

HISTORY AND OVERVIEW OF RIGHTS AND SERVICES FOR FEDERAL CRIME VICTIMS WITHIN THE UNITED STATES

I. INTRODUCTION

As a nation, we are often humbled by the remarkable bravery and courage shown by crime victims in the aftermath of devastating crimes. Often at great personal sacrifice, victims of crime press forward with the criminal justice process and encourage others to do the same in search of a just and fair outcome. Through their contributions, and the assistance of thousands of dedicated victim advocates and supporters, the United States has been able to build a strong network of government and community-based victim assistance programs at all levels of the criminal justice system.

This paper will provide a brief history of the victims' movement and discuss the rights and services available to victims in the United States, focusing primarily on the federal criminal justice system.

II. BRIEF OVERVIEW OF CRIMINAL JUSTICE SYSTEM IN THE UNITED STATES

Criminal cases in the United States are prosecuted by neutral public officials acting on behalf of the government, representing “the interests of society as a whole” as opposed to only the interest of the victim. *See Ferri v. Ackerman*, 444 U.S. 193, 202-203 (1979); *see also Kelly v. Robinson*, 479 U.S. 36, 52 (1986). The United States Constitution grants public officials within the Executive Branch the power to bring criminal prosecutions. *See* U.S. CONST. Art. II, § 3; *United States v. Armstrong*, 517 U.S. 456, 467 (1996). Moreover, “the United States and its attorneys have the sole power to prosecute criminal cases in the federal courts.” *Maine v. Taylor*, 477 U.S. 131, 136 (1986); *see also, e.g.*, 28 U.S.C. 515(a) (authorizing the Attorney General to conduct all litigation, “civil or criminal,” on behalf of the United States).

Today, violations of federal law, such as terrorism, distribution of child pornography, bank robbery and human trafficking crimes, are prosecuted primarily by the United States Department of Justice (“DOJ”) through its litigating divisions and 93 United States Attorneys’ Offices. Federal judges preside over criminal trials, which are decided by a jury of twelve. Violations of state criminal laws, such as homicides, sexual assaults, and child abuse offenses, are prosecuted mostly by local prosecutors’ offices (often called district attorney’s offices), and in some cases, by State Attorneys General Offices (depending on the type of crime involved).¹ Federal, state, and local prosecutors’ offices and law enforcement agencies employ victim-witness support personnel, who collectively assist victims and witnesses during all stages of the criminal justice process.

III. HISTORY OF THE VICTIMS’ RIGHTS MOVEMENT IN THE U.S.

In the modern era, beginning primarily in the 1960s, crime victims sought more involvement and recognition in the criminal justice process. Increasing crime rates prompted President Lyndon Johnson to establish the President’s Commission on Law Enforcement and the Administration of Justice, which conducted the first national victimization surveys. Survey results showed that “victimization rates were far higher than shown in law enforcement figures – and that many non-reporting victims acted out of distrust of the criminal justice system.” See Dr. Marlene Young and John Stein, *The History of the Crime Victims’ Movement in the United States*, April 2005, at 2-3, <http://www.ojp.usdoj.gov/ovc/ncvrw/2005/pg4c.html>.

Also in the 1960s, in recognition of the often devastating financial impact of crime, states

¹ In some states, local prosecutors are called “Commonwealth’s Attorneys,” “County Attorneys,” or “State’s Attorneys.”

began to establish crime victim compensation programs. These programs provided reimbursement to crime victims for out-of-pocket expenses incurred as a result of the crime. California established the first program in 1965, followed soon after by New York. Id., at 3. Twenty-eight states had established compensation programs by the late 1970s, reimbursing crime victims for medical bills, lost wages, and other expenses. The creation of these programs spurred increased victim participation in the criminal justice system, in part because victims were required to file police reports and cooperate with the prosecution to be eligible for compensation. Id. Today, every state and the District of Columbia has a victim compensation program.

Feminists concerned about the criminal justice system's treatment of rape and sexual assault victims also played an important role in developing direct assistance programs for crime victims. Id., at 3-4. Two of the first victim assistance programs were rape crisis centers (in Washington, D.C., and in the San Francisco Bay area), both established in 1972. These programs contributed significantly to the victims' movement, in part because they recognized "emotional crisis" as part of the injury suffered by victims and attracted volunteers to provide support for victims. Id., at 4.

Many courageous victim-survivors also spearheaded new programs, recognizing the need for additional services in their communities. For example, battered women established shelters and hotlines for other victims. In 1974, survivors of homicide victims formed "Families and Friends of Missing Persons" in Washington state. Id., at 5. Four years later, parents of a young murder victim founded "Parents of Murdered Children" to provide support for homicide survivors. Id. And in 1980, Mothers Against Drunk Driving (MADD) was co-founded by two

women whose children had been killed or injured by drunk drivers. Id.

By the mid-1970s, victim issues were attracting national attention. In 1975, the first national victims assistance program, the National Organization for Victim Assistance (NOVA), was formed to help “consolidate the purposes and goals of the victim’s movement.” Id., at 5. NOVA promoted networking opportunities and sponsored training programs for those working with victims. Similar organizations continued to grow in strength and number, providing crisis intervention, counseling, and compensation for victims.

Also in the 1970's, prosecutors’ offices and law enforcement agencies began hiring victim-support personnel, who assisted with referrals to social service agencies and provided victims with notification of case-related events. Id.,at 4. With increasing frequency, prosecutors sought victims’ views about court-related events such as bail determinations, plea bargains and sentencing matters. Id.

Victim issues captured the attention of the White House in 1981, with President Ronald Reagan announcing the first “National Crime Victims Rights Week,” to honor victims and their surviving family members. A year later, President Reagan established a Task Force on Victims of Crime. *See* Exec. Order No. 12,360, 47 Fed. Reg. 17, 975 (Apr. 23, 1982). The Task Force held six hearings nationwide and made numerous recommendations for improving the treatment of victims and witnesses within the criminal justice system. *See* President’s Task Force on Victims of Crime, Final Report (1982). For example, it recommended passage of legislation to require victim impact statements at sentencing; protection for victims and witnesses from intimidation; restitution in all cases absent special circumstances; and the development of guidelines for the “fair treatment of crime victims and witnesses.” Id. at 33. (1982). The task

force also recommended that Congress provide funding for state crime victims compensation programs. Id. at 37.

