

**VICTIMS AND THE CRIMINAL JUSTICE SYSTEM:
HOW TO PROTECT, COMPENSATE AND VINDI-
CATE THE INTERESTS OF VICTIMS**

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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VICTIMS AND THE CRIMINAL JUSTICE SYSTEM: HOW TO PROTECT, COMPENSATE AND VINDICATE THE INTERESTS OF VICTIMS

THURSDAY, FEBRUARY 16, 2006

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

The Subcommittee met, pursuant to notice, at 10:02 a.m., in Room 2141, Rayburn House Office Building, the Honorable Howard Coble (Chairman of the Subcommittee) presiding.

Mr. COBLE. Good morning, ladies and gentlemen. We welcome you to this morning's hearing, which will examine how victims fare in our criminal justice system.

Too often we focus on enhancing penalties and new strategies to combat crime and seem to overlook the need to ensure our criminal justice system best serves those it is intended to protect. When someone has fallen prey to a criminal act, they've been victimized. Victimization can be emotionally and financially overwhelming and creates an obvious burden upon society.

Although crime prevention reduces the incidence of victimization, it does not ensure that victims are effectively compensated. In a 1996 study, conducted by the National Institute of Justice, the calculated loss per victim ranged from \$2.9 million for murder, \$87,000 for rape and sexual assault, \$8,000 for robbery, \$1,400 for burglary, and \$370 for larceny.

Some basic facts demonstrate the impact of the cost to society. In 2004 there was an estimated over 23 million violent and property crime victims aged 12 or older in the United States. This includes an estimated 18.6 million property crimes to persons and their households, and an estimated 5.2 million violent crimes, which vary from simple assaults to the most heinous criminal acts.

To translate these figures into practice terms for the United States, consider the following: one person is murdered every 32.5 seconds; one violent crime occurs every 6 seconds; one rape or sexual assault occurs every 2.5 minutes; one child is reported abused or neglected every 35 seconds; and one violent crime is committed every 20 seconds.

The cost to society is staggering. In 2004 alone, State compensation programs paid crime victims and their families \$426 million. This is nearly double the amount from 7 years ago. Half of these payments were for medical expenses. 20 percent were for lost

wages and support, and 10 percent for funeral bills. Only 9 percent was allocated for mental health services. The direct cost of child abuse and neglect is more than \$24 billion annually, and when adding indirect costs such as mental health, lost productivity, and criminal behavior, the figure rises to more than \$94 billion a year. Law enforcement costs are rising as well. Local police spending represented 30 percent of the Nation's total justice expenditures as State corrections amounted for 23 percent. That's over half of our justice expenditures.

We need to make sure that our criminal justice system treats victims fairly and takes into account their rights to justice and compensation. Don't forget victims include people whose identities have been stolen, and elderly who frequently are targeted by sophisticated scabbers on the Internet or in the business world.

The complexities created by various crimes which pervade our society demand that our criminal justice system is flexible, efficient and focused on the victims' needs. And, of course, we need to do all we can to reduce the victimization in America. By deterring criminals from committing crimes and by preventing criminals from committing crimes.

I look forward to hearing from the witnesses today, and am furthermore interested in any legislative ideas that may be forthcoming from these important witnesses who will give testimony today.

I am now pleased to recognize my good friend, the distinguished gentleman from Virginia and the Ranking Member of the Subcommittee, Mr. Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I want to express to you my appreciation for your holding this hearing on how we can protect, compensate and vindicate the interest of victims of crime. I'm sure we can all agree that the best way to do this is actually prevent crimes from happening in the first place.

I've been a long proponent of crime prevention programs aimed at preventing crimes before the fact, and as a society, we are ready to spend billions of dollars that it takes in the criminal justice system after the crime has been committed, yet when it comes to spending money on evidence-based approaches which have been proven to prevent crime in the first place, or prisoner development programs which significantly reduce recidivism, we find that we either are totally missing in action or very stingy when it comes time to spending those monies.

As a result of these failings—our criminal justice system, Federal, State and local are all failing us. As long as we continue the choice that we're going to play politics rather than actually reduce crime, the criminal justice system will continue to fail us. What we constantly see around here is ratcheting up more and more penalties, without any indication of whether or not those penalties are designed to actually reduce crime.

Mr. Chairman, we have a lot of people in jail today through these policies, and one thing that we are noticing is that about 700,000 of these prisoners will be released, most no better prepared than they were to begin with to lead a law-abiding life.

I appreciate your holding a hearing just this week on what we can do to help these prisoners lead a law-abiding life so that we

don't have to have more victims asking us for compensation because they were victimized. If we spend the money and have the programs that are appropriate, many of these can return to law-abiding life rather than a criminal life, but we have to make sure that we make those investments.

While I'm all for doing what we can to limit crime victimization, we also have to make sure that we do not limit the rights of the accused. We already know that we have too many people who are convicted for crimes they didn't commit. DNA evidence has proven that people, even on death row are there for crimes they didn't commit, and we don't want to limit whatever rights they have.

But one of the things that we have seen in the past is when we consider victims' rights legislation, if we consider statutes rather than constitutional amendments, we don't have to get into the debate of whether we're impinging on people's constitutional rights. If it's not a constitutional amendment, it's not implicated. And there's a lot we can do by statute.

We can have victims' compensation funds. Virginia has a fund where it's almost like worker's compensation. If you're a victim of crime, you can get your medical bills paid and some lost wages. Maybe we need to have more funds.

We need to have more money for prosecutors. There is no way that you can expect a prosecutor to be even polite if they have a stack of files more than they can possibly process in 1 day. They need lower caseloads so they can be, instead of being abrupt and rude to victims, they can have some time to talk with them and go through the process.

Victim coordinators, people who can go help the victims through the criminal justice process, make the phone calls. If something has been rescheduled, make the phone calls so that the victim doesn't have to come all the way to court to find out that the thing has been continued. Victim coordinators, those are not that expensive compared to all of the money we spend in the criminal justice system and can be extremely helpful. And witness protection, to make sure that those witnesses who come forward are protected by the police from the perpetrators of the crime.

There's a lot we can do. Preventing the crimes from happening in the first place, and making the investments in the criminal justice system so that the victims are treated with appropriate dignity.

So I look forward to the testimony by witnesses on how we can actually accomplish this, and working with you, Mr. Chairman, on how we can improve the criminal justice system for those who have been victimized by crime to make sure they're not victimized again.

Thank you.

Mr. COBLE. Thank you, Mr. Scott.

It's customary for the Subcommittee to restrict opening statements to the Chairman and to the Ranking Member, but the distinguished gentleman from Ohio, who chairs the Constitution Subcommittee, Mr. Chabot, has done tremendous work in this area, and he has requested permission to make a brief opening statement.

Mr. CHABOT. I think the Chairman very much, and move to strike the last word. I look forward to this hearing, and I want to

particularly thank you for holding this hearing, Mr. Chairman. This, as you mentioned, has been an issue. How crime victims are treated in the criminal justice system has been something that's been a particular concern to us for quite some time. I was the sponsor of a victims' rights constitutional amendment back in the 106th Congress, the 107th Congress, the 108th Congress. Unfortunately, despite numerous hearings and attempts by Senator Kyl and Senator Feinstein, and myself and many others, we just didn't have the votes to pass a constitutional amendment. It takes two-thirds in the House, two-thirds in the Senate, and we just didn't have the votes to do that.

While it became clear that passage of that amendment wasn't possible, at least at that time, Senator Kyl and Senator Feinstein worked in the Senate for a bill that would protect crime victims' rights. That bill was passed nearly unanimously in the Senate, and I was the sponsor of the bill here in the House. Ultimately, the Crime Victims Rights Act was included as title I of the Justice for All Act, which was signed into law by President Bush on October 30 back in '04.

The Crime Victims Rights Act was the first Federal law to truly provide crime victims with dignity and respect through an established and enforceable set of rights. This ensures that justice is reserved not only for the accused, but also to the thousands of persons whose lives have been impacted by crime. The Crime Victims Rights Act is a little over a year old now, and we're starting to see its impact on the Federal court system. For example, in January, the Ninth Circuit Court of Appeals ruled that crime victims have an affirmative right to speak and not just submit written statements at the sentencing phase of a criminal case.

Also the Justice Department has recently promulgated rules pursuant to the act to help ensure that victims' rights are effectively addressed by Federal prosecutors. I expect that the relevant Subcommittees of the House Judiciary Committee will hold oversight hearings with regard to the implementation of the Crime Victims Rights Act and its impact on the criminal justice system.

However, the Crime Victims Rights Act is just part of the story of how the criminal justice system affects crime victims. For instance, just this week I had the opportunity to meet with Nancy Ruhe—she's the Executive Director of the National Organization of Parents of Murdered Children, and talked with her about some of the concerns that they have and some of the things to bring up at this hearing. This group happens to be based in my district in Cincinnati, Ohio, and they field over 1,000 phone calls every week to assist the needs of families who are experiencing the loss of a loved one.

In addition, in the greater Cincinnati area, there's a lady named Deborah Culberson, who lost her daughter, Carrie, to a terrible murder. The perpetrator is behind bars, but they've not been able to locate or identify her daughter's remains because the murderer refuses to disclose to authorities where he hid the body. Part of the problem is a patchwork of State laws that call for mandatory DNA testing of the unidentified remains in some States, but not in others. Thus, as may have been the situation in Carrie's case, if a murderer disposes of a body in a State that doesn't have the man-

datory DNA testing law, the loved ones of that missing person may never be able to find out where their loved one actually is.

Ms. Culberson has been very forceful and determined. She's a very courageous and inspiring woman, and she's been pursuing this national DNA database to help identify missing loved ones, and thereby, provide at least some closure to these families, and I think her efforts have truly been amazing to watch, and she's an inspiration to me and my staff as we've worked with her in recent years.

I look forward to hearing from all the witnesses here today about the ways that Congress and the States can better serve the needs of crime victims, including Mrs. Culberson and others like her. While no one would choose to be a victim of a crime, we can choose how we will treat those victims once the crime has occurred. And I'll continue to work with those in the crime victims community to ensure that crime victims are treated in the best manner possible by the criminal justice system.

Thank you, Mr. Chairman, for allowing me to speak, and thank you, for the witnesses being here today.

Mr. COBLE. I thank the gentleman from Ohio.

Ladies, it's the practice of the Subcommittee to swear in all witnesses, so if you all would please stand and raise your right hands.

[Witnesses sworn.]

Mr. COBLE. Let the record show that each witness answered in the affirmative. You may be seated.

We are pleased to welcome our panel with us, and Ms. Campbell, the distinguished gentleman from California, Mr. Lungren, had requested permission to introduce you to the panel today, but I see he is belated, so I will do that in his absence.

Ms. CAMPBELL. Maybe it's better if he didn't. [Laughter.]

Mr. COBLE. I didn't hear what you said, Ms. Campbell.

Mr. CHABOT. Maybe it's better if he didn't.

Mr. COBLE. Oh. Well, I am sure he would do a good job. But our first witness is the Hon. Collene Thompson Campbell, National Chair of Force 100, a victims rights grass roots organization. Ms. Campbell was the first woman mayor of the city of San Juan Capistrano, and was recently appointed by Governor Schwarzenegger to the California POST Commission, that is, Peace Officer Standards and Training, which she currently chairs. She is also the founder of Memory of Victims Everywhere, known as MOVE, an organization devoted to improving the criminal justice system by teaching victims how to better understand the law. Ms. Campbell has been honored for her fight against crime by numerous top officials, including President George H.W. Bush.

Our second witness is Ms. Mary Lou Leary, who is the Executive Director of the National Center for Victims of Crime. Prior to serving in this capacity, Ms. Leary was Senior Counsel to the U.S. Attorney in the United States Attorney's Office for the District of Columbia. She's held numerous positions at the U.S. Department of Justice, including acting Assistant Attorney General for the Office of Justice Programs, and Deputy Associate Attorney General. Ms. Leary has a B.A. degree from Syracuse University, and an M.A. from Ohio State University, and a J.D. from Northeastern University School of Law.

