYLAN. We make the full award for \$45,000, and we only use social security to offset the monthly payment. So instead of paying \$45,000 in a 6-year period, the payout period would be extended. We will pay the full \$45,000, but we will reduce his monthly award by his social security monthly award, and the payout period would be extended to say 10 to 12 years.

Mr. WALDIE. If he is receiving money elsewhere, that would be taken into account?

Mr. RILEY. That is also true in New Jersey.

Mr. WALDIE. If he had a personal injury suit that had not been productive yet, what would you do in that case? Suppose he collected because of the loss of that eye, \$100,000, what would you do in each of the cases?

Mr. PICKUS. Mr. Waldie, there are reductions, as Mr. Moylan was saying to you. In the case of social security, all that would do to us would reduce his monthly payment and prolong it.

Mr. WALDIE. There would be no deductions in the award?

Mr. PICKUS. From the social security.

Mr. WALDIE. I am not talking about that. Suppose this person received a \$100,000 award for personal injury, what would you then do?

Mr. PICKUS. We would then reduce it, and depending upon any recovering he made, we could turn it down altogether at that time. Again, we are a financial need State.

Mr. WALDIE. I gather that every State is.

Mr. RILEY. No, not in New Jersey.

Mr. WALDIE. If this fellow that was blinded was a multimillionaire, he would be entitled to the maximum award?

Mr. JAHNKE. We do not specifically set out what financial needs are for a prerequisite. To be very kind, Mr. Waldie, we have it by the seat of the pants at that point. To get back to the situation you just described, this gentleman who received \$100,000, we would certainly take that into consideration. However, there is something else to remember. Before that gentleman gets \$100,000 in a judgment award, perhaps 3 years have gone by. We are not sure whether we have to wait for that 3-year period to go by.

Mr. WALDIE. You subrogate if you do not wait?

Mr. JAHNKE. That is right.

Mr. WALDIE. You—in the need statement, you claim statement, you claim that you are being taken by the seat of your pants.

Mr. JAHNKE. We have no provisions in the statute, we take into consideration other sources of income.

Mr. WALDIE. That is a unique State. Why do you take in other source of income if the statute does not enable you to do so?

Mr. JAHNKE. I am sorry?

Mr. WALDIE. The statute does not give you the authority to take in other sources of income. Why do you do so?

Mr. JAHNKE. The statute does give us the authority.

Mr. WALDIE. You are a unique State.

I have no further questions.

Mr. EILBERG. Mr. Keating?

Mr. KEATING. Why under medical—do you include chiropractors, podiatrists, optometrists, Christian Science practitioners?

Mr. PICKUS. We never had Christian Science situations.

Mr. VAN RENSSELAER. We had one situation like that and we did not allow it.

Mr. KEATING. What would New Jersey do?

Mr. RILEY. It would be included in this, but we have not had any.

Mr. MOYLAN. We would pay all those other doctors that he named.

Mr. VAN RENSSELAER. Only those that are qualified practitioners. In New York they are all licensed.

Mr. KEATING. Thank you very much.

Mr. EILBERG. Gentlemen, thank you very much, and I want to announce our plans. We do not know if we will recall you. We plan to send you a copy of today's transcript and hope you will look it over. I would like you to remember the Attorney General has asked a great many questions which are of concern and we want you to address yourselves to those, as well as any of the other unanswered questions. Also, I am asking the majority and the minority counsel here to circulate to the members of our subcommittee the questions that we would still like to ask.

I have a number that I would like developed. The bells have rung, and I do have to go to the floor.

We will review the transcript of these hearings to see if there is any necessity for further hearings, and with that the hearing is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee adjourned, subject to the call of the Chair.]

[Subsequent to the adjournment of the hearing, the following letter was received.]

STATE OF NEW JERSEY,
VIOLENT CRIMES COMPENSATION BOARD,
Newark, August 21, 1973.

GARNER J. CLINE, Esq.
House of Representatives, Committee on the Judiciary,
Rayburn House Office Building, Washington, D.C.

DEAR MR. CLINE: As you requested, we are returning the transcript you forwarded to us on August 9, 1973. You will note we have edited this. Although it was our understanding that we were also to receive a copy of the testimony given by the Deputy Attorney General, we did not receive it. In any event, the following comments we believe are pertinent in response to questions which seem to be of major concern to the Subcommittee.

