CRIME VICTIMS RIGHTS ACT OF 2004

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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CRIME VICTIMS RIGHTS ACT OF 2004

TUESDAY, SEPTEMBER 29, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 4:04 p.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Jackson Lee, Quigley, Poe, and Goodlatte.

Staff Present: (Majority) Bobby Vassar, Subcommitte Chief Counsel; Jesselyn McCurdy, Counsel; Ron LeGrand, Counsel; Veronica Eligan, Professional Staff Member; and (Minority) Kimani Little, Counsel.

Mr. SCOTT. The Subcommittee will come to order, and I would like to welcome you on today's hearing on the Crime Victims' Rights Act of 2004.

There have been several attempts to amend the United States Constitution to recognize the role of crime victims in the criminal justice process. Having been unable to come to a consensus about a constitutional amendment, in 2004 Congress enacted statutes and other statutes that have established certain statutory rights for crime victims and provides funding for services for crime victims.

Using a statue rather than a constitutional amendment avoids the complications which arise when defendants' rights might be compromised under a constitutional amendment. And so, since 1982 the Federal Government has passed a number of laws that address the role of crime victims in the criminal justice system, including the Crime Victims' Rights Act of 2004.

That act was signed into law as part title I of the Justice for All Act. The law improved the role of victims in the criminal prosecution, including identifying eight specific rights of Federal crime victims, including the right of victim witnesses not to be excluded from public court proceedings unless the court determines that the victim's testimony would be influenced.

Crime victims are also given the right to be reasonably heard at any public proceeding in a district court involving the release, plea, sentencing, or the right to be heard at any parole hearing. The 2004 law gives victims the right to reasonable, accurate, and timely

notice of any public court proceeding, any parole hearing, any release or the escape of a defendant.

The act also established two procedures to ensure the victims' rights are protected under the law. First, the law directed the Department of Justice to develop a process to receive and investigate complaints relating to violations of crime victims' rights to ensure that the Department employees are complying with the requirements of the 2004 law. In addition, the Crime Victims' Rights Act enables victims to assert their rights in district court not only when they believe a Department employee has violated their rights but when they have had any concerns about their ability to exercise their rights.

In addition, the 2004 act directed the U.S. Accountability Office to evaluate the implementation of the law. The GAO will testify today about its December 2008 report which assessed how the Department of Justice has ensured crime victims are given their statutory rights.

One of the findings in the GAO report concluded that several important issues have surfaced as Federal courts interpret the rights given to victims under the act. For example, questions such as: At what point in the criminal justice process do crime victims' rights apply? And does the law apply to local offenses prosecuted in the District of Columbia Superior Court? Both of those have been litigated in Federal court but essentially remain unsettled.

I hope the Department in its testimony will discuss its position on various unsettled legal issues that have resulted from different court interpretations of the Crime Victims' Rights Act.

Finally, the 2004 law authorized funding for programs that provide crime victims with services, funding for organizations that provide legal counsel to Federal crime victims, and funding for the improved Victim Notification System. Although most of these grants have been reauthorized to 2013, we will review how the funding has been spent to date.

It is important to note that the Crime Victims' Rights Act only applies to Federal prosecution, but we also have a concern about how victims are treated in State court. And, indeed, $100 million in the recent recovery package provided funding for State compensation and assistance for victims.

We have several distinguished witnesses who will testify about how the 2004 Crime Victims' Rights Act has been implemented, including representatives from the GAO and the Department of Justice.

Before we get to the witnesses, it is my pleasure to recognize the Ranking Member for today, Mr. Poe from Texas. Judge Gohmert is not with us, and Mr. Poe is sitting in on his behalf.

Mr. Poe?

Mr. POE. Thank you, Mr. Chairman. I appreciate you calling this oversight hearing on the Crime Victims' Rights Act of 2004. To my knowledge, this will be the Subcommittee's first hearing on this landmark piece of legislation in this or the previous Congress.

The Crime Victims' Rights Act, or the CVRA, was passed as part of the Justice for All Act in 2004. The CVRA significantly expanded the rights of crime victims in the criminal justice system. The overarching goal of the Crime Victims' Rights Act was to make sure

that victims of Federal crimes enjoy certain rights of notice, attendance, participation in Federal criminal justice process.

It is my opinion that the same Constitution that protects defendants of crime protects victims of crime, as well. As crime victims are afforded numerous protections under the Bill of Rights and other Federal laws, there was a feeling among many Members of Congress that the criminal justice system did not have enough protections, statutory protections, for rights of victims.

To address that imbalance, Congress created a statutory bill of rights for victims of crime committed in violation of Federal law or the laws of the District of Columbia. The rights conveyed by the CVRA are those eight rights: the right to be reasonably protected from the accused; the right to notification of public court and parole proceedings and the release of the accused; the right not to be excluded from public court proceedings under most circumstances; and the right to be heard in public court proceedings relating to bail, acceptance of a plea bargain, sentencing or parole; the right to confer with the prosecutor; the right to restitution under the law; the right to proceedings free from unwarranted delays; and the right to be treated fairly and with respect to one's dignity and privacy.

Now, the CVRA directs the courts and law enforcement officials to see to it that these rights are honored. Both victims and prosecutors may assert the rights and seek review from the appellate court should the rights be initially denied.

In addition to the statutory rights, the CVRA created grant programs and other authorizations to protect and to further crime victims' rights. To me, this is a good use of taxpayer money. Under the CVRA, the Department of Justice may make grants to State, tribal, local law enforcement agencies, and public and private entities to develop and maintain programs for the enforcement of crime victims' rights as provided by the law.

As a former prosecutor and judge, I have had personal experience working with Americans who have been victimized by crime and whose lives and their families' lives have been torn apart. I started in the criminal justice system back in the 1970's as a prosecutor and then a judge, I guess, forever until I came to Congress.

And one case I prosecuted back in the 1970's was a homicide that involved four people. An entire family was assassinated for the life inheritance of these four individuals. One of those was a child, Kevin Wanstraf. He is the same age as one of my four kids, my son. And I have always had this photograph on my desk since that prosecution in 1979, because he was 14 months old when he was murdered, and I have always wondered how he would turn out, how his siblings would turn out.

And I think it is important that we, in this sterile environment of Washington, D.C., remember that victims of crime are people. They are American people who have had their lives shattered by the fact that someone else picked them to be prey, to have something stolen from them, to have an assault committed against them, or have a homicide committed against them.

And so I appreciate the Chairman having this hearing. As a Member of Congress, I do serve as co-chair of the Victims' Rights Caucus. It is a bipartisan caucus that advocates for crime victims

and also for law enforcement officials. And so I enthusiastically support the CVRA and look forward to hearing testimony. I welcome all the witnesses for being here today.

And I yield back the balance of my time.

Mr. SCOTT. Thank you.

Does the gentleman from Illinois have any comments?

The gentleman from Illinois did a lot of work in criminal law in Illinois.

The gentleman from Virginia, my colleague, Mr. Goodlatte, do you have any comments?

Mr. GOODLATTE. No. Thank you, Mr. Chairman.

Mr. SCOTT. Okay. Did you do prosecution or defense?

Mr. GOODLATTE. I did some court-appointed.

Mr. SCOTT. Okay. So you are very familiar with the criminal justice process.

We will now get to our witnesses.

The first witness is Ms. Eileen Larence, who currently serves as the director for homeland security and justice issues at the U.S. Government Accountability Office. In her capacity at the GAO, she manages congressional requests to assess various law enforcement and Department of Justice issues, as well as state terrorism-related information-sharing since 9/11. She has a master's degree in public administration.

Our second witness today is Mr. Laurence Rothenberg, a deputy assistant attorney general at the Office of Legal Policy at the Department of Justice. He has helped develop and implement policies regarding victims' rights, trafficking in persons, child exploitation,Indian country, international human rights, and forensic sciences. He is a graduate of Amherst College, Fletcher School of Law and Diplomacy at Tufts University, and Harvard Law School.

The third witness is Mary Lou Leary, acting assistant attorney general in the Office of Justice Programs and at the Department of Justice. Prior to joining the Department, she served as executive director for the National Center for Victims of Crime, a nonprofit organization in Washington, D.C. She also has served as deputy associate attorney general for the Office of the Associate Attorney General and acting director of the Office of Community-Oriented Policing Services, or the COPS program, during her previous service at the Department.

Our next witness is Douglas Beloof, professor of law at Lewis and Clark Law School in Portland, Oregon. He is the director of the National Crime Victim Law Institute, which represents crime victims in appellate court. The institute also performs research and maintains a database and brief bank on victim law and promotes legal education of law students, lawyers, judges, and victims' advocates on victim law issues. He received his bachelor of arts from the University of California, Berkeley, and his juris doctorate from Lewis and Clark Law School.

Our final witness is Susan Smith Howley, director of public policy for the National Center for Victims of Crime. She has also served as the center's director of victims' services and is one of the Nation's foremost experts on crime victims' rights laws. She is a graduate of Georgetown University Law Center.

Each of our witnesses' testimony will be entered into the record in its entirety. We would ask each witness to summarize your testimony in 5 minutes or less. To help you stay within the time, there is a timing device at the table which will begin as green, turn to yellow when there is 1 minute left, and turn red when your time is expired.

We will begin with Ms. Larence.

TESTIMONY OF EILEEN LARENCE, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Ms. LARENCE. Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to summarize the results of our review of how well the Victims' Rights Act is working at its 5-year anniversary.

In response to a mandate from the Congress, GAO answered four questions about the act, among other things. First, we determined what steps the Department of Justice and the courts were taking to implement the act and fix any implementation problems. Second, we assessed how well the act's two enforcement mechanisms were working. Third, we reviewed how the courts are interpreting the meaning of key provisions in the act that raise questions. And, fourth, we asked various participants what difference they think the act has made.

In summary, we found that the Department and the courts have taken steps to provide employees with guidance, training, and revised rules, and victims with court access and services.

They have also taken steps to overcome challenges, some of which are inherent to the judicial process. For example, cases of computer fraud or identity theft can involve large numbers of victims. This makes it hard to notify all victims of court proceedings or let all of them speak in court. Justice staff were using media outlets and teleconferences, among other things, to overcome these hurdles.

The Department also was providing funding to hire contractors to help with the increased administrative workload, such as the increased number of notices of court proceedings that must now be sent to victims.

While we tried, we could not determine just how much funding the Department was appropriated to implement the act. As you know, Congress authorized funding for fiscal years 2005 through 2009 and extended that funding for, among other things, staff assistance, enhanced notification systems, legal support to victims, and grants to States and localities for victim assistance. But because the Department receives funds for CVRA lumped in with funds for other victim assistance efforts, it is not possible to separate out and report on CVRA funding.

Turning now to the two enforcement mechanisms that, Mr. Chairman, you mentioned in your opening statement, victims reported that they did not use these tools, in part because they didn't really know about them.

For example, the Department created the Victim Rights Ombudsman to receive and investigate complaints about Justice employees not affording victims their rights. We found, however, that few vic-

tims filed complaints, and many reported they didn't know they could.

We also found that the complaint process was not as independent and impartial as it could be. For example, in some cases, Justice employees were investigating complaints about their officemates or supervisors.

In addition, we found victims did not use the second enforcement mechanism to file a motion in court and, subsequently, a writ of mandamus in appeals court if they believed their rights were compromised.

We recommended that the Department take steps to address all of these issues. The Department, in turn, convened a working group that is assessing how to respond to these recommendations and has already made changes to the ombudsman process to help ensure independence.

In regard to our third question, as is typical with many new laws, the courts have been interpreting provisions in the act to answer questions about it, such as: Do rights apply before a person is charged with an offense? If victims only submit written statements, were they, quote, "reasonably heard in court?"

The Department and courts agree, however, that the Congress should change the law to answer one question that has caused confusion: Does the act apply to victims of local crimes in D.C. Superior Court? Some judges in this court have applied the act, while others have not. The Department had proposed legislation to establish that the law does apply, but no action was taken. We suggest that the Congress consider clarifying the act to address this issue.

Finally, we asked various participants if they thought the act had made a difference. Perhaps not surprisingly, views are mixed. Most maintained that the act did improve awareness about victim rights, victim treatment, and victim participation in the legal process. Others maintained that Federal and State governments, as well as the courts, were already providing victims these rights because of State laws, so perhaps the act had little impact.

Victims said they were aware of most, but not all, of their rights, and victims varied as to how satisfied they were that their rights had been honored. Additionally, some expressed concerns that the focus on victims' rights could come at the expense of defendants' interests. For example, some claim that if victims hear the testimony of other witnesses, victims may alter their own testimony, which could increase the likelihood that the defendant is found guilty.

Mr. Chairman, that concludes my statement, and I would be happy to answer any questions.

[The prepared statement of Ms. Larence follows:]

PREPARED STATEMENT OF EILEEN R. LARENCE

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, House of Representatives

For Release on Delivery
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Tuesday, September 29, 2009

CRIME VICTIMS' RIGHTS ACT

Increasing Victim Awareness and Clarifying Applicability to the District of Columbia Will Improve Implementation of the Act

Statement of Eileen R. Larence, Director
Homeland Security and Justice

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GAO-09-1024T

September 29, 2009

CRIME VICTIMS' RIGHTS ACT

Increasing Victim Awareness and Clarifying Applicability to the District of Columbia Will Improve Implementation of the Act

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Highlights

Highlights of GAO-09-1024T, a testimony before the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

On October 30, 2004, the Crime Victims' Rights Act (CVRA) was enacted, establishing eight rights for federal crime victims and two mechanisms to enforce those rights. The legislation also directed GAO to evaluate the implementation of the CVRA. To address this mandate, GAO reviewed, among other things: (1) efforts made to implement the CVRA, (2) mechanisms in place to ensure adherence to the CVRA, (3) key issues that have arisen in the interpretation of the CVRA by the federal courts, and (4) perspectives of criminal justice system participants on the CVRA. This testimony is based on GAO's December 2008 report on CVRA, where GAO reviewed guidance and conducted surveys and interviews with criminal justice system participants. GAO cannot generalize its crime victim survey results due to a low response rate. In September 2009, GAO obtained updated information on victim's efforts to enforce their rights.

What GAO Recommends

While this testimony contains no new recommendations, GAO previously recommended that DOJ increase victims' awareness of CVRA enforcement mechanisms, among other things. Also, GAO suggested that Congress revise the CVRA to clarify applicability to the District of Columbia. DOJ generally concurred with GAO's recommendations and convened a working group to determine how to implement them.

View GAO-09-1024T or key components. For more information, contact Eileen Larence at (202) 512-8777 or larencee@gao.gov.

What GAO Found

To implement the CVRA, the Department of Justice (DOJ) and the federal judiciary have, among other things, revised internal guidelines, trained DOJ staff and judges, provided victims with emergency, temporary housing to protect them, and proactively asked victims if they would like to speak in court.

DOJ and the courts have also implemented two mechanisms to ensure adherence to the CVRA, including processes for victims to submit complaints against DOJ employees and assert their rights in court; however, the majority of victims who responded to GAO's survey said they were not aware of these mechanisms. If victims are not aware of these enforcement mechanisms, they will not be effective at helping to ensure victims are afforded their rights. GAO also found that DOJ's complaint investigation process lacked independence, impeding impartiality. In July 2009, in response to our recommendation, DOJ revised its victim complaint investigation process such that if investigators who are located in the same office with the subject of the investigation believe that their review of the complaint could bias the investigation or give the appearance of this, they are instructed to inform a designated official at DOJ headquarters. This official may suggest that the complaint be investigated by another DOJ office.

Several key issues have arisen that require the courts to interpret various provisions of the law, including (1) when in the criminal justice process CVRA rights apply, (2) what it means for a victim to be "reasonably heard" in court, and (3) what legal standard should be used to review victim appeals of district court decisions. While judicial interpretation of various aspects of a law typically occurs after new legislation is enacted, DOJ and court officials believe that one CVRA issue may benefit from a change to the law itself. The CVRA is not explicit about whether the law applies to victims of local offenses prosecuted in the District of Columbia Superior Court. Without clarification on this issue, judges in this court may continue to differ in whether they apply the CVRA in their cases.