And as an aside, Ms. Leary and I share two mutual friends. The first one is Mr. M.L. Carr, who is a former basketball star for the Boston Celtics, who played his college basketball in my district in North Carolina at Guilford College. And your counsel, Jennifer, is also a very good friend, Ms. Leary. Good to have you with us.

Our third witness is Dr. Kathryn Coffman, Medical Director of Childhelp Children's Center at the St. Joseph's Hospital in Phoenix, Arizona. In this capacity, Dr. Coffman evaluated children in the Crimes Against Children Unit of the Phoenix Police Department, who have been impacted by acts of crime and neglect. Previously, she worked at a child abuse clinic at the Children's Hospital in New Orleans. Dr. Coffman received an undergraduate degree from the Northwestern University and an M.D. from the University of Iowa.

Our final witness today is Ms. Phyllis Turner Lawrence, Independent Consultant for the Restorative Justice and Victims Services. Ms. Lawrence provides services to victims of crime as a restorative justice practitioner, program coordinator and trainer, sentencing advocate, and consultant to nonprofits and Government agencies. Previously she worked as Special Projects Coordinator for the National Organization for Victim Assistance, known as NOVA. Currently she's an adjunct faculty member at the George Mason University and the Virginia Department of Juvenile Justice. Ms. Lawrence received both her B.A. and J.D. degrees from the University of California.

Now, ladies, it is our custom, as we have told you previously, to try to comply with the 5-minute rule. When you see the amber light on the panel before you, that is your warning that you have 1 minute remaining, and the ice on which you are skating is becoming thin. Now, we're not going to keel haul anybody if they violate the 5-minute rule, but when you see the red light appear, if you would wrap that up, we would be appreciative. We have examined your written testimony and we will reexamine it. But in the interest of time we have other meetings as well, if you could comply with the 5-minute rule we would be appreciative.

Ms. Campbell, why don't you start us off? Ms. Campbell, pull that mic to you and activate it if you will.

**TESTIMONY OF COLLENE THOMPSON CAMPBELL,
NATIONAL CHAIR, FORCE 100**

Ms. CAMPBELL. Thank you. Mr. Chairman and Committee Members, I am frequently asked, "What are your credentials and your degrees? What degrees do you have?"

Well, I have three degrees, gentlemen. In 1982 I received my first degree. Sadly, it was the first degree murder of our only son, Scott. I received two additional degrees in 1988. Those were the first degree murders of my brother, auto racing legend, Mickey Thompson, and his wife. I wish I didn't have these degrees, but I do, and our goal is to avoid others from obtaining these life-altering degrees.

It's obvious that it's near impossible, in only a few words, to adequately describe a quarter of a century of our living hell caused by both the killers and the justice system. I think it is extremely im-

portant for you to try to comprehend the real world of crime and victimization.

Our family's experience is not uncommon. Millions of honest, hard-working Americans are forced to endure the never-ending devastation caused by crime, which is expanded by our justice system that is out of balance.

In order to be here today before you, I had to fly all night last night. I haven't been to bed, and my husband and I paid all costs for this trip. That alone should give you a tiny indication of the importance we place on your actions. Yesterday, in fact, just a few hours ago, we were in a California court for the 54th time, hoping to get a trial date for the 18-year-old murders of my brother and his wife. But we didn't have a right for a speedy trial. Only the accused has that right. So yesterday we got another delay, and there's no end in sight. That's not only costly to our family, but it's very costly to the taxpayers.

Just last week we sat across the table from the man who murdered, and then watched as we searched for our son for 11 agonizing months. We were there at the parole hearing to simply ask the Parole Board to enforce the truth-in-sentencing. It is very difficult.

In our U.S. Constitution, an accused criminal has 23 rights, and the victim has none. That is unjust and causes our system to be heavily weighted in favor of the criminal.

Mr. Chabot, thank you for what you have done in that area. Thank you for your recognition.

For any family, to deal with murder is excruciating, and to allow the American justice system to add additional agony is shameful. We ask Congress to do what is right, and please support the Office for Victims of Crime.

I believe my lovely granddaughter, Melissa, summed it up best. She said, "Mom, what would it be like to live in a normal family?" That about ripped my heart out because we've tried so hard to make our family normal. I asked her what she meant, and she says, "Well, Mom, every time I ask you and Papa if we can take a vacation together, your answer is always the same. You always say, "Well, Princess, we can't promise you because we may have to be in court." So Melissa said, "You know, Mom, the murderer kills our family, then they control the rest of our lives through manipulating the justice system. It's just not fair."

I think Melissa's words were pretty well said, and really summed up what we lived through.

We're obviously disturbed that the President's budget recommends taking the VOCA funds away from the victims, the precise people the fund was designed to help. The Victims of Crimes Act was introduced by President Reagan. The money is generated from fines levied on the convicted criminals. This fund is not taxpayers' money. It comes from the correct source, from the criminals. Congress must reflect on not taking that money. They must not take that money intended for victims, and instead, raise the cap from \$625 million to a billion dollars. The criminals are housed, fed, educated, mentally cared for, and given every opportunity to succeed with enormous funds spent on their comfort and their welfare. There is something greatly wrong with the philos-

ophy that we take care of the criminal, but the victim or their children, are ignored.

It seems the honest law-abiding person may be on the wrong side of the bars. I can assure you that we and thousands of other victims are the product of others before us doing nothing. Hopefully, you will continue to move to take action to better protect good, honest-working Americans.

On behalf of Force 100, representing crime victims from every State in the Nation, thank you for allowing me to be heard. God bless you, and God bless your work, and this great Nation. And I will be happy to answer any and all questions. Thank you.

[The prepared statement of Ms. Campbell follows:]

PREPARED STATEMENT OF COLLENE THOMPSON CAMPBELL

Mr. Chairman and Committee Members;

I'm frequently asked, "What are your credentials to speak on matters of victimology, and what degrees do you possess in this regard?" Well, I have three degrees. In April 1982 I received my first degree. Regrettably, it was the *first-degree* murder of our only son, Scott. I received *two additional degrees* on the 16th day of March 1988. It was the *first-degree* murders of my only sibling, my brother, auto racing legend, Mickey Thompson and his wife, Trudy. I have been in the criminal justice system from 1982 until this day, that's twenty-four straight, exhausting years. So there are "degrees," and then there are "degrees," and I will leave it up to you to decide which are the most significant in our fight for rights and to help gain standing in the courts for the victims. I wish to God I could say I have no credentials to address these issues.

In order to judge moral fiber and fortitude, it is important for you, our Nation's decision makers, to recognize and make a strong effort to identify with "why" we feel so strongly about victims and the protection of our citizens. As horrifying as it may seem, for a moment, please try to put yourself in my victim's shoes. It is difficult in a few words to depict a quarter-of-a-century of a living hell furnished first hand to my family by killers and expanded by our justice system.

We are from a good, honest, hard working family. We never thought we could become victims of horrible crimes. Our family is among the millions of Americans who have been forced to endure the everlasting devastation caused by criminals, and in addition, we are further required to suffer added enormous stress caused by the inequities within our justice system.

As you can plainly see, I'm certainly not a young woman, and yet, I have done what is necessary to be here to speak before you this morning. I have not been in a bed for more than thirty hours, and I'm sure I "look it!"

Just a week ago, my husband, Gary, and I sat across the table from the man who murdered our only Son, asking the parole board to please enforce "truth in sentencing" by keeping the convicted killer in prison for the time the court had ordered. Then, yesterday, we again spent the day in a Los Angeles County Superior Courtroom. However, this court appearance was not about our Son's murder. This time we were in court because of the murder of my brother and his wife, Mickey and Trudy which seemed to be a continuation of what we have endured on a regular basis for nearly twenty-five years *straight!*

After leaving the courtroom yesterday, I flew all night to stand before you this morning. As with everything we do, my wonderful husband of fifty-five-years financed the travel costs. That alone may give you a tiny indication of the importance we place on the subject of crime and the resulting victims. My motivation is to help avoid others from living the life we have been forced to endure by crime and the justice system. My reward will be for this Committee On Crime to respond with positive action to help victims, like making certain the VOCA fund is increased, not eliminated in the President's FY 2007 budget. The additional devastation caused to victims of crime, by the system, could and should be improved immediately.

The trial of our Son's murder case stretched out more than eight years. The murder case of my Brother and his Wife, has now expanded to eighteen years, and obviously, important witnesses are dying. That, Committee Members, is a total of twenty-four straight years of our family attempting to endure the impact of murder, coupled with a less than balanced justice system. Plus, it must also be noted that these delays are a huge liability to the taxpayer. Only the accused has a right to a speedy

trial, not the victim, nor the taxpayer. Victims do not have rights in the Criminal Justice System.

The justice system continues to accommodate the killers, thereby escalating the emotional pain to the families of horrible crimes. Evil offenders murder our loved ones, then, all too often our system permits them to generate absurd, untrue and hurtful accusations against the victims, their families and law enforcement officers. The criminal defendant frequently is allowed to generate painful unfairness, prolonged trial delays and knowingly deceive the Court.

In our U.S. Constitution, an accused criminal has twenty-three rights and the victim has not one single right. It is crucial that we all work to improve the unfairness that is heavily weighted in favor of the criminal.

Along with thousands of other good hard-working Americans who have become victims of evil predators, our only son, Scott, is dead because of a weak and forgiving criminal justice system. His killers both would have been "Three-Strikers" under today's California law, and should have been in prison. If they had been incarcerated our Son would be alive today. There are many thousands just like us who have lost their loved ones because a criminal was given that "one more chance," which is a huge and unforgivable "price" for a Mom and Dad.

We may be one of the hardest hit crime victim's families in the Nation, but we are only *one* family out of hundreds of thousands who are forced to endure huge inequities within the system, both State and Federal.

Our son, Scott, became missing and we desperately searched for him for eleven agonizing months before we learned the horrible truth. Scott was kidnapped, assaulted, strangled and then thrown from an airplane into the Pacific Ocean by two repeat felony criminals, his body was never found.

My Brother, my only sibling, auto racing legend Mickey Thompson and his wife, Trudy, were shot to death as they were simply leaving their home on their way to work in the morning. It has now been eighteen-years since their murders. We have traveled to, and been in the courtroom fifty-four times and still do not have a trial date, due to defense motions. There is no end in sight. For any family to deal with murder is excruciating. However, to allow the American justice system to add additional agony is both intolerable and shameful. Possibly if victims had an organization such as the ACLU or the Trial Attorneys' Associations our situation might improve. We have very few factions representing victims and that is why it is so very important that you step forward to help protect the honest, law abiding citizen who just happens to become a victim of crime. Why are so many interested in helping the perpetrators of crime and not the victims of the criminal's evil actions? We ask the House to do what is right and support the Office For Victims of Crime and its Director, John Gillis, who himself has lived through the devastation of a gang member murdering his only daughter, all because he was a Police Officer. The gang believed to "murder the daughter of a policeman" would escalate their gang status, along with the actual gang killer.

We continue to be deeply saddened, and rightly so, by the 9/11 terrorists' attacks. During those four cowardly assaults, there were 2,752 innocent humans killed by terrorists on that heartbreaking day of September 11, 2001. And as of today, unfortunately, in action, we have also lost 1,776 great and courageous Americans in Iraq and Afghanistan in the war to protect our Nation and bring peace to the world. However, it is important to realize that during that *same period* of time, as our Nation's attention is turned to war casualties and the 9/11 fatalities, *we have lost more than 70,000 American's right here in our own United States, to MURDER. That is more than 15 times the number of people that were killed on both 9/11 AND in the war in Iraq and Afghanistan. Fifteen times greater and I am only talking about murder . . . and not including all the other vicious and violent crimes like rape, molestation and robbery. That certainly indicates, we must also focus on what is happening here, in our Country. We are obligated to fight and protect the citizens of our Nation wherever necessary and that includes here on our own American soil. It is time to better serve Americans in our own homeland by being tougher on crime and criminals and attempting to help the victims.*

It is inconceivable to realize that every *nine weeks* there are as many people *murdered right here in America* as were killed in all four of the horrible 9/11 terrorists' attacks. The safety of its people is our government's most important and critical role.