The Board members from New York, Maryland and New Jersey who were present later discussed the hearing and all were of the general opinion that one of the Committee's major concerns was the financial hardship or "needy" clause. The Committee seemed to be of the opinion that since the middle class individual generally carries some form of insurance to cover medical expenses, he should not be a subject of this legislation. The argument seems to suggest that the legislation was intended to benefit low-income citizens only. While it is probably true that the middle class individual does have some form of insurance to pay for medical expenses, it is equally true that he generally has no insurance plan to compensate him for his loss of earnings, since the cost is prohibitive. His problem is compounded because in his income bracket, he does not qualify for Welfare or other state or federal sources of compensation for loss of earnings. This is particularly true where the victim is self-employed. He not only does not have any insurance plan to cover his loss of earnings—he often has none to cover his medical expenses.

In support of this, I call to your attention letters one and two hereto attached. Letter three will give you one example of why this program is worthwhile.

Briefly, this case involved a self-employed neighborhood grocery store owner, who was shot during a holdup. As a result of the injuries he sustained at the time, he was permanently disabled, therefore, permanently deprived of his regular income.

The Committee expressed concern about the cost to the taxpayer. The cost of compensating individuals such as the authors of the attached letters should not deter the government from supplying aid to the innocent victims of violent crimes. What this Board does suggest is that compensation be limited to losses incurred through medical expenses and lost wages not otherwise reimbursed. To include property loss would substantially increase costs and would open the door to an enormous number of fraudulent claims, which the New Jersey Board in its almost two years of operation has not experienced to any great degree. Additionally, investigation to verify the property loss would increase the administrative costs substantially. Of course, we would continue to compensate for the cost of prosthetic devices.

(a) Public awareness is necessary if the program is to be meaningful. A uniform nationwide program would lead to greater publicity.

(b) Pain and suffering are elements of physical injury which warrant consideration, but how can such an element be measured by an administrative agency. Mental stress can be as painful and real as fractures or any other type of physical injury. The problem of converting such suffering into dollars has generally been exclusively the work of the jury. The question becomes how do we measure pain and suffering.

These are but a few of the questions which were raised at the Subcommittee hearing. There are many more problems which come directly to our Board's attention daily and which we are most eager to bring to the attention of the Committee. To this end, we look forward to future hearings and will be available in any way that we can.

Very truly yours,

GILES K. RILEY,
Chairman of the Board.

ADDITIONAL STATEMENTS

STATEMENT OF HON. WALTER E. FAUNTROY, A REPRESENTATIVE IN CONGRESS
FROM THE DISTRICT OF COLUMBIA

Mr. Chairman, I wish to apologize for not being at your hearing on S. 300 and H.R. 8777 to testify in person, but I have had a long standing engagement which required me to be out of town at the same time the hearing was being held. I hope that you will insert my statement into the record of your hearing on crime victim compensation, and if additional hearings are held, I should appreciate the opportunity to testify in person before the Committee.

I have had the opportunity to review S. 300 and H.R. 8777 in some considerable detail and believe that they represent a sensible and well-conceived approach to the problem of crime victim compensation. I, therefore, am in support of both S. 300 and H.R. 8777 with one major reservation of considerable importance to us in the District of Columbia that I should like to bring to your attention.

As you know, S. 300, passed by the Senate, would establish Federal funding for crime victim compensation programs on a two tier system. Part A would establish a program applicable to "Federal jurisdictions", including by definition the District of Columbia. This program would be administered by the Justice Department through a Presidentialy-approved board and would be totally financed by the Federal Government. The Part B program would provide 75% Federal financing to state-created and administered crime victim programs. Because the District of Columbia would be covered by Part A, S. 300 expressly excludes the District from the Part B program. H.R. 8777, introduced by Chairman Rodino, follows an identical course on this question.

While I am generally in support of S. 300 and H.R. 8777, I believe that their treatment of the District of Columbia should be altered by deleting the District's coverage under the Part A program in favor of District coverage under the Part B program. I have attached some language amending H.R. 8777 that would accomplish this result.

