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U.S. Official Backs Strong D.C. Crime Law Control

By Sandra Evans Teeley
Washington Post Staff Writer

The federal government must ensure public safety and security in the District of Columbia and cannot delegate its responsibility to the city government, a Reagan administration official said recently.

At the same time, the administration is willing to give the District more authority over finances than it has had, even though the federal government might have to pick up the pieces if the District got into serious financial trouble, the official said.

"The federal government has its responsibility for safety in the District of Columbia," as does the District, said the official, who described himself as a spokesman for the Reagan administration on the home rule issue and who agreed to be interviewed on the condition that he not be identified.

This means there is a federal interest in laws dealing with local crimes of violence as well as such events as picketing at embassies, he added.

The comments were made in the context of continuing negotiations between the Reagan administration and the D.C. government about home rule issues raised by a Supreme Court ruling last year. The comments provide new insights into the philosophy behind the administration's position, which has angered District officials, and show a stronger sense of purpose on the matter than has been previously expressed by the administration.

Senate hearings are scheduled for today on home rule issues.

The Supreme Court ruling invalidated legislative vetoes, the mechanism Congress

wrote into the decade-old Home Rule Act as the way it could overturn District-approved legislation. The ruling meant that a new veto method had to be found.

The District government and key members of Congress last year came up with an alternative that would make it more difficult for Congress to overturn D.C. laws.

The administration later proposed an approach that entailed more federal controls than in the past in the criminal law area, but it agreed to the city's approach for noncrim-

inal legislation, such as that involving financial matters.

"In net terms, it is an awfully good deal for the District," giving it more rather than less home rule on balance, the official said of the administration proposal. "We are giving them complete financial home rule . . . They [city officials] never dreamed of getting it.

"Given the full home rule in the financial area, the package offered to the District involves a significant expansion of home rule," he said.

Some city officials have said the proposal would be a sharp reversal of the District's hard-won authority for self-government and would give the federal government too much control over local affairs.

Pauline Schneider, D.C. director of intergovernmental relations, said the idea that the administration's proposal provides more home rule in any area is "absolutely, categorically inaccurate" and shows a misunderstanding of how home rule has worked.

Diplomats and federal buildings already are protected by federal law, and the District government has primary responsibility for protecting its residents from crime in the streets, she said.

"I am very disappointed that they [Reagan administration officials] are taking this hard-line position," Schneider said.

Sen. Charles McC. Mathias Jr. (R-Md.), chairman of the Senate Government Affairs subcommittee on the District, has scheduled hearings today to get the various parties to lay out their differences, in hopes of resolving the home rule problems this year.

The Senate has been holding off on legislation while the city and the administration try to reach a compromise. In the meantime, the city faces serious financial difficulties because it cannot borrow from private markets, as it had planned, to finance day-to-day operations and long-term projects as long as there is a legal cloud over its home rule authority.

The city wanted legislation that would enable the federal government to overturn D.C. legislation only if both houses of Congress voted to do so by resolution, which the president would have to sign. This would make it more difficult for Congress to veto D.C.-passed laws than under the now-invalidated method, which was used only twice in the past decade of home rule.

But the administration objected to the application of the proposed system to criminal legislation, suggesting more federal oversight in that area. Rather than designing a disapproval mechanism, the Justice Department wanted each proposed D.C. criminal law to be actively affirmed by both houses of Congress and the president before it could become law. This would make it considerably more cumbersome to get criminal code changes through Congress than it had been under the method in the Home Rule Act, by which all D.C.-passed legislation was enacted automatically unless Congress took some disapproval action during a 30-day review period.

The Reagan administration must insist on more control in the criminal area because the federal government has a responsibility to maintain a safe and secure environment for itself, the administration official said.

"The federal government has a responsibility here that it can't delegate . . . There is no margin of error," he said.

"It's not a question of lack of confidence by the [Reagan] administration in the Barry administration," the official added. "This is not an issue of trust in the D.C. government."

The Reagan administration would have been "perfectly comfortable" with the one-house veto mechanism over D.C. criminal laws that had been in effect for a decade, but that option was foreclosed by the Supreme Court ruling, he said.