My small family consists of proud Americans. Since the American Revolution, our family has fought in every major war for equality and the freedom of all Americans in this great Nation. We have worked hard, contributed greatly and *never* asked for a handout from anyone. My Father, Marion Thompson, was a police officer, my Mother, Geneva Thompson, was a committed and respected volunteer for good and my Brother, Mickey Thompson, contributed greatly to the youth and to the develop-

ment of automobile safety. My family believed the U.S. Constitution was written to protect, balance and establish justice, yes, *establish justice* . . . And, that is true, it does establish justice . . . unless, you have the misfortune of becoming a victim of violent crime.

Like many other crime victims, there has been tremendous pain and grief to our family, which was expanded due to the fact that the moment we became victims of crime, our rights were ignored in *favor of the killer*. That means, *a murderer or a rapist has rights not afforded* to victims, all because *we, the victim*, are not even mentioned in our U.S. Constitution.

My husband and I were not permitted to be in the courtroom during three trials of the men who murdered our Son. There was no reason to exclude us, other than the defense could get by with it. We were *forced to sit in the hall*, like a dog with fleas. Yet, the killers, along with all their family and supporters, were inside the courtroom portraying a family unit.

We were not allowed to be heard, yet, the killer's family was able to testify in front of the jury, proclaiming the goodness of the defendant and the victim as a lesser person. Our Son's killers were convicted of first-degree murder; we believed we were finally through the process, but we were not informed of the following court action.

We were not notified of a hearing before the District Court of Appeal. Therefore, no family member was present to represent our murdered Son, however, in full force, forty members of one of the killer's contingency, were in the courtroom, as they had been informed and notified. The conviction of our Son's murderer was overturned by that Appellate Court. The "capital case" killer was released on bail in violation of the California State Constitution and *without* consideration for our family's safety. We learned through headlines in the media that there was to be another trial and our Son's killer had been released back into society where he continued his deadly criminal lifestyle and others were hurt.

We contacted the Attorney General's Prosecutor handling our case and asked why she hadn't bothered calling or notifying us regarding the appeal, the pending court proceedings and the killer's release. Her answer was demeaning, but typical, she said, "We never notify the victims, they simply don't understand." However, we knew the *true* reason, *unlike the killer's defense*, she was not *required* to notify us, because we were only the Mom and Dad of the murdered victim, his next of kin. We did not have the right to be notified!

Our family would never ask for or want restitution, our Son's life does not have a dollar value. However, among many other significant costs, we had to "cough-up" \$2,000.00 to get his car out of storage, after it had been impounded by the police for evidence. The trials took eight years to complete, and during that time our life was controlled by the defense. There was no consideration for our panic-stricken personal life, our safety, our plans, family holidays, or finances. Today, the inmates have free access to the internet and often they utilize their contacts to build websites to defame their victim, the victim's family and law enforcement.

I believe my lovely Granddaughter, Melissa, summed it up best. She said, "Mom (that's what she calls me), what would it be like to live in a "normal family?" Those words about ripped my heart out, as we have tried very hard to maintain a "normal" and loving family. When I asked her what she meant, she simply said, "Every time I ask you and Papa if we can take a vacation together, your answer is always the same." "Well Sweetie, we can't promise you, as we may have to be in court." Melissa then responded with, "You know, Mom, the murderer kills our family, then they control the rest of our lives through manipulating the justice system, it's not fair." I think Melissa's words pretty well sum up the feelings of most victims of violent crime. The entire family's life is harmfully altered, not only by the criminal's evil act, but also by a justice system that continues to put the criminal and their desires first.

You rarely hear from people like us, because victims are too devastated to speak on the subject. We have no financial help or attorneys representing us. Unlike the defense attorney's associations we are financially unable to contribute to legislators and policy makers. The victims are forced to fend for themselves. And unlike the inmates, victims don't have medical care, meals, exercise, psychologists, attorneys and legal advisers. Victims are always the only ones at the table who are not on someone's payroll. Victims pay their own costs, even to be heard, like today.

Congressmen, what we victims fail to understand, is how in this great Nation, we have allowed the violent criminals and their defense attorneys to have many rights. And, there are no rights for the honest, law-abiding good American citizen, who through no fault of their own, have become a victim of violent crime. I'm certain this is not what the Founders of this Great Nation and the authors of our Constitution intended *and it needs to be corrected immediately*.

Many were very disturbed when we learned that the President's budget recommends taking the VOCA funds (Victims of Crime Act) away from the victims, the injured party, the intended beneficiaries and the precise people the fund was designed to help! The *Victim of Crime Act is a legacy, introduced by President Ronald Reagan* and passed in 1984 and funded in 1986. The money is generated from fines levied on criminal perpetrators. In other words, this fund is NOT taxpayers' money, it comes from the criminal, the very person who caused there to be a victim. Is any legislator paying attention, "watching the store" or caring about victims? These funds are generated from the criminal, the person responsible for the crime, it is the correct source, and NOW, in the budget, apparently some "uninformed staffer" is trying to eliminate those victims' funds, which is the only source for medical, burial, hospital and necessary help. *Please correct this inequity immediately. Congress must reject the taking of this money and instead, raise the cap from 625 million dollars to a billion dollars.* The criminals are housed, fed, educated, medically cared for and given every opportunity to succeed with enormous funds spent on their comfort and welfare. Are you truly going to deny our victims help, even though the *funding is supplied by the perpetrators.* There is something greatly wrong with this viewpoint and philosophy.

It seems the honest law-abiding person may be on the wrong side of the bars? The criminals have no worries, there needs are met. Last month I listened to the accused killer of my Brother and Sister-in-law complain that he was forced to wait four hours to see a doctor. The last time my husband needed to see a doctor it took two weeks to get an appointment! I also watch as

I can assure you, that we and thousands of other victims are the product of others before us *doing nothing.* Hopefully, you are unwilling to continue that standard and will move to action to better protect the honest, hard-working American.

It is appalling that a vicious murderer has rights and the law-abiding American citizen, who becomes a victim, has no rights. Unfortunately, the justice system has been altered, until it is now broken. Victims ask that you take a strong honest look at the inequities of the so-called "justice" system.

On behalf of FORCE 100, representing crime victims from every state in our nation, thank you for allowing me to be heard.

God Bless your work and God Bless our great Nation.

Mr. COBLE. Thank you, Ms. Campbell.
Ms. Leary?

**TESTIMONY OF MARY LOU LEARY, EXECUTIVE DIRECTOR,
NATIONAL CENTER FOR VICTIMS OF CRIME**

Ms. LEARY. Good morning, Chairman Coble, Ranking Member Scott, and Members of the Subcommittee. I am Mary Lou Leary, Executive Director of the National Center for Victims of Crime. We're a national, private nonprofit, and we recently celebrated our 20th year of working to secure the rights and protect the interests of victims of crime.

So I appreciate the chance to speak before you this morning on a topic of great importance to victims of crime, and that is, collecting the restitution that is owed to victims.

You know, this year is the 10th anniversary of the Federal Mandatory Victims Restitution Act of 1996. So it seems like a particularly appropriate time to reflect on our performance in providing restitution to crime victims. The National Center has spent many years examining this issue of restitution and working with advocates and policymakers to promote best practices in this arena.

Unfortunately, I have to say that when you look closely at the situation, our performance is pretty poor, especially at the Federal level. Most recent public figures show uncollected criminal debt at the Federal level to be over \$25 billion. 70 percent of that is restitution that is owed to individuals and others who are harmed by defendants. Last year the GAO released a study that examined five high-dollar white-collar financial fraud cases. GAO found that only

7 percent of the restitution ordered in those cases was ever collected, and that was up to 8 years after sentencing. We simply have to do a better job.

And I would note also, that of the uncollected criminal debt, about two-thirds of that actually is white-collar fraud and corporate crime, so we're not talking about the kind of run-of-the-mill, ne'er-do-well with no assets here.

The payment of restitution really matters. It matters to victims of crime. Some of the most heartbreaking cases that involve restitution, and especially at the Federal level, involve elderly victims who have lost their life savings to fraud. This crime robs them not only of their money but of their sense of security, their peace of mind, and for many of them, even their ability to remain independent and live in their own homes. The depression and the stress that comes in the aftermath of crime and of losing everything can lead to a steep decline in physical health as well.

For these victims, restitution may preserve their future. Even for victims who have not lost their life savings, restitution for the harm they sustained is important as they rebuild their lives.

Restitution is important for offenders as well. Courts have recognized that restitution is significant because it forces the defendant to confront, in concrete terms, confront the harm he has caused. In fact, there is a study that shows the connection between restitution and recidivism, and it showed that individuals who paid a higher percentage of their ordered restitution were actually less likely to recidivate. It's pretty amazing.

Significantly, paying criminal fines did not have the same impact. Enforcing these orders of restitution is important to the criminal justice system as well, so the defendants will not walk away feeling like, "I'm above the law. If I don't pay, nothing will happen." And it's a message to victims and to the public that when the court issues an order, the court will enforce an order.

So what can we do to do better? First of all, in appropriate cases, courts must have the ability to freeze assets prior to conviction, especially with financial fraud. It's amazing how much money these defendants have, and especially in fraud and corporate crimes at the time of indictment, and then when it comes around, at time of conviction, when it comes around time for sentencing, for restitution, those assets have been secreted, dissipated, transferred to family members and so on.

Second, we have to provide more resources to fund collection efforts. And, finally, we have to create a system to provide immediate restitution to the neediest victims of all. Some States actually have such a program, like Vermont. A needy victim can get immediate restitution up to \$10,000, and then the money is paid back to that fund by the offender. That's a system that works.

Thank you for your time, and the National Center would be very happy to work with this Committee to address this issue of restitution, and to answer any questions, of course, that you have.

[The prepared statement of Ms. Leary follows:]

PREPARED STATEMENT OF MARY LOU LEARY

Good morning, Chairman Coble, ranking member Scott, and members of the Subcommittee. My name is Mary Lou Leary, and I am executive director of the National Center for Victims of Crime. The National Center is a nonprofit, resource and advo-

cacy organization that recently celebrated our 20th year of championing the rights and interests of victims of crime. I appreciate the opportunity to appear before you this morning to address a topic of great importance: collecting the restitution owed to victims of crime.

This year marks the 10th anniversary of the federal Mandatory Victims Restitution Act of 1996.¹ In passing that Act, Congress intended to “ensure that the loss to crime victims is recognized, and that they receive the restitution that they are due” as well as “to ensure that the offender realizes the damage caused by the offense and pays the debt owed to the victim as well as to society.”² This 10th anniversary is an appropriate time to reflect on our performance in providing restitution to crime victims. The National Center has spent many years examining the issue of restitution, working with advocates and policymakers to promote best practices in implementing this key victims’ right.³

Unfortunately, an honest examination shows we’re doing a poor job in implementing this right, especially at the federal level. The most recent public figures show uncollected criminal debt at the federal level to be over \$25 billion—seventy percent of which is restitution owed to individuals and others harmed by defendants.⁴ A study released last year by the GAO examined five high-dollar white collar financial fraud cases and found that only about seven percent of the restitution ordered in those cases was collected—up to eight years after the offender’s sentencing.⁵ We simply must do better.