I request that you bring the District of Columbia under the Part B program for two reasons. I believe that it is inappropriate to treat the District of Columbia as if it were an exclusive Federal reservation. As you know, it is a city approaching 800,000 residents. For the purposes of virtually every Federal grant program, the District of Columbia is regarded as a state. The Omnibus Crime Control and Safe Streets Act in 1968, as amended, and its pending extension, which S. 300 and H.R. 8777 propose to amend, consider the District of Columbia as a state for funding purposes. By considering the District as a Federal reservation, S. 300 and H.R. 8777 are totally inconsistent with the general philosophy of LEAA program taken as a whole.

Apart from this inconsistency, it makes all the sense in the world to have the District of Columbia develop its own local program. Crime victim compensation is an issue that can best be dealt with on a local level under standards developed to take local conditions into account, and administered with sensitivity to local citizens. Part B of S. 300 and H.R. 8777 recognizes this fact, but Part A of both bills fails to meet the test of local responsibility with respect to the District of Columbia. This is contrary to the efforts to achieve greater measures of self-government for the District of Columbia which this Committee has vigorously fought for.

Should the District be eligible under Part B, I can assure the Members of the Committee that every effort will be made to fashion a strong and workable local program. The House District Committee has under active consideration, a bill (H.R. 3264) that would establish a District crime victim compensation program with local administration—a program that would be comparable to the programs that are now in effect in several states. The bill was introduced in the 92nd Congress by a former colleague of yours, Congressman Abner Mikva, a leading advocate of crime victim compensation. Hearings were held by the District Committee in 1972, but no action was taken because the session came to an end.

This year, I re-introduced the legislation and the Judiciary Subcommittee of the House District Committee, of which I am Chairman, has held two days of hearings on the measure, bringing in the best testimony we could find on the subject. The Subcommittee will be marking up the bill and reporting it to the full Committee within the next few months. I believe that the bill that we are working on will reflect the latest best thinking about the problem and will be a model for state legislation. This program deserves the same support as state programs would receive if S. 300 or H.R. 8777 is enacted. While the District would receive less Federal support if it were covered under Part B than it would if it remained under Part A program, I strongly believe that the advantage of local control and administration far outweighs this disadvantage. I might add that Mayor Washington and the District Government submitted testimony to my Subcommittee expressing this view.

S. 300 and H.R. 8777 contain some minor technical problems that I will not burden you with now. I would suggest that the staff of my Judiciary Subcommittee contact your Subcommittee staff to discuss some of these problems.

Again, let me repeat my strong support for the principle of crime victim compensation, and urge you to pass S. 300 or H.R. 8777 with the revision that I have suggested, a revision that would allow the District to develop a local program suitable to the needs of its citizens.

Attachment.

AMENDMENT TO H.R. 8777

On page 20, delete line 1, and on line 2, redesignate paragraph (3) as paragraph (2).

On page 25, line 11, delete (, other than in the District of Columbia,).

STATEMENT OF HON. JOSEPH J. MARAZITI, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF NEW JERSEY

Mr. Chairman, I appear before you today to endorse the plan set forth in H.R. 8777 which provides a Federal program to meet the financial needs of innocent victims of violent crime, and a grant-in-aid program for states which have already established programs of this type.

I do this on behalf of the countless thousands of innocent victims of crime in America. I also do this with a deep personal concern for the effects of violence upon our Society today.

Mr. Chairman, I believe that society has an obligation to meet the needs of victims of criminal violence. Although compensation for criminal victimization is not yet an integral part of the American justice system, the concept extends back to the ancient penal codes of Babylonian and Anglo-Saxon times.

Heretofore modern American law has only recognized and provided for the rights of those accused of crime. This legislation before us today provides for the rights of the victim, and it would help fulfill what I consider to be a social contract between the State and its citizens.

This contract assumes that there is an inherent duty of the state, or sovereign, to indemnify those members of its society whom it fails to protect from criminal victimization.

The citizen who pays his taxes and obeys the laws imposed by society, in return, expects to be protected by those laws from illegal acts which result in injury and suffering to himself. I feel this is a reasonable expectation.

When the sovereign fails to protect the victim from criminal violence, the implied contract between the state and its citizens is breached, and therefore the state is obligated to compensate the victim for injuries resulting from the breach.