Shortly after the Task Force issued its report, Congress passed the first major federal victims rights law, entitled the “Victim and Witness Protection Act of 1982” (“VWPA”). Pub. L. No. 97-291, 96 Stat. 1248. Among other things, the VWPA prohibited victim or witness intimidation and strengthened restitution options for victims in certain types of offenses. *See* 18 U.S.C. §§ 1512-1515; *see also* 18 U.S.C. 3579(a)(1) (1982 ed., Supp. IV).² In enacting the VWPA, Congress declared that “without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.” Id., Section 2 (a) (1).

Congress also directed the Attorney General to develop and implement guidelines consistent with the purposes of the VWPA. Accordingly, the Attorney General created the “Attorney General Guidelines for Victim and Witness Assistance” in 1985. Revised approximately every five years, the guidelines are “to be followed by officers and employees of Department of Justice investigative, prosecutorial, and correctional components in the treatment of victims of and witnesses to crime.” *See* Attorney General Guidelines for Victim and Witness Assistance, Art. III, A. at 7.

Two years after the passage of the VWPA, Congress enacted the “Victims of Crime Act of 1984” (“VOCA”). 42 U.S.C. § 10601 et. seq. This landmark legislation established the “Crime Victims Fund,” thereby providing a stable funding source for federal, state, local, tribal,

² Effective November 1, 1987, the VWPA was recodified pursuant to the Sentencing Reform Act of 1984, 98 Stat. 1987 and as a result, 18 U.S.C. 3579 became 18 U.S.C. 3663.

and non-profit victim assistance programs. Receiving no tax dollars, the fund is made up of criminal fines, fees, bond forfeitures, and assessments collected from convicted federal offenders. The first VOCA funds were distributed in 1986. State and local governments also received financial assistance from Congress through passage of the Justice Assistance Act in 1984. P.L. 98-473. In 1990, Congress passed the Crime Control Act, and included within it the Victim Rights and Restitution Act, which provided victims with a list of rights and defined a group of mandatory services. *See* 42 U.S.C. §§ 10606 and 10607. Although the rights delineated in § 10606 were subsequently repealed by the Crime Victims Rights Act (18 U.S.C. § 3771), the mandatory service provisions of § 10607 remain in effect. Pursuant to this provision, at the earliest opportunity after the detection of a crime, employees must provide information to victims on the status of the case, address their safety concerns, and refer them to services, such as emergency medical assistance and counseling. 42 U.S.C. § 10607 (c)(1)-(3).

Subsequent legislation continued to expand victims' rights. For example, Congress began to include mandatory victim restitution provisions in the federal criminal code. *See e.g.* 18 U.S.C. § 228 ("Child Support Recovery Act of 1992") (imposing mandatory restitution for those convicted of willfully failing to pay child support). In 1994, Congress established mandatory restitution provisions for the crimes of sexual abuse, sexual exploitation and other abuse of children, domestic violence, and telemarketing fraud, in the Violence Against Women's Act ("VAWA"). *See* 18 U.S.C. Section 2248, 2259, 2264, 2327. Twelve years later, Congress enacted the Mandatory Victim Restitution Act (MVRA), Title II of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. No. 104-32, 110 Stat. 1214 (Apr. 24, 1996)),

which made restitution mandatory for many federal crimes, and enhanced measures for enforcing and collecting restitution.

Laws providing protection for specific categories of victims were enacted with increasing frequency. For example, the Violence Against Women Act (“VAWA”), created numerous grant programs to assist domestic violence victims, initially authorizing \$1 billion over five years. See Pub. L. No.103-322 (1994). Subsequent amendments to VAWA in 1996 and 2000 made domestic violence and stalking federal offenses. See 18 U.S.C. § 2261A. In 2000, Congress legislated protections for immigrant victims of domestic violence, human trafficking and other violent crimes in the Victims of Trafficking and Violence Protection Act. See 22 U.S.C. §§ 7101-7110; 8 U.S.C. § 1101(a)(15)(U) (creating “T visas” for victims of severe forms of trafficking and “U” visas for victims of violent crime who cooperate with the investigation and prosecution.) After the Oklahoma City bombing, Congress passed the Justice for Victims of Terrorism Act, establishing specific programs for immediate crisis response to victims, and *inter alia*, providing terrorism victims the right to participate in criminal trials. Pub.L. No. 104-132 (1996).

Congress also enacted specialized provisions to protect child victims and witnesses during the court process, such as creating alternatives for live, in-court testimony in appropriate circumstances and requiring documents containing child’s names to be filed under seal. 18 U.S.C. § 3509. Laws to protect children from sexual predators were passed as well. See e.g. PROTECT Act of 2003, Pub. L. No. 108-21 (2003) (establishing a national Amber Alert coordinator and prohibiting foreign child sex tourism); *see also* “Adam Walsh Child Protection and Safety Act,” Pub. L. 109-248 (2006) (establishing sex offender registration requirements and

making failure to register a felony). Elderly victims also received protections through the Older Americans Act Reauthorization of 2006, requiring the U.S. Department of Health and Human Services to develop a long-term national response plan for elder abuse prevention, intervention, and treatment.

