



Department of Justice

STATEMENT OF

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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

approximately 75 percent reported satisfaction with their receipt of the right to be treated with fairness and respect for their dignity and privacy. Finally, GAO found that passage of the CVRA has increased awareness of victims' rights by participants in the criminal justice system, including judges, prosecutors and investigative agents.

GAO made some recommendations based upon its review. First, it recommended that the Department explore ways to publicize the victim complaint process and the ability of victims to file motions to enforce their rights, as it found that many victims were unaware of these processes. The Department has a working group exploring the best options for implementing this recommendation. GAO also suggested that the victim complaint review process in the USAOs be modified to cure the appearance of conflict that could arise where employees review their colleagues and, in some cases, superiors. The complaint process has now been revised in response to this suggestion. GAO further advised the Office for Victims of Crime to establish a uniform process by which agencies provide their annual compliance reports. A Departmental working group is in the process of drafting such a standardized reporting process. GAO also recommended that all components ensure that victim witness responsibilities are included in performance work plans, and that performance measures be promulgated to gauge the Department's compliance with its Strategic Plan objective on victims' rights. The Department is now working to analyze and implement these recommendations.

While the Department has made great strides in the area of crime victim rights, we recognize that our work is far from over. All the employees of the Department, and I personally, are committed to furthering the crucial goal of making victims meaningful participants in the criminal justice process, and we appreciate your support for our efforts.