The two-house disapproval mechanism favored by the city would give the federal government no more power over D.C. criminal matters than it has over a state's, according to the official, because Congress can pass laws that supercede state laws.

"The federal government can't be in the position of just having to veto through the laborious [legislative] process any criminal laws that are unacceptable," he said.

The official also said the Reagan administration has been better to the District than most liberal Democratic administrations that "can afford to say no to them."

"This has been an enormously accommodating White House for the Barry administration," he said, pointing to large increases in the annual federal payment to the city.

The city proposed a compromise last month that would require both houses to vote for disapproval of any law Congress wanted to overturn but would have extended the congressional review period and added expedited procedures for getting disapproval resolutions to the floor of both houses. The Justice Department rejected that proposal, but city officials still hope Congress might approve it.

Another alternative discussed by the Reagan administration and the District government would involve "screening" of D.C.-passed criminal legislation by the U.S. attorney general. If he or she disapproved it, it could become law only if both houses of Congress approved it and the president signed it, under a version of the proposal the Reagan administration approved.

City officials have called that version of executive branch screening unacceptable but have left the door open to a method whereby an established "federal interest" standard, rather than the opinion of the attorney general, would be used to activate the approval mechanism.

The administration official expressed hope that a compromise could be worked out but warned that the city will have to be flexible if that is to happen.

"If politics doesn't overwhelm the issue, the thing can be worked out," he said. "But if the whole issue is made into a political issue where any incumbent D.C. administration has no room to move, it will be a darn shame."



TALKING POINTS

Vol. IV, No. 5, April 27, 1984

Getting Tough on Crime

The problem of crime "is one as real and as deadly serious as any in America today. It demands that we seek transformation of our legal system, which overly protects the rights of criminals while it leaves society and the innocent victims of crime without justice."

-- President Reagan
January 1981

The Reagan Administration has kept its promise to make the reduction of crime a national priority and the work of this administration is paying off. This administration cares about protecting the innocent victims and holding people accountable for the wrong they do.

-- The FBI recently announced the number of serious crimes reported to police dropped seven percent in 1983, the third consecutive decline and the biggest drop in 23 years. (The number of crimes reached an all-time high in 1980.)

-- The FBI's preliminary figures (the full FBI crime report will be released in August) showed declines in all categories of crimes counted.

-- While the aging of the post World War II "baby boom" generation contributed to this drop, Attorney General William French Smith said, "This marvelous news proves we are beginning to win the battle against crime with some of the most significant initiatives and results in years."

The Reagan Administration has made it clear that the federal government has a very important role to play in prosecuting and punishing federal criminals, in helping to train law enforcement officials, in coordinating national law enforcement efforts, and in setting standards for crime fighting that will guide state and local crime programs.

The need for this is obvious, when, for example, we take a look back to what was happening prior to receiving the welcome news from the FBI.

-- Just four years ago, reported violent crimes were 60 percent greater than in 1971 and 33 percent higher than in 1976. Put another way, there was a murder every 23 minutes, a rape every six minutes, a robbery every 58 seconds, and a burglary every eight seconds. It is estimated that 25 million households, or about 30 percent of the nation's total, are touched by crimes of violence or theft every year. These are staggering numbers.

-- The Republicans are determined to keep this country from sliding back to those days. Progress has been made, but the Reagan Administration continues to work for change in three major areas:

- increased emphasis on the needs of the innocent victims of crime;
- administrative initiatives to strengthen law enforcement programs with particular emphasis on drug trafficking; and,
- legislative reform of federal criminal law.

Victims of Crime—A New Awareness

Early in his administration, President Reagan established the **Task Force on Victims of Crime**. The Task Force report states this was the first time a president had "recognized the plight of those forgotten by the criminal justice system --- the innocent victims of crime."