WHY ENFORCEMENT OF RESTITUTION ORDERS IS IMPORTANT

The payment of restitution is of great importance to victims of crime. Some of the most heartbreaking restitution cases, particularly prevalent at the federal level, involve elderly victims who have lost their life savings to fraud. The crime robs them not only of their money, but their sense of security and even their ability to remain independent and live in their own home. The ensuing depression and stress lead to a steep decline in their physical health. For these victims, restitution may preserve their future.

Even for victims who have not lost their life savings, restitution for the harm they sustained is important as they rebuild their lives. Repayment of their financial losses, including property losses, can be crucial in helping to repair the damages from the offense. It is also important as a tangible demonstration that the state, and the offender, recognize that the harm was suffered by the victim and that amends will be made.

Restitution is important for offenders as well. Courts have recognized that restitution is significant and rehabilitative because it “forces the defendant to confront, in concrete terms, the harm his or her actions have caused.”⁶ In fact, a study that examined the connection between restitution and recidivism found that individuals who paid a higher percentage of their ordered restitution were less likely to commit a new crime.⁷ Significantly, the payment of criminal fines did not have this effect, indicating that it is the act of reparation to the victim that is important.⁸

Enforcing orders of restitution is also important to our criminal justice system. When a criminal court has issued an order, and that order remains unenforced, respect for our justice system suffers. Victims lose faith, criminal justice system employees become cynical, and offenders learn that they will not be held accountable when they conduct themselves as if they are “above the law.”

¹Pub. L. 104–132, title II, subtitle A (§201 et seq.), 110 Stat. 1227 (1996).

²S. Rpt. No. 104–179, at 24 (1995).

³See, for example, National Center for Victims of Crime, “Restitution: Making it Work,” OVC Legal Series Bulletin #5 (November 2002); National Center for Victims of Crime “Ordering Restitution to the Crime Victim,” OVC Legal Series Bulletin # 6 (November 2002); National Victim Center, “1996 Victims’ Rights Sourcebook: A Compilation and Comparison of Victims’ Rights Laws,” (Arlington, VA: National Victim Center, 1997).

⁴U.S. General Accounting Office, “Criminal Debt: Actions Still Needed to Address Deficiencies in Justice’s Collection Processes,” GAO–04–338 (Washington, DC: March 2004), 2. This figure excludes restitution owed to federal agencies.

⁵U.S. General Accounting Office, “Criminal Debt: Court-Ordered Restitution Amounts Far Exceed Likely Collections for the Crime Victims in Selected Financial Fraud Cases,” GAO–05–08 (Washington, DC: January 2005), 3.

⁶People v. Moser, 50 Cal. App. 4th 130, 135 (1996).

⁷Cynthia Kempinen, “Payment of Restitution and Recidivism,” *Research Bulletin 2*, No. 2 (State College, PA: Pennsylvania Commission on Sentencing, October 2002).

⁸Id.

WHAT CAN WE DO?

First, in appropriate cases, courts must have the ability to freeze assets prior to conviction. This is particularly necessary in cases involving financial fraud. The recent GAO report I spoke of earlier noted that many fraud defendants have significant financial resources at the start of the criminal case, but by the time of sentencing have dissipated, transferred, or hidden much of their wealth.⁹ We must give prosecutors the tools to preserve assets in certain cases.

Some states already allow this. In Pennsylvania, prosecutors can seek a temporary restraining order in cases in which there is a substantial probability that the state will prevail, that restitution of more than \$10,000 will be ordered, and that failure to enter the order will result in the assets being unavailable for payment of the anticipated restitution.¹⁰ In California, prosecutors may seek an order to prevent offenders from dissipating or secreting specified assets or property at the time of the filing of a complaint or indictment when a case involves a pattern of fraud and the taking of more than \$100,000.¹¹ Federal prosecutors should have a similar ability to preserve assets for restitution.

Second, we must provide more resources to collection efforts. Financial Litigation Units, or FLUs, established to pursue collection of federal debt in U.S. Attorneys' offices, tell us they are understaffed.¹² No government program can be fully effective without adequate resources. We must make FLUs a funding priority. Many FLUs also turn to a program that provides additional, highly experienced asset investigators for specific cases, called the Financial Litigation Investigator Program. This program should be expanded, to make this tool more widely available.

Finally, we must create a system to provide immediate restitution to the neediest victims. Some victims, particularly vulnerable or frail seniors, cannot wait the years it may take to collect restitution from an offender. We must create a program that can provide restitution to them immediately, while the program is reimbursed by the defendant over time.

Such a program has been created in Vermont.¹³ Victims of crime who are awarded restitution can immediately take their order to the state's Restitution Fund, where up to \$10,000 of the order is paid immediately. The Fund then collects from the offender. The Fund has been operational since July of 2004, and in its first year has paid 1,400 claims. Importantly, with a trained staff including collection analysts and an attorney, no restitution orders have been determined to be uncollectible.

These three steps would significantly improve the provision of restitution. The result would be a more complete recovery for crime victims, a restorative sentence for offenders, and a system that comes closer to the ideal of "doing justice."

Thank you for your time. I'd be happy to answer any questions.

Mr. COBLE. Thank you, Ms. Leary.

Dr. Coffman?

TESTIMONY OF KATHRYN COFFMAN, M.D., MEDICAL DIRECTOR OF CHILDHHELP CHILDREN'S CENTER, ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER

Dr. COFFMAN. Thank you, Mr. Chairman, and Members of the Committee.

I've been a pediatrician for nearly 25 years, but for the past 15 years I've been working in the field of child maltreatment, and my primary role has been medical evaluation of children who are referred for abuse or neglect. I have done this in different regions of the country and in different practice settings, but at the current time I'm very fortunate to be working in a multidisciplinary center called the Childhelp Children's Center of Arizona.

This is a child advocacy center that co-houses professionals from different agencies who work in the field of child maltreatment, in-

⁹ Supra, note 2, page 3.

¹⁰ 42 PA Cons. Stat. § 9728 (2005).

¹¹ Cal. Penal Code § 186.11 (2006).

¹² See also U.S. General Accounting Office, "Criminal Debt: Court-Ordered Restitution Amounts," 18.

¹³ 2003 Vt. Acts & Resolves No. 57.

cluding law enforcement, social services, mental health and medical personnel.

The multidisciplinary team concept allows professionals from different disciplines, with different agendas and different missions, and often different philosophic approaches, to find common ground to best serve the children and families in our community.

What I would like to do in the time allotted to me is address some of the issues in my statement that are covered more fully in the written statement.

The first of these, and the foundation of really what I'd like to talk about is the necessity of intensive early intervention in the lives of children who are living in situations where they are experiencing abuse or neglect. There is a lot of information available on the effects of environment, on the developing infant. And I would refer you to work by Dr. Bruce Perry, a child psychiatrist in Houston. I did list contact information in the website in my citation. But he's done a lot of work on neurobiology and neurodevelopment in children who are exposed to trauma.

One of the things that's very clear is that infancy and early childhood is the time of life when we are most susceptible to environmental or traumatic influences. And children who are raised in neglectful or traumatic environments, experience profound, negative impact on their development, and this is something that's going to eventually touch us all. We need to acknowledge, I think, the importance of early childhood and early childhood development if we're going to hope to make a meaningful impact in child abuse and in the outcome of these children.

The second issue follows from the first, and that involves the way our system tends to react to children who are victims of abuse and neglect, and that is, we have a reactive system rather than a proactive system. We wait until something's happened and then we try and do something about it. While this is understandable to some extent, because it's hard to do something when something has not happened yet, there are certain risk factors for abuse that are well recognized, for example, substance abuse; for example, domestic violence. We know children who live in these homes are very, very high risk for abuse and neglect, and yet, we leave children in these homes usually until such time as a serious injury occurs, and then the response is often too little and too late.

I would encourage the Committee to support whatever action needs to be done to put prevention services in place for these children before such time as they have to experience severe abuse or neglect.

Another issue is our legal system. Our child abuse cases don't usually make it to the criminal justice system unless a child is killed or severely injured, but they do make it to the civil justice system or the family courts. And what we see in family court is an emphasis on family reunification. Above all, that seems to be the overriding goal of the civil justice system.

The problem with this is that we seem to lose sight of the fact that child abuse is a crime, and children who have been abused are victims of a crime, and people who abuse their children are criminals. We don't treat these children as victims, and we often tend to return them to the very people who victimize them.

A parallel thing is family preservation in the social service system. Family preservation seems to be the overriding goal of our social service agencies across the country, and although it's a nice idea to keep children with their families, and all children should be raised in healthy, nurturing, supportive families, the problem is some of these families are not families that should be maintained. When family preservation becomes the primary goal, child safety and child well-being becomes a secondary goal and we lose sight again of the importance of that.

Bottom line, I think, is that we need to move from a family-centered to a child-centered welfare system. We need to make children's rights and children's needs our primary focus when we make determinations on what's going to happen with them.

I would like to close on a message of hope. Again, I have the great good fortune to work in a multidisciplinary center, and we are able to provide in that center comprehensive services to children and families who are in the situations. In so doing, I think we're able to greatly minimize the likelihood that this child is going to be revictimized, greatly minimize the chance that this child's siblings are going to be victimized, and most importantly, greatly minimize the chance that this child will grow up to be an abusive parent themselves.

These multidisciplinary centers are not widely available throughout the country. They should be. All children should have access to them. And given that funding is one of the primary reasons why they're not available, I would echo the comments of my previous two speakers, we need to free up money from the Crime Victims Fund in order to put in place these prevention services on behalf of our children and behalf of all of us.

Thank you.

[The prepared statement of Dr. Coffman follows:]

PREPARED STATEMENT OF KATHRYN COFFMAN

Statement of

Kathryn Coffman, MD

St. Joseph's Hospital and Medical Center

Phoenix, Arizona

Before the

House of Representatives

Committee on the Judiciary

Crime, Terrorism, and Homeland Security Subcommittee

Oversight Hearing on Victims and the Criminal Justice System:

How to Protect, Compensate, and Vindicate the Interest of Victims

February 16, 2006

Rayburn House Office Building

Liana Sandoval was already dead on September 27, 2001, when a state Child Protective Services caseworker closed her file on the little girl, writing off allegations as 'unsubstantiated' that her mother's boyfriend was abusing her.

The night before, Juan Velasquez confessed to police that he tied the 20 month old girl with heavy wire to an 18 pound chunk of concrete and sank her body in a filthy canal.

Liana had been beaten to death, her head swollen from the blows of a grown man's fist.

A month earlier, her father's family had called CPS to report Liana and her sister Isabella, then 3, were missing clumps of hair and covered in bruises, marks they thought had been caused by Velasquez. CPS did not take the girls from their mother

From the Arizona Republic, The sad case of little Liana Sandoval, Karina Bland, January 12, 2003

Mr. Chairman and members of the Sub-Committee:

Thank you for the opportunity to speak with you today about the urgent needs of children who are victims of criminal abuse and neglect. Of all the underserved needs of crime victims that we might catalogue in our criminal justice system, the needs of children who are victims of these horrific crimes are perhaps the most compelling, if for no other reason than they cannot speak for themselves. We must be their voice.

My background is as a pediatrician who has been working in the field of child maltreatment for the past 15 years. I earned my undergraduate degree at Northwestern University and my medical degree from the University of Iowa in 1981. I did a residency in Pediatrics at the University of Arizona from 1981 to 1984 and a fellowship in adolescent medicine, also at the University of Arizona, from 1984 to 1985. I was in private pediatric practice from 1985 until 1991.

From January, 1991 through March, 1996, I worked at Children's Hospital of New Orleans. During that time I worked in the child abuse clinic (as the sole provider for most of that time), in the Emergency Department, and as a hospital staff physician.

I moved in 1996 to Stratford NJ, where I worked full time in the child abuse clinic at the University of Medicine and Dentistry. During that time I participated in multidisciplinary team meetings in different counties in southern New Jersey.