Despite the significant numbers of laws protecting victims, many crime victims' rights advocates were concerned that existing statutory provisions were inadequate and thus began to "push for a constitutional amendment." *See e.g.*, Cassell, Paul G., *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims' Rights Act*, 2005 B.Y.U.L. Rev. 835, 848-850 (2005). The first proposal to create a Crime Victims' Rights amendment to the United States Constitution was introduced in 1996 by Senators Dianne Feinstein (D-CA), and John Kyl (R-AZ). The proposal was ultimately withdrawn due to a lack of support. Eight years later, the amendment was re-introduced in Congress, but withdrawn again due to insufficient support. A few months later, however, Congress passed a comprehensive rights bill for federal crime victims, calling it the "Scott Campbell, Stephanie Roper, Wendy Preston, Loarna Gillis, and Nila Lynn Crime Victims' Rights Act," in honor of five homicide victims. Known simply as the "Crime Victims Rights Act," or the "CVRA," the law codifies eight rights for crime victims, and includes provisions enabling victims to enforce their rights both at the trial and appellate levels in federal court. *See* 18 U.S.C. § 3771. Under the CVRA, a "victim," is defined as "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia."³ The rights afforded to federal crime victims by the CVRA are as

³ "In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's

follows:

- (1) The right to be reasonably protected from the accused;
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim could be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

Additionally, the CVRA directed DOJ to designate an authority to receive and investigate complaints from federal crime victims alleging violations of their rights. *See* 18 U.S.C. § 3771(f)(1) and (2). Accordingly, DOJ established the Office of the Victims' Rights Ombudsman (VRO) in January 2006, within the Executive Office for United States Attorneys. Victims of federal crimes can file complaints with the VRO against any employee located in a United States Attorney's Office, or in one of thirteen DOJ components. The VRO maintains a public website providing information about the program and the CVRA, and detailing procedures for filing complaints. *See* www.justice.gov/usao/eousa/vr/index.html.

estate, family members, or any other persons appointed as suitable by the court, may assume the crime victims' rights under this chapter, but in no event shall the defendant be named as such guardian or representative." 18 U.S.C. § 3771 (e).

IV. VICTIM ASSISTANCE IN FEDERAL PROSECUTOR’S OFFICES AND LAW ENFORCEMENT AGENCIES

Victim assistance personnel in the United States can generally be divided into two categories: “system-based” advocates, who work in prosecutors’ offices or law enforcement agencies and “community-based” advocates, who work for non-profit or community organizations. The role of “system-based” advocates is to provide victims with information and support during the various stages of the criminal justice system - i.e. investigation, prosecution, and post-conviction. The following is a brief description of some of the system-based programs operating in federal prosecutors’ offices and law enforcement agencies in the United States.

A. United States Attorneys’ Offices

Every United States Attorney’s Office (“USAO”) has a Victim-Witness Program, usually led by a Victim Witness Coordinator (“VWC”) and staffed with additional victim witness personnel. The Executive Office for United States Attorneys, through its Law Enforcement Coordinator/Victim Witness Staff, provides support and guidance to victim witness personnel in the USAOs. Providing information, support and assistance to federal crime victims and witnesses, these highly-skilled professionals are often a source of great comfort for victims. Examples of federal crimes in which victim support is often provided include bank robberies, child pornography, financial crimes, identity theft, hate crimes, terrorism, or violent crimes that occur on federal or Native lands such as homicide, sexual assault, domestic violence, or child abuse.

Victim witness personnel assist victims in numerous ways, including notifying them of court proceedings and significant case developments, providing counseling referrals, locating temporary housing, and assisting with victim impact statements. VWCs are available to explain the court process, including the reasons for any delay, and often attend court proceedings with victims, providing a comforting presence while victims testify or listen to difficult testimony about their loved ones. Prior to sentencing hearings, victim witness personnel are available to answer victims' questions about victim impact statements.

Victim witness personnel also address witness security concerns, make travel arrangements and ensure reimbursement for required court appearances. Working closely with fellow law enforcement advocates and community victims service providers, Victim Witness personnel often serve on task forces or multi-disciplinary teams and often develop innovative programs designed to enhance rights and services for specific victim populations. By way of example, the Victim Witness Program in the U.S. Attorney's Office for the Western District of Wisconsin, with funding and support from the Office for Victims of Crime, provided community training and developed an educational video that addressed the devastating problem that methamphetamine addiction can have on children.

B. Federal Bureau of Investigation (FBI) - Office for Victim Assistance (OVA)

The Office for Victim Assistance (OVA) within the Federal Bureau of Investigation (FBI), is located at FBI headquarters in Washington, D.C., and is responsible for assisting victims of crimes investigated by the FBI. See www.fbi.gov/hq/cid/victimassist/resources.htm. OVA manages the daily operational aspects of its Victim Assistance Program (VAP) in 56 FBI field offices and international offices. Among its other responsibilities, OVA provides

emergency assistance to victims of terrorist attacks; coordinates victim notification in child pornography cases; oversees the forensic child interviewing program; and provides specialized assistance to Native American victims of crime.

OVA also manages and supports 122 Victim Specialists located within the FBI field offices, who provide direct assistance to federal crime victims. The FBI requires that Victim Specialists have extensive knowledge and experience in crisis intervention, social services, and victim assistance. These professionals also provide notification of case events to victims and refer them to services within their communities such as compensation programs, rape crisis centers, and homicide bereavement groups.

Victim Specialists are often a crucial support system for victims and family members, helping them at some of their most vulnerable moments. In the aftermath of the Mumbai terrorist attacks, for example, Victim Specialists quickly assisted in the identification of American victims, arranged for repatriation of those who had died, and helped evacuate those who were injured. *See* Transcript of testimony of Mary Lou Leary, Acting Assistant Attorney General, Office of Justice Programs, Department of Justice, before the House Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security (September 29, 2009).

C. United States Immigration and Customs Enforcement Agency (ICE)

ICE investigates a significant number of federal crimes involving human trafficking, child exploitation, child sex tourism, genocide, identity theft, and telemarketing fraud. ICE's Victim Assistance Program, consisting of fifteen full-time Victim Assistance Coordinators in the field, 350 collateral duty Victim Assistance Coordinators and five headquarters staff, address the physical, psychological, and financial harms that victims often suffer. ICE works often with

human trafficking victims and child sex tourism victims, providing them shelter, food, interpreter services, and other basic services in the immediate aftermath of these horrific crimes.