- As the Task Force reported to the President in December 1982, "The innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds -- personal, emotional, and financial -- have gone unattended."
- The nine-member Task Force presented the President with 68 proposals to restore the balance between the rights of victims and those of the accused. Among their recommendations:
 - Modification of the Sixth Amendment to the Constitution. If adopted, the speedy and fair trial amendment would include the sentence: ". . . Likewise, the victim in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings."
 - Financial assistance for victims.
 - Counseling and help in finding victims temporary shelter.
 - Investigating and prosecuting any form of harassment of witnesses or victims.
- The Reagan Administration has already signed, or is proposing, legislation to assist victims of crime.
 - The **Victim and Witness Protection Act of 1982**, signed by President Reagan in October 1982, requires federal judges to include a victim's impact statement and restitution clause when sentencing a criminal.
 - Under the provisions of the act, a federal judge must now consider the financial, medical, social and psychological effects on victims when determining an appropriate sentence. Also, a criminal must repay the victim for property or financial losses. If no restitution is ordered, the judge must state his reasons.
 - The administration is now sponsoring a victims' crime assistance bill to provide compensation for crime victims. This bill would create a Crime Victim's Assistance Fund in the Treasury supported by fines collected from convicted federal defendants and proceeds defendants might receive for the sale of literary rights relating to the crime. It would also guarantee victims the right to speak at federal parole hearings about the impact a defendant's crime has had on his/her life.

On the Administrative Front

In addition to legislative action, the Reagan Administration has also established some strong programs to reduce crime.

- **War on Drugs:** One of the best examples of the administration's drug enforcement initiatives is the South Florida Task Force, headed by Vice President Bush. The Task Force works with state and local governments to halt the flow of illicit drugs. Its activities have resulted in nearly 2,000 arrests and the confiscation of more than \$3 billion worth of drugs in South Florida alone.
- The White House has established 12 additional task forces to work in other states with state and local officials to stop drug trafficking at its source.
- The administration is better coordinating federal drug enforcement efforts, bringing the FBI together for the first time with the Drug Enforcement Administration (DEA).
- **Organized Crime:** The White House established a Commission on Organized Crime to do a three-year study to expose and analyze organized crime activities and to make judicial and legislative recommendations for improved law enforcement and new methods to combat organized criminal activity.
- The administration has established a cooperative project with the nation's governors to help bring about criminal justice reforms.
- In January, the Department of Justice and the FBI co-sponsored a national symposium on sexual assault to better acquaint law enforcement officials with procedures they should follow in sexual assault cases.
- The resources of federal law enforcement have been increased by adding nearly 1,000 new FBI and DEA agents since fiscal year 1981 and by increasing the federal law enforcement budget by almost 50 percent over the past three years.

Comprehensive Crime Control

As part of its initiatives to strengthen our criminal justice system and to fight crime, the Reagan Administration has proposed the most comprehensive reform of our federal criminal law in recent history.

- The Senate has overwhelmingly approved the administration's Comprehensive Crime Control Act of 1984. In addition three other administration crime bills have been passed by the Senate.
 - The legislation now awaits House approval. U.S. Rep. Trent Lott (R-Miss.) recently said, "This is another of those unfortunate instances where a single Member of Congress, a Democrat subcommittee chairman, is able to keep the House from acting on legislation it probably would pass."
- Key provisions of the Comprehensive Crime Bill are:
 - **BAIL:** It would be easier for judges to impose high bail on defendants who might commit another dangerous crime if they were freed. The bill would permit courts to consider danger to the community in setting bail conditions and to deny bail altogether where a defendant poses a grave danger to others.
 - **SENTENCING:** The bill would revise sentencing procedure to make certain sentences would be consistent and determinate. This would mean criminals would be required to serve the sentences given them, with no parole and limited "good time" credits.

- **CRIMINAL FORFEITURE:** This would reinforce a prosecutor's ability to confiscate property and profits from criminal activity.
- **INSANITY DEFENSE:** The bill would narrow the insanity defense currently available in the federal system by limiting the definition to those who are unable to appreciate the nature or wrongfulness of their acts. It would also place the burden on the defendant to prove insanity, rather than on the prosecution to prove sanity.
- Other provisions of the comprehensive bill include a minimum mandatory five-year sentence for use of a firearm in a federal crime of violence and stiffer federal penalties relating to narcotics offenses, "laundering money," and organized crime.
- The three related administration crime bills deal with:
 - Revision of the **exclusionary rule** which currently disallows evidence in a criminal case that has been improperly seized. This bill would prevent suppression of evidence where it can be shown that officers were proceeding in good faith and with a reasonable belief they were acting in compliance with the law.
 - Creation of constitutionally permissible procedures for imposition of the **death penalty** for treason, espionage, certain federal homicide cases and attempts to kill a president of the United States.
 - Reform of federal **habeus corpus** laws.