As to the overall impacts of the CVRA, the victims as well as the DOJ and judicial officials GAO interviewed had mixed perceptions. Most maintained that CVRA has improved victim treatment. For example, 72 percent of the victim-witness professionals—individuals who are responsible for providing services to crime victims and witnesses—who responded to GAO's survey perceived that the CVRA has resulted in at least some increase in victim attendance at court proceedings. Other officials maintained that the federal government and the courts were already treating victims well prior to the act. Victims responding to GAO's survey also reported mixed views on their knowledge of, and satisfaction with, the provision of various rights. For example, 141 of the 167 victims who responded to GAO's survey question regarding participation in the judicial process reported that they did not attend any of the proceedings related to their cases, primarily because the location of the court was too far to travel or they were not interested in attending.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our analysis of the efforts made by the Department of Justice (DOJ) and the federal judiciary to implement the Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act (CVRA), which was enacted on October 30, 2004.[1] The CVRA defines a crime victim as "a person directly and proximately harmed as a result of a federal offense or an offense in the District of Columbia."[2] The Act established eight rights for such victims, including, among others, the right to be notified of any public court proceeding, the right not to be excluded from such proceedings, and the right to be heard at certain of these public court proceedings related to the crime.[3] The law requires officers and employees of DOJ, which includes, investigative agents, prosecutors, and victim-witness professionals—individuals who are responsible for providing services to crime victims and witnesses—to make their best efforts to see that crime victims are notified of and accorded their rights under the CVRA.[4] Since most federal crimes—that is, crimes that violate a federal statute—are prosecuted by DOJ's U.S. Attorneys Offices (USAO), staff in these offices have primary responsibility for assisting crime victims during the prosecution phase of a case. The federal courts also have responsibilities for ensuring that crime victims are afforded their CVRA rights, such as by generally not excluding victims from certain public court proceedings.

The CVRA also established mechanisms to enforce crime victims' rights. Specifically, to ensure that DOJ employees are complying with CVRA requirements, the Act directs DOJ to establish a process for receiving and investigating victim-related complaints against DOJ employees, and to require training or impose disciplinary sanctions on any DOJ employees who fail to comply with federal law pertaining to the treatment of crime victims.[5] The CVRA also enables victims to assert their rights in district court by filing a motion for relief [6]—a formal request made to a judge for

[1] Pub. L. No. 108-405, 118 Stat. 2260 (2004).

[2] 18 U.S.C. §3771(e).

[3] 18 U.S.C. §3771(a).

[4] 18 U.S.C. §3771(c)(1).

[5] 18 U.S.C. §3771(f).

[6] Relief is a generic term for all types of benefits or redress that a party asks of a court.

an order or ruling—with the district court regarding their rights.[7] If the district court denies victims the relief they are seeking—such as a request that the judge allow the victim to be heard at a court proceeding—the victim can petition the court of appeals for a writ of mandamus, in which case the court of appeals may instruct the district court to grant the victim the relief sought.[8]

We have assessed implementation of the CVRA in response to sec. 104(b) of the Act, which directed GAO to evaluate the "effect and efficacy of the implementation of the [CVRA] on the treatment of crime victims in the federal system." We issued a report on the results of that review on December 15, 2008.[9] My statement today summarizes most of the findings in our report and addresses the following questions: (1) What efforts have been made to implement the CVRA, what factors have affected these implementation efforts, and how have these factors been addressed? (2) What mechanisms are in place to ensure adherence to the CVRA, and how well are these mechanisms working? (3) What are the key issues that have arisen as courts interpret and apply the CVRA in cases? (4) What are the perspectives of various participants in the federal criminal justice system regarding the effect and efficacy of CVRA implementation? Our December 2008 report also includes a discussion of the methods DOJ uses to monitor performance regarding the provision of the CVRA.[10]

To address these questions, we reviewed CVRA guidance issued by DOJ and the federal judiciary, victim complaints submitted to DOJ, and federal

[7] 18 U.S.C. §3771(d)(3). Most motions must include a written statement of the relief sought and the grounds for seeking the relief. The motion must be served on all parties, and a judge may hold a hearing for oral arguments on the motion. During a trial or a hearing, an oral motion may be permitted.

[8] 18 U.S.C. §3771(d)(3). A writ of mandamus is an order from a higher court directing a lower court to perform a specified action.

[9] GAO, *Crime Victims' Rights Act: Increasing Awareness, Modifying the Complaint Process, and Enhancing Compliance Monitoring Will Improve Implementation of the Act*, GAO-09-54 (Washington D.C.: Dec. 15, 2008).

[10] GAO-09-54. We made a number of recommendations in the report to strengthen DOJ's ability to assess how well the Department and its employees are meeting their CVRA responsibilities. DOJ agreed with our recommendations and established a working group to determine how best to implement them. As of September 2009, the working group had prepared a draft data collection instrument which, when finalized, will be used to collect standardized information from the various DOJ components regarding their compliance with the CVRA. DOJ then plans to use this information to measure the department's performance in meeting victims' needs.

court rulings. We also conducted surveys and interviews of crime victims and victim-witness professionals, and interviews with investigative agents, prosecutors, defense attorneys, and federal judges.[11] We cannot generalize the results of the crime victim survey due to a low response rate, nor can we generalize the results of the interviews since we used a nonprobability sampling method to select the locations we visited to conduct these interviews. However, the survey results and interviews provided us with information on the perspectives of various participants in the criminal justice system about the CVRA. We conducted our audit work from May 2007 to December 2008. In September 2009, for the purposes of this testimony, we obtained updates to certain data we included in our report, such as the number of victim complaints submitted to DOJ and the number of times CVRA rights were asserted in federal court. We conducted our audit work in accordance with generally accepted government auditing standards. Appendix I of our December 2008 report contains a detailed description of our scope and methodology.[12]

Background

The Evolution of Crime Victims' Rights

Since 1982, the federal government has passed a number of laws that address the role of the crime victim in the criminal justice system, including the Victim and Witness Protection Act of 1982,[13] Victims of Crime Act of 1984,[14] Victims' Rights and Restitution Act of 1990,[15] Violent Crime

[11] We surveyed by mail a stratified random probability sample of federal crime victims whose cases became active on or after January 1, 2006, and were closed no later than November 30, 2007. We included only victims whose cases were closed in order to obtain victims' perspectives over the duration of the criminal justice process. We selected our sample of federal crime victims from DOJ's Victim Notification System (VNS), which is used to notify crime victims of proceedings related to their cases. Of the 1,179 victims we surveyed, 248 (21 percent) returned completed questionnaires. Also we conducted a Web-based survey of all 201 victim-witness professionals who were located in each of the 93 U.S. Attorneys Offices as of April 2008, which is when we fielded the survey, to obtain their perspectives about CVRA implementation. We received responses from 174 (87 percent) of them. Additionally, we visited and interviewed criminal justice participants in nine federal judicial districts. We also reviewed files related to the 141 victim complaints that had been received by DOJ's Victims' Rights Ombudsman (VRO) from December 2005 to April 2008 and in which a determination had been made.

[12] GAO-09-54

[13] Pub. L. No. 97-291, 96 Stat. 1248 (1982).

[14] Pub. L. No. 98-473, ch. XIV, 98 Stat. 1837 (1984).

Control and Law Enforcement Act of 1994,[16] Mandatory Victims Restitution Act of 1996,[17] Victim Rights Clarification Act of 1997,[18] and Crime Victims' Rights Act of 2004.[19]

Several of these statutes provided crime victims with rights, but they also directed federal officials to provide victims with various services, such as notification of certain public court proceedings. In particular, the Victims' Rights and Restitution Act of 1990 identified crime victims' rights, delineating seven such rights and requiring federal officials to make their best efforts to see that crime victims are accorded these rights.[20] The 1990 law also included a separate provision, codified at 42 U.S.C. § 10607, that requires federal officials to identify crime victims and provide them information about their cases and about services that may be available to them.[21] For example, the law requires officials to inform victims of a place where they may receive emergency medical and social services, to inform victims of programs that are available to provide counseling, treatment, and other support to the victim, and to assist victims in contacting persons who can provide such services.

On October 30, 2004, the Crime Victims' Rights Act, as a component of the Justice for All Act, was signed into law.[22] The CVRA left in place 42 U.S.C. §

[15] Pub. L. No. 101-647, tit. V, 104 Stat. 4789 (1990).

[16] Pub. L. No. 103-322, 108 Stat. 1796 (1994).

[17] Pub. L. No. 104-132, tit. II, 110 Stat. 1214 (1996).

[18] Pub. L. No. 105-6, 111 Stat. 12 (1997).

[19] Pub. L. No. 108-405, tit. I, 118 Stat. 2260 (2004). The federal government has passed other laws that provide benefits and services to certain classes of crime victims including the Trafficking Victim Protection Act (for victims of human trafficking crimes) and the Justice for Victims of Terrorism Act (for victims of terrorism). Pub. L. No. 106-386, 114 Stat. 1464 (2000); Pub. L. No. 104-132, 110 Stat. 1214 (1996).

[20] Pub. L. No. 101-647, § 502, 104 Stat. 4789, 4820 (1990), *repealed by* Pub. L. No. 108-405, § 102(c), 118 Stat. 2260, 2264 (2004). The rights listed in the 1990 law included: (1) the right to be treated with fairness and with respect for the victim's dignity and privacy; (2) the right to be reasonably protected from the accused offender; (3) the right to be notified of court proceedings; (4) the right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial; (5) the right to confer with the attorney for the government in the case; (6) the right to restitution; and (7) the right to information about the conviction, sentencing, imprisonment, and release of the offender.

[21] *Id.* at § 503, 104 Stat. 4820-22 (codified at 42 U.S.C. § 10607).

[22] Pub. L. No. 108-405, 118 Stat. 2260 (2004).

10607—the provision requiring federal officials to inform victims about their cases and about services available to them—but the CVRA modified the provision from the 1990 law regarding crime victims' rights and identified eight rights for federal crime victims, some of which were similar to the rights from the 1990 law and others of which were new. The CVRA provided that crime victims have the following rights:

- the right to be reasonably protected from the accused;
- 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;
- 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 would be materially altered if the victim heard other testimony at that proceeding;
- the right to be reasonably heard at any public proceeding in the district court involving the release, plea, sentencing, or any parole proceeding;
- the reasonable right to confer with the attorney for the government in the case;
- the right to full and timely restitution as provided in law;
- the right to proceedings free from unreasonable delay; and
- the right to be treated with fairness and with respect for the victim's dignity and privacy.[23]

Mechanisms for Crime Victims to Assert Their Rights

The CVRA also established two mechanisms to ensure adherence to victims' rights under the law, neither of which had been available under previous statutes. Specifically, to ensure that DOJ employees are complying with CVRA requirements, the law directed DOJ to designate an administrative authority to receive and investigate complaints relating to the provision or violation of crime victims' rights.[24] To comply with this provision in the statute, DOJ issued regulations creating the Victims' Rights Ombudsman.[25] The VRO is a position within the Executive Office of United States Attorneys—the DOJ division responsible for facilitating coordination between USAOs, evaluating USAO performance, and providing general legal interpretations and opinions to USAOs, among other things. Federal crime victims may submit written complaints to the

[23] *Id.* at § 102(a) (codified at 18 U.S.C. § 3771(a)).

[24] 18 U.S.C. § 3771(f).

[25] 28 C.F.R. § 45.10.

designated point of contact for the DOJ division that is the subject of the complaint, who then investigates the complaint and reports the results of the investigation to the VRO. Victims may also submit complaints directly to the VRO. If the VRO finds that an employee failed to afford a CVRA right to a victim, the VRO must require that employee to undergo training on victims' rights. If based on an investigation the VRO determines that an employee willfully and wantonly failed to provide a victim with a CVRA right, the VRO must recommend a range of disciplinary sanctions to the official authorized to take action on disciplinary matters for the relevant office. The CVRA does not require DOJ employees to provide relief to victims whose rights have been violated, but the VRO guidelines do require investigators, to the best of their ability, to resolve complaints to the victims' satisfaction.

The CVRA also enables victims to assert their rights in district court by filing a motion—which they can do either verbally or per a written request—with the court.[26] Unlike the complaint process, this mechanism allows victims to assert their rights and seek relief from the court, and can be employed not only when victims believe that a DOJ employee violated their rights, but when they have general concerns regarding the provision of their rights. If the district court denies the victim's request regarding the provision of CVRA rights—such as a request to be heard at a hearing—the victim can petition the court of appeals for a writ of mandamus. Thus, if the court of appeals grants the victim's petition, it may direct the district court to take actions to afford CVRA rights to the victim. Petitions for writs of mandamus can be filed at any point in the case.

Authorization of Funding to Support CVRA Implementation

The CVRA authorized appropriations for fiscal years 2005 through 2009. However, it is unclear whether and exactly how much of this funding was appropriated because funds that may have been appropriated under the CVRA were likely appropriated in a lump sum with funds for other victim assistance and grant programs. The authorized amounts, years, and purposes are listed in table 1.

[26] 18 U.S.C. § 3771(d)(3).

Table 1: Funding Authorized by the CVRA

Purpose	Amount and fiscal years
For U.S. Attorneys Offices for Victim-Witness Assistance Programs	$2 million for 2005, $5 million annually for 2006-2009
For the Office for Victims of Crime for enhancement of the Victim Notification System[a]	$2 million for 2005, $5 million annually for 2006-2009
For the Office for Victims of Crime for staff to administer the appropriation for the support of organizations that provide legal counsel to federal crime victims	$300,000 for 2005 and $500,000 annually for 2006-2009
For the Office for Victims of Crime for the support of organizations that provide legal counsel to federal crime victims[b]	$7 million for 2005 and $11 million annually for 2006-2009
For the Office for Victims of Crime for the support of training and technical assistance to states and tribal jurisdictions to craft state-of-the-art victims' rights laws, and training and technical assistance to states and tribal jurisdictions to design a variety of compliance systems, which shall include an evaluation component	$5 million for 2005 and $7 million annually for 2006-2009
For grants to state, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public or private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal proceedings at issue in a timely and efficient manner	$5 million annually for 2005-2009

Source: GAO analysis of section 103(b) of the Justice for All Act of 2004.

[a]DOJ's Office for Victims of Crime (OVC), which provides leadership and funding on behalf of crime victims, was established in federal law in 1988 through an amendment to the 1984 Victims of Crime Act (VOCA). OVC provides federal funds to support victim compensation and assistance programs across the nation. OVC also provides training for professionals who work with victims, develops and disseminates publications, supports projects to enhance victims' rights and services, and educates the public about victim issues. DOJ uses the Victim Notification System to notify crime victims of proceedings related to their cases.

[b]Organizations that provide legal counsel to federal crime victims include the National Crime Victim Law Institute (NCVLI), which established 12 clinics nationwide that provide pro bono legal services to crime victims at the federal, state, and local levels.

Multiple Efforts Have Been Made to Implement the CVRA, and DOJ and Federal Courts Have Taken Actions to Address Various Factors that Have Presented Challenges for Affording Crime Victims Their Rights

DOJ and the federal judiciary have made various efforts to implement the CVRA—from revising internal guidelines and developing training materials for DOJ staff and judges to providing victims with emergency, temporary housing in some cases to protect them from the accused offender and proactively asking victims if they would like to speak in court. Additionally, DOJ and the federal judiciary have taken actions to address four factors that have affected CVRA implementation, including the characteristics of certain cases, the increased workload of some USAO staff, the scheduling of court proceedings, and diverging interests between the prosecution and victims.

First, the characteristics of certain cases, such as the number of victims involved and the location of the victims, make it difficult to afford victims certain CVRA rights. For instance, USAO staff stated that it can be difficult to provide timely notification of court proceedings to victims located on Indian reservations because the victims may not have access to a mailbox, a telephone, or the Internet. To address this challenge, victim-witness personnel said that they have driven to Indian reservations to personally inform victims of upcoming court proceedings.

Second, due to CVRA requirements, particularly notification requirements, USAO victim-witness staff face an increased workload—about 45 percent of staff who responded to our survey reported working an average of about 6 additional hours per week in order to meet CVRA requirements. DOJ has made efforts to address this issue by providing funding to 41 of the 93 USAOs to hire contractors to assist with clerical duties related to victim notification.

Third, inherent characteristics of the criminal justice process, such as the short period of time over which pretrial proceedings are scheduled and take place, make it difficult to provide timely notice to crime victims and afford them their right to be heard. For example, according to the investigative agents, USAO staff, and one magistrate judge with whom we met, a detention hearing—which is a judicial proceeding used to determine whether a defendant should remain in custody before her or his trial—typically takes place within a few days of an arrest (as generally required by federal law), and in certain situations, can occur within hours of an arrest. When faced with this challenge, USAO victim-witness personnel said that they have notified victims of court proceedings by telephone rather than mail, which may not arrive in enough time to enable the victim to attend the proceeding.

Fourth, diverging interests between the prosecution and victims may affect the way in which the government affords victims their CVRA rights. For instance, according to DOJ, it is not always in the interest of a successful prosecution for victims to be notified of and attend a plea hearing for a cooperating defendant who agrees to testify against or provide information about other defendants in the case in exchange for a lesser sentence. The concern is that public knowledge of the defendant's cooperation could compromise the investigation, as well as bring harm to the defendant and others. DOJ officials stated that this issue occurs frequently in gang-related prosecutions, where, for instance, the victim is a member of the defendant's rival gang. DOJ's efforts to address this issue include requesting that the court close plea agreement proceedings—which may prevent the victim from attending such proceedings since victims' right not to be excluded only applies to public court proceedings—and proposing legislation to revise the CVRA to allow for an exception to victims' notification rights in these instances.