D. Additional Victim Assistance Programs within DOJ and Federal Government Agencies

In addition to the agencies described above, many other DOJ components and federal agencies have programs to support victims of federal crimes, including but not limited to the Criminal Division, the Civil Rights Division (Criminal Section), the Drug Enforcement Agency, the U.S. Parole Commission, the Bureau of Prisons; the Bureau of Alcohol Tobacco and Firearms, the Office of Justice for Victims of Overseas Terrorism, the United States Postal Inspection Service, the Department of State, the Bureau of Indian Affairs and the U.S. Military.

V. DOJ COMPONENTS THAT PROVIDE LEADERSHIP ON VICTIM ISSUES AND GRANTS FOR VICTIM ASSISTANCE PROGRAMS

Assisting crime victims and protecting their rights, is a “high priority for Attorney General Holder and the Department of Justice.” *See* Statement of Mary Lou Leary, Acting Assistant Attorney General, Office of Justice Programs, Department of Justice, before the House Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security (September 29, 2009), at 2. DOJ personnel work hard every day to provide victims with the rights and services to which they are entitled, notifying them of court proceedings, ensuring that their voices are heard in court, and being available to listen to their concerns. DOJ components and offices that work on matters assisting crime victims are too numerous to mention. Accordingly, this paper will focus on three offices that support a nationwide effort to assist victims of crime in all levels of the criminal justice system.

A. Office of Justice Programs

Within the Department of Justice, the Office for Justice Programs (OJP) provides leadership and develops programs to increase public safety and improve the fair administration of justice. OJP is comprised of five bureaus and two program offices: the Bureau of Justice Assistance, the Bureau of Justice Statistics; the National Institute of Justice; the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, the Community Capacity Development Office, and the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking Office (SMART). *See* www.ojp.gov. All of OJP's bureaus and components develop programs and strategies to assist victims and prevent victimization, however this paper will highlight the work of the Office for Victims of Crime.

B. Office for Victims of Crime

The Office for Victims of Crime (OVC) was established within OJP through an amendment to the Victims of Crime Act of 1984. OVC's primary mission is to "enhance the nation's capacity to assist crime victims" and to "be a leader in transforming attitudes, policies, and practices that encourage justice and healing for victims." *See* www.ovc.gov/about/offices/ovc.htm. OVC also provides training and technical assistance to victim service providers, prosecutors, law enforcement officers, and other professionals, and also "works to raise awareness of victims' issues and "to promote compliance with victims' rights laws." *See* OVC Report to the Nation, Fiscal Years 2007 - 2008, at ix. OVC also offers a wealth of information on its website, such as a comprehensive directory of victim assistance resources. Sponsoring national and state victim assistance academies that provide academic instruction for victim service providers, OVC also offers web forums on such topics as vicarious

trauma, working with survivors of traumatic events, and serving victims of stalking.

Perhaps OVC's most recognizable role is its administration of the Crime Victims Fund ("the fund"). Notably, no tax payer dollars are used to support the fund, as it is comprised entirely of criminal fines, bail bond forfeiture, penalties, fees, and special assessments collected from federal convicted offenders, as well as private donations. Congress imposed a cap on distributions from the fund in 2000, to control large fluctuations in deposits. *See* OVC Report to the Nation (2009), at 4. In fiscal year 2010, the cap was set at \$705 million. *Id.*

Monies in the fund are disbursed pursuant to a carefully established allocation process. Earmarks are deducted from the fund first as follows: (1) Children's Justice Act grants, including formula grants to states through the United States Department of Health and Human Services, and discretionary grants to tribes for services and programs to improve the investigation and prosecution of child abuse and neglect cases in American Indian and Alaska Native communities; (2) Victim Witness Coordinators in U.S. Attorneys Offices; (3) Victim Specialists in the FBI, and (4) the federal Victim Notification System.

Funds are disbursed to state victim compensation programs through formula grants. The Director of OVC is required to make an annual grant to eligible crime victim compensation programs that is equal to 60 percent of the amount awarded by the state program to victims of crime from state revenues during the fiscal year preceding the year of deposits in the Fund (two years prior to the grant year), other than amounts awarded for property damage. If the amount in the Fund is insufficient to award each state 60 percent of its prior year's compensation payout from state revenues, all states will be awarded the same reduced percentage of their prior year payout from the available funds other than amounts awarded for property damage. The

distributions may not exceed 47.5 percent of the remaining Crime Victim Fund balance (available after earmarks and discretionary funds). VOCA requires all state compensation programs to offer, at a minimum, “reimbursement for expenses related to medical and dental care, counseling, funeral and burial services, and lost wages.” *Id.*, at 17. However, these programs may reimburse victims for additional expenses such as “travel, temporary lodging, crime scene cleanup, and dependent care.” *Id.*⁴

State Victim Assistance grants receive 47.5 percent of the amount remaining after earmarks, plus any amounts not used for victim compensation grants. States often award sub-grants to victim service providers in criminal justice agencies, noncriminal justice government agencies, (including hospitals, public housing offices, hospitals, and social service and mental health agencies); private, non-profit organizations, including rape crisis centers, shelters, mental health organizations, religious organizations, hospitals and others; and American Indian tribes or organizations. During fiscal years 2007 - 2008, victim assistance funding supported over 33.7 million specific services to more than 7.89 million victims of crime. *See* OVC Report to the Nation (2009), at 23.

OVC discretionary grant amounts are calculated after all program area allocations are determined, except for formula grants, and may total 5 percent of the remaining balance. *Id.*, at 8. Discretionary grants serve a vital purpose, helping to meet “emerging needs” and filling “gaps in existing services and support model programs to help strengthen the skills and abilities” of victim service providers. *Id.*, at 47. Examples of innovative discretionary grants include

⁴ Maximum reimbursement amounts for these categories must be established by each state and territory receiving these funds. OVC Report to the Nation (2009) at 17.

the development of Sexual Assault Nurse Examiner (SANE) and Sexual Assault Response Teams (SART); promoting cultural change in law enforcement's response to victims; assisting victims with disabilities; and supporting resource centers that provide counseling and legal assistance for identity theft victims. *Id.*, at 48-49, 52-53, 57-58. Additionally, OVC receives specially designated funds that are not part of the Crime Victims Fund, to support "the development or enhancement of emergency services to assist victims of severe forms of trafficking." *Id.*, at 51.