Tough on Crime

The Reagan Administration's tough-on-crime attitude is paying off. The efforts to make the reduction of crime a national priority, to recognize the rights of the innocent victims of crime and to hold people accountable for the wrong they do are helping to make a better future and a safer America for us all.

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THE WHITE HOUSE

WASHINGTON

April 30, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Statement of Lois Herrington Concerning
S. 2423 -- Victims of Crime Assistance
on May 1, 1984

We have been provided with a copy of testimony Assistant Attorney General Lois Herrington proposes to deliver on May 1 before the Senate Judiciary Committee on S. 2423, the Administration's "Victims of Crime Assistance Act of 1984." The testimony simply reviews the major features of the bill, which was introduced by Chairman Thurmond on March 13 with Senators Biden, Laxalt, Heinz, and Grassley as co-sponsors. As you may recall, the bill would establish a Victims Fund at Treasury, funded mainly by Federal criminal fines. The assets of the fund would be distributed annually, 50 percent to reimburse states for a portion of the financial assistance they provide to victims, 30 percent to the states by population to fund programs providing non-financial assistance to victims, and 20 percent to Federal agencies serving the same purpose. The bill also would establish a Federal Victims of Crime Advisory Committee, with members appointed by the President.

I have reviewed the proposed testimony and have no objections. The policy choices were made at the time the Administration introduced the bill; this testimony adds nothing new.

Attachment

THE WHITE HOUSE

WASHINGTON

April 30, 1984

MEMORANDUM FOR JAMES C. MURR
CHIEF, ECONOMICS-SCIENCE-GENERAL
GOVERNMENT BRANCH, OMB

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Lois Herrington Concerning
S. 2423 -- Victims of Crime Assistance
on May 1, 1984

Counsel's Office has reviewed the above-referenced testimony,
and finds no objection to it from a legal perspective.

FFF:JGR:aea 4/30/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

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224136 *u*

STATEMENT OF

LOIS HAIGHT HERRINGTON

ASSISTANT ATTORNEY GENERAL
FOR JUSTICE ASSISTANCE
U.S. DEPARTMENT OF JUSTICE

Before the

SENATE COMMITTEE ON THE JUDICIARY

CONCERNING

S. 2423 - VICTIMS OF CRIME ASSISTANCE

ON

MAY 1, 1984

Mr. Chairman, I am pleased to testify before you today on S. 2423, the "Victims of Crime Assistance Act of 1984." You introduced this bill on behalf of the Administration on March 13, 1984, with your co-sponsors, Senator Biden, Senator Laxalt, Senator Heinz, and Senator Grassley. I want to extend the Administration's appreciation to you and your co-sponsors for your leadership on this critical issue. I am also very happy to see that the Senate recognizes that fair treatment for victims of crime is an issue that transcends party lines. The bipartisan support we have received in both Houses makes me confident that Congress is ready to move quickly on this important legislation.

I would also like to express my appreciation for all the help that this Committee and its staff have provided me, first in my capacity as Chairman of the President's Task Force on Victims of Crime, and now as Assistant Attorney General for Justice Assistance. I hope we can continue to work together on the important subject of Federal financial assistance to victims of crime.

I would like to first describe the key features of our bill, then respond to any questions you may have.

The Administration's bill implements many of the recommendations made by President Reagan's Task Force on Victims of Crime. The Task Force presented strong rationales for establishing a program of Federal assistance in this area. Foremost among them was that, at present, the States are shouldering the entire burden of compensating victims of crime. The Federal government, however, has a significant interest in

compensating and otherwise assisting victims of crime. By helping the criminal justice system to actually work for the benefit of the innocent victim, the Federal government can assure greater cooperation between victims and the system to the substantial benefit of law enforcement nationally. Creation of a Crime Victims' Assistance Fund in the Treasury will help the government restore public confidence in the efficiency and integrity of the criminal justice system.