Complaint Process and Victims' Ability to File Motions Are Intended to Ensure Adherence to CVRA, but Some Victims Are Not Aware of These Enforcement Mechanisms and the Complaint Process Could Be Restructured to Ensure Independence

Many Victims Who Responded to Our Survey Reported Not Being Aware of Their Ability to File Complaints Related to Their CVRA Rights, and the Structure of the Complaint Process Could Impede Impartiality

To enforce the provisions of the CVRA, the act established two mechanisms to help victims ensure that their rights are granted. These mechanisms include processes by which victims can submit complaints against DOJ employees whom they believe violated their rights and file motions in court related to their rights. However, many of the victims who responded to our survey reported that they were not aware of these enforcement mechanisms. Of the more than 1.1 million federal crime victims who, as of September 4, 2009, were identified in DOJ's Victim Notification System as having active cases, the Victims' Rights Ombudsman—DOJ's designated authority to receive and investigate federal crime victim complaints regarding employee compliance to the CVRA—received 259 written complaints from December 2005 through August 2009. The VRO closed 235 complaints following a preliminary investigation, primarily because the complaints were related to a state or local matter as opposed to a federal matter or it was determined that the individual was not a federal crime victim. Lastly, the VRO determined that of the 19 complaints that warranted further investigation,[27] in no instance did a DOJ employee or office fail to comply with the provisions of the law pertaining to the treatment of these federal crime victims. We did not make a judgment on the reasonableness of the VRO's rationale for dismissing these complaints because we did not conduct an independent investigation of each complaint.

Several contributing factors most likely explain the low number of complaints filed by federal crime victims against DOJ employees. First, DOJ officials believe few victims have filed complaints because victims are generally satisfied with DOJ's efforts to afford them their rights. Second, USAO officials we spoke with have made efforts to resolve complaints directly before they reached a point where a victim would file a complaint with the VRO. Third, victims reported a lack of awareness about the complaint process itself. Specifically, 129 of the 235 victims who responded to our survey question regarding the complaint process reported that they were not aware of it, and 51 did not recall whether they were aware. USAOs have been directed to take reasonable steps to

[27] There are 5 complaints for which we do not have information regarding the VRO's determination as to the merits of the complaint. As of September 2009, the VRO had yet to make a final determination regarding the merits of 2 complaints. Also, at the time we reviewed complaints that were submitted to DOJ from December 2005 through April 2008, there were 3 complaints that were still under investigation and a final determination had not been made. However, we did not follow up on the status of those complaints for the purposes of this testimony.

provide notice to victims of the complaint process, and they generally do so through a brochure provided to victims at the beginning of the case. However, DOJ has opportunities to enhance victim awareness of the complaint process, such as by making greater use of office Web sites to publicize the process or, when appropriate, personally informing victims. If victims are not aware of the complaint process, it becomes an ineffective method for ensuring that the responsible DOJ officials are complying with CVRA requirements and that corrective action is taken when needed. Therefore, in our December 2008 report,[28] we recommended that DOJ explore opportunities to enhance publicity of the victim complaint process to help ensure that all victims are made aware of it. In commenting on a draft of our report, DOJ stated that it agreed that victims should be well-informed of the complaint process and intended to take steps to enhance victim awareness. However, as of September 11, 2009, DOJ had not yet determined what steps are most appropriate, but hopes to make this decision by the end of the year.

Even if victims submit complaints to DOJ regarding their CVRA rights, the lack of independence within the complaint investigation process could compromise impartiality of the investigation. Professional ombudsman standards for investigating complaints against employees, as well as the practices of other offices that investigate complaints, suggest that the investigative process should be structured to ensure impartiality. For example, in practice, the investigators are generally not located in the same office with the subject of the investigation, in order to avoid possible bias. DOJ's Office of Professional Responsibility, which investigates other types of complaints against DOJ employees, also does not use investigators who are located in the same office with the subject of the complaint. However, under DOJ's victim complaint investigation process, the two are generally located in the same office. In addition, in some instances the DOJ victim complaint investigator has been the subordinate or peer of the subject of the complaint. According to DOJ officials, the department structured the victim complaint investigation process as such due to resource constraints and the perception that complaints could be resolved more quickly if addressed locally. However, this structure gives the appearance of bias in the investigation, which raises questions as to whether DOJ employees' violation of victims' rights will be overlooked and employees will not receive appropriate training on the treatment of

[28] GAO-09-54

crime victims or disciplinary sanctions. In our December 2008 report,[29] we recommended that DOJ restructure the process for investigating federal crime victim complaints in a way that ensures independence and impartiality, for example, by not allowing individuals who are located in the same office with the subject of the complaint to conduct the investigation. In commenting on a draft of our report, DOJ stated that it recognized the benefits of having an investigation process that ensures independence and impartiality and that the working group, in consultation with the VRO, would explore several options that will address this concern. Subsequently, DOJ reported that on July 31, 2009, the VRO issued guidance to ensure that complaint investigators refer to the VRO any complaint where the investigator's review of the complaint would raise an actual or apparent conflict of interest. If the VRO determines that such a conflict exists, the VRO would consider reassigning the complaint to someone in a different office for investigation.

Few Victims Have Asserted CVRA Rights in Court, and Many Victims Who Responded to Our Survey Reported Not Being Aware of Their Ability to Do So

Among the hundreds of thousands of cases filed in the U.S. district courts in the nearly 5-year period since the CVRA was enacted, we found 49 instances in which victims, or victims' attorneys or prosecutors on behalf of victims, asserted CVRA rights by filing a motion—either verbally or in writing—with the district court.[30] We also found 27 petitions for writs of mandamus that were filed with the appellate courts,[31] the majority of which were in response to motions previously denied in the district court. Table 2 summarizes the number of times CVRA rights were asserted in the district and appellate courts and how the courts ruled in those instances.[32]

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[30] We obtained CVRA-related cases through legal search engines, court dockets, interviews, and case compilations by the Federal Judicial Center and the National Crime Victims Law Institute. We conducted our final electronic search on September 3, 2009. The cases included are those that were available in legal databases as of that date.

[31] A writ of mandamus is an order from a higher court directing a lower court to perform a specified action.

[32] Prior to issuing our December 2008 report, we summarized all cases we identified as of June 20, 2008, in which a court issued a decision based on the CVRA. The summary of those cases can be found in appendix IV of our December 2008 report. (GAO-09-54)

Table 2: Number of Times CVRA Rights Were Asserted in District Courts and Courts of Appeals and How the Courts Ruled in Those Instances, as of September 3, 2009

	Court ruling				
	Granted	Denied	Granted in part	Decision not based on the CVRA	Total
Number of motions (written and verbal) filed in district court[a]	14[b]	29	1	5	**49**
• Filed by victim or victim's attorney	4	22		2	**28**
• Filed by prosecutor on victim's behalf	10	7	1	3	**21**
Number of petitions for writs of mandamus filed in the court of appeals[c]	4	21	1	1	**27**

Source: GAO analysis of court cases in which the CVRA was raised.

[a]The number of motions includes four civil claims filed under the CVRA, one motion filed by the defendant in the case, and instances in which victims asserted CVRA rights in response to a motion or other action by another party. Also, three of the motions were filed not in district courts, but in the District of Columbia Superior Court, the local trial court for the District of Columbia.

[b]The victims' motion in United States v. Moussaoui was granted by the U.S. District Court for the Eastern District of Virginia; however, the government appealed the decision and it was reversed by the U.S. Court of Appeals for the Fourth Circuit. The victims did not rely on the CVRA in their arguments at the appellate level.

[c]The number of petitions for writs of mandamus includes eight petitions that did not arise out of criminal prosecutions in district courts.

Victim attorneys and federal judicial officials gave several potential reasons for the low number of victim motions, including victims being satisfied with how they were treated and victims either being intimidated by the judicial process or too traumatized by the crime to assert their rights in court. However, the most frequently cited reason for the low number of motions was victims' lack of awareness of this enforcement mechanism. The results of our victim survey also suggest that victims lack this awareness. Specifically, 134 of the 236 victims who responded to our survey question regarding filing motions reported that they were not aware of their ability to file a motion to assert their rights in district court, and 48 did not recall whether they were aware. DOJ generally does not inform victims of their ability to assert their rights in court. While the CVRA does not explicitly require DOJ to do so, the law does direct DOJ to inform victims of their eight CVRA rights and their ability to seek the advice of an attorney. Thus, DOJ may be the most appropriate entity to inform victims of this provision as well. In addition, DOJ's guidelines state

that responsible officials should provide information to victims about their role in the criminal justice process, which could include their ability to file motions with regard to their CVRA rights. If victims are not aware of their ability to assert their rights in court, it will reduce the effectiveness of this mechanism in ensuring adherence to victims' rights and addressing any violations. In our December 2008 report,[33] we recommended that DOJ establish a mechanism for informing all victims of their ability to assert their CVRA rights by filing motions and petitions for writs of mandamus, such as by incorporating this information into brochures and letters sent to victims and on agency Web sites. In commenting on a draft of our report, DOJ stated that it agreed that victims should be well-informed of their ability to assert their CVRA rights in district court and intended to take steps to enhance victim awareness. However, as of September 11, 2009, DOJ had not yet decided upon an approach for enhancing victim awareness, but hopes to make this decision by the end of the year.

Several Key Issues Have Arisen as the Courts Interpret and Apply the CVRA in Cases, and Judges Have Differing Interpretations Regarding Whether the Law Applies to the District of Columbia Superior Court

Several key issues have arisen as courts interpret and apply the CVRA in cases, including (1) when in the criminal justice process CVRA rights apply, (2) what it means for a victim to be "reasonably heard" in court proceedings, (3) which standard should be used to review victim appeals of district court decisions regarding CVRA rights, and (4) whether the CVRA applies to victims of local offenses prosecuted in the District of Columbia Superior Court.

First, the courts have issued varied decisions regarding whether CVRA rights apply to victims of offenses that DOJ has not charged in court, stating that the law applies in some circumstances and not in others. While some courts have stated that CVRA rights doe not apply unless charges have been filed, other courts have stated that certain VCRA rights, under particular circumstances, may apply to victims of offenses that are investigated but have not been charged in court. In implementing the CVRA, DOJ has specified in its guidelines that CVRA rights do not apply unless charges have been filed against a defendant, based on its initial interpretation of the law, but is reviewing its policy in response to a court ruling in 2008.[34] On September 11, 2009, DOJ informed us that the department was initiating a review of the Attorney General Guidelines for Victim and Witness Assistance—which provides guidance to DOJ

[33] GAO-09-54

[34] *In re* Dean, No. 08-20125 (5th Cir. May 7, 2008).

prosecutorial, investigative, and correctional components related to the treatment of crime victims—and any changes to the department's position on when CVRA rights apply would be reflected in the revised guidance. DOJ is uncertain when the revised guidelines will be issued.

Second, the courts have issued varied rulings that interpret the meaning of the right to be "reasonably heard" at court proceedings, with, for example, one court ruling that the right to be heard gave victims the right to speak and another ruling that the right could be satisfied by a written statement, given the specific facts of the case.

Third, the courts have differing interpretations regarding which standard should be used to review victim appeals of district court decisions regarding CVRA rights. Typically, when a party appeals a district court decision to a court of appeals, the court of appeals reviews the district court decision using what may be called the ordinary appellate standard of review. Under this standard, the court of appeals reviews the district court decision for legal error or abuse of discretion.[35] In contrast to an appeal, a petition for a writ of mandamus is a request that a superior court order a lower court to perform a specified action, and courts of appeals review these petitions under a standard of review that is stricter than the ordinary appellate standard of review. Under the standard traditionally used to review petitions for writs of mandamus, petitioners must show that they have no other adequate means to attain the requested relief, that the right to the issuance of the writ is clear and indisputable, and that the writ is appropriate under the circumstances. As of July 2008, 4 of the 12 circuits were split on which standard of review should be used to review petitions for writs of mandamus under the CVRA.[36]

When new legislation is enacted, the courts typically interpret the law's provisions and apply the law as cases arise. As rulings on these cases are issued, the courts build a body of judicial decisions—known as case law—which helps further develop the law. The issues discussed above have arisen as cases have come before the courts, largely via motions and

[35] A court would have committed a legal error if, for example, it applied the incorrect law or incorrectly interpreted the law. A court would have committed an abuse of discretion if, for example, it made a discretionary decision that is arbitrary or with which no reasonable person could agree.

[36] Four of the 12 circuit courts have used one of the two standards of review to decide petitions for mandamus. Other courts have discussed the standard of review under the CVRA but did not apply either standard in deciding the case at hand.

petitions for writs of mandamus under the CVRA, and the rulings on these issues will likely contribute to the further development of case law related to the CVRA. However, DOJ and D.C. Superior Court officials stated that a statutory change would be beneficial in resolving the issue of CVRA applicability to the D.C. Superior Court.

The CVRA defines a crime victim as "a person directly and proximately harmed as a result of a federal offense or an offense in the District of Columbia." At the same time, multiple provisions of the CVRA refer to district courts, which do not include the D.C. Superior Court. While it is apparent that the CVRA applies to victims whose federal offenses are prosecuted in the U.S. district court in the District of Columbia, the CVRA is not explicit about whether the law applies to victims of local offenses prosecuted in the D.C. Superior Court. As a result, some judges in the D.C. Superior Court are applying the CVRA, and others are not. In implementing the CVRA, DOJ operates as if the CVRA applies to victims of local offenses in the District of Columbia, and in July 2005, DOJ proposed legislation to clarify whether the CVRA applies to cases in the D.C. Superior Court, but no legislation had been passed. Without clarification on this issue, the question of whether the D.C. Superior Court has responsibility to implement the CVRA will remain, and judges in the D.C. Superior Court may continue to differ in whether they apply the law in their cases. As a result, victims may be told they are entitled to CVRA rights by DOJ, but whether they are afforded these rights in Superior Court proceedings will depend on which judge is presiding over their case. In our December 2008 report, we suggested that Congress consider revising the language of the CVRA to clarify this issue. As of September 2009, no related legislation had been introduced.

Perceptions Vary Regarding Awareness of and Satisfaction with Victims' Rights as well as Participation and Treatment of Crime Victims, and the Potential for Conflicting Interests between Victims and Defendants Is a Concern

Perceptions are mixed regarding the effect and efficacy of the implementation of the CVRA, based on factors such as awareness of CVRA rights; victim satisfaction, participation, and treatment; and potential conflicts of the law with defendants' interests. For example, while a majority of federal crime victims who responded to our survey reported that they were aware of most of their CVRA rights, less than half reported that they were aware of their right to confer with the prosecutor. In addition, victims who responded to our survey reported varying levels of satisfaction with the provision of individual CVRA rights. For instance, 132 of the 169 victims who responded to the survey question regarding satisfaction with their right to notice of public court proceedings reported being satisfied with the provision of this right. In contrast, only 72 of the 229 victims who responded to the survey question regarding satisfaction with the right to confer with the prosecutor reported being satisfied with the provision of this right.

The general perception among the criminal justice system participants we spoke with and surveyed is that CVRA implementation has improved the treatment of crime victims, although many also believe that victims were treated well prior to the act because of the influence of well-established victims' rights laws at the state level. Furthermore, while 72 percent of the victim-witness personnel who responded to our survey perceived that the CVRA has resulted in at least some increase in victim attendance at public court proceedings, 141 of the 167 victims who responded to our survey question regarding participation reported that they did not attend any of the proceedings related to their cases, primarily because the location of the court was too far to travel or they were not interested in attending.

Finally, defense attorneys and representatives of organizations that promote the enforcement of defendants' rights expressed some concerns that CVRA implementation may pose conflicts with the interests of defendants. For example, victims have the right not to be excluded from public court proceedings unless clear and convincing evidence can be shown that their testimony would be materially altered if they heard the testimony of others first. However, 5 of the 9 federal defenders and 6 of the 19 district judges we met with said that it would be very difficult, if not impossible, to provide such evidence that the victim's testimony would be materially altered.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

GAO Contact and Staff Acknowledgments

For questions about this statement, please contact Eileen R. Larence at (202) 512-8777 or larencee@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this statement include Kristy N. Brown, Assistant Director; Tracey King; and Susan Sachs. Additionally, key contributors to our December 2008 report include Lisa Berardi Marflak, David Schneider, Matthew Shaffer and Johanna Wong, as well as David Alexander, Stuart Kaufman, and Adam Vogt.