In August, 1998, I began my current position as the Medical Director of the Child Abuse Assessment Center of St. Joseph's. When I began, I was the sole medical provider for the center. Currently, we have 4 pediatricians and 2 nurse practitioners, as well as a full time forensic interviewer.

Our clinic is based at Childhelp Children's Center of Arizona. Childhelp is a multidisciplinary center housing the Crimes Against Children Unit of the Phoenix Police Department, a CPS unit, mental health clinicians, forensic interviewers, and the medical providers. My duties include evaluating children (both in the clinic and as inpatients at area hospitals) for possible abuse/neglect, doing case reviews of child fatalities, evaluating children removed from homes where drugs are being used/manufactured, evaluating child pornography/computer crimes cases, and educational outreach within the community and state. I also testify in court, both civil and criminal, on child abuse cases.

As part of a multidisciplinary center, I have the opportunity to work closely with police officers, CPS workers, attorneys, and mental health clinicians, and have a good understanding of their roles, missions, and limitations. The multidisciplinary team concept allows professionals from different disciplines, with different mandates and often different philosophic approaches, to find common ground in order to best serve the children and families in our community. It is a model that should be in place in every community, however lack of awareness and lack of funding have prevented the widespread development of centers such as this. One solution, among others, to the funding issue would be for Congress to raise the cap on the Crimes Victims fund, money that comes from criminals rather than taxpayers, to allow the full use of this money, as originally intended, for the benefit of crime victims.

My perspective on the problem of child maltreatment is shaped by my years of experience working in this field, and the opportunity to work in different regions of the county and different practice settings. Over the past several years, there have been significant increases in the understanding of, and knowledge about, child abuse issues within the social service, law enforcement, and medical communities. Despite this, we continue to see children routinely and repeatedly put in harm's way by the very systems that are designed to protect them. I would like to take this opportunity to address some of these issues and some of the challenges we face. These include the scope and nature of the problem of child abuse, why it is so urgent that we respond to these cases on both an individual and a system wide basis, what some of the problems with our response system have been, and some approaches to better address the needs of these most vulnerable of our citizens.

The Scope and Nature of the Problem

Each year in the U.S., nearly 3 million reports of child abuse and neglect, involving 5.5 million children, are made to child protective service authorities (USDHHS). Of these, two thirds are investigated, and 30% of those investigated are 'substantiated'. Whether or not a case is substantiated depends upon many factors, including the quality of the investigation and the type of injury. 'Unsubstantiated' does not mean that abuse did not occur, simply that it was not or could not be proven, or that the identity of the perpetrator could not be ascertained.

Conservative estimates are that 1500 children every year are killed by their parents or caretakers. According to The U.S. Advisory Board on Child Abuse and Neglect, up to 85% of child homicides are 'misidentified' as deaths due to accidental injuries, natural causes, or other; thus it is likely that the incidence of child abuse fatalities is much higher. These numbers, as alarming as they are, do not begin to tell the whole story. Millions of children not represented in the above statistics experience maltreatment that is unrecognized or unreported, or are adversely impacted by violence in their home or their communities. Millions more are affected by exposure, in utero and after birth, to drugs. The cost, in social and human terms, of leaving children in these environments cannot be overstated.

Much has been learned from scientific and clinical research about infant and child development, and the profound effects of neglectful or traumatic experiences in early life. Children are born with genetic potential (nature) that is shaped by experience (nurture). There is a widely held assumption that infants and children are 'resilient', that they can recover from, are unaware of, or 'won't remember' traumatic events. Nothing could be further from the truth. Perry and others (see citation) have described the stages of neurologic development, and the role of experience in shaping our emotional, behavioral, cognitive, social, and physical functioning. We have learned from animal studies and clinical experience that when infants are deprived of sensory input, such as auditory or visual stimulation, the neural connections that enable the brain to process this input fail to develop. If the problem is not corrected within a critical period of early brain development, recovery of function is unlikely even if the stimulation is restored.

Human beings are social animals; indeed our survival as a species has depended on the ability to form relationships and exist as part of a community. Some of the most complex neural systems in the human brain are dedicated to social affiliation; these too are stimulus dependent. Infants and children need nurturing, responsive caretakers and stable, predictable environments for optimal brain development. When, instead, they live in chaotic or threatening environments, or are cared for by unresponsive or neglectful adults, they may suffer fundamental and permanent neurologic damage with lifelong consequences. A compelling argument for early and intensive intervention on behalf of these children is the demonstration that *improvement in functioning* in children who are

removed from these environments is *inversely proportional* to the length of time they have endured them.

How does our system fail children?

The U.S. Advisory Board on Child Abuse and Neglect stated in a 1990 report that the problem of child maltreatment in the United States had escalated to the level of a national emergency. In the 15 years since that report was published, little progress has been made in prevention of abuse and treatment of victims. Perhaps at the heart of the problem is the nature of our societal response. Systems put in place to protect children are reactive, rather than proactive. In far too many cases, children remain in abusive homes without any intervention whatsoever. In cases where intervention is offered, it takes place *after* the abuse or neglect occurs, and is often fragmented and incomplete. Despite awareness of risk factors for abuse, families at risk are often not identified, and when they are, effective treatment and prevention programs are scarce. We mandate automobile restraints for child passengers and pool fences for homes with young children. A child who lives in an abusive home is far more likely to sustain injury than an unrestrained child riding in a car or a child living in a home with an accessible pool; do they not deserve the same level of protection?

Although no one would argue that child abuse is a crime, the children who suffer it are often not treated as crime victims. We would not ask a woman victimized by rape to continue to have contact with her rapist, yet this is what happens on a daily basis to children abused by their parents or guardians. In the majority of these cases, the children are left in the homes while attempts are made to ‘preserve’ the family. Instead of making child safety the primary goal, Child Protective Service agencies too often seek to prevent dependency by stabilizing families and preserving the family unit. While a laudable goal, this policy casts a very wide net in which children of families that cannot be stabilized, and should not be preserved, may be trapped. In the words of Richard Gelles:

“The abuse and murder of children are major social problems, public health threats to children, and crimes that require strong and effective response. The child welfare system, which was instituted to protect children, continues to fail them. The problem is not simply that resources are lacking, but that the central mission of child welfare agencies, preserving families, does not work and places many children at significant risk of continued injury and death.” Richard Gelles, *The Book of David. How Preserving Families Can Cost Children’s Lives* 1996

Child abuse cases are handled in both civil and criminal courts. The goals and mandates of these courts are often at odds with one another, with civil, or family, courts addressing family reunification, and criminal courts addressing prosecution of offenders. Too often, the interests of children who cannot speak for themselves are underrepresented in both venues, and they lack the protections that *should* be offered to all crime victims. The goals of justice, safety, and fair treatment for these children are thus subject to corruption by both civil and criminal court proceedings.

Under the Child Abuse Prevention and Treatment Act (CAPTA), originally enacted in 1974, the state is charged with making 'reasonable efforts' at family reunification. The Adoption and Safe Families Act of 1997 narrowed the 'reasonable effort' requirement with the caveat that "the child's health and safety shall be the paramount concern". While this may seem self evident, it has not become universal practice. Increasingly, the policies of family reunification are making it more difficult for trained law enforcement officers to investigate allegations of criminal abuse and neglect. This undermines child safety and may allow perpetrators to escape justice. Congress must use its influence to ensure that law enforcement personnel are able to conduct these investigations without interference by family reunification laws, policies, or practices. The following is a graphic example of how 'reasonable effort' is enacted in the real world:

On May 14, 1999, at around 7:00 p.m., M called police and told them that her daughter, Christine, was not breathing. When the police arrived at the home, they found Christine dead, covered with bruises and lacerations. The family told the police that on the previous afternoon, Christine had come home from a walk at a construction site with bruises and other injuries. They said that Christine was babbling and could not explain what had happened to her. M and one of her daughters then bathed Christine and prayed for her. Christine's father returned from work around 7 pm, and also prayed for her.

Early the next morning, the father got up for work and went to check on Christine. He found Christine cold and clammy, and she was not breathing. He attempted cardiopulmonary resuscitation on Christine but told police that he knew she was dead at that point. The family continued resuscitation efforts and also prayed for several hours, hoping that Christine would come back. They finally called the police that evening after a relative convinced them to do so. Police classified Christine's death as suspicious and the next day Child Protective Services took the other three children into protective custody, citing the failure to seek medical attention and the delay in reporting Christine's death. On June 29th, Christine's mother gave birth to a son, who was also taken into CPS custody immediately.

Because of the severity of Christine's injuries, her parents' failure to seek any timely assistance, evidence of possible sexual abuse of two of the daughters, and the fact that this was the family's seventh investigation by CPS, the original

CPS plan was severance and adoption. However, when the case was transferred to another caseworker a few months

later, the plan changed to family reunification. CPS offered the parents services such as counseling, psychological evaluations, parent aide services, including parenting skills and training, and domestic violence counseling.

Christine's parents were eventually arrested and incarcerated in connection with her death. CPS continued to offer them reunification services, including finding a psychologist to counsel them in jail, and assigning a parent aid. They initially agreed to participate in the services; however, they later decided not to participate upon the advice of their criminal defense attorneys. CPS informed them that their participation in these services was extremely important to the family reunification plan, and that they would not be reunited with their children if they did not participate. But the parents refused, citing their attorneys' advice.

Parents have a fundamental right to raise their children as they see fit, but that right is not without limitation. *Graville v. Dodge*, 195 Ariz. 119, 124, ¶ 20, 985 P.2d 604, 609 (App.1999). The State has a right to protect children from abusive parents. See *id.* And to protect children from abusive parents, the State may require therapy and counseling for the parents. See, e.g., *In re Welfare of J.W. and A.W.*, 415 N.W.2d 879, 883 (Minn.1987) (holding that the State may compel abusive or neglectful parents to undergo treatment)

This case highlights both the absurd lengths to which reunification efforts may be taken, as well as fundamental policy conflicts between the systems designed to help and protect children. Clearly the State has a right to protect children from abusive parents; but more fundamentally, *children themselves* have the right to be protected.

What can be done?

Investigation and management of child abuse cases is best done by professionals experienced in this field. Interdisciplinary collaboration is crucial to success, both in the social service and legal arenas. Research should be ongoing into identifying risk factors for abuse and providing effective and accessible treatment for parents and families. Recognition of substance abuse and domestic violence as very significant predictors of child maltreatment should inform policy decisions regarding child welfare.

At the most fundamental level, our child protection system needs to transition from a family centered to a child centered approach. Clearly children are optimally raised in a nurturing and healthy family. However, when it is apparent that the family is not providing that nurture, or that the child's safety or well being is threatened, placement of the child in a more appropriate environment should be done as rapidly as practical. Allowing a child to remain in a neglectful or dangerous home while repeated, and often futile, attempts are made to 'rehabilitate' parents is ineffective and inhumane. Permanency planning should be an integral part of the approach to every case, allowing children the opportunity to develop a lasting attachment to a caring and capable adult.

Again, in the words of Richard Gelles:

In a child-centered child welfare system, children at risk would not remain in abusive homes for long periods of time, experiencing repeated physical and sexual abuse and having their emotional and physical development compromised. Nor would they languish in foster care while the doctrine of reasonable efforts was applied long beyond the point where it was clear that abusive parents were not going to change. Abused children would not go in and out of the revolving door of foster care and their biological homes.

The main goal of a child-centered system would be to act expeditiously so that children could develop a nurturing relationship with an adult during the critical period of their development. Under a child-centered system, the goal would be to terminate parental rights, when appropriate, quickly enough so that children were not permanently harmed, physically or psychologically, and were made available for adoption early enough in their lives to enhance the likelihood of being adopted. ...