The thrust of our legislation is to place the Federal government in a leadership role without creating an unnecessary bureaucracy to impose the Federal government's priorities on the States. Under the bill, the Federal government will provide money to the States to encourage them to effectively run their own programs. The States will continue to make their own policy choices on critical elements of their compensation programs. The legislation provides for only minimal Federal guidance in areas of substantial Federal interest that will not interfere with a State's discretion to run its own program as it sees fit.

Criminals--not innocent taxpayers--will provide the money for the Fund. The principal source of funding is the total of all criminal fines collected from convicted Federal defendants, including anti-trust fines. Criminal fines are also defined to include fines imposed for criminal violation of Federal motor vehicle laws, and forfeited appearance bonds posted by Federal criminal defendants.

The best, most recent figures on criminal fines collected by the courts indicate that just under \$72 million in fines was

collected in FY 1983. This figure, however, may be unreliable because it is derived from accounts maintained by the Administrative Office of the United States Courts that do not identify collected fines as civil or criminal. GAO is presently examining this issue and hopes to have a draft report available for the Department of Justice in the near future. Our bill would require the Director of the Administrative Office of the United States Courts to report to the Attorney General within one year after the bill's enactment on what steps have been taken to improve the accounting of criminal fines and to assure the deposit of fines in the Fund. The report may also make other recommendations for future Federal action to improve the collection of fines.

Absent reliable data on the amount of fines being collected now, it is not possible to definitively project how much money would be realized in the Fund from this source. It is our expectation, however, that with improved accounting techniques and the enactment of the collection procedures delineated in the Administration's "Comprehensive Crime Control Act of 1983", this source would provide approximately \$45-75 million for the Fund its first year.

Under our bill, the Fund would also receive the proceeds of any contract entered into by any Federal defendant for the sale of literary or other rights arising from his criminal act. This proposal, modeled after the "Son of Sam" laws enacted by 15 States, responds to the requirement of the "Victim and Witness Protection Act of 1982" that the Attorney General report to

Congress regarding any Federal laws necessary to ensure that Federal felons do not profit from selling the story of their crimes.

To that end, the bill adds a new Rule 32.2 to the Federal Rules of Criminal Procedure. The new rule would authorize a United States District Court judge, at any time after the filing of an indictment or information against a defendant, to order any person or organization with whom the defendant has contracted "for the purpose of having his crime or alleged crime depicted in a movie, book, newspaper, magazine, radio or television production, or live entertainment of any kind, or for the purpose of expressing his thoughts, opinions or emotions regarding such crime" to pay in to the clerk of the court any money which would otherwise be paid to the defendant, his representative, or a third party under the contract. Before entering the order, the court would be required to hold a hearing at which the defendant, the person or organization with whom he contracted, any third party beneficiary of the contract, and the victim would be permitted to speak. The purpose of the hearing would be to permit the court to determine whether the order would be warranted in the interests of justice or to redress the injuries of the victim. The defendant or any third party to the contract would have the opportunity to present any legal challenges to such an order at this hearing.

Any monies paid to the clerk would be deposited in the Fund for the benefit of any victim of the defendant's crimes. The victim could receive the funds only after securing judgment in a

civil action brought against the defendant for damages arising out of the crime. If no action was filed within 5 years after the first deposit of money into the Fund, the money would become part of the Fund. The only other use to which the money could be put would be the payment of the defendant's legal defense fees. No more than 20 percent of the money put into the Fund with respect to the defendant could, however, be used for that purpose. Upon dismissal of the charges or acquittal of the defendant, the clerk would immediately pay over to the defendant all money paid into the Fund with respect to the defendant. ✓

These sections may serve as a deterrent to any contract ever being entered between a defendant and another party for the purposes listed above. As a result, it may be that no funds will ever be deposited in the Fund from this source. New York's experience, however, has shown that some defendants will still enter into such contracts in hope of getting better treatment on parole. No projection of anticipated funding from this source can, however, realistically be made at this time.