H.R. 8777, providing a Federal victim of crime compensation program for areas of Federal concern, and a separate grant-in-aid program for States like New Jersey which have victim compensation programs of their own, is based on this social contract theory of compensation. For the first time it recognizes on a Federal level that criminal victimization is an integral part of the criminal justice system.

I believe that victims of crime are entitled to just as many guarantees under our Constitution as are criminals.

Right now a crime victim's sole recourse within our Federal jurisdiction is to seek damages by instituting a civil action against the guilty criminal.

Since a bare 1.8 percent of the victims of violent crime ever collect anything from their attackers, laws without compensation for victims are, at best, an inadequate remedy. Yet, studies conducted in 1972 showed that 74.2 percent of the victims of violent crime suffered economic loss, physical damage, pain and suffering because of the crimes perpetrated upon them.

The expenses of litigation, the difficulty of apprehending the offender, and the judgment proof status of many of those apprehended are factors which militate against the adequacy of the victims civil remedies in today's society.

In the New Jersey State Senate I had the privilege of supporting my esteemed friend and colleague, Senator Alfred Beadleston, now President of the N.J. State Senate, in his successful bid to move the Victims of Crime Compensation Act through the New Jersey State legislature. Senator Beadleston's bill is a milestone in New Jersey legislative history, making New Jersey the seventh out of nine states in the Union enacting legislation putting such a program into operation.

I supported the bill then, and do now, on the basis of a need for more balance in our criminal justice codes. The scales of Justice are certainly tipped in favor of the criminal as it now stands. Innocent victims of crime in most states are required to fend for themselves in the face of almost insurmountable odds.

I think the citizen who pays his taxes, and obeys the laws deserves to be protected by those same laws which result in injury and suffering to himself.

Although a monetary award does not truly compensate for pain and suffering, it does help alleviate the economic losses that the majority of the victims of violent crime incur when involved with crimes perpetrated upon them.

Thank you, Mr. Chairman, and Members of the Committee for your consideration.

STATEMENT OF HON. ANGELO D. RONCALLO, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW YORK

CRIME VICTIMS COMPENSATION PROGRAM

Mr. Chairman, I would first of all like to thank you and the other members of the Subcommittee for the opportunity to make this statement in support of my cosponsored bill, H.R. 7384, and similar bills relating to the establishment of a national program to compensate innocent victims of crime.

We are fortunate in my home State of New York to have had such a program for the past seven years. The able chairman of our Crimes Victims Compensation Board, Stanley L. Van Rensselaer, who has already testified before you, has eloquently endorsed the proposed legislation. I am also proud to tell you that one of my own constituents, Commissioner P. Vincent Landi, is currently serving with distinction on the State Board.

The recent trend has been one hundred per cent concern about the criminal. Many well-meaning people show a major interest in protecting the rights of the accused—sometimes to the detriment of society's right to ensure its own protection. Law enforcement agencies and the courts also concentrate on the criminal. They are interested in arrests and determinations of guilt or innocence. The victim of crime, however, is forgotten in all this. He is merely looked upon as a useful tool for securing conviction, assuming a suspect can be found. Even more forgotten is the Good Samaritan who intervenes to aid another and prevent or lessen the effects of criminal actions. The present climate discourages such altruistic heroism.

Although a victim would normally have an action against his aggressor, many crimes go unsolved. In most other cases, the convicted criminal is judgment-proof. The thrust of this legislation to award compensation based on the fact of injury, rather than on the identification and conviction of the criminal, would reverse the trend and concentrate public concern on the victim. Any person has the right to demand safety and protection of society. When society lets him down, he has an equal right to demand compensation.

Mr. Chairman, H.R. 7384 is an excellent example of how our Federal system can work. Where crimes occur within the Federal jurisdiction, the proposed Violent Crimes Compensation Board would make awards to victims using Federal funds at the Federal level. Where State crimes are involved, Federal grants authorized in this bill would assist State boards in their compensation efforts. These same grants would encourage those states which do not presently have such a system to participate in the program. In today's highly mobile society, crime is a national problem, and a Federal-State partnership such as this is the best way to ensure that people throughout this country will not suffer financially after having suffered physically and mentally through the criminal actions of others.

I respectfully urge the Subcommittee's favorable consideration of this legislation so that the full House can soon have a chance to show its concern for the victims rather than the perpetrators, of crime.

Thank you.