OVC is also authorized to set aside \$50 million in an Antiterrorism Emergency Reserve account to support programs to assist victims of terrorism and mass violence, including the International Terrorism Victims Compensation Program. In recent years, these funds have supported crisis response and victim compensation in the aftermath of several mass shooting incidents in the United States in which several people were killed.

C. The Office on Violence Against Women (OVW)

Created in 1995, the Office on Violence Against Women (OVW) assists in developing the nation's capacity to reduce violence against women through the implementation of the Violence Against Women Act. Through financial and technical assistance to communities across the U.S., OVW supports programs, policies, and practices aimed at ending domestic violence, dating violence, sexual assault, and stalking. *See* www.ovw.usdoj.gov/overview.htm. Currently, OVW administers two formula grant programs and 17 discretionary grant programs, and to-date has awarded over \$4 billion in grants and cooperative agreements.

<http://www.ovw.usdoj.gov/overview.htm>. Id.

OVW has also developed a number of special initiatives through its grant programs and collaborative projects. One such initiative is the “National Domestic Violence Hotline,” which is administered by the U.S. Department of Health and Human Services. Hotline advocates take an average of 21,000 calls per month nationwide, from domestic violence victims and their friends and family members. The advocates provide immediate crisis counseling and connect victims with services in their local communities. *See* Statement of Catherine Pierce, Acting Director, Office on Violence Against Women, United States Department of Justice, before the United States Senate Committee on the Judiciary, at 2 (June 10, 2009).

OVW has also coordinated a series of projects to encourage communities to develop sexual assault forensic medical exams that are designed to minimize trauma to victims and to increase the chances of successful prosecution of these cases. Id., at 5. Toward this end, OVW assisted in developing a national protocol for Sexual Assault Medical Forensic Examinations (the SAFE Protocol), as well as national training standards for sexual assault nurse examiners (SANE). Id. It currently funds the SAFE Technical Assistance Project, an ongoing collaboration with the International Association of Forensic Nurses, to assist communities in implementing the SAFE Protocol. Id. OVW also supports initiatives to prevent elder abuse, stalking, and teen dating a violence. Recently, OVW partnered with the Vera Institute of Justice in an effort to meet the needs of deaf victims of domestic violence. Id., at 7.

VI. NON-GOVERNMENTAL VICTIM SUPPORT GROUPS AND ORGANIZATIONS

A. Advocates

Many community-based advocates provide local support to victims, regardless of whether these victims report the crimes to law enforcement agencies. For example, sexual assault advocates often answer victims' questions about the law enforcement reporting process, explaining medical exams and evidence collection procedures, and help them to understand their options for treatment of sexually transmitted diseases. Community-based advocates also provide support to domestic violence victims through free counseling, safety planning assistance, and shelter referrals. Many community-based advocates help domestic violence and stalking victims obtain protection orders as well.

B. National Victim Assistance Organizations

Grassroots and other community organizations have been essential to establishing a strong victim assistance infrastructure in the United States. Many national programs began as small collections of victims and survivors, passionate about helping fellow victims. Below is a brief description of just a few of the organizations that provide assistance to victims, family members, service providers, and allied professionals.

1. National Center for Victims of Crime (NCVC)

Organized in 1985, NCVC is a non-profit organization that works with community groups and criminal justice agencies throughout the U.S. NCVC provides direct services and resources to victims of crime, advocates for resources and for victims' rights' laws and public policies; and provides training and technical assistance to victim service organizations, counselors, criminal justice professionals, and others. See www.ncvc.org. NCVC also

maintains “Victim Law,” a comprehensive, online database of victims’ rights laws and case summaries.

2. National Center for Missing and Exploited Children (NCMEC)

Founded in 1984, NCMEC was established as a private, nonprofit organization to assist in the prevention of child abduction, endangerment and sexual exploitation. NCMEC operates a 24-hour, toll-free hotline that takes reports of missing children and receives leads in ongoing investigations. It also provides training, technical assistance and public outreach on the prevention, investigation, and prosecution of cases involving missing and exploited children.

3. RAINN (Rape Abuse and Incest National Network)

The largest anti-sexual assault organization in the United States, RAINN sponsors numerous programs to assist victims of sexual assault, rape and incest. RAINN operates a 24-hour National Sexual Assault Hotline (both a telephone and on-line version) involving a collaboration of more than 1,100 local rape crisis centers. The organization partners with celebrities to deliver sexual assault prevention awareness programs. See www.rainn.org.

4. National Crime Victims’ Law Institute (NCVLI)

NCVLI was founded in 1997 as a national resource for crime victims and their lawyers, and to assist them in asserting victims’ rights in criminal and civil matters. See www.ncvli.org/history.html. Since 2002, NCVLI has received funding from DOJ, through the Office for Victims of Crime, to support a comprehensive, national effort to advance the rights of victims. The centerpiece of this effort is a network of pro bono legal clinics that NCVLI

supports across the country that provide direct legal assistance to crime victims in criminal court proceedings in the enforcement of their statutory rights at the state, federal, and tribal levels. In federal court cases, the clinics represent victims in the enforcement of their rights under the Crime Victims Rights Act. Along with the funding to the clinics, NCVLI provides them with intensive technical assistance in furtherance of their work. Additionally, as part of its overall initiative to advance crime victims' rights, NCVLI provides education and training on victims' rights, offers legal technical assistance to attorneys around the country who represent victims in the enforcement of their rights, files amicus curiae briefs in cases nationally, convenes a national victims' rights training conference, publishes a bi-annual newsletter on victims' rights litigation and issues, and facilitates a national network of attorneys and others interested in the enforcement of victims' rights. Id.

5. National Crime Victim Bar Association (NCVBA)

Affiliated with NCVC, the NCVBA provides technical support to attorneys who represent crime victims in civil actions and promotes awareness of the availability of civil remedies for victims.