It is not a lack of necessary knowledge or resources that constrains our ability to prevent abuse before it occurs and intervene effectively after a child has been harmed. It is not a lack of laws. It is not entirely a lack of will to provide services that enhance children's ability to reach their

developmental potentials. It is a persistent unwillingness to put children first. Gelles, The Book of David

As a society, we can no longer afford to ignore the plight of these children. We can no longer afford to deny them the same protections under the law that we should give to all crime victims, and we can no longer afford to assume that, except in the most egregious of circumstances, abused and neglected children are better left in the care of those who have abused and neglected them. Children who are victims of child abuse and neglect are victims of crime. Those who perpetrate those offenses are criminals, and our society needs to treat them as such. Children have a fundamental right to be raised in a safe, nurturing, and stable home. Our society has a fundamental need and obligation to protect that birthright.

Addendum to Statement of Kathryn Coffman, MD

Citations:

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Mr. COBLE. Thank you, Dr. Coffman.
Ms. Lawrence?

**TESTIMONY OF PHYLLIS TURNER LAWRENCE, INDEPENDENT
CONSULTANT, RESTORATIVE JUSTICE AND VICTIMS SER-
VICES**

Ms. LAWRENCE. First I would like to thank you very much, Chairman Coble and Ranking Member Scott, and all the other Members of the Committee and the staffers and the audience, for taking the time out of your busy schedule to think about these very critical issues.

Mr. COBLE. Ms. Lawrence, if you would suspend just a moment. I failed to mention we have been joined by the distinguished gentleman from Arizona, Mr. Flake, and the distinguished gentleman from Texas, Mr. Gohmert. Good to have you all with us.

And I will not penalize you for that extra time, Ms. Lawrence.

Ms. LAWRENCE. Thank you. As my written testimony describes, I'm the survivor of a violent rape in 1989 by a man who broke into my home. I was a practicing attorney at the time. In fact, my home was my office, and he failed to notice my attorney-at-law card on the door, which was probably one of his major mistakes.

He would up being convicted, and he's doing time in California. Now, I'll be talking about that in a minute. But after I quit practicing law, I came to D.C., and I received extensive training in victim assistance, including my 3 years at the National Organization for Victim Assistance in the mid '90's. That experience turned me into a victim advocate. I've also had extensive training and experience in restorative justice, and I'll talk a little bit more about that paradigm.

But there are three relevant points in terms of how victims are treated in the criminal justice system that I would like to mention about my own case. First, at the trial, the prosecutor told me to be more emotional on the stand. It was obvious that he wanted the jury to see someone angry and upset, even though, fortunately, I had had great support and was already beginning to heal.

Secondly, admittedly, it was very challenging to see this man that I knew had raped me, go ahead and plead not guilty and deny the violence he perpetrated and insist on a trial. However, I considered it my victory over the rapist and his awful acts, that I was not swayed from my commitment to the United States Constitution and its proper protections against abuses of Government power. The terrible sense of violation I experienced could easily have led me to substitute emotion for reason and principle, forgetting our basic premise that one is innocent until proven guilty by a court of law, and potentially, any one of us could be wrongfully accused, as Mr. Scott was referring to, we know that that happens, so we know we need to maintain every single protection in the Constitution. However, as a victim, I'm not at risk for such threats of abuse of governmental power, such to the extent that I would need constitutional protection.

Thirdly, at the sentencing, when I gave my victim impact statement, it was extremely frustrating that there was no way to make sure that this man, who had so violated me, would even listen to

me, pay attention to me as I described the pain he had inflicted. But I was very fortunate in my recovery going very well.

Over my now 11 years of involvement with victims, I have met many who have never received support that helps them move toward recovery, and therefore, their grief, their anger and their fear continue to dominate their lives. This is tremendously sad.

Also in my 3 years at NOVA on our victims hotline, I spoke with probably at least 3,000 victims, and I can tell you that, unfortunately, more than half of them were complaining about the very people they expected to help them, the prosecutors, the police, people in the correctional system and sometimes the judges.

So it is critical that we continue to educate the people in the allied professions, the people who come into contact with victims, that we continue to educate and raise up qualified victim services providers, and that we make sure that the laws that already are there to protect victims' rights are enforced by those who are responsible for implementing them. So I too join everyone on the panel in asking that Congress leave alone the funding mechanism for VOCA, and in fact, increase funding for victims and victim services.

I would like to turn now to talking about something that has become my major passion in life, and that is the paradigm of restorative justice. Understandably, many times people feel, let's just lock him up, take him away, get rid of him, I don't want to see him again. But we do believe in fundamental fairness in this country and we do realize that people are going to get out, and many people aren't going to be locked up in the first place. So we need to address what are kinds of processes that are really going to take into account the needs of the victims and the community, and at the same time actually hold offenders accountable in a real way.

For many, accountability has come to mean punishment. We lock them up. They're being accountable. They're paying their debt to society. However, to the victim, they may appreciate that, as I do, of feeling safe, but I don't feel that the man doing what will be at least 26 years in prison without ever, ever having to face what he did to me, to understand, by having to go through sex offender treatment services, that he will come out in 26 years minimally—if he does good time—of his 48-year sentence, without ever getting it, without ever understanding, without ever taking any real responsibility for his actions.

He left behind a wife and four children. One of the reasons he was able to be captured was because he had abused his wife. She and her children were left behind, and they are not protected under victims of compensation acts, and I believe that the family members of offenders, and offenders who are victimized, should also be protected.

So I'd like you to really consider the meaning out of the dictionary of the word "accountability." It's the trait of being answerable to someone for something, or being responsible for one's conduct. From that perspective, this is what is owed by the offender to the victim and the community, rather than a debt to the amorphous State that none of us can actually really experience.

Restorative justice asks three questions: Who has been hurt? What are their needs? And whose obligations are they? So we real-

ly look at the larger picture and really see what the victim's needs are, and how can the system address them, the public address them, and what is the offender's responsibility, and how can we help that offender become competent enough that they can make repair in realistic and affirmative ways.

I would also like to add to Ms. Leary's comments about restitution, that we found that when people participate in a restorative process, which is either directly meeting with the—a meeting facilitated by trained facilitators between a voluntary victim and a voluntary offender, or shuttle diplomacy, that somebody's facilitating conversations with them independently and bringing the information back to the table, that when the agreements are made for reparation, the rate of compliance is very, very high. I ran a program with juveniles and we had almost 100 percent rate of compliance.

Thank you very much. I hope you will consider looking at the testimony, and consider the concept of restorative justice, and consider piloting projects on the Federal level so we can really have good ways of testing implementation.

Thank you.

[The prepared statement of Ms. Lawrence follows:]

PREPARED STATEMENT OF PHYLLIS TURNER LAWRENCE

Mr. Chairman and Committee Members:

First I would like to offer my sincerest appreciation to Chairperson Coble and members of this subcommittee for taking the time to examine the needs of victims of crime in order to consider appropriate "next steps" by Congress. Thank you very much.

In 1989, I was living alone and working out of my home in California as an attorney in private practice, some of which consisted of criminal defense. In the 12 years that I had been practicing law in California, and during my three years of law school at the University of California, there had been little to no emphasis on thinking about the victims of crime. However, I was politically active in women's rights and had represented many women who were physically abused, as well as the local shelter in a case over client confidentiality.

My own world changed when a stranger broke into my home and raped me. Now I— who had felt "it will never happen to me," became a victim myself. Besides the psychological and physical trauma of the rape itself, there were the ongoing emotional challenges of having to recall, over and over again, every minute detail of the horrific experience in order to make sure that the rapist, who fortunately was caught, would be convicted. These were pre-DNA days, and other than blood typing matches from both his and my blood from fighting each other, there was little forensic evidence, in fact, little evidence other than my word. Fortunately, there was a conviction, and at sentencing, I was able to give my victim impact statement in court, but from behind the bench, and without being able to directly confront the man who had caused me the worst harm of my life.

I was also very fortunate to have a wonderfully empathetic female police officer and then a very supportive female victim/witness coordinator in the district attorney's office. However, the male prosecutor chose to direct me to stay in his office when others were testifying, claiming he did not want the jury to be distracted by watching my every reaction. This was odd, as usually that's exactly what prosecutors want, but later—when I realized that he also told me to show more emotional when testifying—I understood that he wanted an angry, upset victim, not the calm person that I had become through my own healing process. I also was later told by someone very familiar with this prosecutor that she believed that he did not want a victim who was an attorney in the courtroom evaluating his every move.

I make these points to underscore my later experience when working for the National Organization for Victim Assistance (NOVA) here in Washington in the mid-90s. I realized that I was so blessed to have had good support from friends, my SGI-USA Buddhist community and a good therapist, that I was able to begin immediately on a healing journey. However, I have seen through my now 11 years of involvement with victims, that many victims who do not have sufficient professional,

financial, emotional, or spiritual support, continue to suffer with their anger, confusion, and fear dominating their lives.

I was trained in crisis response and victim advocacy by the NOVA experts, and besides my regular research and writing, I answered NOVA's national victim hotline. Over my three years, I estimate that I responded to calls from perhaps 3000 victims. To my surprise, and perhaps to yours, more than half those victims were hurt or angry about the treatment, not by the offender, but by the professionals they expected to "represent" them, the police and the prosecutors, and sometimes the judges. We had to explain over and over that one of our goals was to better train all those professionals to be more sensitive to victims and to enforce the rights they already had under state statutes and constitutions.

That work of education and professional training of allied professionals and even more importantly, sufficient financial support to provide more breadth and depth to victim services across the country is critical. Therefore, I offer my strongest encouragement to the members of Congress to not only continue to leave the Victims of Crime Act (VOCA) funding mechanisms intact, but to also increase funding to the Office for Victims of Crime and the federal programs regarding violence against women.

For myself, being an attorney, I rationally understood that an accused person has the right to plead not guilty and to go to trial. As a victim, I knew he was the man who raped me, so it was hard to take that emotionally. The terrible sense of violation I experienced could easily have led me to substitute emotion for reason and principle, becoming the kind of victim who could not abide the critical legal distinction: that one is innocent until proven guilty. One victory over the rapist that I achieved was that his awful acts did not sway my commitment as an American and as an attorney to the United States Constitution and its proper protections against abuses of government power in regards to the arrest and prosecution of individuals accused of a crime.

I wanted the fairest trial possible, so there would be no chance for an effective appeal. And of course, when the jury changed his status from "accused" to "convicted" and he was no longer the "defendant" but the recognized "offender," I was relieved and felt validated.

There is one thing that I still am angry about: he was sentenced to 48 years in prison, but there is absolutely no requirement that he ever have to come to grips with the pain he caused me nor the wife and four children he left behind. I'd rather he have to at least periodically be part of a demanding sex offender treatment program, and be evaluated and considered for release, than waste taxpayers' money keeping him locked up for his minimum of 26 years only to get out even more angry and ready to do violence again.

I have been able to embrace a holistic, balanced approach to thinking about how we need to respond as a society to crime. This paradigm is often referred to as restorative justice. We must strike the balance between feeling strongly about wanting to "take 'em away and lock 'em up" with our fundamental American ideals—beliefs in fairness and justice, and the responsibility of both the government and the people to treat everyone—in this realm, victim and offender alike—with dignity and respect. Key restorative principles also include the importance of accountability and of competency development—the need to help each develop the competency necessary to heal, to repair, and to be productive citizens.

Americans' respect for individual liberty is coupled with our expectation of individual responsibility, or accountability. It is now common for those in the criminal justice system to just assume that punishment equates with accountability. However, when we talk of governmental accountability—a frequent buzzword these days—there seems to be an assumption closer to the American Heritage Dictionary definition: "*a form of trustworthiness; the trait of being answerable to someone for something or being responsible for one's conduct.*"

From a restorative justice perspective, the latter definition—"being answerable to someone . . . for one's conduct"—fits what is owed by the offender to the victim and to the greater public, not to the amorphous "state." We have to determine who has been harmed—such as individuals, family members, neighbors, the community at large? And then they determine in what ways they have been harmed and in what manner could those harms be repaired, literally or symbolically. Then, all the stakeholders, collectively, should determine whose obligation is it to repair the various harms and how that should be done in meaningful, practical, measurable, ways and as efficiently as possible.

