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THE VICTIMS OF CRIME ACT: 25 YEARS OF PROTECTING AND SUPPORTING VICTIMS

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HEARING

before the

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UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

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THE VICTIMS OF CRIME ACT: 25 YEARS OF PROTECTING AND SUPPORTING VICTIMS

TUESDAY, APRIL 28, 2009

U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

The Committee met, pursuant to notice, at 10:10 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Wyden, and Klobuchar.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman Leahy. Good morning, everybody.

This past Sunday marked the start of National Crime Victims' Rights Week. Now, since 1981, here in Washington and in communities across the Nation, people have observed this week with candlelight vigils and public rallies to renew our commitment to crime victims and their families. I think it is important that we do this to recognize the needs of crime victims and their families.

I was talking with Susan Russell and Judy Rex from our State of Vermont about this, and I am reminded, of course, that this is the 25th anniversary, and in some ways, it seems like just yesterday that the Victims of Crime Act was passed. I was one of the supporters of that at the time. It has supported essential services for crime victims and their families. The people in Vermont have heard me tell about how, when I was a prosecutor, there were not any of these programs, and we had to make them up as we went along. I remember my wife and I personally financing a number of the programs and a number of volunteers and others. And now we have grants for direct services to victims, State crime victim compensation programs,

emergency shelters, crisis intervention, counseling, and assistance in participating in the criminal justice system--all these, and I should note that these do not cost taxpayers any money. They are funded from a reserve fund created from the fines and penalties paid by Federal criminal offenders.

A lot of us have worked hard over the years to protect the Crime Victims Fund. They serve nearly 4 million crime victims each year, including victims of violent crime, domestic violence, sexual assault, child abuse, elder abuse, and drunk driving. This makes it possible. I think of the number of times we congratulate ourselves that we have prosecuted somebody, and they go off, and we spend a fortune to prosecute the person, and at that time there was nothing to do anything for the victims.

I was worried that the Crime Victims Fund would be there in good times and bad. Several years ago, I worked to make sure it had a ``rainy day'' capacity so that we would not have to worry about it running out of money and being left stranded. More recently, an annual cap has been set on the level of funding to be spent from the fund in a given year. I remember when the cap was established, and former President Bush sought to empty the Crime Victims Fund of unexpended funds--funds that we had put in there to have for a rainy day. I joined a bipartisan effort with Senator Crapo of Idaho and others from both political parties to make sure that the money was preserved. There are enough other places we can find money. This was one that was being well used.

So we are working as hard as ever. We are working with Senators from both sides of the aisle. I hope we can raise the cap this coming year to devote more than \$700 million to crime victims.

I want to commend Senator Mikulski, who is the Chairwoman of the Commerce, Justice, and Science Appropriations Subcommittee, and Senator Shelby, the Ranking Member, for working with the President to provide \$100 million in the economic recovery program for crime victims. I look forward to working with Senator Mikulski, Senator Crapo, and, of course, Senator Feinstein, who has been a tremendous help in all of this, to keep us going.

I look forward to hearing from our witnesses. Two of our witnesses, as I mentioned, come from Vermont. Susan Russell has an incredible story. Her courage and strength is an inspiration to us all. And I should mention she lives just a few miles from where I live in Vermont.

Judy Rex, I have enjoyed over the years calling Judy to say, ``Judy, you know that money that was not coming? It is coming.'' And knowing it is going to be done well, and, of course, Mary Lou Leary, from the National Center for Victims of Crime, is well known to this Committee, as is Steve Derene from the National Association of VOCA Assistance Administrators, and R. Keith Perkins from the very well named Never Again Foundation.

Before we go to the witnesses, Senator Feinstein, did you want to say anything?

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator Feinstein. Thank you very much, Mr. Chairman, and I very much appreciate the good work you have done, and these witnesses present.

In 2004, Senator Kyl and I introduced and subsequently passed the Crime Victims' Rights Act, and that was essentially giving crime victims certain basic rights--the right to be present in the court, the right to know when your attacker has

been released, the right to make a statement. But what we found was that the defendants had essentially all the rights, and a crime victim had virtually no rights. And I would just be curious at a later time if in the comments of your witnesses, if they would be willing to comment on how effective they believe this has been, and if they think there still is additional action to be taken.

I was appalled when I learned that a victim, let us say a rape victim, had no right to be notified if her attacker is released from jail. And theoretically, at least by the law, now this is taken care of.

So my question is: Are these rights, in fact, being carried out? And perhaps if you can, you would address that in your testimony.

Thank you, Mr. Chairman.

Chairman Leahy. Thank you.

Since 1998, Susan Russell has served as a criminal justice victim services consultant with the Office for Victims of Crime. For the past 7 years, she has worked for the Central Vermont Council on Aging as the Director of Community Service. Central Vermont is the area where I am from. She also chaired Vermont's Sexual Violence Task Force, served as a member of the Vermont Network Against Domestic and Sexual Violence. She has received several awards for her efforts, including the 2005 National Organization for Victim Assistance Edith Surgan Award for outstanding dedication and leadership, and Vermont's 1995 Outstanding Victim Advocacy and Awareness Award.

Ms. Russell, please go ahead. Make sure that is on.

STATEMENT OF SUSAN S. RUSSELL, M.A., WARREN, VERMONT

Ms. Russell. Good day. I would like to thank you, Chairman Leahy, Senator Patrick Leahy, and Ranking Member Senator Specter, for inviting me here today to testify on behalf of victims. Indeed it is quite an honor and privilege to be here today to provide testimony on the Victims of Crime Act. While I have over a decade of experience working within victim services, the most significant experience I bring before you today is as a survivor of violent crime.

Seventeen years ago, a man who resided in the same small rural community as I kidnapped, raped, and nearly killed me. This man slashed two of my car tires and then followed me. It is highly likely that he had been stalking me for some time as several years after my assault, I learned that he had broken into my husband's truck and had stolen identifying information. This man held no regard for life as, after begging and pleading for my life, he fractured my skull in three places with a tire iron, broke several facial bones, and left me to die in a remote wilderness area. I can recall gaining consciousness hours later, cold, shivering, naked, and in intense pain. I recall touching my head and feeling something very sharp and protruding. And as a trained emergency medical technician, I knew that I was in serious trouble and needed help. Somehow, I managed to stumble through the woods a tenth of a mile where there were five teenagers camped. They managed to keep me warm and awake, and two of them hiked 3 miles to the nearest phone.