VIII. VICTIM ASSISTANCE DURING EACH STAGE OF THE FEDERAL CRIMINAL JUSTICE PROCESS

Prosecutors, investigators, victim advocates, and others who work in federal agencies “engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded the rights” set forth in the Crime Victim Rights Act. *See* 18 U.S.C. § 3771(c)(1). Federal employees are also required, pursuant to 42

U.S.C. § 10607, to provide victims with notice, information and services, and with all other applicable rights as provided for in other statutes or the rules of criminal procedure. Department of Justice employees also must adhere to the guidance set forth in the Attorney General Guidelines on Victim and Witness Assistance (“AG Guidelines”).

Article IV of the AG Guidelines provides detailed steps for addressing victims’ needs and concerns at the investigative, prosecution, and corrections stages of the criminal justice process. In addition, the AG Guidelines provide instructions and discuss considerations for working with specific categories of victims including children and victims of domestic violence, sexual assault, stalking, identity theft, human trafficking, terrorism and other mass casualties. *See* AG Guidelines, Art. VI - X, pp. 48-74. As an overarching principle, victims must be treated with fairness, dignity, and respect, and the AG Guidelines provide that a strong presumption exists in favor of providing rather than withholding assistance and services to victims and witnesses of crime.” *Id.*, Art. II.B., at p. 7; *see also* 18 U.S.C. § 3771(a)(8).

A. Investigative Stage

1. Information, Notice, and Referrals to Services

During the investigative stage of a case, responsible officials (ordinarily case agents), must identify victims “at the earliest opportunity after the detection of a crime at which it might be done without interfering with the investigation.” *Id.*, Art.IV.A.2., at p. 22. Responsible officials must also provide identified victims with a list of rights and available services, along with the name and contact information of a person who is available to answer the victims’

questions. Id., Art.IV.A.3.a.(1), at p. 23. In addition, victims must be provided information about where to receive emergency medical or social services; the availability of restitution or other relief (including crime victim compensation programs); counseling programs; the right to make a statement about pretrial release of a defendant in cases involving interstate domestic violence, violation of a protection order, or stalking and the availability of services for victims of these crimes; the availability of payment for medical testing in sexual assault cases, the option for being included in the automated Victim Notification System, and available protections from intimidation or harassment. Id., Art. IV.A.3.a.(1)(a)-(k), and e, pp. 23-26.

Information about the status of the investigation shall be provided to the victim, “to the extent that it is appropriate and will not interfere with the investigation”; and the victim shall be notified of the suspect’s arrest. Id., Art. IV.A.3.a.(3)(a)-(b), at p. 25. Responsible officials shall also ensure that any property of the victim that is being held for evidence is maintained in good condition and ultimately returned to the victim. Id., Art. IV.A.3.c., at p. 25. Further, if requested by a victim, responsible officials shall assist in notifying the victim’s employer if the crime causes the victim to miss work, or the victim’s creditor, if the crime results in the victim’s inability to make timely payments. Id., Art. IV.A.3.d.(1)-(2), at p. 25-26.

2. Protection from Intimidation and Harassment

During a criminal investigation, victims and witnesses often express concerns for their safety. Although witness security and intimidation are common in drug trafficking, homicide, and organized crime cases, threats can arise in any case at any time during the investigation or prosecution. Law enforcement agencies and federal prosecutors offices have several tools to

address the security concerns of victims and witnesses, although law enforcement officers should be involved in the determination of how to assist the victim or witness.

Once a defendant has been charged, the prosecutor may, if appropriate, move for pretrial detention of the defendant. *See* 18 U.S.C. § 3142. The prosecutor also may ask that the court to order the defendant to have no contact with the victim or witnesses. *See* 18 U.S.C. § 3142(C) (1)(B)(v). As yet another measure, prosecutors may seek a temporary restraining order prohibiting the defendant from harassing the victim or witness. *See* 18 U.S.C. § 1514; *see also* AG Guidelines, Art. VII.B.4. During court proceedings, a prosecutor or victim witness advocate should ensure that a separate waiting area is made available to a victim or witness so that he/she does not have to come into contact with the defendant or his associates. 42 U.S.C. § 10607 (c)(4). In addition, the programs described below may also assist in addressing victim or witness security concerns.

(i) Emergency Witness Assistance Program

Relocation can be one of the most effective tools available to prosecutors in assisting threatened and intimidated witnesses. In recognition of this fact, DOJ created the Emergency Witness Assistance Program (“EWAP”) in 1977. The purpose of this program is to provide United States Attorneys Offices (“USAOs”) a critical tool in assisting witnesses on an emergency basis “to ensure their well-being and that they will be available for trial, other court proceedings, or activities related to an ongoing case.” *See* Gaines, Crystal, “Witness Intimidation,” United States Attorney’s Bulletin, January 2003 at 9. The EWAP also addresses the “physical, mental, or emotional reservations” of a witness or prospective witness regarding

their cooperation with the investigation and prosecution. Id.

Each USAO has its own protocol outlining permissible uses of EWAP funds. Decisions as to how, when, and whether to use the funding are left to the discretion of individual USAOs. Examples of expenses that may be requested through the EWAP include, but are not limited to: transportation to permit a witness to leave his/her neighborhood in order to get away from the danger area, temporary housing or moving expenses, temporary subsistence (consisting of a reasonable portion of the permissible federal per diem amount for the location); emergency telephone service to permit the witness to remain in touch with the USAO, and transportation costs for school or immediate medical or counseling needs. Id. at 9.

EWAP's purpose is not to provide physical protection for a witness, and EWAP services do not include protective services or a law enforcement presence. Id. Additionally, a person's participation in the EWAP does not relieve him/her of any responsibilities with regard to debt, custody, child support, court, or other obligations. EWAP is considered "a fund of last resort" and is limited to those witnesses who are frightened and endangered. Id.