Fifty percent of the money deposited in the Fund will be available for distribution annually to those States with operating victim compensation programs for the purpose of reimbursing them for ten per cent of their payouts under those programs. To be eligible for this funding, a State must provide the same compensation to nonresident victims as it does to residents, and the same compensation to victims of Federal crimes as it does to victims of State crimes. The States must also agree to compensate victims for mental health counseling required

as a result of their victimization.

Thirty percent of the Fund will be distributed to the States (and the territories and commonwealths of the United States) on the basis of their population for the purpose of improving the assistance provided to victims of crime by State governments, local units of government, and nonprofit organizations. To be eligible to receive funding from this portion of the Fund, organizations must demonstrate a record of quality assistance to victims, promote the use of volunteers, demonstrate a commitment from other organizations to provide necessary services to all victims of crime, and assure coordination with other service providers.

The remaining 20 percent of the Fund will be distributed among Federal law enforcement agencies for the purpose of improving the assistance offered by the Federal government to victims of crime. This money could be spent for establishing victims assistance positions or units in Federal agencies, providing services to the victims of Federal crimes, training Federal law enforcement and court personnel in victims assistance, and disseminating information about Federal victims assistance services. A Federal Victims Assistance Administrator appointed by the Attorney General will administer this share of the Fund.

The Administrator will be guided by a Federal Victims of Crime Advisory Committee to be appointed by the President. The Committee would be chaired by the Attorney General, and would include the Secretary of the Interior (to represent, among

others, the Park Police and the Indian Police), the Secretary of the Treasury (to represent, among others, the Secret Service) the Federal Administrator, such other Federal officials as the President may appoint, and at least two members of the public who have special knowledge of the needs of victims. The Committee would also make periodic recommendations to the President about other actions the Federal government could take to improve treatment of the victims of Federal crime.

The Federal Administrator must seek to avoid funding activities that duplicate assistance already effectively provided by local organizations. The Administrator would also be responsible for overseeing Federal compliance with the "Guidelines for Fair Treatment of Federal Crime Victims and Witnesses" enacted pursuant to the Victim and Witness Protection Act of 1982.

This 20% share is necessary to enable the Federal Government to lead by example in the area of victims assistance. The U.S. Attorney's Offices and the FBI, in particular, should serve as models for district attorney's offices and state investigators in providing services to victims of crime. At present, however, there are very few victims assistance positions or units in Federal law enforcement agencies. The staff charged with the responsibility of victim assistance is often inadequately trained and unaware of the network of local service providers available to help the victim.

In addition, victims of violent crimes occurring in Federal territory--Indian reservations, military installations, United

States Parks--often have no resources close at hand to counsel, inform, and otherwise assist them in dealing with the effects of the crime. Federal personnel in these areas are presently unable to either provide necessary services or to refer the victim to an appropriate service provider.

There is, in short, a great need for training, information, and technical assistance at the Federal level to improve the treatment of Federal crime victims. It may be that, at some future date, the 20% share will provide more money at the Federal level than is needed. That time, however, is not now. At such time as the funds provided exceed the amount needed, the excess will go to state and local victim assistance providers. Under §204(e) of the Act, any portion of the 20% share that remains unspent after 3 fiscal years will be redistributed to the States in addition to their 30% allocation.

The bill would also provide victims the opportunity to appear at Federal parole hearings to inform the Parole Commission of the emotional, psychological, physical, and financial impact a prospective parolee's crime had on their lives.

The legislation contains a sunset date of September 30, 1988 and incorporates administrative provisions of the Omnibus Crime Control and Safe Streets Act, as amended, concerning nondiscrimination, audit of fund recipients, and confidentiality of information.

This Administration is committed to helping the criminal justice system of this nation provide fair and compassionate treatment to the victims of violent crime. It is apparent, Mr. Chairman, that you and the co-sponsors of S. 2423 share the same

goal. I hope that the continuation of our constructive dialogue on these issues today will result in the speedy passage of this legislation for the benefit of both the victims of crime and the criminal justice system as a whole.

Thank you, Mr. Chairman, I will be pleased to respond to any questions you or members of the Committee may have.