I was taken to a nearby hospital where they stabilized my injuries and prepared me to be sent to another hospital that specialized in traumatic brain injuries. While in the emergency room of the first hospital, I was met by a detective who gathered information which led to the apprehension of my assailant 4 days later.

Upon arrival at the emergency room of the second hospital, I had a team of nurses and doctors working to prepare me for surgery. During this time my husband was brought in, and he

immediately passed out and was escorted out of the emergency room. However, after he recovered, he was met by a rape crisis advocate who provided him with information and a supportive ear. During my 3-week stay in the hospital, the rape crisis advocate came several times to talk and/or listen. And after I returned home, I was able to call the rape crisis hotline any time day or night. Rape crisis centers which provide a host of victim services such as this one are funded with VOCA funds.

At the time of my assault, I worked as a hiking/canoeing guide. I subsequently lost my job and had no income. It took me many months--really many years--to recuperate physically, and part of my recover hinged on physical therapy--something not covered by my medical insurance. The medical bills alone even with health insurance reached over \$30,000. Another VOCA-funded service which I benefited from is the Victims Compensation Program. Vermont's Victim Compensation will allocate \$10,000 per victim for things such as medical costs, including physical therapy and counseling. These are two of the services that I so desperately needed and would not have had access to if it were not for VOCA.

Soon after my assault, I was contacted by the State's Attorney Victim Advocate, and we found ourselves having to go through the criminal justice system. Again, due to VOCA funds, we were able to have a victim advocate help us navigate the criminal justice system. I am quite certain I would never have survived the criminal justice system without the information and support provided by the victim advocate. Fortunately for all of us, due to having a way to be involved and informed, a plea agreement was met and the offender was convicted and sentenced to 25 to 35 years.

However, in approximately 5 years, he will be released in Vermont having maxed out his sentence for a total time served of 23 years. He will be released, untreated and unsupervised. His only requirement will be to register with the Vermont Sex Offender Registry.

In closing, I would like to state that had I not received these VOCA funding services, I would not be here today. I would also like to add that these services helped my husband and I remain together as next month we will celebrate our 26th wedding anniversary. There is no doubt in my mind that without VOCA funding services, I would not have been able rebuild my life and recover in a manner that moved me from a victim to a survivor.

Thank you again for inviting me here to share my story.

[The prepared statement of Ms. Russell appears as a submission for the record.]

Chairman Leahy. Thank you. Thank you, Ms. Russell. I knew the story, but I thought it was important that others hear it. It is a very moving one. I also think it is fortunate we have these programs. Certainly I wish there was no need for them. I wish there would never be an experience like you went through. But you know and I know that happens, whether in our State or other States. And I think back to the days of my own experience in law enforcement when we did not have that and how we had to piece these things together and the number of people who must have fallen without the help they needed. So thank you for your bravery in repeating it, and congratulations on 26 years. It seems like so long ago. In our family we will celebrate our 47th this summer.

Judy Rex is the Executive Director of the Vermont Center for Crime Victim Services that administers the Victim Compensation Program, the Victim Assistance Program, and other Federal and State grants for community-based programs serving victims of crime. Previously, she had been the Executive Director of Vermont Protection and Advocacy, the coordinator of

the Vermont Victim Assistance Program, a State program serving victims of crime through the Vermont Department of State's Attorney. She served as the coordinator of the Vermont Network Against Domestic Violence and Sexual Assault, a statewide association of 17 private, nonprofit domestic violence and rape crisis program well known to all of us in Vermont.

Please go ahead.

STATEMENT OF JUDITH A. REX, EXECUTIVE DIRECTOR, VERMONT CENTER FOR CRIME VICTIM SERVICES, WATERBURY, VERMONT

Ms. Rex. Good morning. I want to thank Chairman Leahy and Ranking Member Specter for giving me this opportunity to speak before the Senate Judiciary Committee. It is an honor for me to appear here today as we celebrate the 25th anniversary of the Victims of Crime Act.

I have worked on behalf of crime victims for over 25 years, and I remember what it was like before the Victims of Crime Act was enacted. In Vermont, there were very few services and supports for crime victims. In the early 1980s, Vermont had four domestic violence shelters and two rape crisis programs. The entire State appropriation for these programs was \$50,000 a year, and the State allocation for the domestic violence shelter where I worked was \$5,000 per year.

The passage of the Victims of Crime Act in 1984 has had a tremendous impact on how crime victim services have evolved and expanded in this country--and certainly in Vermont. When the Victims of Crime Act passed, then-Governor Kunin earmarked the funding to establish rape crisis programs in every county in Vermont. As a result of the VOCA funding, Vermont was able to establish ten additional programs, ensuring that every victim of sexual assault in Vermont could access a 24-hour hotline and advocacy services.

In 1986, it was the Victims of Crime Act funding that helped Vermont establish its Victim Assistance Program. These prosecutor-based victim advocates ensure that crime victims receive information, notification of court hearings, and a variety of support services throughout the criminal justice process. The program has played a critical role in ensuring that Vermont's crime victims receive restitution for their crime-related losses and, even more importantly, in empowering crime victims to address the court at sentencing to share the impact of the crime on their lives.

In 1990, Vermont finally established its Victims Compensation Program, and it was the Federal VOCA match that convinced the Vermont Legislature to fund this initiative. In 2000, when there was an increase to the VOCA cap, Vermont was able to establish a Victim Services Program within the Department of Corrections that is now fully funded with State funds. These advocates provide an array of services to crime victims to help prepare them for an offender's release from incarceration. Services for underserved populations were also established at this time. One example is our Deaf Victim Advocacy program, comprised of three deaf victim advocates who provide education and advocacy services to the deaf and hard-of-hearing communities throughout Vermont.