(ii) *The Federal Witness Security Program*

Another useful tool in assisting threatened or intimidated witnesses is the Federal Witness Security Program, created in by Attorney General Robert Kennedy in the 1960's to protect witnesses willing to testify against organized crime defendants. *See* Ruleman, Eileen, "Witness Security and Special Operations Unit," United States Attorneys' Bulletin, January 2007, Vol. 55, No. 1, at 7. Since the program's inception, more than 8,000 protected witnesses have testified against members of major organized criminal groups, resulting in numerous

convictions. Id. Further, no participant who has followed the program's rules has been killed or seriously injured due to his or her cooperation with the government. Id.

The current program is administered pursuant to 18 U.S.C. §§ 3521-3528, the "Witness Security Reform Act of 1984" as well as guidelines established by the Attorney General pertaining to the program. *See* USAM 9-21.000. The Office of Enforcement Operations (OEO) within DOJ is in charge of administering the program, with the United States Marshals Service (USMS) responsible for the relocation components of the program. Ruleman at 7-9.

The Witness Security Program is a program of "last resort," and applicants must meet strict criteria before they are approved for the program. Id. at 7. Applications on behalf of witnesses must be submitted and signed by the United States Attorney in the federal jurisdiction where the investigation or case involving the witness is pending. Applications must contain the following information, to enable OEO to evaluate whether acceptance into the program is necessary: the significance of the case must be clearly demonstrated; the importance of the testimony that the witness will provide, and the lack of alternative sources for it, must be shown; the existence of a bona fide threat against the life of the witness must be demonstrated; and assurance must be given - if the witness is to be relocated rather than incarcerated - that any danger the witness might pose to a new community is outweighed by the benefits to be gained by his or her testimony.

Additionally, the investigating agency sponsoring the applicant must submit a threat assessment signed by management personnel from the investigating agency's headquarters that details the believed threat to the witness based on his/her cooperation. If a witness (and/or any

family members of the witness) will be relocated to a new community, the threat assessment also must contain information about any risk the witness, as well as the adult family member, may pose to the new community. Id. at 8. Moreover, USMS inspectors must conduct an interview of non-prisoner applicants as well as any adult family member of the witness who will be relocated, to assess whether they are appropriate candidates for the program. Id. Finally, a psychologist conducts an evaluation of each witness and family member of the witness who is being sponsored for relocation through the program. Id.

A majority of the program's participants are prisoner-witnesses who must serve their prison time before being given a new identity and placed in the program. While they are still in prison, the witnesses are separated from other prisoners who may represent a threat to them. To address the security needs of prisoner witnesses who cannot safely be placed in a general inmate population, the Bureau of Prisons maintains "Protective Custody Units," which are like "prisons within prisons." Id. at 8. Prisoner witnesses whose families may be at risk as a result of the witness's cooperation, may also be eligible for protection through the USMS relocation program.

B. Prosecution Stage

Beginning with the filing of charges and continuing through the appeals and post-conviction process, responsible officials in prosecutors' offices (usually prosecutors or victim witness personnel), shall ensure that victims receive notice and information regarding case events and available services, and shall address any security concerns victims may have. AG Guidelines, Art. IV.B.2., at 27. Once charges are filed, prosecutors must advise victims of their rights and that they can seek the advice of an attorney with respect to their CVRA rights.

Id., Art. IV.B.2.b.(1) -(2), at 27.

1. Right to Notice

Once charges have been filed, prosecutors' offices are responsible for notifying victims of the role of the victim in the criminal justice process, their right to attend trial, and provide information on services and case events, including the scheduling of public court proceedings, the filing of charges, the release or escape of the accused, the entry and acceptance of guilty pleas, trial verdicts, and sentencing proceedings. AG Guidelines, Art.IV.B.2.b.(3)-(6). To assist with notification requirements, DOJ supports an automated, nationwide Victim Notification System (VNS) in federal cases. VNS is also used by the FBI, the United States Postal Inspection Service, and the Bureau of Prisons to assist them in meeting their notification obligations. . Federal crime victims may elect to receive notice through VNS via mail or e-mail, and may view case information online through a password-protected Internet site.

2. Right to Consult with a Government Attorney

A federal crime victim has the “reasonable right to confer with the attorney for the government in the case,” but this right “shall not be construed to impair prosecutorial discretion. AG Guidelines, Art.IV.B.2.c(1), at p. 29. In general, prosecutors should be available to consult with victims regarding “major case decisions such as dismissals, pre-trial release of the defendant (where appropriate), plea negotiations and pretrial diversion. Id. At the request of victims, prosecutors and victim witness coordinators often meet with victims by telephone or in person, to address their concerns and questions.

3. Right to be Heard

Under the Crime Victims' Rights Act, federal crime victims have a "right to be reasonably heard" at any public hearing involving the release, plea, sentencing or parole of the defendant. 18 U.S.C. § 3771(4). Thus, if victims wish to provide a statement describing their views for example, on whether a defendant should be released pending trial, or the terms of a plea agreement, the prosecutor shall request that the Court permit the victim to be heard.

Sentencing hearings are often where victims seek to provide their views to the court. Prior to sentencing hearings, a responsible official shall notify victims that the U.S. probation officer is required to prepare a pre-sentence investigation report that includes a section on victim impact, and shall provide the victim with contact information for the probation officer. AG Guidelines, Art. IV.B.3.a.(1)-(2), at 30. Victim Impact Statements provide a powerful mechanism for victims to express how they feel about what happened to them as a result of the crime, and many victims choose to submit them. Victims may also express their views to the Court in person at the sentencing hearing. See Fed.R.Crim.P. 32(i)(4)(B).

In addition, the CVRA provides victims with the right to "full and timely restitution," and prosecutors, victim-witness coordinators, investigators, probation officers, clerks of court, and financial litigation units within USAOs, must work together to ensure that a victim receives the restitution to which he or she is entitled. AG Guidelines, Art. V.A., at 37.