Using my own experience as an example: I was harmed, as was his family. There was certainly physical harm, at least to me and to his wife, who had been previously battered (it was through those court records that they could produce a photo of him that I was able to identify). We all no doubt experienced a variety of emotional and

financial harm as well. Who owes the repair? The rapist at least. Not ever being told any of his background other than he was just one year out of the service, I do not know who, if anyone, may have been responsible for contributing to his psychological makeup and attitudes.

[In some instances, especially involving juveniles, the parents' culpability comes to light as well. In some circumstances, there are others spurring on the criminal behavior, such as kids spreading rumors, leading to a fight among students.]

What about my landlords for the poor lighting, lock system, etc., that allowed his entrance? Yes, they owe, and they did pay me some compensation, which was handled in the civil realm, which only measures harm by the dollar. However, in the criminal realm, the assumption is that the "debt owed to society" is only payable to the State, and is measured specifically by time under state control—either in the community or in some form of lock-up, and/or possibly other restrictions on behavior, fines, requirements for attending programs, and only occasionally financial restitution, which is often uncollectible or uncollected.

How can someone "repair" the harm done when they forcibly violate someone's personhood? Obviously, they cannot do something as simple and direct as paying back the value of a stolen car or replacing a broken window. However, I, like many victims, come to feel that the offender owes me, personally, based on my needs.

What are some of the greatest needs of victims? Of course, first is safety, which, unfortunately can never be fully guaranteed.

Often ranking stronger in victim studies than the need for retribution is the need to experience some control over our lives—to have the experience make some sense; to have answers to the questions that plague us. I had to do my own spiritual work to understand what was the "purpose" or "meaning" in my own life.

But regarding the people who do harm, we may realize that in general, some people are just "messed up" or "mean and evil." But still, the questions about the offender remain: "Who ARE you? Why did you do this? Why me? Do you have any idea what you have done to me?" They go on: "How did you do it? Have you done it before? What makes you think it is okay to treat people like this? Are you going to hurt me again? Will you hurt someone else? What will it take to get you to change?"

Victims also rate accountability as very important, but define it as the offender acknowledging, understanding and accepting personal responsibility for the harm and doing something about it, whether in the form of paying something back financially, performing some service to the victim or the community, and particularly making efforts to change the attitudes and the behaviors that created the harm. When victims are able to know that the person who hurt them "gets it," even if they are unable (obviously) to go back and change things, and if they are capable, will pay them and the community back in some way, and will not re-offend—this goes an incredibly long way in helping the person move from "victim" to "survivor" and hopefully, even to "thrivers."

One of the reasons that victims feel so frustrated with the criminal justice and correctional systems is that they do not get such opportunities. We can get so little information of what went on in the crime, what the system is doing, and what the outcomes are of court proceedings, probation, incarceration and parole. And I do not just mean being notified that someone is up for a hearing or is being released, or even where he or she is going to live and work, but more importantly, "Where is his head at? Am I at risk? What does his family think of him—are they scared? Should I be?"

A truly victim-centered (and restorative) approach to justice should afford the opportunity for victims to get their questions answered, to be part of the process in determining what the harm was and to be part of the process in determining how the harm can be repaired, including making agreements about material or symbolic obligations, and in fact to be directly involved in policy-making.

Like the approximately other 96% of incarcerated people in the U.S. the man who raped me will be released. For me, true accountability to me and to the public lies squarely with two entities. The first is Michael Alexander Christopher, who needs to admit (unlike at trial) that he fought me, hurt me, and raped me, and that he understands what triggers that violence and is willing and able to do everything in his power to manage those triggers. And if he is not willing or capable of all of that? Then the California criminal justice system and the Department of Corrections are accountable to me and to the public to explain why they failed to bring him to that level of accountability. While I do not expect their success in every case, a do-nothing but "lock 'em up" approach just does not satisfy this victim and I suspect many others as well.

We have to redefine our values, policies and practices in order to create a balanced, restorative approach to dealing with crime.

We need to realign our allocation of resources to support the needs:

- of victims of all kinds of crimes, whether there is an accused or not,
- of offenders so that they can develop the competencies needed make repair and be productive citizens, and
- for the training of victim-sensitive, restoratively-minded professionals who will also follow the laws already in place for victim protection and participation, and
- of communities to be more involved and to be supported in making the economic and social changes necessary to create healthy children

While I am very sympathetic to the frustrations of victims dealing with perceived inequities in how our adversarial system currently runs, as a fellow victim and a victim advocate, I must encourage Congress, victim rights supporters and the public, to devote every bit of energy to transforming an adversarial, punishment-driven system to one which is truly about changing and healing lives, not just processing cases.

I would be more than happy to answer any questions and to provide the Chair and the Committee with more information about restorative justice.

Thank you again for your time and attention.

Mr. COBLE. Thank you, Ms. Lawrence.

Ladies, we impose the 5-minute rule against ourselves as well, so if you all can keep your sentences or responses as terse as possible. Now, I don't really mean to put you on a short leash, but time is of the essence for you and for us. We appreciate you all being here, and especially Ms. Campbell, who took the red eye from the Coast. I know that was not a pleasant encounter, but we appreciate that, Ms. Campbell.

Ms. CAMPBELL. I'll start with you. My State of North Carolina is the buckle of the NASCAR belt. Your brother was well known there.

Ms. CAMPBELL. Thank you, sir.

Mr. COBLE. Now, he was murdered, 18, 19 years ago?

Ms. CAMPBELL. 18.

Mr. COBLE. 18. Ms. Campbell, let me ask you this: What specific measures do you think can be addressed that will remedy some of the deficiencies in the criminal justice system when it comes to victims?

Ms. CAMPBELL. Boy, there's a lot of them, but I would say—

Mr. COBLE. Give me two or three.

Ms. CAMPBELL. First of all, thank you for saying that about my brother. He was a wonderful man. He just happened to be my brother.

I think balancing the Constitution, where victims have some rights to the Constitution since there's 23 rights given to the criminal. At that time when it was written in 1786 it made sense because people represented themselves. It's much different today. But there's a whole long list of things that can be done that could help. I think one of the things that I am most emphatic about is the fact of the situation that attorneys and the perpetrators can knowingly lie and deceive the court. There just needs to be some sanctions on something like that.

The families are hurt bad enough, but in order to make it appear there were other people involved in the killing, you end up being everything from a prostitute to a drug addict to the mafia, and those things are delivered to the court, and so it continues to hurt the family. They not only take our loved ones, they try to take our

reputation. And there seems to be no sanctions. Nobody does anything about that, and I feel that that's very painful.

Do you want me to go on with my list? I don't want to take more time than I should.

Mr. COBLE. Well, I may come back to you. Let me ask Ms. Leary a question.

Ms. Leary, what do you say when a person says to you, "Okay, Ms. Leary, how does restitution work? When the prisoner is incarcerated he's judgment proof. His family has no funds or no money at all." How do you respond to that as far as paying to the victim?

Ms. LEARY. I think it's important that the offender pays something, and, you know, that's why it's important to investigate assets immediately, to freeze assets immediately. But if you do have an offender who just doesn't have any, and then he is in prison, there are prison work programs, and I believe that the offenders ought—whatever accounts they have from their wages or from money they get from family members or whatever, money should come from that and go to the restitution to the victims. It's critically important. Some States actually take up to 20 percent of an inmate's account for purposes of restitution. It's just as important for the offender as it is for the victim and the victim's family.

Mr. COBLE. Thank you, Ms. Leary.

Dr. Coffman, describe the importance of the multidisciplinary units assigned to handle children's abuse specifically, (a) how are they funded? and; (b) how effective are they?

Dr. COFFMAN. The multidisciplinary concept is one in which professionals from different agencies work collaboratively. The efficacy is largely related to the collaboration that takes place between the different professionals or among the different professionals. In our center, for example, the child protective services workers work hand in hand in the investigation with the police officers, so they don't duplicate efforts and they're not in conflict. And I would say that our efforts, instead of just being additive are actually synergistic. We really provide extremely effective response and very rapid response in investigation, as well as victim treatment.

In terms of funding, our center basically exists in a building with a support system that's provided by a nonprofit organization called Childhelp, and all the agencies are independent. I work for a hospital and I'm based there. The police are funded by the city and so on.

There are other centers that are funded differently. There is an up-front cost, obviously, to establishing these centers, but I think the cost savings down the road is incredible. We save a lot of money because of the efficiency of the investigations.

Mr. COBLE. Let me try to beat the red light by asking Ms. Lawrence a question. Ms. Lawrence, I understand your theory and concept of restorative justice, but explain to us, if you will, in practical terms, how that would work in a court system with a prosecutor on the one hand, a judge on the other, defense counsel on the other, and finally, a probation and/or parole officer?

Ms. LAWRENCE. Interestingly, actually, there's a model that comes out of the Yukon called sentencing circles, but some courts are utilizing them here in the United States, where actually all of those parties that you just named, and the victim, if they are car-

ing to participate, the offender and their support system, the support system of the victim, and in some places, anyone in the community who wants to show up has actually a circle, and there's—the people that are allowed into this kind of circumstance, the offenders, generally have had to jump through hoops to show their good faith that they're taking responsibility for one, admitting. So this is actually a sentencing process. And that they've already been making efforts to clean up their act, you might say.

And they actually have a, maybe hours and hours long, circle, with some facilitator having each person around the circle passing a talking piece usually, be able to tell whatever the topic of that round is, and generally it starts with the telling of the stories of the impact. And then they actually come up with a sentence that is the sentence of the court. That's kind of the most obvious example given, your example. Other times judges will send people to a restorative process, which will be facilitated, clients prepared on both sides, the parties be willing. They have a conference, discuss, tell the stories, answer questions, discuss reparation, and then that reparation agreement is sent back to the court either as the whole or part of the sentence.

Mr. COBLE. Well, I asked for a practical explanation and you gave me a practical. I appreciate that.

My time has expired. The gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman.

Ms. LAWRENCE, are any of those programs mandatory?

Ms. LAWRENCE. There's the rare case where a judge might say you're ordered into meeting with the victim, but they shouldn't be. Like with any mediation, many courts around the country now, and especially in Virginia; we have a very excellent system of mediation, for example, in family matters. The judge does not order a person to mediate. They order them into the mediation program which then can evaluate is this an appropriate case. So the same way for a restorative justice process. Is the offender being appropriate, and is the victim interested and willing?

Some programs are using surrogate victims, so somebody else is coming speaking for the victim, so there's still a possibility for the offender to be accountable. And sometimes it's community representatives. Some of the models, often called Community Accountability Boards or panels, are using community members who are also trained, and they're meeting with, they're inviting the victim and their support, the offender and their support, and they're having the same kind of dialogue that I described. But if the victim doesn't come, you still have the community working out with the offender what the appropriate reparation agreement will be.

Mr. SCOTT. Thank you.

Ms. Leary, you mentioned prison work programs. We're doing what we can to keep them alive. There have actually been serious attacks on the prison work programs, but we're doing what we can so that you can have that important restitution.

You mentioned uncollected debt. Do you have any idea of how much of this is actually collectible?

Ms. LEARY. I don't know how much is actually collectible, and I think that that's one of the biggest problems that you have in the

system, is making a determination about what's truly collectible and what's not.

One of the dangers, of course, is assuming, oh, you can't get blood from a stone; why bother? And the system then turns into a data entry system, so you have a tickler and you have to make entries at every, you know, certain intervals, and the time and energy is spent tickling the system as opposed to making concerted efforts to collect. I think there's a tremendous amount of training that needs to be done in order to determine what's collectible and what's not and to really go after it.

Mr. SCOTT. And a criminal court judge can jail somebody for not paying what they can actually pay. You can't jail somebody for paying what they don't have, but you can revoke parole, probation if you have the ability to pay and don't.