The most recent impact of VOCA was the inclusion of \$100 million for crime victims in the American Recovery and Reinvestment Act. In January, I was faced with making cuts of up to 20 percent to victim services programs in Vermont due to declining State revenues. The impact of these cuts would have been significant for those very small domestic violence programs, child advocacy centers, and supervised visitation programs operating in the most rural areas of Vermont. Some of these programs would have closed. But as a result of the

Recovery Act funding, I was able to level- fund all direct service programs serving crime victims in the 2010 State budget. This infusion of funding could not have happened at a more critical time, since we all know that crime rates often increase during hard economic times.

Despite all of these accomplishments, there is still much more to be done. In 2003, the Center for Crime Victim Services engaged in a lengthy strategic planning process. A number of gaps in services were identified, including the need for victim advocates in police departments, specialized services for people with disabilities who have been victimized, and services for the elderly--a growing population that is particularly vulnerable to financial fraud and exploitation. However, because Vermont has not seen any significant increase in our VOCA allocation for the past 8 years, little has been accomplished in these areas. In fact, in some years we have seen our allocation reduced, even though the number of crime victims needing services continues to grow.

I know that other States are also struggling with this same dilemma. I would urge this Committee to consider raising the VOCA cap to \$705 million in the 2010 Federal budget so that we can begin to address some of these gaps in services. One important lesson we have learned over the last 25 years is that the sooner we are able to respond to a crime victim's trauma, the sooner they are able to recover. As a society, we cannot afford to delay services to crime victims. The cost is too great.

In closing, I want to thank the Judiciary Committee, and I want to especially thank Chairman Leahy, for all of the support you have given us for the last 25 years, and I look forward to another 25 years of progress.

Thank you.

[The prepared statement of Ms. Rex appears as a submission for the record.]

Chairman Leahy. I look forward to 25 years of progress, but not 25 years more here in the Senate.

[Laughter.]

Chairman Leahy. But thank you very much.

Mary Lou Leary is currently the Executive Director of the National Center for Victims of Crime. She has served there since 2004. She previously served as United States Attorney for the District of Columbia and as Acting Assistant Attorney General for the Office of Justice Programs. As the leader of the Office of Justice Programs, she oversaw the Department of Justice's Office for Victims of Crime and the Office of Violence Against Women. She also served as Acting Director of Community-Oriented Policing Services at the Department.

As always, Ms. Leary, it is good to see you, and I am delighted to hear you are going to be rejoining the Department. Please go ahead.

STATEMENT OF MARY LOU LEARY, EXECUTIVE DIRECTOR, NATIONAL CENTER FOR VICTIMS OF CRIME, WASHINGTON, D.C.

Ms. Leary. Thank you. Good morning, Chairman Leahy. Thank you to you and Ranking Member Specter for this opportunity. Good morning, Senator Feinstein. I want to say thank you for holding this hearing during Crime Victims' Rights Week. I think this is just the ideal time for us to be focusing on one of the Nation's most successful programs: the Victims of Crime Act and the Crime Victims Fund that it created.

I am Mary Lou Leary, and as the Senator said, I am Executive Director of the National Center for Victims of Crime. At the National Center for almost 25 years now, we have worked to make sure that victims have the rights, the resources, and

the respect that they need to rebuild their lives after a crime.

Steve Derene's written testimony explains all about VOCA and how the fund works, the difference between compensation and assistance, so I will not go into any of those details. But you, Senator Leahy, understand better than just about anybody that VOCA funds are essential to our national response to victims. In fact, the National Center recently surveyed our membership, and more than 98 percent of our nonprofit victim service provider members tell us that VOCA funds are "very important," and you heard that in Judy Rex's testimony this morning. More than 90 percent of the system-based providers--people in law enforcement and prosecutors' offices--say the same thing.

For the past several years, Congress has imposed a cap on the funds disbursed each year, and in recent years, the balance has grown to about \$1.9 billion. And the cap has been hovering around \$625 million. Last year the cap dropped down to \$590 million.

I came before this Committee in January and told you that this reduction of funding, coupled with the economic climate, was devastating to victim service programs. And, again, you heard that from Judy Rex this morning. People were cutting staff hours, laying people off, and programs were reaching fewer victims and, in fact, providing even fewer services to the ones that they could reach. For example, in many places victims were placed on very long waiting lists for services; even child victims of sexual abuse, weeks before they could get into counseling.

When we reported to you in January on this situation, you responded by working to ensure that \$100 million for crime victim compensation and assistance would be included in the stimulus package, and we cannot tell you how grateful we are for that. Then, the fiscal year 2009 appropriations package passed in February released \$635 million from the VOCA Fund. So this combination will restore victim funding to the levels it received in 2006, before those reductions.

So the dollars have not reached the front-line service providers yet, but relief is already being felt across the country. So we thank you for that. The relief was much needed and well timed, but I am here to tell you there is still much more to be done.

Compensation assistance, for instance, is helpful, but some states have told us they expect to disburse all their stimulus compensation money within just a few weeks. The restoration of funding for victim services may take more victims off waiting lists for services, but there are so many more victims who are not being reached and who do not even know that help is available.

State and local programs tell us they desperately need money for awareness and outreach so that victims in their communities will know where to turn for help. And then they need money for the services to help them when those victims do come forward.

As you know, the economic crisis is having a terrible impact on victims, increasing victimization, increasing the need for services, and increasing the range of services that are needed. Our Helpline, for instance, is seeing a big spike in calls from victims, and we have seen a big spike in calls from fraud victims. Many victims of fraud have lost absolutely everything, and they are at the end of their rope, no place to turn.

These victims are in desperate need of financial counseling to help them pull together what remaining assets they have, and time is very often of the essence. They have nowhere to turn

for this. They also need mental health counseling to overcome the stress and the shame of this kind of victimization, but it is not available.

States could, under regulations, pay for this kind of counseling, but they have been reluctant to expand the pool of eligible victims because there just is not enough money to go around. Too many victims of crime have no services outside the criminal justice system. Too many victims are going unserved.