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Mr. SCOTT. Thank you.
Mr. Rothenberg?

TESTIMONY OF LAURENCE E. ROTHENBERG, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. ROTHENBERG. Good afternoon, Chairman Scott, Ranking Member Poe, and Members of the Subcommittee. My name is Laurence Rothenberg, and I am a deputy assistant attorney general in

the Office of Legal Policy in the Department of Justice, where I have worked on victims' rights issues for more than 5 years, including, specifically, the implementation of the CVRA.

I also have a personal interest in and commitment to this work as the son of a murder victim. My father was murdered in the U.S. Virgin Islands in 1974 in a case that was successfully prosecuted by the U.S. Attorney's Office there. Thus, I have firsthand appreciation of the needs of Federal crime victims and the importance of DOJ employees taking those rights seriously.

Indeed, the rights of crime victims are of critical importance to the Department, and we are glad the Subcommittee is focusing on those rights and we have been given the opportunity to discuss the Department's important work in this area.

In the 5 years since passage of the CVRA, the Department has worked hard to fulfill both its letter and its spirit. Almost immediately after passage of the act, an extensive awareness and education program was commenced within the Department.

Using funding provided by the Office for Victims of Crime, the Executive Office for United States Attorneys held a series of trainings, both live and by video, in an effort to reach all those in the Department who work with crime victims to spread the message of the new crime victims' rights law.

Under OLP's coordination, the Attorney General Guidelines for Victim and Witness Assistance were substantially revised in May 2005 to include the act's new protections. And the training video on the new AG guidelines was distributed to all Department components with victim responsibilities.

We also established the Office of the Victims' Rights Ombudsman, which has the authority to investigate complaints under the CVRA made by victims against DOJ employees. The vast majority of complaints received by the VRO were not within the VRO's jurisdiction, however, because they either referred to State or private authorities, judges, non-DOJ agencies, or were complaints from individuals who were not victims in any ongoing Federal cases.

Of those cases within the VRO's jurisdiction, many involved simple errors, such as the victims' names being inadvertently being left off of restitution mailing lists or inquiries about defendants falling behind in restitution payments.

Our work has had a real effect on victims, but it is always difficult to quantify a change in awareness. We have indications that victims are participating in cases more often and receiving more and better services. For example, the number of victim notifications sent by the Department has nearly tripled since passage of the CVRA, and victims are participating in more proceedings than ever before.

Essential victim services have also increased. In fiscal year 2008, for example, victim witness personnel in the U.S. Attorney's offices provided referral assistance to 27 percent more victims than in fiscal year 2006, when we started tracking that data. We utilized a wide range of resources from State, local, and Federal agencies and victims service organizations.

The Department has also used the CVRA provisions to protect victims' rights in court. For example, we are currently litigating the right of victims to be heard in child pornography cases. Last

year, a district court in California, on its own, struck victim impact statements from the presentencing report for a defendant who had pled guilty to possession of images of child sexual abuse. The court said the statements were not relevant to the possession charge, only to the actual abuse.

We believe this is legal error, as a long line of cases establishes that children whose sexual abuse has been photographed are revictimized every time those images are viewed by another offender. Indeed, the victim impact statements in this case specifically describe the emotional harm felt by the victims as a result of the knowledge that images of their sexual abuse are in circulation and continually viewed by offenders. We are aggressively pursuing the right of these victims to have their say before the court, and the appeal is pending in the Ninth Circuit.

I believe that GAO's review validates the overwhelmingly positive impact of the CVRA and of the Department's efforts to implement it. GAO found the majority of crime victims were aware of most of their CVRA rights. They found that victims are, on the whole, satisfied with the Department's provision of those rights.

GAO did make some recommendations based upon its review, as the previous witness described. And, also, as our previous described, we have convened a working group that has examined these issues, and we are preparing specific responses to them, including, for example, the one that we have already taken in order to revise the VRO's procedures to eliminate the problem of appearance of conflict of interest.

That concludes my statement, and I look forward to hearing your questions.

[The prepared statement of Mr. Rothenberg follows:]

PREPARED STATEMENT OF LAURENCE E. ROTHENBERG

Department of Justice

STATEMENT OF

LAURENCE E. ROTHENBERG
DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL POLICY
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

ENTITLED

"THE CRIME VICTIMS RIGHTS ACT OF 2004"

PRESENTED ON

SEPTEMBER 29, 2009

Good afternoon. My name is Laurence Rothenberg, and I am a Deputy Assistant Attorney General in the Office of Legal Policy (OLP) at the Department of Justice (DOJ, or "the Department"), where I have worked on victims rights issues for more than five years, including specifically the implementation of the Crime Victims Rights Act (CVRA, or "the Act"). I also have a personal interest in, and commitment to, this work, as the son of a murder victim. My father was murdered in the U.S. Virgin Islands in 1974, a case that was successfully prosecuted by the U.S. Attorney's Office there. Thus, I have first-hand appreciation of the needs of federal crime victims and the importance of DOJ employees taking victims' rights seriously. Indeed, the rights of crime victims are of critical importance to the Department, and we are glad the Committee is focusing on those rights, and that we have been given the opportunity to discuss the Department's important work in this area.

In the five years since passage of the CVRA, the Department has worked hard to fulfill both its letter and its spirit. Almost immediately after passage of the Act, an extensive awareness and education program was commenced within the Department. Using funding provided by the Office for Victims of Crime (OVC), the Executive Office for United States Attorneys (EOUSA) held a series of trainings, both live and by video, in an effort to reach all those in the Department who work with crime victims, to spread the message of the new victims' rights law. Under OLP's coordination, the Attorney General Guidelines for Victim and Witness Assistance ("AG Guidelines") were substantially revised in May 2005 to include the Act's new protections, and a training video on the new AG Guidelines was distributed to all Department components with victim responsibilities. The Department's efforts were successful in creating an increased awareness of victims' rights. In its review, the Government Accountability Office (GAO) found that 95 percent of victim witness professionals in the United States Attorneys' Offices (USAOs)

reported that the Department's guidance and training in this area had been helpful in carrying out their duties. The Department continues to provide victims' rights and services training for its components, and the AG Guidelines mandate appropriate training for employees whose responsibilities include contact with victims and witnesses.

The Department also moved quickly to implement regulations to enact the provision of the CVRA which required us to create an administrative authority to investigate complaints against Department employees who were alleged to have denied or failed to provide rights to crime victims. In January 2006, the Department established the Office of the Victims' Rights Ombudsman (VRO), located in EOUSA. Victims of federal crimes now can file complaints against any employees located in a USAO or one of twelve Department components. All of those offices have identified senior Points of Contact to review and investigate victim complaints, and report their results to the VRO for final determination. The Department has extensively promoted the program and has made it easily accessible to crime victims who wish to file complaints by using a standard complaint form, available electronically and in hard copy, both in English and Spanish. The VRO maintains a comprehensive website, which provides information about the program, an explanation of the rights to which victims are entitled, and detailed procedures for filing complaints. Similar information about the complaint process, contained on websites and in written material, is available to crime victims through their local USAOs. Thus far, 264 complaints have been filed under the program. Although the vast majority of these complaints were filed against state or private authorities, members of the judiciary, or by individuals who were not victims in federal criminal cases, the VRO requested full investigations of 25 complaints, and many were resolved to the victims' satisfaction in a timely fashion.

Our work has had a real effect on victims. While it is always difficult to quantify a change in awareness, we have indications that victims are participating in cases more often and receiving more and better services. The number of victim notifications sent by the Department has nearly tripled since passage of the CVRA, from 3.3 million in FY 2004 to 8.6 million in FY 2008. To assist in completing these notifications in a timely manner without sacrificing victim services in other areas, EOUSA has established a direct link between the court's Electronic Case Filing system and the Victim Notification System, or VNS. This extensive project allows for notices to go directly from the courts to VNS, skipping layers of work and potential human error. Currently, 90 of the 94 districts are using this system, and many have reported that notices are much faster and more accurate because of it. In addition, since FY 2008, EOUSA has provided funding for contractors to assist with notification responsibilities for 41 USAOs, in order to free victim witness professionals to focus on direct services for victims.

Essential victim services have also increased. In FY 2008, Victim-Witness personnel in the USAOs provided referral assistance to 27 percent more victims than in FY 2006 when we started tracking that data. They utilized a wide range of resources from state, local, and federal agencies and victim service organizations. Since passage of the CVRA, victims are participating in more court proceedings than ever before. In FY 2008, 170 Crime Victims Fund-supported Victim-Witness staff members attended nearly 13,000 court hearings with victims or at their request; this is a 44 percent increase from just two years before. Court accompaniment helps ensure that victim participation is meaningful, as USAO Victim Witness personnel are available to answer questions and explain the federal judicial process. With the growing interest in

attending court proceedings and the need for more information and direct services, Victim Witness personnel are finding the numbers of contacts they have with victims are also on the rise. In FY 2008, Victim Witness personnel reported having over 148,000 contacts with victims in person, on the telephone, or through email (compared to 115,000 in FY 2006.) The Federal Bureau of Investigation's victim assistance personnel have also seen an increase in direct services they provide to victims; in FY 2008, the FBI provided 113,640 direct services to victims in FBI cases, a 30 percent increase over FY 2007. These services included death notification, assistance at crime scenes, transporting victims to forensic interviews and sexual assault examinations, court accompaniment, and locating emergency housing.

Let me provide you with some specific examples of the lengths to which the Department goes to afford victims their rights. The Central District of California prosecuted Yasith Chhun for conspiracy to commit murder and acts of mass destruction in a foreign country for his role in leading an attempted military coup in Cambodia in which four people were killed and dozens were severely injured. Chhun was convicted of all charges after a three-week trial in 2009. Sentencing is scheduled for next week, and in preparation, the Assistant United States Attorney in the case, as well as an FBI agent and an IRS agent, traveled to Cambodia to meet with the victims and survivors (many of whom live in rural, remote areas) to take statements from them to be used at the sentencing in that case. But for their efforts, it's doubtful these victims would have been located, let alone been given an opportunity to have a voice in this process.

In another case, federal prosecutors, agents, and victim witness assistance staff members conducted town hall meetings to confer with victims regarding the prosecution of Citgo Petroleum for Clean Air Act violations. Notice of the town hall meetings and their purpose was

published in local newspapers, and flyers were placed in grocery stores and sent to homes within the target geographic area. Attendees received information about the crimes and possible sentencing outcomes and had the opportunity to discuss these issues with prosecutors and agents. In addition, victim assistance personnel provided information about social service and compensation programs that would address the victims' needs. Meetings were held over a two day period and several hundred people attended.

And in another case, the Department is currently litigating the right of victims to be heard in child pornography cases. Last year, a district court in California sua sponte struck victim impact statements from the pre-sentencing report for a defendant who had pled guilty to possession of images of child sexual abuse. The court said that the statements were not relevant to the possession charge, only to the actual abuse. We believe this is legal error, as a long line of cases establishes that children whose sexual abuse has been photographed are re-victimized every time those images are viewed by another offender. Indeed, the victim impact statements in this case specifically describe the emotional harm felt by the victims as a result of the knowledge that images of their sexual abuse are in circulation and continually viewed by offenders. We are aggressively pursuing the right of these victims to have their say before the court. The appeal is pending in the Ninth Circuit.

I believe that GAO's review validates the overwhelmingly positive impact of the CVRA and the Department's efforts to implement it. GAO found that the majority of crime victims were aware of most of their CVRA rights. It found that victims are, on the whole, satisfied with the Department's provision of those rights. In particular, GAO found that almost 80 percent of victims reported being satisfied with the Department's provision of the right to notice, and

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Mr. SCOTT. Thank you.
Ms. Leary?

TESTIMONY OF MARY LOU LEARY, ACTING ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. LEARY. Thank you.

Mr. Chairman, Ranking Member Poe, Members of the Subcommittee, I am pleased to have the opportunity to discuss with you the Department of Justice's efforts to implement the CVRA. We appreciate your interest in this issue.

I, myself, have a particular interest in the issue, since I have been working with victims of crime throughout my career as a local prosecutor, a Federal prosecutor, head of a national victims' advocacy organization and as an official at the Department of Justice.

Treating crime victims with dignity and with respect and protecting their rights is a high priority for the Attorney General, Mr. Holder, and for the entire Department of Justice, including the Office of Justice Programs, better known as OJP. And, as GAO's recent audit demonstrates, the Department really has made substantial efforts to comply with its obligations to victims of crime, whether or not those obligations are imposed by the CVRA or any other provision of Federal law. OJP has played a critical role in those efforts through its policy development and through program funding.

As this Committee is aware, the CVRA tasks the office of Victims of Crime in OJP with collecting victim service information from other DOJ components. OVC is required to submit a report of this information to the Attorney General. This year, OVC submitted a combined report, its information for 2005 through 2007, that summarizes DOJ component reports, and it also makes a number of recommendations for improvements throughout DOJ components. And, currently, OVC is working on creating the 2008 Attorney General compliance report.

Also in response to a recommendation in the GAO audit, OVC is working with the Office of Legal Policy and other DOJ components to develop a standardized compliance survey that will be completed annually by all components at the Department and will give us a much clearer idea of departmental efforts in this arena.

The AG report is really just one of the many ways in which OJP is working with other DOJ components to improve victims' services and protect their rights. In 2005, OVC provided the Executive Office of U.S. Attorneys with a million dollars to provide training on CVRA. OVC has also, for many years, provided support for Federal victim coordinator and specialist positions in both U.S. Attorney's offices and in FBI field offices.

I know from my own experience as an AUSA that these specialists are absolutely critical and they provide essential services. One example is with terrorism and trafficking victims. In the aftermath of last year's terrorist attacks in Mumbai, India, where there were a number of American victims, victim specialists quickly identified 120 victims. They arranged for repatriation for victims that died in the attacks and evacuated those who were injured.

And those specialists continue to this day to provide services to those victims and to their families: crisis counseling, therapy referrals, employer intervention, verification for crime victim compensation programs, and a number of other services and notifications of rights. Those victim specialists have made all the difference for the victims of that attack.

Another important example: In fiscal year 2009, OVC provided over a million dollars for model projects, particularly in Indian country, to provide support to the U.S. Attorney's offices and Bu-

reau of Indian Affairs district offices on victim services and victims' rights.

One of the Bureau of Indian Affairs advocates that was hired through this program recently worked with 17 high school kids who were involved in a very tragic vehicular homicide on the White River Apache Reservation. Seventeen kids piled into a pickup truck, driving around the reservation. The driver had been drinking, drove the car into a ditch. The front-seat passenger was killed, her cousin was killed, and four others were critically injured. And the victim specialists are working with all those victims and with their families and with the community.

OVC also supports the nationwide victim notification system, which is a shared Web-based application. It involves FBI, Postal Inspection Service, U.S. Attorney's Offices, DOJ, and Bureau of Prisons. This provides victims with a toll-free number. They can use that number to get access to current case information. And there is also a Web site that provides that information, as well. We are working with EOUSA to make sure that every DOJ component gets linked up to that system.

OVC has also undertaken other efforts to enhance provision of victims' services at every level of the criminal justice system. We have awarded over $4 million to the National Crime Victim Law Institute for the Crime Victims' Rights Enforcement Project. You will hear a lot more about this from Mr. Beloof, but they are working throughout the country to provide direct representation to crime victims to enforce their rights in court.

In addition to OVC, the Bureau of Justice Assistance, which is also part of OJP, has awarded over $39 million to 38 States and Puerto Rico through the State Automated Victim Information and Notification Program, better known as SAVIN. And that helps States build, implement, and improve this State-level victim notification capacity. It helps the States get the technology they need to maintain critical information about offenders in almost real time.

So crime victims in States now have unprecedented access to real-time information. Imagine what that means to a victim of a sexual assault who is terrified that the offender will be released from prison and she won't know about it and she will turn around one day and there he will be in the neighborhood. That victim can get real-time information and should not ever be surprised like that.

I would like you to know that the Department will continue to expand and improve its efforts to assist victims and to protect their rights under the CVRA and under every other pertinent provision of law. This has always been a critical part of the Department's mission, and it will continue to be so.

Thank you for your attention, and I will take any questions you have.

[The prepared statement of Ms. Leary follows:]

PREPARED STATEMENT OF MARY LOU LEARY

Department of Justice

STATEMENT OF

MARY LOU LEARY
ACTING ASSISTANT ATTORNEY GENERAL
OFFICE OF JUSTICE PROGRAMS
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

ENTITLED

"THE CRIME VICTIMS RIGHTS ACT OF 2004"

PRESENTED ON

SEPTEMBER 29, 2009

MARY LOU LEARY
ACTING ASSISTANT ATTORNEY GENERAL
OFFICE OF JUSTICE PROGRAMS
U.S. DEPARTMENT OF JUSTICE

Mr. Chairman, Ranking Member Gohmert and Members of the Subcommittee: I am pleased to have the opportunity to discuss the Department of Justice's (DOJ) efforts to implement the Crime Victims Rights Act (CVRA) of 2004. We appreciate this Subcommittee's interest in this issue.