Ms. LEARY. That's correct. But it is not a crime to willfully fail to pay restitution, and maybe it should be.

Mr. SCOTT. Well, yes, but you can condition probation and parole on a good faith effort. You don't make the good faith effort, they can revoke parole, which has, back door, about the same impact.

Ms. LEARY. Right.

Mr. SCOTT. You mentioned the victims' fund. Do I understand that to be the source of the funds to be totally funds from convicted prisoners?

Ms. LEARY. The VOCA money, yes. The crime victims' fund, it all comes from offenders.

Mr. SCOTT. Should we not put some general fund money in there?

Ms. LEARY. I think that victims should be getting as much from the country as they possibly can. I think that the system, the criminal justice system is not balanced, and I believe that the only way that victims will get true justice is if they have their own parallel path. Their rights should not be derivative of the defendant's. They have their own set of rights, and general fund money would certainly help—

Mr. SCOTT. Well, you know, if you're talking about general fund money, you're not even discussing whether or not you're affecting defendants' rights or not, and when you start talking, as I've mentioned, the constitutional amendment and balancing rights, you get into a debate. You don't get into a debate if you just put general fund money in there to help the victim.

Ms. LEARY. That's true, but—

Mr. SCOTT. And if I could ask one other question, Mr. Chairman.

You indicated for those who have a need, they can get up to \$10,000?

Ms. LEARY. Yes.

Mr. SCOTT. Do they have to show a need? I mean if you have a wealthy person who has suffered a loss, as opposed to a person who has been financially devastated, would the person financially devastated be able to get the money, whereas a person that would like it but doesn't really need it, would that be a factor?

Ms. LEARY. I think that fund is available regardless, up to the amount of 10,000.

Mr. SCOTT. Up to the amount of actual loss?

Ms. LEARY. No, up to the amount of 10,000.

Mr. SCOTT. Yes, but—

Ms. LEARY. Right, or the actual loss, whichever is less.

Mr. SCOTT. But your subjective need is not a factor?

Ms. LEARY. No.

Mr. SCOTT. Thank you, Mr. Chairman.

Ms. LEARY. And that's just one model. You know, you can work from that. We'd be happy to work with the Committee to help you learn about various State models.

Mr. COBLE. I thank the gentleman from Virginia.

The distinguished gentleman from Ohio, who is no stranger to this issue, Mr. Chabot.

Mr. CHABOT. Thank you very much, Mr. Chairman. I appreciate it.

I want to once again thank all the witnesses for their testimony here this morning, and also the courage that they've shown in dealing with their own personal occurrences which have happened within their own families and to themselves.

As I had mentioned in my opening statement, because of our involvement with Deborah Culberson, we've been very involved relative to the DNA testing when there are unidentified remains, and one might not be sure who the victim actually is, and they might be in a different State. Right now it's not particularly coordinated in this country, and the remains might be—there are literally thousands of incidences of remains somewhere that have never been tested. And so, that's someone's loved one, and somebody else is looking for a person. So you just—we've been remiss in dealing with this issue.

Now, my question is, as I've mentioned before, in the previous bill, we were able to get some funding in there to encourage States to do the DNA testing, but at this point, it's not mandatory that they do the testing. And I would just like to see if any of the panelists have any opinion relative to the DNA testing, whether this is an important issue, if you have any ideas relative to how we might make this more effective, or anything that you would like to comment about. I'd be happy to hear from any of the witnesses that might want to weigh in on the issue.

We'll start with Ms. Leary.

Ms. LEARY. Yes, thank you. I'm a great believer in the utility of DNA, both to protect the innocent and to convict those who are guilty. And I think that the potential for DNA is really untapped in many respects, certainly in the arena of missing persons, certainly in the arena of using DNA for less serious crimes, which I think would be very cost effective, burglaries and so on. You know, you could save a lot of investigative time up front if you used that technology.

I think if the Government—if we could have public-private partnerships with some of these companies that are moving—that have moved into the DNA arena and are doing a lot of research and development with DNA, and if they can partner with public entities, we could make a lot more headway.

There are a lot of issues for victims I think with DNA. You know, for instance, when you have a family with a missing person, when do you approach the family to try to get DNA samples from them, and how do you approach the family in a way that's sensitive, in-

clusive, and respectful of them. All of those things matter so much. You know, any of those contacts a victim has with the system can mean the difference between recovery and continuing trauma. So we need to be really sensitive about that. But we can do that. And I think that it behooves victims for this country to make much more aggressive and expansive use of DNA.

Mr. CHABOT. Thank you.

Ms. Leary, if I could just follow up with you on another issue that you already talked about to some extent, but that's the issue of restitution. Is there anything that can be done on the Federal level to help the States collect the victim restitution that's been ordered? Is there anything that you can think of that we might be able to do in that area?

Ms. LEARY. Yeah, I think that there are a number of things that could be done. First of all, the States, I believe, ought to be able to intercept Federal income tax refunds for purposes of State restitution orders. They can already do that for child support, but they should be able to do the same thing with Federal tax refunds.

In Colorado, their State tax refund intercept program gave them \$3 million in collections in 2005. And when we talked to some of the folks in Colorado who run their really successful State restitution program, they said, "I can only imagine what intercepting Federal tax returns would yield."

And it's amazing how many of these defendants file joint returns with their spouses, and even when money is taken from the refunds, they continue to file joint returns. There's potential there and it needs to be tapped.

The other thing is that restitution orders—well, in the Federal arena, restitution orders right now are not final until all the appeals are settled in Federal cases, and I think that those restitution orders should be immediately enforceable.

Mr. CHABOT. Thank you.

Let me ask a quick question about the victims' rights constitutional amendment. It's always been disturbing to me that the rights of the defendant are right there in the Constitution, a whole series of things, but the victims are nowhere there, and they're protected through statutes, either Federal or State, but sometimes the Constitution that's protecting the defendant is in conflict with the constitutional rights of the accuser. You had mentioned, I think your testimony was you don't necessarily—I think you're opposed to the constitutional amendment, correct?

Ms. LAWRENCE. I've grappled with it over the last 10 years, having worked for NOVA, which is one of its major advocates, and felt for a while it was necessary. But I think when we look first about why the constitutional issues are there is to deal with governmental abuse, and that's why the protections are there, to avoid somebody being wrongfully accused and wrongfully convicted.

Mr. CHABOT. But I thought in your testimony that—

Ms. LAWRENCE. Yeah, victims are not in that boat. I won't say I'm entirely against it. I just think all the energy that goes into trying to get these individual victims' rights enforced, even though it's important, should go into trying to transform a system that's been failing all along and will continue to fail if we do not do something major to change our basic approach.

Mr. CHABOT. Since you had just touched on it, basically in opposition, I thought perhaps we ought to have somebody else, maybe Ms. Campbell, who might want to give her opinion relative to the victims rights constitutional amendment, whether or not we ought to at least at some point still push for that.

Ms. CAMPBELL. I can't imagine any country, or anyone, feeling that a criminal should have more rights than the honest, law-abiding situation. It absolutely—looking at every single angle, I cannot imagine supporting something like that.

Mr. CHABOT. When you say supporting something like—you mean, in other words—

Ms. CAMPBELL. Supporting that the criminals have more rights. I'm sorry. I didn't explain that well.

Mr. CHABOT. No, that's okay.

Ms. CAMPBELL. I mean we're like this. When I walk into a courtroom today—and it depends what State you're in—every State in America should be covered by constitutional rights for the honest law-abiding citizen, not just the criminal having the rights.

Mr. CHABOT. So you do still believe that we should at some point move forward—

Ms. CAMPBELL. Absolutely, absolutely.

Mr. CHABOT [continuing]. With the victims rights constitution?

Ms. CAMPBELL. Yeah. Yesterday in the courtroom—

Mr. COBLE. The gentleman's time has expired.

Mr. CHABOT. Thank you very much.

Mr. COBLE. I think we have a vote on. I think we have time for Mr. Gohmert to examine the witnesses. Mr. Gohmert.

Mr. GOHMERT. Well, I'll be brief and just say thank you. As a former judge and chief justice, I'm well familiar with the plight.

And, Ms. Lawrence, thank you for not allowing the felon, the criminal to assault you twice. As you know, as all of you know, so often some violent criminal thug not only commits an assault on a person and that person's family, but also allows that assault to victimize them the rest of their lives, through the grief, hate, anger, fear, combination of those that just overshadows everything. So, obviously, you wouldn't be doing what you were doing unless you knew that your actions helped bring people out of the valley of the shadow of fear and anger and hate and grief. So thank you for what you're doing. I believe in what you're doing. I've seen first-hand.

I believe in our adversarial system. You know, with all its faults, it is the best there is, but it doesn't mean we can't improve it. And Texas has adopted a victims' bill of rights and that helped some, but there's still work to be done, not only in Texas but everywhere.

I applaud your efforts with regard to money. People need to know there's not only a price to be paid by incarceration, but also financially, and, you know, Ms. Leary, I think you're right, even if they're in prison they can work, and even if it's pennies, the family knows they're having to earn and work and remember why it is they're doing that, and to pay back. But as you all know, there's no amount of money that replaces what a victim or the victim's family's been through, but it still helps, and it helps with recovery.

So I applaud you, as someone who's been a witness to destruction and sometimes as a judge, you know, your heart just aches for the

victim's family, and I would never, as a judge, hold it against someone that they utilized their constitutional rights. They have a right to the best defense they can get. However, if someone is guilty and found guilty beyond a reasonable doubt, then that means that what they put an innocent victim through was an additional offense, and they knew it as it occurred, and so that often found its way into the additional sentence that may have been more harsh than if they had put up a great defense, but not attacked a victim they knew was not at fault.

So anyway, there are judges that think like that, and so, you don't necessarily verbalize it so the victim understands that the assault that occurred in the courtroom added to what the sentence is, but it happens, for what that's worth.

But anyway, thank all of you for your work. I do think that, Mr. Chairman, I applaud your having the hearing and pushing this issue. I think that as a Federal Congress, we ought to do something—and as you all talked about, and it really makes me feel good to see you get the big picture too. It's not only helping victims, but it's doing something to try to keep that person from coming out of prison with nothing but hate and additional knowledge about how to hurt people. So we need to do a better job there.

I do have concerns about a Federal Congress dictating to States what they have to do, because I am an advocate of States' rights as well, but would hope that those States would work on their own, and also look at our model, what we create and do through our actions here.

But thank you. Obviously, a vote's on. But I can't tell you adequately with words how much I appreciate what you're doing for people and for victims.

Mr. COBLE. I thank the gentleman from Texas.

We have conclude this—

Mr. SCOTT. If I may, Mr. Chairman. The tax returns, there's also lottery tickets. If you owe fines, you can get your lottery tickets—in fact, there was a report where a gentleman who won a lottery ticket, went to cash it in, and just before he went in, remembered he owes the State fines, so he had his buddy go in and cash in the ticket. Unfortunately, as soon as the buddy cashed it in, he owed child support. [Laughter.]

Ms. LEARY. Great. You ought to be able to curtail what they buy.

Mr. COBLE. Folks, on that note, we'll conclude. Ladies, we've got to go vote and I don't want to keep you all here. Ms. Campbell, you have some other points to mention, and will list them here. Thank you all for your contribution.

In order to ensure a full record and adequate consideration of this important issue, the record will be left open for additional submission for 7 days. So any written questions by the Members to you also must be submitted within that 7-day timeframe.

So you had other measures you wanted to share with us, Ms. Campbell. If you don't mind, send those to us in writing, if that would be okay with you.

This concludes the oversight hearing on Victims and the Criminal Justice System: How to Protect, Compensate and Vindicate the Interests of Victims.

Thank you all for your appearance today, and pardon us for our abrupt departure, but we have to go vote. The Subcommittee stands adjourned.

[Whereupon, at 11:16 a.m., the Subcommittee was adjourned.]