Congress has the ability to provide the funding that is necessary to bridge this gap. There is \$1.9 billion in the VOCA Fund. Additional fines over \$2.7 billion have already been announced against corporate defendants, so additional moneys can be released from the VOCA Fund without compromising the long-term stability of that fund.

In 1984, Congress created the VOCA Fund, and it fundamentally changed the way this Nation responds to victims of crime. This funding, as you heard from Susan Russell's testimony, truly helps victims of crime rebuild their lives, and we know that is a slow process.

Congress reaffirmed its commitment to victims earlier this year through the stimulus funding and it restored the appropriations levels. Now we ask you to take the very next step. We urge you to tell victims of crime that you are still committed; you still hear their voices; you recognize their needs; and you will extend them a helping hand by raising the cap on the VOCA Fund.

Thank you.

[The prepared statement of Ms. Leary appears as a submission for the record.]

Chairman Leahy. Thank you, Ms. Leary. And I can assure you I hear their voices, and I think of them. I still have nightmares about some of the things I saw at 3 o'clock in the morning and 4 o'clock in the morning when I would be at some of these crime scenes with the lights from the police cars, blinking lights reflecting off the walls, and some of the most horrific scenes. I do not forget.

The next witness is Keith Perkins. He is the Founding Attorney and Executive Director of the Never Again Foundation Legal Services, provides free legal representation for crime victims in civil lawsuits directly against the criminal perpetrators. He authored the highly acclaimed Arizona crime victims rights programs, received several top awards--the 2007 Arizona Attorney General Distinguished Service Award, the 2007 Foundation for Justice Work, and the Arizona State Bar's Foundation for Legal Services, the 2009 College Honored Alumni Award from Brigham Young University's J. Reuben Clark Law School, in recognition not only for his achievements but dedication to a life of services. That is actually a nice thing to hear, an award for a life of services.

Please go ahead, Mr. Perkins.

STATEMENT OF R. KEITH PERKINS, ESQ., FOUNDING ATTORNEY AND
EXECUTIVE DIRECTOR, THE NEVER AGAIN FOUNDATION, CHANDLER,
ARIZONA

Mr. Perkins. Mr. Chairman, Ranking Member Specter, Senator Feinstein, and members of the Committee, my name is Keith Perkins. I am the Founding Attorney and the Executive Director of the Never Again Foundation Legal Services.

How grateful we are for the tremendous amount of good that the Victims of Crime Act has been able to do for so many over the last 25 years.

My testimony to you today will comprise primarily of three parts: the successes that we have been able to have within the spirit of VOCA, challenges that we have had with VOCA, and a

suggestion that we bring to you today to improve VOCA.

The purposes of VOCA are vitally important, and they include the help to provide that emotional healing as well as that economic restabilization that victims of crime need after they have been a victim of crime.

The Department of Justice confirms that the cost of crime is staggering. It costs us billions of dollars each year. There are only three parties that can bear that cost: the perpetrators of the crime, the victims of the crime, or somehow it being absorbed by the rest of us in society. The criminal justice system was not designed to send that cost back to the criminal perpetrators. It was only the civil justice system that was designed to take that burden that is being borne by the victims as well as by us in society and shift it back to put it back upon those who have caused the harm, back upon the criminal perpetrators.

However, most crime victims have been unable to gain access to that civil justice system, primarily because it is not a matter of law office economics. For most lawyers, it simply does not make financial sense to just simply represent crime victims in civil actions as long as it is just against the criminal perpetrators.

So, with that in mind and to fill that void, in Arizona for the last 10 years we have provided free, nonprofit legal representation to crime victims in civil lawsuits directly against the criminal perpetrators. The results have been quite dynamic. We have now won over \$170 million in judgments-- directly against criminals.

Chairman Leahy. How much?

Mr. Perkins. \$170 million in judgments directly and only against the criminal perpetrators.

Now, what we have found is that many of the crime victims, as well as the public, have been anxious to have the opportunity to finally take that full cost of crime and send it back and place it directly and squarely upon the shoulders of those who have caused it.

Now, we know that all of that is not going to be collectable from the criminals. However, we are very pleased to report that we have actually been able to collect over \$2 million of that directly from the criminal perpetrators; 100 percent of that has all gone back to the victims to help provide that economic restabilization.

Now, one of the things that might come as a bit of a surprise is that money is not the primary motivating factor for why the crime victims have requested to have civil remedies. Rather, the No. 1 reason that they requested the civil remedies is to help provide an additional sense of emotional healing that they may not have been able to get in their particular circumstance through the criminal justice system. Examples of that may include an opportunity to regain power and control and the right to make the decisions in the case; an opportunity to fully tell their side of the story; an opportunity to place that economic responsibility for the cost of crime personally and directly upon the perpetrator who caused it.

In other words, the civil justice system can play a very important part of fulfilling the very purposes for which the Victims of Crime Act was enacted.

But now for the problem: VOCA does not support civil actions by crime victims directly. I think, Mr. Chairman, the reason why that was originally put in VOCA was because we wanted to make sure that the sacred money of VOCA could not be used for civil actions against negligent deep pockets of third parties.

However, with that broad prohibition, we have unnecessarily restricted victims of crime from being able to put that

financial accountability directly upon the very people that all of us think should be responsible for it in the first place-- that is, upon the criminal defendants. And as a result, the victims of crime have only been able to look to secondary sources for that economic restabilization.

So we come today on behalf of a broad base of victim service providers throughout Arizona, and we would like to ask that VOCA--and VAWA as well--allow a very narrow exception that it can help to provide that emotional healing and economic restabilization for crime victims and civil actions directly and only against criminally convicted perpetrators. This will help victims nationwide be able to gain further access to that justice that they desire with the help of nonprofit legal service organizations willing to give it all back to the victims to help them rebuild their lives.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Perkins appears as a submission for the record.]

Chairman Leahy. Thank you very much.

Steve Derene is Executive Director of the National Association of VOCA Assistance Administrators. Since its creation in 2001, he has represented State agencies and administers State VOCA victim assistance grants. He has served as an expert consultant to the U.S. Justice Department Office for Victims of Crime, formerly the Director of Research and Information for the Wisconsin Department of Justice, worked in the Department's Office of Crime Victim Services, is the 2005 recipient of the National Crime Victims Services Award and the 2006 Congressional Crime Victims Lois Haight Award.