My name is Mary Lou Leary and I am the Acting Assistant Attorney General for the Office of Justice Programs (OJP) within the Department of Justice. OJP's mission is to increase public safety and improve the fair administration of justice across America through innovative leadership and programs. A critical part of this mission is ensuring that crime victims are treated with respect and fairness. Within OJP, our Office for Victims of Crime (OVC) provides resources and leadership to support key services for crime victims. OJP's Bureau of Justice Assistance, as part of its support of state, local and tribal criminal justice systems, also administers programs that help crime victims.

As you are probably aware, my commitment to serving crime victims goes back to my service as an Assistant District Attorney in Middlesex County, Massachusetts. I also made victim assistance a priority in my work as an Assistant United States Attorney for the District of Columbia and my initial service at OJP. Most recently, before rejoining OJP, I was the Executive Director of the National Center for Victims of Crime.

Helping crime victims and protecting their rights is a high priority for Attorney General Holder, the Department of Justice and OJP. As GAO's recent audit demonstrated, the Department has made substantial efforts to comply with its obligations to the victims of crime, whether those obligations are imposed by the CVRA or by other provisions of federal law. OJP has played a critical role in those efforts through its policy development and program funding.

As the Subcommittee is aware, the CVRA tasks OVC with collecting victim service information from other Department of Justice components, including the number of victims assisted, the component staff responsible for helping victims, the programs and procedures to serve victims, related training, and evaluations of its victim assistance efforts. The Act requires OVC to submit a report with this information to the Attorney General. This year OVC submitted a combined 2005 through 2007 AG Compliance Report that both summarized the DOJ component reports and made recommendations for improvement.

Currently, OVC is working on completing the 2008 AG Compliance Report. In addition, in response to a recommendation in the GAO audit report, OVC, in a partnership with the Department's Office of Legal Policy and in coordination with other components with victim-related responsibilities, is developing a standardized compliance survey to be completed annually by all such components in the future.

The AG report is just one of many ways that OVC is working with other DOJ components to improve victim services and protect victims' rights. OVC has long provided support for federal victim coordinator and specialist positions in the 94 U.S. Attorneys' Offices and 56 Federal Bureau of Investigation (FBI) field offices. In Fiscal Year 2005, OVC provided the Executive Office of U.S. Attorneys (EOUSA) with $1 million to provide CVRA training. In Fiscal Year 2009, OVC has provided over $1 million for model projects, particularly in Indian Country, that provide support to U.S. Attorneys Offices and Bureau of Indian Affairs District Offices to enhance victim services and ensure that victims' rights in Indian Country are upheld.

OVC also supports the Nationwide Victim Notification System (VNS), a shared web-based application involving the FBI, the United States Postal Inspection Service, the United States Attorneys' Offices, the Department's Criminal Division, and the Federal Bureau of Prisons. Through VNS, notification of case events begins during the investigative stage and continues throughout the prosecution and corrections stages of a criminal case. VNS provides federal crime victims a toll-free number where they can access current case information and the Victim Internet System (VIS) Web site that allows them to view their notifications and update their personal contact information.

In cases with many victims, use of the VIS and the VNS Call Center frequently is the most cost-effective and efficient means of notification. OVC is working with EOUSA to ensure that all DOJ components, including the U.S. Parole Commission, are linked to VNS.

In addition to its work with its federal partners, OVC has undertaken other efforts to enhance the provision of victim services at all levels of the criminal justice system. From Fiscal Year 2006 through Fiscal Year 2009, OVC has awarded over $4 million to the National Crime Victim Law Institute (NCVLI) for the Crime Victims' Rights Enforcement Project. Under the auspices of this Project, legal clinics across the country are providing direct representation to victims to enforce their rights in criminal courts at the federal, state, and tribal level. NCVLI provides intensive technical assistance, training, and support to all the clinics.

NCVLI also undertakes education, training, and technical assistance on victims' rights issues nationally and works to build a network of private attorneys to represent victims pro bono in the enforcement of their rights in criminal court. FY 2007 OVC funding under the Crime Victims' Rights Enforcement Project also supported grants to two additional organizations that established legal clinics to provide direct services to victims. In FY 2009, moreover, NCVLI received an award from the Bureau of Justice Assistance under the American Recovery and Reinvestment Act (ARRA) – to be administered by OVC – to provide critical support for continued operations of its national victim legal clinic network.

In addition to OVC's effort, OJP's Bureau of Justice Assistance has awarded over $39 million to 38 states and Puerto Rico through the Statewide Automated Victim Information and Notification (SAVIN) Program, which assists states in building,

implementing, and improving victim notification capacity. Through SAVIN, states work to increase victim safety by developing policies, practices, and technology solutions for the timely and accurate dissemination of information about offenders and their cases. This information-sharing capability is extended to court, corrections, and law enforcement officials, thereby enhancing national information sharing capacity and helping to prevent crime.

Eligible states may use SAVIN funds either to create a statewide victim notification system, or in the case of states with existing notification capacity, to enhance features or availability of the current system.

SAVIN helps states obtain effective technology to manage critical information about offenders in near real-time. Crime victims in states receiving SAVIN funds have unprecedented timely access to information. They may:

- Register to be notified via telephone, e-mail, Telecommunication Device for the Deaf (TDD), or written letter each time the status of their offender or case changes.
- Access critical case information through a web site or toll-free number with support from a live operator 24 hours a day.
- Access information about their offender's arrest, initial incarceration, pretrial release, judicial process, final disposition, post-conviction incarceration, and community supervision.

BJA has also awarded over $1.8 million to provide SAVIN training and technical assistance to the grantees. In addition, BJA, in coordination with the Integrated Justice Information Systems (IJIS) Institute, developed *Planning, Implementing and Operating Effective Statewide Automated Victim Information and Notification (SAVIN) Programs*, which identifies minimum program guidelines and standards to help ensure interoperability between victim notification systems across the country. OJP's National Institute of Justice is currently conducting an evaluation of the SAVIN program.

Please be assured that the Department will continue to expand and improve its efforts to assist victims and protect their rights, both under the CVRA and other pertinent provisions of law. This has always been a critical part of OJP's mission, and it will remain so.

This concludes my statement, Mr. Chairman. Thank you for the opportunity to testify today. I welcome the opportunity to answer any questions you or Members of the Subcommittee may have.

Mr. SCOTT. Thank you.
Mr. Beloof?

TESTIMONY OF DOUGLAS E. BELOOF, PROFESSOR OF LAW, LEWIS AND CLARK LAW SCHOOL, PORTLAND, OR

Mr. BELOOF. Thank you, Mr. Chair Scott, honorable Members of the Committee.

I assisted in the drafting of the Crime Victims' Rights Act of 2004. Right now, the CVRA represents a broken promise to crime victims in several essential respects.

First of all, the authorized funding of the CVRA has not been forthcoming in the form of an additional appropriation. The efforts the government is talking about largely have been made out of existing funds.

There has been an appropriation in one category of funding that is of particular interest to me. It was a critical component of the CVRA to provide independent legal services to enforce these rights. The amount authorized in the CVRA was $7 million and $11 million thereafter for a period of 5 years. That amount has been reauthorized by Congress within the last year.

There have been 3 years of that money coming: under $2 million, a little over $2 million, and $4 million. Funding close to the level of your authorization has never occurred. This year, there is no funding at all for these services, for these legal services, despite the fact that it has been authorized.

This is, in my mind, perhaps the most critical problem with the implementation of the CVRA. Authorization without appropriation dooms the CVRA experiment.

As the Chair noted, this legislation was passed in lieu of a constitutional right. And one of the central premises of this statutory scheme were to test these laws with independent attorneys to see if they would be satisfactory.

This testing is occurring on an extremely limited basis. We have created a slim framework of legal clinics with extremely limited funding. This network of legal services and the case banks and information collected is all on the brink of collapse shortly. Without authorization for this funding, the CVRA and the State law equivalents of victims' rights will have no champions and, as a result, are likely doomed to mediocrity or failure.

The second biggest critical problem I see is the split of authority in the courts that threatens to, as a practical matter, end enforcement of crime victims' rights. The dispute is over whether the standard of review of appeals from violations of victims' rights is that of an appeal or that of mandamus.

A standard of review of appeal guarantees meaningful review in all cases where victims' rights are violated. It has been the Justice Department's position that the standard of review should instead be mandamus. A standard of review of mandamus means that there will rarely be enforcement of victims' rights on review. The Federal Circuit courts are currently split on this issue.

The third critical problem I see in the implementation of victims' rights is that the United States Department of Justice has taken a variety of positions adverse to both the letter and spirit of the CVRA. The most critical of these is, as I mentioned, the Depart-

ment's position on the standard of review, but there are others as well.

Another unfortunate stance of the Department of Justice has been to seek a very narrow definition of "victim," first, that there only be a victim after the government indicts, and, second, they have sought a narrow construction of the definition of "proximate harm."

On the other hand, in fairness, there have been cases in which the Justice Department has cooperated with lawyers that I am aware of. And it has worked out very well, and there has been substantial success. However, the level of cooperation is a far more common occurrence in State courts than in Federal prosecutions.

Members of Congress should ask the present Attorney General to revisit the approach to crime victims' rights that some in the Department have taken and encourage the Department to take a position that makes these rights expansive rather than reduces them.

As critical as I am of these unfortunate positions taken by the Department, the most regrettable shortcoming, again, I would like to emphasize, is the failure to fund the CVRA. This experiment cannot be tested without it.

I want to say quickly that I am very grateful for the Office of Victims of Crime, which has worked diligently with limited resources—resources, mostly, that have not been appropriated under this authorization—to try to do something with the resources they have concerning the CVRA. They are to be commended for that.

We could all do a lot more with a proper amount of funding. Thank you.

[The prepared statement of Mr. Beloof follows:]

PREPARED STATEMENT OF DOUGLAS E. BELOOF

Testimony of Professor Douglas E. Beloof
Before the Subcommittee on Crime Terrorism and Homeland Security
Concerning the "Crime Victims' Rights Act" of 2004
September 29th, 2009

Mr. Chair and Honorable Members. Thank you for the opportunity to testify before you once again, it is an honor and a privilege. I am testifying in my capacity as a Professor of Law and an expert on victim law and the CVRA.

My name is Douglas Beloof, I am a Professor of Law at Lewis and Clark Law School in Portland, Oregon. I have authored the only casebook on crime victims in criminal procedure and written many articles on the subject. I am a former violent crimes prosecutor. The United States Senate Judiciary Committee has recognized me as an expert on crime victim law. I have received an award from the United States Attorney General for Innovation in Services to Victims of Crime. I am the founder and for ten years was the first director of the National Crime Victim Law Institute. I am presently a Board member of that organization.

I assisted in the drafting of the Crime Victims Rights Act (CVRA) of 2004. You may remember that an Amendment to the United States Constitution providing for Victims' Rights had been proposed, this effort was turned into a statutory proposal by victims rights groups in exchange for the statutory CVRA which was supposed to provide for enforceable rights for victims of crime and for funding to test enforceable victims rights in federal and state court. Such funding was also designed to encourage states to develop enforceable victims rights. Right now, the CVRA represents a broken promise to Crime Victims in several essential aspects.

First, the funding in the CVRA has never been forthcoming. Instead small appropriated amounts in one category of funding has trickled out. In this category, there was to be 7 million the first year for legal services and 11 thereafter. Funding close to this level has never occurred. While the Office for Victims of Crime is to be commended for it' s excellent work in managing the much smaller amount of funding that was forthcoming, this year there is no funding at all for any part of the CVRA, despite the fact that recent legislation has re-authorized it. Even the small amounts appropriated for legal services are no longer available.

Authorization without appropriation dooms the CVRA experiment. The slim framework of legal clinics built to provide legal services to victims under the CVRA, and state law equivalents is on the brink of collapse. Without it the CVRA and the state equivalents of the CVRA will have no champions and, as a result are likely doomed to mediocrity or even failure. Funding is the most critical part of the experiment that was the CVRA. An experiment that has barely gotten off the ground because of a failure to fund. This despite Congressional authorization for the funds.

Second, there is a split of authority in the courts that threatens to end practical enforcement of crime victims' rights. The dispute is over whether the standard of review is that of an appeal or that of a mandamus. A standard of review of appeal guarantees meaningful review in all cases where victims rights are violated. On the other hand the standard of review of mandamus means that remedy will rarely be available to crime victims. The CVRA was intended by congress to provide redress for rights violations.

Congress should act to resolve the split of authority, reinvigorate victims" rights by making clear that the standard of review for victims rights violation is that of an appeal.

Third, the United States Justice Department has taken a variety of positions that are adverse to both the letter and spirit of crime victims' Rights. The most critical of these is the Department's position on the standard of review the position that the standard of review is that of mandamus. As I just mentioned, as a practical matter, a mandamus standard of review drastically reduces the enforce-ability of these rights. And, in those federal courts where the Justice Department's position has prevailed, federal courts have declined to reach the merits of the victims rights violation. On the other hand where the appellate standard of review applies remedies for victims' rights violations have been forthcoming.

On the other hand, there have been some cases in which the Justice Department has worked cooperatively with crime victim lawyers to assure victims rights in federal trial courts. Given the underfunded amount put towards legal services to crime victims, I can tell you only anecdotally that when federal and state prosecutors seek to meaningfully comply with the rights and works with crime victims lawyers, there is generally success. This is a far more common occurrence in the states than in federal prosecutions. However, there have been some very successful collaborations with the Justice Department.

While there are no doubt those within the Justice Department who embrace crime victims' rights, unfortunately others within the United States Justice Department do not.

There remains substantial institutional resistance to enforceable victims' rights as evidenced both by the effort to prevent a strong standard of review that I have already mentioned and as demonstrated in several reported cases in which the Department has sought to diminish these rights.

Perhaps, the most egregious violation occurred in the criminal prosecution of British Petroleum. There the prosecutors sought to strike a plea deal with British Petroleum. British Petroleum was indicted after an explosion at one of its sites, killed people. Rather than seek to consult the manslaughter victims families about an appropriate plea deal, the Justice Department in collaboration with defense counsel for British Petroleum went to the trial court and obtained a secret order that purported to allow the Justice Department to enter into a secret plea deal by suspending the application of the CVRA. The 5th Circuit Court recognized the victims' right to confer with the government about the plea bargain before it was struck ane wrote "the government should have fashioned a reasonable way to inform the victims of the likelihood criminal charges and ascertained the victims' views on the possible details of a plea bargain."

Another case involved a mortage fraud. People seeking mortgages were made to pay money towards there mortgage which was an illegal payment. The victims sought to get the Justice Department to acknowledge these people as victims under the CVRA, Justice refused and sought to deny these people victim status. The 11th Circuit sided with the victims, and stated that clearly these people met the definition of victim under the

CVRA. In conclusion the panel wrote, " Although the petition does not seek relief against the Assistant United States Attorney prosecuting the case, we expect that attorney to be mindful of the obligations imposed by ...[the CVRA." Not content to comply with the Circuit Panel' s ruling, the Justice department sought review in front of the entire 11th circuit bench, a request that recently declined.

Members of Congress should ask the present Attorney General to revisit the approach to crime victims' rights that some in the department have taken, particularly as to the standard of review and encourage the Department to follow not only the letter, but the spirit of the CVRA. As critical as I am of the unfortunate positions taken by the Department of Justice, the most regrettable shortcoming is the failure of Congress to fund the CVRA. Many in the victim community are now asking themselves and each other whether putting aside the drive for a constitutional amendment was worth the trade for an unfunded CVRA and a CVRA thhat may largely be without meaningful remedy. Many are talking of reviving the Victims' Rights Amendment because of the broken promise the CVRA is coming to represent. I am beginning to to share that view.

In closing, I would like to praise the Office for Victims of Crime which has worked diligently and with heartfelt commitment to do what they can, with the limited resources at their disposal to fulfill the promise of victims' rights. I am very grateful for their professionalism and dedication. The Office for Victims of Crime and the community of victims' rights lawyers could do far more with adequate funding, and will achieve very little if Congress provides no funding.

Mr. SCOTT. Thank you, Mr. Beloof.
Ms. Howley?

TESTIMONY OF SUSAN HOWLEY, DIRECTOR OF PUBLIC POLICY, NATIONAL CENTER FOR VICTIMS OF CRIME, WASHINGTON, DC

Ms. HOWLEY. Good afternoon, Chairman Scott and Members of the Committee. I appreciate the opportunity to be here today to

talk about the implementation of the "Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act of 2004."