4. Attending Court Proceedings

Responsible officials also must inform victims of their right to attend the trial, regardless

of whether the victim will testify at trial or present information at sentencing. AG Guidelines, Art.IV.B.2.b(3). Recognizing the importance to victims of attending court proceedings involving their victimization, Congress legislated the “right not to be excluded from any such public court proceeding,” unless the court determines “by clear and convincing evidence,” that a victim-witness’s testimony would be materially altered by exposure to the testimony of other witnesses. 18 U.S.C. § 3771 (a)(3). As noted during the floor debate prior the CVRA’s passage, the right to attend hearings and trials is “so important because crime victims share an interest with the government in seeing that justice is done in a criminal case.” 150 CONG. REC. S4268 (Apr. 22 2004)(statement of Sen. Kyl). In at least two reported cases, federal prosecutors have filed motions to ensure that victim-witnesses are not excluded, unless the court finds by clear and convincing evidence that the exclusion is necessary. *See e.g. In re Mikhel*, 453 F.3d 113, 1139 (9th Cir. 2006); *United States v. Johnson*, 362 F.Supp.2d 1043 (N.D. Iowa 2005).

C. Corrections Phase

After a defendant is convicted and sentenced, a responsible official (usually a representative from the Bureau of Prisons (BOP)), must provide a victim with notice of (i) the date on which the offender will be eligible for parole, and the scheduling of any such release hearing; (ii) the escape, work release, furlough or any other form of release of the offender; and (iii) the death of the offender, if the offender dies while in custody. AG Guidelines, Art. IV.C.2(a)(2), at p. 34. BOP maintains on its website, a “federal inmate locator,” which provides information about the location of every federal inmate within the BOP system. *See www.bop.gov*. If a defendant is being detained pre-trial pending prosecution, notification of

the defendant's custody status is usually provided by the USAO.

D. Parole Process

Victims also have the right be notified of parole hearings, and to be heard at these proceedings. AG Guidelines, Art. IV.C.2.a.(3), at p. 35. Moreover, within 30 days of an inmate's release from prison, responsible officials shall provide victims with notice of the date of release, the city and State where the inmate will be released, and contact information for the inmate's supervising probation officer, if applicable. AG Guidelines, Art.IV.C.2.b.(4), at p. 35.

IX. THE VICTIM WITNESS ASSISTANCE UNIT IN THE UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF COLUMBIA

Located in the Nation's capital, the United States Attorney's Office for the District of Columbia (USAO-DC) is unique in that it prosecutes both local and federal crimes, handling well over 20,000 cases per year. Prosecutors, victim witness staff, investigators and other support personnel meet daily with victims and family members of victims of all varieties of crime, such as homicide, domestic violence, identity theft, human trafficking, and terrorism.

Many years ago, the office established a specialized Victim Witness Assistance Unit ("VWAU") as a stand-alone section. The VWAU has always been central to the work of the USAO-DC, and has always had the strong support of the United States Attorney. The VWAU assists thousands of victims and witnesses each year.

The VWAU is by far the largest victim witness program in all of the United States Attorneys' Offices. Comprised of 26 highly trained individuals, the unit is divided into three sections: Witness Security, Victim/Witness Specialists, and Central Services. For the past ten

years, the Chief of the VWAU has been either a prosecutor or an attorney. The Chief also provides policy and legal guidance to the office on matters regarding victim and witness rights and services.

The Witness Security Section employs 5 staff members and a supervisor and addresses security concerns raised by victims and witnesses who are threatened or perceive that they are threatened as a result of their participation in a case. In light of the high rate of homicides, assaults and violent crime in the District, along with a substantial number of criminal organizations operating in the city, witness intimidation is a serious problem. Often, victims and witnesses are eligible for EWAP, and in certain cases, the prosecutor may request that the witness be considered for acceptance into the Federal Witness Security Program. The section also addresses inmate and prisoner witness security concerns as well, working with the local Department of Corrections and the Bureau of Prisons.

The VWAU's Central Services Section is responsible for victim notification in both federal and D.C. Superior Court cases, handling tens of thousands of notifications per year. Specialists in this section also arrange for victim and witness travel for court appearances and witness conferences, assisting a significant number of international victims and witnesses. Section members also obtain interpreters and ensure that witnesses receive reimbursement for required court appearances.

The Victim/Witness Specialist Section employs 15 highly experienced victim advocates who are stationed in various trial units within the USAO-DC. The Section is supervised by a doctor of psychology, and several advocates are licensed clinical social workers. Victim

advocates have many responsibilities, including intake, safety planning, lethality assessment, referring victims to the crime victims' compensation program and services, and accompanying them to court. The advocates are specialized, based on their area of expertise. Several advocates work only with domestic violence victims (with one advocate specializing in elder abuse as well), while others work only with sexual assault or child abuse victims. One advocate works with misdemeanor victims, and two other advocates are responsible for assisting victims of violent crimes and general felonies. There is one advocate who assists family members and loved ones of homicide victims, often attending court appearances on their behalf and referring them to grief counseling and other support programs. Another advocate is assigned to the federal crimes section where she routinely assists victims of trafficking, identity theft, child pornography, bank robbery and terrorism. Several advocates are fluent Spanish speakers, and the office maintains a dedicated telephone line where Spanish-speaking victims can obtain assistance. Often, the unit posts case-updates and other information for victims on its public website.

The VWAU also employs a highly trained child forensic interviewer, who works closely with a non-profit Child Advocacy Center. The forensic interviewer is responsible for conducting the majority of forensic interviews and assessments of victims and witnesses who are between the ages of two and seventeen or are vulnerable adults. In addition, she participates in multi-disciplinary case review sessions to assist law enforcement, prosecution, social service, and mental health professionals in determining appropriate assistance child victims and witnesses.

VWAU staff also collaborate with law enforcement and community partners on projects designed to assist victims, such as the human trafficking task force, the fatality review board, and the Domestic Violence Intake Center.

X. CONCLUSION

In the nearly thirty years following the Final Report of the President's Task Force on Victims of Crime, the United States has made significant strides in the passage of victims' rights laws, the creation of funding mechanisms for victim services, and the development of programs to address the specific needs of crime victims. Nonetheless, there is more work to be done. Government and community partners must continue to work together to develop innovative strategies to ease the suffering of crime victims and to make the criminal justice process a more bearable one.