Please go ahead.

STATEMENT OF STEVE DERENE, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF VICTIMS OF CRIME ACT ASSISTANCE ADMINISTRATORS, MADISON, WISCONSIN

Mr. Derene. Thank you very much, Mr. Chairman and members of the Committee. As has been mentioned, it is appropriate that we are discussing this during the 25th anniversary of the enactment of VOCA, and while much of the focus has been on the funding aspects of VOCA, I would just like to acknowledge the fact that VOCA since its inception has really represented considerably more than just the dollars, just another funding stream. It has been very significant, and I think you have heard some of the reasons why. It really represents a commitment that the Government made to treat victims with fairness and dignity and respect about 25 years ago. So I think it was a catalyst to making much of the improvements throughout the Nation over the last 25 years. And our challenge now, as has been mentioned, is: Where are we, and where are we going to go?

I will just summarize some of what you have heard already in terms of a national perspective. When VOCA was first adopted in 1984, the first year there was \$68 million collected, and in 2007, there was over \$1 billion. And I think that signifies the resources that are available to help victims of crime.

As has been mentioned, one of the challenges here is how do you release that money to the field to do what it is intended to do, and I would just note that under the language of the statute itself, had there not been a cap, all of that money would already have been out providing services to victims. And I think one of the functions that has been served by a cap--and I think there have been some positive features--and one I think is necessary for people such as Judy, who administers this money, is that it is very helpful to have some predictability, some sustainability of the money going forward. And we know

that money is coming in.

But just to put it in perspective a little bit, from 2006 to 2008, as deposits in the fund increased by 53 percent, grants to State victim assistance programs were actually cut by 22 percent. And thanks to your efforts and the efforts of Senators Mikulski and Shelby in 2009, we made some very important inroads into restoring that money back to the level it was in 2006. And what we anticipate the funding will be for State assistance programs in 2009 with the appropriations and the Recovery Act together will get us back to where we were in 2006. So we are sort of back to square one, and when we hear proposals for additional uses of VOCA, one of the basic purposes of VOCA was really to sustain programs, to sustain services to victims. And as we know, there is a great deal of additional needs. There are new types of services. There are new types of victims that we want to respond to: stalking, identity theft, dating violence. There is a whole panoply--human trafficking--that we did not recognize 25 years ago. And so a State's ability to not only sustain programs but to meet these increasing needs in populations really depends on our ability to release the money that is there, that is not taxpayer money, as you know, and that was dedicated both by statute and in the appropriations solely for the use of victims.

And so I would sincerely endorse the suggestion that, at least for 2010, the level of funding of \$705 million will sustain that level that we had in 2006, it will get us back to 2006 with inflation, and begin to make some inroads, very modest inroads into the ability to meet the ongoing needs. And so I thank the Committee for all its efforts.

I would just like to respond briefly to Senator Feinstein's question about the CVRA, and I think that was a very significant proposal. We understand that the rights there really pertain to victims in the Federal system, which we are talking about maybe 1 or 2 percent. But it also contains some other features. I know it came from Senator Leahy's contribution to that bill in terms of services, in terms of funding. I know there are studies underway as far as the effectiveness of the rights. But one part of that act which I do think pertains to VOCA as well, there was authorization to fund victim services in the U.S. Attorney's Offices, legal clinics, which are very important in defining and establishing the case law, other compliance programs, notification programs, and there were a variety of services intended to be supported without using VOCA funds, to use other funding streams. And I do not believe any of that money--I believe Congress just reauthorized those provisions, but I do not believe any money has ever been appropriated for those services. And I think those services go toward making the rights effective both at the Federal level and the State level. And I know the appropriations process is apart from that, but to the extent those funding streams are implemented and funded, it will relieve or be in addition to the amounts available for similar types of things under VOCA. So I do know as far as the services and funding parts of that act go, that has not been implemented at all.

Thank you very much.

[The prepared statement of Mr. Derene appears as a submission for the record.]

Chairman Leahy. Thank you.

Let me start. We have been joined by Senator Klobuchar of Minnesota, who is also a former prosecutor. I will start with you, Ms. Russell. It cannot be easy telling the story of what you went through and having to relive the fact that you nearly died, aside from the horrendous attack, the rape, the tire iron

to your skull, and all the rest. I commend your bravery because we have to be reminded periodically that the Victims of Crime Act, these programs are not just something on paper. There are real people involved.

You talked about the advice and the help you and your husband got. What would you say are the most important parts of help that the two of you got during this time? And were there things that were not done that should be done? I realize that is kind of open-ended, but I am just curious. We rarely have somebody with such firsthand knowledge as yourself before the Committee.

Ms. Russell. I would say that my awareness of my husband being a secondary victim really raised the question to me later on of what kind of services that we could provide family members. We were fortunate that that rape crisis advocate recognized that he was a secondary victim and he needed to have that information. So I look at that.

I also look at the spectrum of all the help that has been given in terms of relieving that stress of some of the financial burden. In my particular case, restitution was not ordered, and so there was no process coming back from that.

I think times have really changed----

Chairman Leahy. I see Mr. Perkins shaking his head on that one. I thought you might note that.

Go ahead.

Ms. Russell. But this was 17 years ago, and we certainly have seen a lot of improvement in 17 years.

Chairman Leahy. But you said you had about \$30,000 in medical bills alone.

Ms. Russell. Yes.

Chairman Leahy. The victim compensation cap in Vermont is \$10,000, correct?

Ms. Russell. Correct. We were really fortunate that I live in a very, very supportive community, and they held fundraisers for us. I was also able to work with the hospital in reducing some of those costs. One of my concerns back then was that I was told that I should have a CAT scan done every couple of years, and those things are not always covered by medical insurance. So I was worried about that. So, you know, raising the cap per victim might be something that should be looked at.

Chairman Leahy. Thank you. We will. We will. Did you have expense out of pocket? Well, obviously you did if they had to have a fundraiser, they had fundraisers in the community for you.