I will focus my testimony today on four issues. First is the need to clarify the applicability of the act prior to the formal filing of charges; the need to clarify the applicability in the District Columbia; the need to strengthen the victims' rights compliance program; and the need to refine and fund the CVRA's grant programs.

There has been some question, as you have heard, as to the applicability of the CVRA prior to the filing of charges. We urge Congress to clarify. While a number of the rights in the CVRA specifically apply to the criminal justice process, and so would logically attach after the filing of charges, others are not so inherently limited.

For example, victims should be entitled to fair treatment from the time they file a complaint with law enforcement. If a victim expresses fear for his or her safety prior to the filing of charges, the criminal justice system should provide the assistance it can regarding protection. And, when cases involve official plea negotiations prior to the filing of charges, surely the victim's right to confer with the prosecutors must attach. Otherwise, we are making a mockery of the victim's right to confer.

We also ask Congress to clarify the applicability of cases in the District of Columbia Superior Court. While the definition of "victim" states that crimes in the District of Columbia are clearly covered by the CVRA, other sections create ambiguity by referring solely to the District Court and appeals therefrom, rather than specifically including the D.C. Superior Court.

We also agree with the GAO that the victims' rights compliance system is inadequate. My written testimony makes a number of suggestions, but I want to address one here.

As you have heard, the GAO found that Federal victims were unaware that they had a right to file a complaint or the right to seek legal advice. We urge Congress to give crime victims the right to be informed of their legal rights, including the right to file a complaint and the right to seek legal advice.

Finally, I want to highlight two important CVRA grant programs. The first is to provide money to the U.S. Attorney's Office victim/witness programs. The drafters of the CVRA understood that the law would create additional burdens. To our knowledge, this grant program has never been requested or appropriated.

Money is needed for additional data-entry low-level contractors to relieve victim service specialists from the routine entry of victim contact information and free them to provide the important hands-on victim assistance for which they have been trained. The program should specifically allow funding for such data-entry positions. It should also be expanded to include the investigation stage, because victim specialists at that stage also have significant data-entry burdens related to the victims' right to notification.

We also urge increased funding for organizations that provide legal assistance to victims in criminal cases. Our National Crime Victim Helpline receives calls from too many victims who need this type of help, and we have too few places to send them.

Just last week, we got a call from the mother of a 12-year-old sexual assault victim. In the 2 years the case had been pending, she had never been notified of the status of the case by the prosecutor's office. She had made repeated attempts to learn the status of the case. Finally, she found out that a plea agreement had already been entered. She now wants to make a victim impact statement but has no confidence that she will be allowed to. Our staff counseled her on how to advocate for herself, but she really needs a victims' rights clinic or victims' rights attorney, and her State has none.

Thank you for the opportunity to testify this morning. The National Center would be pleased to assist you as you work to refine and reauthorize the provisions of the Crime Victims' Rights Act.

[The prepared statement of Ms. Howley follows:]

PREPARED STATEMENT OF SUSAN SMITH HOWLEY

TESTIMONY OF SUSAN SMITH HOWLEY

Public Policy Director, National Center for Victims of Crime

Before the
Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives

The Crime Victims' Rights Act of 2004

September 29, 2009

Good afternoon, Chairman Scott, ranking member Gohmert, and members of the Subcommittee. My name is Susan Howley, and I am the public policy director for the National Center for Victims of Crime.

The National Center is a nonprofit resource and advocacy organization that will soon celebrate our 25th year of championing the rights and interests of victims of crime. Our members include victim service providers and allied professionals who assist crime victims at the federal, state, and local levels. Since our inception, the National Center has been at the forefront of the national effort to create legal rights for crime victims at the state and local levels. In recent years, we have focused on making those rights meaningful and enforceable. I appreciate the opportunity to appear before you this afternoon to address the implementation of some historic victims' rights legislation, the Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act of 2004 (CVRA). We supported this Act initially and have monitored its implementation.

Five years later, we can report that the CVRA has had a greater and more far-reaching impact than expected. As you know, the basic rights contained in the CVRA were already part of the federal code. For the most part, however, these rights were found only in title 42, the Public Health and Welfare Code. The CVRA restated those rights, moved them to Title 18, the Criminal Code, and made them enforceable. Both the move to the Criminal Code and the added enforceability have raised the profile of federal crime victims' rights.

The adoption of the CVRA has fostered new respect for victims' rights through all stages of the federal criminal justice process: investigation, prosecution, and corrections. Many of our members who work with victims of federal crimes say they feel more supported in their work and that prosecutors and investigators are increasingly concerned about victims' rights compliance.

The CVRA has led to the development of case law, as described in the recent report of the Government Accountability Office (GAO).[1] It has prompted revisions to the Federal Rules of Criminal Procedure, and has prompted increased attention to victims' rights and interests by the U.S. Sentencing Commission.

Five years after the CVRA's adoption, it makes sense to carefully examine the implementation of this landmark law. We would like to focus our testimony today on four aspects of the legislation: the need to clarify that victims' rights attach prior to the filing of charges, the need to clarify the applicability of the law to proceedings in the District of Columbia, the need to strengthen the Department's compliance program, and the need to reauthorize and refine the grant programs.

Applicability of victims' rights prior to charging

There has been some question as to whether the CVRA's provisions apply prior to the time a defendant is charged with an offense. According to the GAO report, the Department of Justice has determined that the CVRA rights do not apply unless charges are filed.[2] We believe this interpretation is erroneous. The act explicitly requires that those "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" provided in the act.[3] The inclusion of the detection and investigation phases clearly indicates that the law encompasses periods prior to the filing of charges.

While many of the rights listed in the CVRA pertain to court proceedings and, thus, apply after the charging of a defendant, others are not so inherently limited. For example, the victims' rights to be treated with fairness and with respect for their dignity and privacy and the right to be reasonably protected from the accused should apply throughout the criminal justice process. In certain cases, the right to confer with the prosecutor should also apply prior to the charging of a defendant. As the GAO report points out, in some federal cases plea negotiations occur prior to indictment.[4] If the victim is to have a meaningful right to be heard before a case is resolved, the right to confer with the prosecutor must attach in such cases prior to the charging of the defendant.

The Department of Justice is reviewing its policy on the applicability of the CVRA pre-charging in light of certain court rulings, according to the GAO report. Depending on the outcome of that review, an amendment to the law may not be necessary. However, we urge the Committee to monitor this issue and, if necessary, clarify the statutory language.

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[1] U.S. Government Accountability Office, "Crime Victims' Rights Act: Increasing Awareness, Modifying the Complaint Process, and Enhancing Compliance Will Improve Implementation of the Act," GAO-09-54 (Washington, DC: December 2008).
[2] *Id.* at 65.
[3] 18 U.S.C. 3771(b)(1)(2009).
[4] *Supra* note 1at 63-68.

Applicability to cases tried by federal prosecutors in the District of Columbia

We recommend that Congress clarify the internal inconsistencies within the CVRA regarding its applicability to cases tried by federal prosecutors in the District of Columbia. The Act's definition of "victim" states that it applies to those harmed "as a result of the commission of a Federal offense or an offense in the District of Columbia."[5] However, other provisions cause confusion. For example, the provision regarding motions for relief and writs of mandamus to enforce victims' rights refers to cases in the district court and to petitions to the court of appeals.[6] However, many of the cases tried by federal prosecutors in the District of Columbia are brought in the D.C. Superior Court, and appealed to the D.C. Court of Appeals. Similarly, the section regarding the prosecutor's ability to assert the rights of the victim on appeal is written in terms of the district court's denial of a victim's right, rather than district court or D.C. Superior Court.[7] We recommend Congress make the necessary technical amendments to clarify the applicability of the CVRA to cases prosecuted by the U.S. Attorney in D.C. Superior Court.

Promoting compliance

One of the clearest findings from the GAO's report is that the compliance system created by the Department of Justice is inadequate. We know from years of observations regarding victims' rights at the state level that meaningful enforcement is the key to promoting compliance—even though sanctions are rarely ordered. The existence of a meaningful avenue for enforcement gives agencies and officials a reason to focus on crime victims' rights in the face of many competing priorities.

The GAO found that victims are not regularly informed of their rights to file a complaint or seek an attorney. Moreover, if a victim files a complaint alleging a violation of rights, the complaint must be directed to a person in the agency that is the subject of the complaint. This creates the potential for, and appearance of, a conflict of interest.[8]

The Department's response to the GAO report states that the CVRA does not require it to inform victims of their ability to file motions or petitions to enforce their rights, or their ability to submit complaints.[9] The CVRA does, however, clearly require prosecutors to advise crime victims that they can seek the advice of an attorney with regard to their legal rights.[10] We urge Congress to add a provision under section (a) to give victims the right to be informed of their legal rights, including the right to seek legal advice or file a complaint with the Department.

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[5] 18 U.S.C. § 3771(e)(2009).
[6] 18 U.S.C. § 3771(d)(3).
[7] 18 U.S.C. § 3771(d)(4).
[8] *Supra* note 1at 36.
[9] *Supra* note 1 at 137.
[10] 18 U.S.C. 3771(c)(2).

We also agree with the GAO that the current configuration of the compliance office is insufficient to fulfill its purpose. The Victim's Rights Ombudsman (VRO) is placed within the Executive Office for United States Attorneys (EOUSA). EOUSA has no authority over or, indeed, connection to, many entities within DOJ that are responsible for implementing victims' rights, including the Federal Bureau of Investigation, the Federal Bureau of Prisons, and the Parole Commission. Even for Offices of U.S. Attorneys, EOUSA is largely viewed as a resource, rather than an authority.

To avoid actual or apparent conflict of interest, states have given special attention to the placement of their victims' rights compliance entities. Some provide initial screening by a Department of Justice or Department of Public Safety employee, but complaints are reviewed by a committee or board with broad representation among criminal justice and victim service professionals. The South Carolina Crime Victims' Ombudsman is in the governor's office. The Connecticut Crime Victim Advocate reports to the governor as well. The Alaska Office on Victims' Rights is in the legislative branch.

At the federal level, we recommend the ombudsman's office report to the Deputy Attorney General (DAG). The DAG has clear authority over senior-level employees and attorneys throughout DOJ.[11] At the very least, the VRO should be situated within the Office of Professional Responsibility (OPR), which has jurisdiction to investigate allegations of professional misconduct made against DOJ attorneys, investigators, or law enforcement personnel where the allegations relate to the exercise of an attorney's authority to investigate, litigate, or provide legal advice. OPR also has authority to investigate other matters when requested or authorized to do so by the Attorney General or the DAG.[12] In addition, OPR reports directly to the Attorney General or, whenever appropriate, to the DAG, the Associate Attorney General, or the Solicitor General.[13]

The location of an enforcement office within an administration sends a message to governmental agents and employees as well as the general public of the importance an administration places on victims' rights compliance.

The process through which aggrieved crime victims seek redress should also be more user-friendly. Significantly, state-level compliance programs provide assistance to victims in completing and submitting complaint forms.[14] In offering assistance to victims early in the process, state compliance programs have found that many complaints can be resolved quickly, by providing information or connecting a victim with the proper official or by making a simple phone call to the agency in question. That same initial point of contact can assist victims who wish to file a complaint in filling out the form clearly and completely.

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[11] 28 C.F.R. § 0.15 (2009).
[12] See Office of Professional Responsibility, Fiscal Year 2006 Annual Report, http://www.usdoj.gov/opr/annualreport2006.pdf (accessed Sept. 24, 2009).
[13] 28 CFR § 0.39 (2009).
[14] See, for example, Alaska Admin. Code tit. 23, § 10.010 (2009), and the Web sites of the Colorado and South Carolina programs, http://dcj.state.co.us/ovp/VRA.html and http://www.oepp.sc.gov/cvo/file.html (accessed Sept. 24, 2009).

Another flaw in the structure of the DOJ compliance procedure is that it provides no avenue for review of a case. Instead, the regulation states that the VRO is the final arbiter.[15] The CVRA does state that the regulations created by the department to promote compliance should "[p]rovide that the Attorney General or his designee shall be the final arbiter of a complaint." However, there could be a method for internal review within DOJ. For example, in Colorado, either party can request an appeal of the decision or findings of the first authority, the Victim Rights Subcommittee, to the full Governor's Coordinating Committee. Similarly, if the VRO were within the Office of the DAG or within OPR, a victim or official could seek an appeal or review of results from the DAG. The DAG already receives reports of the outcomes of investigations by OPR, and so would be a logical position for review.

The extent to which these changes would require congressional action depends in large part on the outcome from the working group created by the Department to respond to the GAO's findings.

Legal assistance grants

We also urge Congress to reauthorize the grant programs contained within the CVRA. We wish to draw special attention to two of those programs.

The CVRA's drafters understood that its provisions would increase the burden on victim assistants at the federal level. Therefore, the Act authorized $2 million for FY 2005 and $5 million for FY 2006 – 2009 to "United States Attorneys Office for Victim/Witnesses Assistance Programs." To our knowledge, such funding has never been appropriated.

We know from our conversations with our members who work in the federal system, as well as information provided in the GAO report, that the increased notification duties have been especially burdensome on victim assistants. Not only is the workload draining, the data entry duties keep highly skilled victim assistants from providing the important services for which they have been trained: providing support and referrals, accompanying victims to court, assisting victims with their impact statements and requests for restitution, and other services. The GAO notes that the Department has provided some internal resources for data entry, but more is needed. This grant program may need to be amended to specifically authorize the use of funding for data entry contract positions. It should also be amended to extend funding availability to victim assistants at the investigation stage, who also bear a significant data entry burden related victim identification and notification.

We also support continued and expanded funding for organizations that provide legal counsel and assistance for victims' rights enforcement in criminal cases. Such funding has been used to create victims' rights clinics, which help to change the legal landscape for victims by asserting victims' rights in the courtroom and creating case law. These actions are important components of a full implementation of victims' rights, helping to establish the scope and strength of statutory and constitutional rights.

[15] 28 CFR 45.10(c)(7)(2009).

Legal assistance is also important for individual victims. While several states have entities that can receive and investigate a crime victim's complaint about violations, those processes are often time-consuming. To provide immediate relief—for example, where a victim's ability to remain in the courtroom during trial is at issue—victims must have the ability to assert those rights in court, and that ability is usually meaningless unless victims have the assistance of legal counsel.

Calls to our National Crime Victim Helpline show why this grant program should be reauthorized and expanded. Victims regularly tell us they believe their rights are being violated, but too often we have no place to send them for specialized legal assistance. Just last week we received a call from the mother of a 12-year-old sexual assault victim who, in the two years the prosecution had been pending, had never been contacted by the prosecutor's office despite her repeated calls to request information. She learned too late that the case had resulted in a plea bargain. With no information or encouragement from the prosecutor's office, she wrote and submitted a victim impact statement for the upcoming sentencing hearing. She has no confidence she will be allowed to speak. Although our staff counseled her about advocating for herself, this victim clearly needed a knowledgeable attorney to help her assert her rights—her state has no victims' rights clinic.

The CVRA provided that both of these grant programs—providing funding for victim assistance at the federal level and supporting legal assistance for victims—could be funded from amounts collected through actions under the False Claims Act. To our knowledge, this source has not been tapped for these programs. We continue to believe it is a viable source of funding.

Conclusion

We thank you again for the opportunity to testify this afternoon. The National Center would be pleased to provide its assistance as you work to refine or reauthorize provisions of this historic Act.

Mr. SCOTT. Thank you.

Thank everyone. I want to thank all of our witnesses for your testimony.

Now we will recognize ourselves under the 5-minute rule for questions.

First, I don't know whether this is Mr. Rothenberg or Ms. Leary: Does the Department have a position on the situation in Washington, D.C.? It is my understanding that all of the prosecutions in the State, in the District courts—excuse me—in the courts, D.C. Courts, as opposed to the Federal courts, if they are felonies, the U.S. Attorney's Office is doing the prosecution. Is that right?

Ms. LEARY. Your question is, are all the local crimes prosecuted in the D.C. Courts?

Mr. SCOTT. At least the felonies.

Ms. LEARY. Yes. Yes. Some crimes could be brought in either D.C. Superior Court or in the District Court.

Mr. SCOTT. The Federal District Court.

Ms. LEARY. Correct.

Mr. SCOTT. Right. And if it is a felony, the U.S. Attorney is prosecuting whichever court it lands in.

Ms. LEARY. Correct.

Mr. ROTHENBERG. Even misdemeanors, all crimes.

Mr. SCOTT. Even misdemeanors? Okay. The corporation counsel doesn't do that?

Mr. ROTHENBERG. No.