Ms. Russell. Yes. I was unable to drive for almost a year, so we always had to find a way to get me to appointments and things like that. So that was an additional thing. Losing my employment was a struggle, but fortunately, we were able to tap into unemployment. But that is another avenue that might be considered, too, because somebody might not be eligible for unemployment.

Chairman Leahy. Let me ask Ms. Rex, the State cap is there to make sure there is enough money for a victim. If we increase the cap on spending, do you think that there is a possibility the State cap, the \$10,000, might be raised? And should it be? Hit the button.

Ms. Rex. Yes, I would love to see the State cap raised. I think what could help convince the Vermont Legislature to do something like that would be if the Federal matching dollars were also increased. I think right now the VOCA match is 60 percent. Is that right? So if that were to go up to, let us say, 75 percent, then I think Vermont could do the same.

Chairman Leahy. You know, one of the things--and we are going to be voting on a bill here in just about an hour on the Senate floor on fraud, mortgage fraud, and other things. We

looked at elderly especially being hit with this, their life savings gone, their money they set aside for retirement gone; oftentimes their home, the one area where they have built up equity, gone, by unscrupulous people. Our bill will allow us to go after those people and put them in jail. But in the Victims of Crime Act, is there an emphasis on the elderly?

Ms. Rex. Well, I think one of the challenges for us is getting the elderly to report the crime in the first place. Particularly when you are talking about fraud, I think when they realize that they have been taken advantage of, they are often embarrassed. They do not want other people to know about it, and they do not often report it.

But I can tell you, since the center--we now do restitution for the State of Vermont, and so we process all those restitution orders, and it was alarming for me to see the number of elderly people who are the victims of fraud in the State. And the sad thing is we do put those offenders in jail, but we rarely collect money from them. And, fortunately, Vermont does have a restitution fund, and so those victims will at least get \$10,000 out of the fund. But these cases usually involved over \$100,000, their life savings, which they will never see during their lifetime.

Chairman Leahy. Does anybody else want to add to that just on the elderly part? Feel free.

Ms. Leary. Senator Leahy, I would add that our toll-free crime victims helpline receives many, many calls from elderly victims, and many of them actually find us in the Yellow Pages, in the phone book. But we have seen an increasing number of elderly victims of all kinds of financial scams. Just a couple weeks ago, in fact, we had a call from a man who is over 70 who lost everything in a Ponzi scheme. It was not Madoff. It was another case. And there were 50 victims in that case, and none of those victims had expected to get anything back. And so he was dealing with the embarrassment and shame of having, you know, allowed himself to be victimized. That is how he saw it. He had no idea how to stabilize his financial situation, let alone where to turn to get some help with the emotional impact of it.

It is really devastating. You lose your independence and your hope, really, to live out, you know, a good life for the remaining years. It is very sad.

Chairman Leahy. Thank you. Thank you very much.

I am going to turn to Senator Feinstein. I have to leave just for a few minutes. I have got a call from the Leader, apparently, regarding the bill on the floor.

Senator Feinstein.

Senator Feinstein. [Presiding]. Thank you very much, Mr. Chairman. Thank you for your leadership.

I have been looking at the figures, and what I see is quite startling to me. I see California in a lose-lose-lose position in terms of money. No State has been cut more than California, from \$64 million to \$31 million. So California has been cut \$30 million over the last 5 years.

My question, Mr. Derene, is: Why?

Mr. Derene. If you are referring to the victim assistance grants, those are distributed among the States. There is a base amount plus population. And so it is proportionate to the size of the---

Senator Feinstein. Well, nobody has the population that we do. We are at 38 million people now, with a high crime rate.

Mr. Derene. Correct. And the distribution of the money that is available under the victim assistance grants is distributed proportionately by population, so being the largest State, you are going to see the largest cut in absolute dollars for your State.

Senator Feinstein. Is that the way the formula goes?

Mr. Derene. Yes, ma'am. There is a base amount that----

Senator Feinstein. That is absolutely unacceptable.

Mr. Derene. There is a base amount that goes to every State, and then the amount that remains after that is distributed among the States based on population.

Senator Feinstein. So if you gain people, as all of the sunshine States are doing, you lose money.

Mr. Derene. Proportionately.

Senator Feinstein. There are 13 States that have lost money.

Mr. Derene. Proportionately, yes, every State is going to lose money when the amount available is cut. And as I said in my testimony, all States experienced across the board a 22-percent cut, but a State like California that has a larger population is going to have proportionately a larger cut in terms of dollars. That is the statute.

Senator Feinstein. Then it seems to me we need to fix the formula so that does not happen. I will do the research and look into what California produces for the program and try to make a determination whether we get our fair share. But to cut the money in half when no other State takes that kind of hit because the State has no way of controlling the people that come to the State, I think, I must tell you, is grossly unfair and unacceptable.

Mr. Derene. And that is in the statute, so every State is going to be cut, and it is going to be approximately within a similar range. But a larger State, obviously----

Senator Feinstein. But what you just told me is that you are penalized if you gain population. You do not lose when you lose population. Maybe we should take a look at that. But you lose when you gain population. That is reverse of the way most things are figured on a fair basis.

Mr. Derene. Every State--if the amount available nationally declines, every State is going to lose. Some States will lose proportionately a little bit more than others.

Senator Feinstein. I look at the big States--Texas, New York, Florida, and California. None of those other States have lost. Only California has lost. And something is not right, and it would be my intention to find out what it is. I would like to have you know that.

Mr. Derene. Excuse me. Are you referring to the victim assistance chart or the compensation chart?

Senator Feinstein. Compensation.

Mr. Derene. Okay. I am sorry. I am referring to the assistance. Compensation is a different matter. I apologize, because I was responding to a different program.

The compensation grants are based solely on how much the State uses of its State dollars to pay out compensation benefits, so that decline is because the State used fewer State dollars to make compensation benefits, and that is based in the statute. As Judy mentioned, each State gets a percentage. It is 60 percent of what they used State dollars for. And, frankly, over time it may vary because, as States get larger grants, they are going to use less of State money. And if they use less of State money, they will get more in Federal money. And so there is sort of a natural fluctuation.

Senator Feinstein. Where is the chart that says how much Federal money States get? I am reading your materials.

Mr. Derene. There is a chart there for victim compensation that will show you how much State money each State received for the last several years, and I think you would be accurate in terms of compensation that, if California's VOCA grant went down, it is because the State paid out less. But that year they probably used more Federal money for benefits. That is going to

vary from State to State.

Senator Feinstein. So I really need to figure this because if I follow your chart, in grants we have gone from \$44.9 million to \$40 million, \$40.8 million, in 5 years.

Mr. Derene. If you go back, you will see----

Senator Feinstein. No, 4 years.

Mr. Derene. If you go back several years, you will see California, I think there was a year where it received over \$100 million. And that all depends on how much the State program pays out using State dollars.

Senator Feinstein. So do you add the two together? How do you----

Mr. Derene. Every year the VOCA grant to a State is based on how much the State paid out the 2 years prior in State money. The State certifies an amount to the Federal Government, and that is the basis for determining how much their VOCA compensation grant will be.

Senator Feinstein. Well, this bears some additional research.

Mr. Derene. It is not easy. I understand.

Senator Feinstein. I will ask my staff to do it so that I get a clear picture. Thank you very much.

Ms. Russell, I must say, I am one that believes that we are sorely tested in life, and how we measure up to those tests is really the measure of the kind of person we are. And let me just say you have certainly measured up to your test. It is incredible, and it is wonderful to see you smiling and well and here. And so I just want to--I wish this were California wine.

[Laughter.]

Senator Feinstein. But I just want to raise my glass to you and say, you know, much of the best to you.

Ms. Russell. Thank you so much.

Senator Feinstein. You are very welcome.

Senator, would you like to ask some questions?

Senator Klobuchar. Thank you very much, Senator Feinstein. Thank you for your leadership in this area for so many years. And, again, I would echo what Senator Feinstein said, Ms. Russell. Thank you for having the courage to come forward and talk about what happened to you. Many people cannot do that, and that you have been able to do this is so helpful to so many other victims. You are not just speaking for yourself. You are speaking for them.

I wanted to talk a little bit about actually what Ms. Leary had raised, and these are white-collar crimes, because I see that we are seeing an increase in those kinds of crimes, and I have known firsthand the hope that these victims need. And what I always remember when I was county attorney in Hennepin County, Minnesota, managing an office of about 400 people, we had an incredibly active victim witness program, and it was one of--we think it was one of the best in the country, but it was certainly one of the most active. I saw the hope that the program gave not only in individual compensation and helping victims, as they should be helped, but it also helped us with our prosecutions and mentally, because people felt comfortable to come forward. The shame that you alluded to, Ms. Leary, where victims do not want to come forward, they are scared, to have someone there with them every step of the way makes a difference.

But the white-collar area, what I most remember of this is we had--I spoke to one of our victim witness advocates once in a case, and I saw there were deputies outside of our courtroom. And I said, ``Oh, that must be that gang case you are doing, huh?'' She said, ``No. It is that white-collar case.'' I said, ``What?'' And she said that there was--I think she was about 85 years old--a widow who was so angry because her husband, he had

died, but he had invested his money, all their life savings with someone, and that guy then happened to go and spend all their money. He pretended he was religious, he was using the money to invest in religious things. And he ended up going down to Costa Rica for plastic surgery with all their money. And there were a number of victims in the case, and that 85-year-old woman was so angry and had said some threatening things about the victim, that is why those deputies were outside the door. And I remember that because it just hit to me how these white-collar cases for many good reasons--as you said, people's life savings down the drain--can have the kinds of emotions and difficulties for people, and we have to remember that. And as we look at these increasing white-collar cases, whether it is the Madoff case or any others that are coming through the system, we have to remember that.

I wondered, first of all, Ms. Leary, and then maybe Ms. Rex, you both have raised this issue, if you could talk a little bit about the kinds of programs you would want to see how we could address those kinds of needs of these victims of white-collar crimes.

Ms. Leary. Thank you. We are very concerned about this, and, you know, currently under the regulations, the Federal regulations, the States have the ability to pay for financial counseling and mental health counseling for victims of financial crime through the compensation programs. But, you know, as I said in my testimony, they are very reluctant to expand that pool of eligible victims. The assistance programs could be developed for these victims, but there is a tremendous amount of competition for the funds that are available. You can see even some people go ``Oooh'' when Mr. Perkins testified, because people are nervous about being able to preserve what we have now. And, in fact, there is a huge need. Victims of financial crime need a tremendous amount of guidance.

It is a complex world out there. The crooks are way ahead of law enforcement in terms of their sophistication, and so unraveling the damage that is done to your credit history, to your reputation, there may be warrants out for your arrest be somebody has misused your information, you know, restoring your fiscal stability is only one part of it.

People need those services. They need the mental health counseling. They need some very practical, hand-holding financial advice. They need connections to pro bono or low-cost consumer attorneys. People forget that it often requires litigation to get your life back on track, to ward off those creditors, to restore your financial well-being, get your credit history repaired, get those arrest warrants that are based on false information quashed.

People need legal assistance to do this, and particularly less sophisticated and perhaps older folks are just completely stunned by what confronts them. So they need those services, absolutely.

Senator Klobuchar. Thank you.

Ms. Rex, do you want to add anything?

Ms. Rex. I would just say that I do think, as an administrator of a compensation program, you know, that the face of crime changes with the decades. And I think we do need to look at as the pool of elders grows in Vermont and in this country, to look at what is happening to them. And our compensation program does provide the financial counseling, and we will do the mental health counseling. But I think we need to start looking at helping people with their living expenses if they do not have any money to live and making sure they get to stay in their home.

So I think those are some of the challenges we need to look at in the years to come.

Senator Klobuchar. Thank you for appreciating that because, you know, we had one person that could not qualify for student loans because her ID was stolen 4 years before. She did not think much of it. She just got a new one. And then she had racked up 14 prostitution convictions, which, of course, was not her, and she could not get any student aid and was going to have to drop out of college. So there is this whole grouping of services that normal county attorneys or State attorneys' offices are not used to providing. And so we have to find some way to help these victims of identity theft and much more complicated crimes than that.