Ms. LEARY. Juvenile crime is prosecuted primarily by the Attorney General of the District of Columbia. It used to be called Office of Corporation Counsel. And for juveniles transferred for prosecution as an adult, it would be prosecuted by the U.S. Attorney.

Mr. SCOTT. Okay. But for all other felonies, it is the U.S. Attorney. Does the Department have a position on whether or not this act ought to apply in Washington, D.C., in those cases prosecuted by the U.S. Attorney?

Ms. LEARY. For all practical purposes, the Superior Court operations at the U.S. Attorney's Office operate as if it is applicable. But I would defer to Mr. Rothenberg on any policy questions.

Mr. ROTHENBERG. Of course, what my colleague, Mary Lou, just said is absolutely accurate. The Department considers that it applies, and we act in all circumstances if it does apply. I believe, to the extent that that is not the case, as the GAO indicated, there are some judges who do not believe that it applies.

Mr. SCOTT. So you wouldn't be offended if we made it specific, made it clear that it does apply?

Mr. ROTHENBERG. I don't want to make a decision on that right at this moment, on what changes. But we are happy to work with you on any changes you feel would be appropriate.

Mr. SCOTT. One of the things about the act is that some of the provisions are labor-intensive. I mean, some work has to be done, which means you have to have enough staff in the U.S. Attorney's Office to work with the victims and witnesses. As I think both Mr. Beloof and Ms. Howley have indicated, we haven't appropriated the money.

How much would we need to provide the assistance contemplated under this act that has not been appropriated?

Ms. LEARY. I don't know what the exact figure would be, but we can work with you on that.

I will say that improvements have been made, and some of them through additional staffing provided to the offices and some of them through automation. The Victim Notification System is connected directly to the electronic case filing systems in the District Court. So that really expedites the notification and really eliminates error and inaccuracy and saves a lot of time.

Mr. SCOTT. But are you going to work with us to get the appropriations so that we can provide the service contemplated under the act?

Ms. LEARY. We will be happy to work with the Committee on all of that.

Mr. SCOTT. Now, we have talked about definition of "victims," and comments have been made about, in some cases, the management of the victims can be complicated.

The Madoff case, does anybody know what happened with the victims in that case, how they were managed?

Mr. ROTHENBERG. I am not specifically familiar with the case. If there are particular concerns that you have, I would be happy to work with your staff.

Mr. SCOTT. Well, you had lots of victims. Did they all get to make impact statements? I mean, somebody ripped off at the level that the reports have—the public reports are that a lot of people got ripped off, and each individual would consider him or herself a huge victim. Did everybody get to make a comment?

Ms. LEARY. Yeah, actually, there is a significant number of victims in the Madoff case, and we have seen this in some other cases too. I am sure you remember the terrorism prosecutions in the Eastern District of Virginia. And there was litigation, actually, over whether each victim could make a statement and so on.

I don't know the specifics in the Madoff case, but we can certainly look into that and find out for you.

Mr. SCOTT. Do we have other problems with determining who is a victim? I mean, if you have a gang shootout, I mean, is there a problem with who is a victim and who is not a victim? Has that been a problem?

Mr. ROTHENBERG. I am sorry——

Mr. SCOTT. Let me ask Mr. Beloof.

Has that been a problem, determining who is a victim and who may not be a victim?

Mr. BELOOF. I actually think the definition that Congress came up with is a perfect definition. The challenge we are having is we are having to litigate that issue against the Department of Justice. It is a very expansion definition of "victim." It includes any victim who is proximately harmed by the offense. So I haven't seen a problem with the definition itself. What I have seen is what I think is unnecessary litigation about what the scope of that is.

Mr. SCOTT. Well, Mr. Beloof, you have been litigating. Are you litigating because the act is not clear enough or because in individual fact situations you have to figure out what the facts are to see how to apply the law?

Mr. BELOOF. Well, I guess a little of both. But I think some of the litigation is unnecessary, in the sense that it is clear when vic-

tims get their rights under the statute, and I think it is clear what the definition of "victim" is.

The definition of "victim" is someone who has been proximately harmed by the event, and proximate harm is not a mystery in law. There are a lot of cases that define the scope and outline of proximate harm in other contexts that are applicable to this.

So, both are true. There are a few things that are unclear. The standard of review is not crystal-clear. The definition of "victim" is pretty clear.

Mr. SCOTT. Okay. I have other questions but will defer to Mr. Poe at this point.

Mr. POE. Thank you, Mr. Chairman.

Mr. Beloof, I have some questions regarding review. A complaint is made for the violation of one of the eight rights. The victim notifies your office or is put in contact with your office in some cases. Can you give me some ballpark figure of number of complaints, number of filings, whether it is an appeal or a mandamus, and success, how has it turned out? Has the victim's right been upheld or not founded by the appellate court?

Mr. BELOOF. Easier to start backwards, if I can.

Mr. POE. Okay.

Mr. BELOOF. And we have mandamus. There is not a flood of mandamus. We have, you know, very limited resources for attorneys to do these things. But the answer is, there is a mix of success, and that success depends largely on what the standard of review interpretation is. Sometimes we are litigating these cases alongside the Justice Department, in cooperation with them. Sometimes we are litigating against the Justice Department.

In terms of numbers, I would have to get back to you on those numbers. There are far more State cases than Federal cases. And, remember, one thing the CVRA does not do is it does not apply in State cases, so we are litigating State rights in those cases.

Mr. POE. Do you think Congress ought to make it clear whether it should be appellate review or a mandamus?

Mr. BELOOF. I think it is critical that Congress make clear that it is an appellate review standard, standard of appellate review. It is critical. Otherwise, these rights are really, essentially, from a legal perspective, not enforceable, very often. And that was the whole function of the experiment of the statute. At least, that was the understanding of every Member of Congress I personally spoke to about it while we were working on this.

Mr. POE. If the rights don't have some enforcement or some sanction, then they are meaningless.

Mr. BELOOF. Right. The history of this is that there was an advisory victims' rights provision. And the Oklahoma City bombing occurred, as you may you remember, and the victims of the Oklahoma City bombing tried to attend the trial. And the victims' attorneys, particularly Paul Cassell, professor at the University of Utah, worked with the United States Department of Justice, and they both tried to enforce the victims' rights to attend that trial in the Oklahoma City bombing case. And it failed. And it failed because it was an advisory act. It didn't give meaningful and enforceable rights.

And the problem with a mandamus standard of review is it risks the same thing. Yes, it is somewhat more enforceable, but there is no guarantee that it is enforceable. It depends on what the circuit court interprets as an extraordinary need for relief under mandamus standards.

So we are not completely back where we started, but it was sort of three steps forward and, with this standard of review, it is two steps back again.

Mr. POE. Okay.

Ms. Howley, on the comments you made about victims' rights taking place before the charge or after the charge or when they do take effect, what would you want Congress to do?

Ms. HOWLEY. I would like Congress to make clear that their rights are not limited to post-indictment. Some of them would be logically limited by their language. For example, the right to be heard at a public court proceeding is inherently limited to post-indictment. However, some of these other rights, as I mentioned, should apply from the time the crime victim has filed a complaint.

Mr. POE. So you would like us to just make that clear.

Ms. HOWLEY. Yes, please.

Mr. POE. Ms. Larence, did the GAO examine how the courts are doing in enforcing the victims' rights under the CVRA? And are courts aware, are judges aware of their obligations under the act?

Ms. LARENCE. We did look at a number of actions that the courts have taken to make the judges aware. And they have taken quite a few actions in terms of training. They revised the Judges Bench Book. They revised the rules for criminal procedures. They have made extensive training available, including over their closed-circuit TV network. So they have taken numerous steps to increase the awareness among the judiciary of those rights.

Mr. POE. Mr. Rothenberg, it seems to me years ago there was a general philosophy among prosecutors that victims were just another witness in their case. Do you think that is still a philosophy in the U.S. Attorney's Office, or do you want to comment on that?

Mr. ROTHENBERG. I would say, Congressman, that that is not the case, if it ever was the case, among Federal prosecutors. The CVRA has certainly helped make everyone sensitive to their obligations to victims, but I believe that the Department and its employees have always taken victims' rights seriously. And the CVRA has provided us with more opportunities and more guidance to do so.

Mr. POE. Last question for Ms. Leary. The Federal notification, along with the State notification, are those systems merged?

Ms. LEARY. No, they are not.

Mr. POE. Do you think they should be?

Ms. LEARY. I don't think that would work because the Federal system is tied into the electronic case filing system that you have in the United States Federal district courts throughout the country, and the State systems are completely different. So I actually think that it is best if we tailor those systems to the States and then tailor the Federal.

Mr. POE. All right.

My time has expired. Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Rothenberg, have there been any cases where the Department has sought appellate review of district court decisions that limited victims' rights under the CVRA?

Mr. ROTHENBERG. There have been quite a number.

Mr. GOODLATTE. How have those cases been resolved?

Mr. ROTHENBERG. I don't have specific figures. I can give you some examples.

One case in, I believe, 2006, we were prosecuting a case in Los Angeles. It was a Russian mob kidnapping and murder case. The victims' family members wanted to sit in court, and the district judge refused to let them do so. We appealed that on a mandamus, and we got a favorable ruling from the Ninth Circuit, and we were able to get the victims in there. It was a very important aspect for the victims.

I recall one of the victims had never heard the details of her husband's last moments. And she was sitting in court while one of the defendants was on the stand, and she finally heard exactly what happened. And that was very important to her. She was quoted in the press subsequently as saying that.

In a recent prosecution of an environmental crime in the district of Montana, we, again, wanted to have some of the victims present in court to hear testimony, and the district court refused. We successfully used the mandamus provision and got the appellate court to require that those victims were permitted to appear.

Mr. GOODLATTE. What was the court's basis for excluding them?

Mr. ROTHENBERG. I think, if I recall correctly, in both of those cases there was a concern that it would be inappropriate to have somebody who could be a witness hear the testimony prior to their own appearance on the witness stand. But we successfully argued that that was not a serious concern in those cases and the victims deserved to be present during the prosecution.

Mr. GOODLATTE. In your testimony, you noted that the Department's Victims' Rights Ombudsman has investigated 25 victims' complaints about the Department of Justice personnel. Can you describe the issues raised in those complaints, and how were they resolved?

Mr. ROTHENBERG. I believe virtually all of those were resolved to the satisfaction of the victims. In many cases, those were simple errors, such as at some point someone's name fell off the list of notifications for a restitution order or something like that. Many of them were clerical errors which, once the VRO and the system got into place, it worked exactly as it should and we resolved them.

Mr. GOODLATTE. Thank you.

Ms. Leary, can you tell us how the Department developed the nationwide Victim Notification System?

Ms. LEARY. Actually, the nationwide—do you mean the State or the Federal one?

Mr. GOODLATTE. Federal.

Ms. LEARY. The Federal one. It was done in conjunction with the Executive Office of U.S. Attorneys, because the U.S. Attorney's Office, you know, actually prosecute most of these cases. And, if I recall correctly, there was kind of a needs assessment done first, and then they had some technology consultants in there. And when we

start talking technology, that is the end of my expertise. But I can try to get you some information.

Mr. GOODLATTE. And does that Federal Victim Notification System have interoperability with the many State notification systems?

Ms. LEARY. No, it does not.

Mr. GOODLATTE. And is there an effort to make that interoperable? Is that a desirable or undesirable thing to do?

Ms. LEARY. I am not sure it would be desirable since we are connected to a different—we use different mechanisms. And we are going through the Federal courts' electronic case filing system, and that is not applicable to the States.

Mr. GOODLATTE. Okay.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

Either Mr. Rothenberg or Ms. Leary, Ms. Howley indicated that, if Federal charges are brought, many victims request protection. If someone requests protection during the proceedings, what happens?

Mr. ROTHENBERG. I believe that sort of request would go through our offices. I think it would depend upon the particulars of the case, but the agents investigating the case and the Assistant U.S. Attorneys are familiar with exactly what would happen. Sometimes, for example, that means providing emergency housing that would be a secure place for the victim. There are many different operations that we could take to secure the victim's safety.

Mr. SCOTT. And would that protection be provided pre- indictment?

Mr. ROTHENBERG. It would, because I really should point out that the CVRA is only one of the ways that we help victims. For example, you may be aware that, under 42 USC 10607, we also have obligations to the victims, including protection, including notice of what is going on in the investigation, the status of the case.

So we provide a full range of services to victims, potential victims, even prior to an indictment, throughout the course of investigation and prosecution. It is a little bit of a—we shouldn't focus too much on simply the CVRA.

Mr. SCOTT. You indicated problems in sentencing, the victim impact in a particular sentence, that the judge ruled it inadmissible and struck it. I thought that just about any conduct was relevant in sentencing, even acquitted conduct. It doesn't have to specifically even be related to the case.

Is that what you are arguing on appeal, that if you have a victim, they have the right to testify, it doesn't have to be targeted just for this? I mean, they have other kind of conduct related?

Mr. ROTHENBERG. In the particular case at issue, it is a possession case of child pornography. And what the judge said was that the victim impact statements were not relevant to the conduct charged that he pleaded guilty to.

I think that is a good point you raise. But we want to establish the fact that the victim—the statement of the victim is in fact relevant. Because the possession of child pornography is part of the demand for the sexual abuse that occurred; and so we are estab-

lishing the fact that the child in these circumstances was, in fact, a victim of the crime.

Mr. SCOTT. Thank you.

Now, a lot of people have kind of gone back and forth about when the rights under this Act began, whether they began at indictment, pre-indictment, whether you need charges actually filed. Ms. Leary, you indicated a situation that sounds like, the terrorist situation, that sounds like that assistance was provided even before charges were brought, is that right?

Ms. LEARY. That is right. As Mr. Rothenberg said, the Department of Justice works with victims in a variety of ways; and many of those ways involve pre-indictment assistance to the victims. My own personal experience as an Assistant U.S. Attorney in D.C. is that we provide services to victims at every stage. And you can't meet all the needs, but you do your very best to do so.

Mr. SCOTT. Now, some of these needs that you are describing seemed unrelated to court proceedings. Are we able to provide those kinds of services on a routine basis?

Ms. LEARY. We are not able to provide that full panoply of services on a routine basis. This was a very extraordinary case. And in many cases we do make referrals for services. So it is really incumbent on the prosecutors to, and the victim witness assistance units in the offices, to know the community resources that are available and to help connect victims with those services. So while you are not providing them yourself, you are making an appropriate referral and kind of connecting the dots for the victims.

Mr. SCOTT. And my final question is just simply whether or not providing assistance to the victims has at all complicated the prosecution of cases?

Ms. LEARY. Providing assistance, does it complicate prosecution?

Mr. SCOTT. Compliance with the law, has that complicated the prosecution?

Mr. ROTHENBERG. I would say that it is an additional duty that our prosecutors have to and our investigative agents have to take. But to the extent that it has required more effort is one that we fully accept upon ourselves as part of our obligations.

Mr. SCOTT. Okay. It has provided more efforts. But has it—I mean, you can see in some cases, if it is a request for a timely trial before you are prepared, for example, theoretically, it could complicate the prosecution. Have you seen any complications in prosecutions? Have you been unable to aggressively and effectively prosecute defendants because of any compliance with this law?

And I just say one of the arguments against the constitutional amendment is that you are impending on defendant's rights. And I guess my question is whether that is theoretical or real? Are you unable to prosecute people because of compliance with this law, or are any rights of defendants compromised because you have to comply with the law?

Mr. ROTHENBERG. There are certainly circumstances where finding the right balance in the course of a prosecution between our obligations to the constitutional rights of defendants and the rights of victims does happen, and we do our best to work through those.

Mr. SCOTT. Okay. Like what? Like what? Do you have some examples?

Mr. ROTHENBERG. I cannot think of any examples.

Mr. SCOTT. If you could provide some—let's go through and ask the U.S. Attorneys whether or not there have been any complications arising—how the law has complicated—other than they have got more work to do, you know, just provide that—do you cure that with funding for staff? Or whether or not there has been any compromising of their ability to do their jobs because they have to comply with the Act, whether it has complicated the prosecution at all. Because it is a statute, you can't impinge on defendants' rights, whether or not there have been any complications that arise? And if you would just check around and see if there are examples, I would appreciate it.

The gentleman from Texas.

Mr. POE. Mr. Rothenberg, Ms. Howley mentioned that there were cases where the victim was not notified prior to charging when a plea bargain had been worked out. Are those cases where the U.S. Attorney's Office is working with some cooperating individual and working some kind of deal to get somebody else? Are those the type of cases that that would apply to, in your opinion?

Mr. ROTHENBERG. I believe that is one example. I think that is correct.

There are circumstances in which a pre-indictment plea agreement is in the best interest of all the parties involved in order to successfully conclude a prosecution, and sometimes it is not possible to provide pre-indictment notice to the victims.