Thank you.

Chairman Leahy. [Presiding.] Thank you. Thank you very much, Senator Klobuchar.

Senator Wyden.

Senator Wyden. Thank you, Mr. Chairman. I want to commend you particularly for standing up for the rights of victims. We have had an excellent panel, and I am sorry that I have missed at least part of this. This is a hectic morning, even by Senate standards.

I strongly support the legislation involved here, the Victims of Crime Act. It is the bedrock of support for victims' services across the country. And I think a number of you have made some good suggestions with respect to updating the law.

My first question is directed to you, Mr. Derene, because I think you have laid out particularly some of the issues with respect to the cap on payments from the fund that was established in the legislation. As you noted in your testimony, in 2000 Congress put the cap on. It was designed to deal with fluctuations in the deposits into the fund. And I think it would be helpful if you could describe to the Committee what the negative consequences are because there is this cap.

Mr. Derene. Thank you. I think the problem with the cap is that the formula for distributing the fund according to the statute--and we just went through part of the problem--is kind of complicated. But the bottom line is that the amount available for State assistance programs, many of the ones that we have been talking about here, is sort of at the bottom of the food chain. So unless the cap is set at a sufficient level, the amounts that go for other programs increase, or if the cap is lowered, the amounts available for States decline. And it is a simple matter of the operation of the formula in the statute.

So what we have seen is that while deposits have actually increased, the amount available for State programs has declined. And, in fact, you may have gotten letters from constituents why if the cap is raised, the programs are still getting cut. And part of it is because of that formula.

As a result of those cuts--as I mentioned, between 2006 and 2008, there has been a cut of \$87 million, or 22 percent--State programs at the State level try to buffer those cuts. But at some point in time, we pay the piper. The loss of money is seen, and we have just seen that in a recent report by the Office for Victims of Crime where in 2008 the number of victims served by this program nationally was actually reduced by over 336,000 victims.

Senator Wyden. Why would this be the right time to raise the cap? You know, obviously, when you are talking about this, you are always in a balancing act. You have got to ensure the stability of the fund. All of you are interested in that, and I think at the same time, we understand there are a number of critical services for victims that need to be addressed.

So if someone asked you who was skeptical of this, you know, why should we do it right now, what would be your answer?

Mr. Derene. Of course, I think it is always the right time to raise the cap. And I would simply point out that under the

statute, if there had not been a cap, all of this money that we are talking about, about \$2 billion that we are talking about that has been retained in the fund, would already have been out serving victims. And as was mentioned before, you cannot delay services to victims. If a woman needs shelter, she needs shelter now. She does not need it, you know, in 6 months or when the cap is raised. So I always think there is a need

I did a survey of State administrators and simply said, ``What is the gap between the amount of funds that you have been asked to award and how much you had available? And nationally that was over \$100 million.

Senator Wyden. How would you prioritize the services that could be offered if the cap was raised?

Mr. Derene. Well, I think the first--very honestly, I think the first need now is to restore what has been cut. We have had programs that have shut their doors, staffs that have been laid off, so we are really looking at trying to get back to where we were, and I think there is a host of needs there for shelter. The National Network to End Domestic Violence does an annual census, and they reported, I believe, on one day some 9,000 requests for services have been denied because of lack of funding.

So there are immediate needs for counseling, for shelter, for emergency support that I think would be the first priority among States if they were able to get more funds.

Senator Wyden. I have not meant to ignore the other four very valuable witnesses. Would any of you like to add a comment both with respect to the question of raising the cap and the priorities for services if the cap was raised?

Ms. Leary. Thank you, Senator. I would like to just add that not only is there a need for additional VOCA funding to release more of those funds, but we need to have steady, predictable increases in funding, because, you know, it is kind of like your family budget. If you know how much you are going to make that year, then you may not like it, but you can decide what to do with it. And it is the same thing with victims' services. You need to have a steady increase, a predictable increase, so that you can ensure the continuity of staff, ensure the continuity of services. Victims can rely on you. They know 6 months from now you will still be doing whatever the service is that they need. And, in addition, victim service providers can focus on their mission, which is serving victims of crime, and not be distracted and totally preoccupied all the time with raising money and worrying about laying your staff off and so on. That predictability is equally important.

Ms. Rex. I would echo what Mary Lou just said, but I would also say that one of the things we have been able to do in Vermont is to use the VOCA funds to leverage other funding. So when I get new VOCA funds, I am able to pilot a new program that is serving, you know, some crime victims that are currently not being served. And after a couple years, if I can show good results, it is really valuable for me to bring to the State legislature and say, look, you need to invest in this program, too.

So I think that is another reason why we really need to give States a steady increase each year so that we can do these kind of innovative programs.

Senator Wyden. I went to school on a basketball scholarship, and they always said you should take one shot to close on. And sometimes it would take me a long, long time to get that shot to wrap up. But I think your comment really summed it up and why Chairman Leahy's hearing is so important.

If you look back at the history of this legislation, when the Victims of Crime Act was passed, there was not a whole lot at the State level. There certainly was not a lot of State

initiative in this area, programs and funding and the like. And as a result of this legislation, just as you have suggested, when there is attention at the Federal level, when there is attention on the rights of victims, it does spread fairly quickly to the State level, and we see interest among nonprofits and service organizations. So there are many reasons why we should bolster this act now as we look back on 25 years particularly of the work you all and others have done at protecting and supporting victims.

But one of the most important is when there is Federal leadership. Just as you suggest, it does spread to the State level, to nonprofits, to organizations outside Washington, D.C. So your point is one to quit on.

Mr. Chairman, thank you. Thank you for your leadership on this issue, and as I have told you before, it is a pleasure to serve on the Senate Judiciary Committee.

Chairman Leahy. Well, we have got a chance to do things that so many of us agree with, and I know this is an area where you have been a strong supporter, and I appreciate that.

With that, we will stand in recess.

[Whereupon, at 11:19 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

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