Mr. POE. And one other comment that she made. Do you think Congress needs to clarify as to when these rights actually take effect pre-indictment, at indictment or someplace? Do you think Congress has that responsibility to make it clear to everybody?

Mr. ROTHENBERG. Well, as a number of the witnesses have said, we have taken a position regarding that in terms of the policy matter as to whether the law should be changed. We are happy to work with the Subcommittee on finding it.

Mr. POE. Okay. You will follow whatever it is.

Other than money, which in my opinion it is appallingly low for this legislation, embarrassingly low in how little money is applied to this Act, what is one thing each of you would like to see now 5 years down the road—here we are 5 years since the legislation was enacted—to improve the law in any aspect, other than money?

We will just go down the row. Ms. Larence.

Ms. LARENCE. In our report, we identify a number of areas where the courts are still trying to interpret some of the provisions of the Act. And it is fairly early, and there is not a body of case law on those issues. So GAO did not take a position on whether or not Congress needs to change the law to address those issues. In the one case that we did, though, it was pretty clear from all of those involved they would like the Congress to clarify how the law applies to the District of Columbia.

Mr. POE. Okay. Mr. Rothenberg.

Mr. ROTHENBERG. Uh——

Mr. POE. You are satisfied with the way it is?

Mr. ROTHENBERG. We are—the Department of Justice is fully committed to enforcing the Crime Victims' Rights Act. We believe that we are doing our best efforts right now, and we look forward

to working with the Committee on any changes that you deem appropriate.

Mr. POE. Okay. Ms. Leary.

Ms. LEARY. I don't know that I would recommend any specific changes to the statute, but I do hope and I expect that as time goes by the awareness of victims' rights, the importance of protecting them and the mechanisms, the legal mechanisms actually available to victims will become more and more widely recognized and utilized. And I do think we will see that happen. We have seen that in other areas of victims' rights.

Mr. POE. Professor.

Mr. BELOOF. Standard of review—can I have two?

Mr. POE. Yes. If they didn't have any, you can have one for each one of them.

Mr. BELOOF. Standard of review and the concern Ms. Howley mentioned, making clear that victims can access certain of these rights prior to indictment.

Mr. POE. And I would like for you to turn that information over to the Chairman regarding those statistics on review, whether it is appeals or whether it is our mandamus.

Mr. BELOOF. I will do that. I can tell the Chair that there are no cases under the CVRA that have found that the CVRA violates criminal defendants rights, no reported cases.

Mr. SCOTT. Let me just say this. I would not be surprised about that, because it is a statute, not a constitutional amendment. And I think that is one of the reasons we want it to be a statute, we can be a little more aggressive and didn't have to worry about that point.

Thank you. I yield back.

Mr. POE. Ms. Howley.

Ms. HOWLEY. Along with the points that I have already raised in my oral testimony, I believe that the most important thing is to make the Department's Victims' Rights Compliance Program effective. The GAO report went into that in great detail, that the placement of the office and the current procedures are inadequate for the enforcement of victims' rights.

We have seen at the State level that the existence of a meaningful compliance program makes all the difference, even though sanctions are rarely used. Just the existence makes people take the training more seriously, makes them pay more attention to the protocols and the implementation. It is my understanding that the working group is making some changes to the victims' rights ombudsman's office, but we have not seen those yet.

Mr. POE. I want to thank all of you for your work for victims. They don't have a high-dollar lobbyist up here in Washington, D.C.; and so it is people like you that look out for them. I want to thank you.

And I yield back, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. I have no further questions.

Mr. SCOTT. I just had one other question. Does each U.S. Attorney have a victim witness coordinator in each U.S. Attorney's Office?

Ms. LEARY. Yes. Every U.S. Attorney's Office has a victim witness coordinator.

Mr. SCOTT. And in the Eastern District of Virginia where you have got an Alexandria, Richmond, Norfolk, and Newport News office, would there be one in each office or one for the whole district?

Ms. LEARY. I think in Virginia each one does. I can't be sure, but we will get back to you on that.

I guess I should correct it. Almost every single office has a victim witness coordinator. There are some really small field offices out there, but the vast majority do have victim witness coordinators.

Mr. SCOTT. And, Mr. Beloof and Ms. Howley, how effective are these coordinators?

Mr. BELOOF. Well, I think they are pretty effective. I think their hearts and professional commitment is largely in the mission. So I think it is a good thing, and it is good that they are in those offices. They are, of course, not attorneys. They are people who work for the attorneys. So it is a bit of an awkward relationship.

Mr. SCOTT. Well, one of the things that we have to recognize is some of this is labor intensive. Coordinating, letting people know, and taking the time to treat people with the dignity that you would expect in a court system takes time; and if you have somebody whose job is just that, the job will get done. A U.S. Attorney with a stack full of files may cut people a little short, but if you have somebody whose job it is to take some time and describe when the hearing is coming up, when to show up, what to expect, that could be helpful. If you have enough of them.

Ms. HOWLEY. Exactly. I would say that the victim witness coordinators—and, also, at the investigative stage, the victim assistance—are what make victims' rights workable for the criminal justice system.

Mr. SCOTT. Thank you.

I would like to recognize the gentlelady from Texas is here. Do you have any questions, Ms. Jackson Lee?

Ms. JACKSON LEE. I would, but I would yield to the gentleman.

Mr. SCOTT. The gentleman is done.

Ms. JACKSON LEE. Okay. I thought the gentleman just came in. Thank you very much, Mr. Chairman.

I just landed, so I thank the witnesses for their testimony and wanted to make sure that at least represented to all of you as witnesses of my interests in this area.

And let me ask Susan Howley, who is with the National Center for Victims of Crime, if she could—though it may be repetitive, and I apologize to you—but let me just make this my bearing question, if you will, as to the major legal legislative need and fix that victims do need in making sure that they are counted in the sentencing process, that they are compensated, and what kind of Federal laws are needed in contrast to what happens on the State level, which I know that the State of Texas has an active victims' rights compensation process.

Ms. HOWLEY. I would say that creating a meaningful compliance program or a meaningful avenue to enforce victims' rights is the

most important thing that can be done. The CVRA has taken a number of important steps in that direction with the clarification of the applicability of the enforcement procedures to cases brought in District of Columbia Superior Court. And with changes to the Department of Justice's victims' rights ombudsman, the Federal system could be a model for the States, many of whom do not yet have enforcement programs.

Ms. JACKSON LEE. So do you think the Federal system needs to be enhanced to emphasize or fill in the gaps where States do not have a meaningful program?

Ms. HOWLEY. No. The Federal system could not be expanded to enforce these State victims' rights.

Ms. JACKSON LEE. Or to step in where there are no State victims' rights structures, the States that do not have them?

Ms. HOWLEY. Right. The States will have to create their own enforcement proceedings. Unless we went to a Federal victims' rights constitutional amendment, then the Federal system could step in and help enforce victims' rights at the State level.

Ms. JACKSON LEE. So what do you think should be the effort in encouraging States, since we think it is a priority, to implement their own structures?

Ms. HOWLEY. The first step would be to use the funding authorized in the CVRA to promote compliance or to promote the enforcement of victims' rights in the courts to fully fund that grant program.

Ms. JACKSON LEE. And what do you think and how do you think the victims' rights program are treating children who are victims? Is there sufficient protection for them in the process?

Ms. HOWLEY. Victims' rights generally attach to the parent or guardian of a minor victim. There are other rights outside of the CVRA and outside of standard bills of rights that provide alternate procedures that facilitate the participation of child victims and witnesses and protect them.

Ms. JACKSON LEE. Thank you.

Professor Beloof, would you like to comment on whether or not the structure that we have, it relates to victims who happen to be children, and if you have any contrary views about this victims' rights structure?

Mr. BELOOF. The CVRA in relationship to children is drafted so that—let's say the parent is the perpetrator. The court can appoint a different representative for that child or counsel for that child. So we were conscious of that at the time it was drafted.

In regards to your other structural question, the idea in the statute at CVRA was to use this funding to create incentives in States to come up with a similar victims' rights scheme. That is, this was to serve as a national model. It stands as the most progressive, forward-looking civil rights provision for victims that exist, but without the funding—and that is a central problem we have been talking about here—there is little funding. There is little incentive for States to change.

I was involved in my own State's change, probably because I was there and had a relationship with the Attorney General and we now have enforceable victims' rights. I was fortunate enough to be engaged with a person who had substantial assets who funded a

similar kind of change in California. But, to my knowledge, since the CVRA was enacted and with this limited funding, those are the only two States that have tried to emulate the Federal model in the last 5 years.

Ms. JACKSON LEE. Well, let me thank the Chairman and Ranking Member for this hearing.

I think what I am gleaning, for at least two witnesses, it may be—might even be with the same perspective or different perspective, is that we need to ramp up the voice for this legislation that would include funding. And we need to recognize, as we look at some very difficult times in America, crime rates soaring, some going down in some cities, which we recognize, no matter what level the crime rates are, the victims exist. And what comes to mind in particular is the City of Chicago that certainly has had its share of crisis with respect to youth violence.

So I do want to thank the Chairman. It is something that we will look at I know individually and as this Committee.

Mr. Chairman, thank you for your courtesies. I yield back.

I thank the witnesses for their indulgence.

Mr. SCOTT. Thank you.

The gentleman from Texas.

The gentleman from Virginia. Mr. Goodlatte, do you have any other questions?

Mr. GOODLATTE. No.

Mr. SCOTT. Thank you.

I would like to thank our witnesses for their testimony today. Members may have additional written questions we will forward to you and ask you to answer as promptly as you can in order that the answers may be part of the record.

The hearing record will remain open for 1 week for the submission of additional materials; and, without objection, the Subcommittee stands adjourned.

[Whereupon, at 5:27 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE PEDRO PIERLUISI, A REPRESENTATIVE IN CONGRESS FROM PUERTO RICO, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you, Mr. Chairman. I am grateful that you have convened this hearing today.

In our criminal justice system, the person who has been most affected by a crime-the victim-plays no formal role in the legal proceeding connected to his or her case. While the government prosecutes the case and the alleged offender defends against the charges, the victim is left in a legal "no man's land."

When I was Attorney General of Puerto Rico, I often met with victims who felt disconnected from the prosecution of their cases. Although I tried to involve victims as much as possible, it was clear to me that more formal mechanisms were needed to promote their participation.

At the federal level, Congress recognized this problem and passed the Crime Victims Rights Act in 2004. The law provided federal crime victims with eight rights, including the right to be protected from the accused; the right to be notified of, and to participate in, court proceedings; and the right to confer with the prosecution. These rights re-oriented the relationship between victims and our criminal justice system by providing victims with an opportunity to be involved with the prosecution of their cases if they so chose.

The GAO released a report last December that evaluated the implementation of the Crime Victims Act. That report found that the Justice Department and the federal courts have made significant efforts to implement the Act, and I applaud the Department and the courts for the steps it has taken to date. That said, there appears to be room for improvement both in the Act's implementation and in designing methods to monitor compliance with the Act. For example, a number of victims were not aware of their rights or of their ability to file an internal grievance when their rights were not being respected.

I welcome our witnesses' thoughts on the GAO's recommendations and, more broadly, on how we can improve implementation of the Act and better ensure that all victims are able to assert their rights. I look forward to having a productive dialogue today, and I appreciate the witnesses' testimony.

MEMORANDUM September 28, 2009

To: House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security
Attention: Jesselyn McCurdy

From: Celinda Franco, Specialist in Crime and Drug Policy

Subject: **Funding for the Crime Victims' Rights Act of 2007**

This memorandum responds to your request for funding information on the Crime Victims' Rights Act (CVRA) of 2007, established under P.L. 108-405.[1] Specifically, you requested information on the amounts authorized and appropriated for each of the six purpose areas included in the CVRA. These purpose areas include:

- supporting the activities of the U.S. Attorneys' Offices (USAOs) Victim/Witness programs;
- supporting enhancements to the Department of Justice (DOJ) Victim Notification System;
- providing assistance for the Office of Victims of Crime (OVC) to administer support for organizations receiving CVRA funding;
- providing legal counsel and support services for victims in criminal cases in federal jurisdictions, and in states and tribal governments with substantially equivalent laws;
- providing training and technical assistance to states and tribal jurisdictions to craft state-of-the-art victims' rights laws, and to state and tribal jurisdictions for designing compliance systems, including an evaluation component; and
- developing state-of-the-art systems for notifying victims of crime of important dates and developments relating to criminal proceedings in a timely and efficient manner.

Table 1 shows the amounts authorized for the activities provided under the CVRA for FY2005-FY2009. Most of the purpose areas in **Table 1** have not received direct appropriations to implement the provisions of the CVRA over this period, with some notable exceptions, discussed below.

[1] 18 U.S.C. § 3771.

Table 1. Funding Authorized Under the Crime Victims' Rights Act of 2007, P.L. 108-405

Authorized Activities	FY2005	FY2006	FY2007	FY2008	FY2009
To support USAOs for Victim/Witness Assistance programs.	$2 million	$5 million	$5 million	$5 million	$5 million
To support enhancements to the DOJ Victim Notification System.	$2 million	$5 million	$5 million	$5 million	$5 million
To OVC for staff to administer the appropriation for the support of organizations receiving CVRA funding.	$300,000	$500,000	$500,000	$500,000	$500,000
To provide legal counsel and support services for victims in criminal cases for the enforcement of crime victims' rights in federal jurisdictions, and in states and tribal governments with substantially equivalent laws.	$7 million	$11 million	$11 million	$11 million	$11 million
To support training and technical assistance to states and tribal jurisdictions to craft state-of-the-art victims' rights laws; and training and technical assistance to state and tribal jurisdictions to design a variety of compliance systems, including evaluation component.	$5 million	$7 million	$7 million	$7 million	$7 million
To develop state-of-the-art systems for notifying victims of crime of important dates and developments relating to criminal proceedings at issue in a timely and efficient manner.	$5 million	$5 million	$5 million	$5 million	$5 million

Source: Authorized amounts taken from P.L. 108-405.

Table 2 shows congressional appropriations for DOJ's Victim Notification System (VNS) for FY2005-FY2009, except for FY2007. Some of these amounts are used for VNS enhancement activities authorized under the CVRA.[2] For FY2007, final appropriations for DOJ were provided in P.L. 110-5. There was no conference report, however, detailing funding allocations for subaccount activities under DOJ.[3] As a result, there was no readily available congressional source indicating the funding level for the VNS for FY2007.

The National Crime Victim's Law Institute (NCVLI) has received funding through DOJ appropriations. For FY2005, the conference report language for DOJ's FY2005 appropriation indicates that Congress did not provide funding for the NCVLI for that year. For FY2006, on the other hand, Congress appropriated $2.0 million specifically for the activities authorized by section 103(b)(4) of the CVRA. This provision of the CVRA authorizes funding for the National Crime Victim Law Institute and its clinic organizations to provide legal counsel and support services to crime victims in federal jurisdictions.[4] For FY2007, the Senate recommended $4.0 million for supporting the NCVLI; however, as noted above, no conference report was filed for P.L. 110-5. The NCVLI did receive $4.465 million in congressionally directed funding for FY2008 and $500,000 for FY2009 under the Edward Byrne Memorial Discretionary Program, which is administered by the Office of Justice Programs at DOJ.

Table 2. Congressional Appropriations for DOJ's Victim Notification System

(in millions)

Authorized Activity	FY2005	FY2006	FY2007	FY2008	FY2009
DOJ's Victim Notification System	$8.0	$9.0	N/A	$9.4	$12.0

Source: For FY2005, H. Rpt. 108-792 (P.L. 108-477); for FY2006, H. Rpt. 109-272 (P.L. 109-108); for FY2007, P.L. 110-5; for FY2008, House Committee on Appropriations, Consolidated Appropriations Act, 2008 (P. L. 110-161), at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_house_committee_prints&docid=f:39564b.wais; for FY2009, House Committee on Appropriations, Omnibus Appropriations Act, 2009 (P.L. 111-8), Committee Print, Books 1 & 2, at http://www.gpoaccess.gov/congress/house/appropriations/09conappro2.html.

Note: N/A, not available.

If you have further questions, please contact me at 7-7360 or cfranco@crs.loc.gov.

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[2] U.S. Department of Justice, Office of the Inspector General, Audit Division, *The Department of Justice's Victim Notification System*, Audit Report 08-04, January 2008, pp. 72-73.

[3] For FY2007, the Administration requested $9.960 million for the VNS; the House recommended $10.960 million; and the Senate recommended $12.0 million.

[4] See H. Rpt. 109-272, at http://www.congress.gov/cgi-lis/cpquery/R?cp109:FLD010:@1(hr272).