THE WHITE HOUSE

WASHINGTON

March 12, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Statement of Lois Haight Herrington
on H.R. 3498 -- "The Victims of Crime
Act of 1983"

We have been provided with a copy of testimony Assistant Attorney General Lois Herrington proposes to deliver on March 14 before the Subcommittee on Criminal Justice of the House Judiciary Committee. The testimony concerns H.R. 3498, "The Victims of Crime Act of 1983," which is very similar to the Administration's own "The Victims of Crime Assistance Act of 1984." Herrington's testimony reviews the major features of the Administration's bill, and then discusses the differences between it and H.R. 3498. The Administration bill would create a Fund from criminal fines and other sources, and distribute 50 percent of the Fund to reimburse states for compensating victims, 30 percent to states to improve victim assistance programs, and 20 percent to Federal agencies for the same purpose. The Fund would be administered by an official appointed by the Attorney General, advised by an advisory committee appointed by the President. H.R. 3498 also establishes a Fund, with slightly broader sources of funding, and would distribute 80 percent of the Fund to reimburse states for compensating victims, and 20 percent for victim assistance programs.

I have reviewed the proposed testimony, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 12, 1984

MEMORANDUM FOR JAMES C. MURR
CHIEF, ECONOMICS-SCIENCE-GENERAL
GOVERNMENT SECTION, OMB

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

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FFF:JGR:aea 3/12/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 12, 1984

MEMORANDUM FOR JAMES C. MURR
CHIEF, ECONOMICS-SCIENCE-GENERAL
GOVERNMENT SECTION, OMB

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Lois Haight Herrington
on H.R. 3498 -- "The Victims of Crime
Act of 1983"

Counsel's Office has reviewed the above-referenced testimony,
and finds no objection to it from a legal perspective.

FFF:JGR:aea 3/12/84
cc: FFFielding/JGRoberts/Subj/Chron

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Subject: Statement of Lois Haight Herrington
on H.R. 3498 "The Victims of Crime Act of 1983"

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DRAFT

STATEMENT OF

LOIS HAIGHT HERRINGTON

ASSISTANT ATTORNEY GENERAL
FOR JUSTICE ASSISTANCE
U.S. DEPARTMENT OF JUSTICE

Before the

SUBCOMMITTEE ON CRIMINAL JUSTICE
HOUSE COMMITTEE ON THE JUDICIARY

MARCH 14, 1984

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Mr. Chairman, I am pleased to present the Department of Justice's views on H.R. 3498, "The Victims of Crime Act of 1983". This bill is similar in many significant respects to the Administration's recently introduced legislation, "The Victims of Crime Assistance Act of 1984." The technical differences between the two proposals do not obscure our common commitment to the goal of improving assistance to the innocent victims of violent crime.

I would also like to express my appreciation for all the help that this Subcommittee and its staff have provided me, first in my capacity as Chairman of the President's Task Force on Victims of Crime, and now as Assistant Attorney General for Justice Assistance. I hope we can continue to work together on the important subject of Federal financial assistance to victims of crime.

I would like to first describe the key features of our bill, then briefly address the differences between the two proposals.

The Administration's bill implements many of the recommendations made by President Reagan's Task Force on Victims of Crime. The Task Force presented strong rationales for establishing a program of Federal assistance in this area. Foremost among them was that, at present, the States are shouldering the entire burden of compensating victims of crime. The Federal government, however, has a significant interest in compensating and otherwise assisting victims of crime. By helping the criminal justice system to actually work for the benefit of the innocent victim, the Federal government can assure

greater cooperation between victims and the system to the substantial benefit of law enforcement nationally. Creation of a Crime Victims' Assistance Fund in the Treasury will help the government restore public confidence in the efficiency and integrity of the criminal justice system.

The thrust of our legislation is to place the Federal government in a leadership role without creating an unnecessary bureaucracy to impose the Federal government's priorities on the States. Under the bill, the Federal government will provide money to the States to encourage them to effectively run their own programs. The States will continue to make their own policy choices on critical elements of their compensation programs. The legislation provides for only minimal Federal guidance in areas of substantial Federal interest that will not interfere with a State's discretion to run its own program as it sees fit.

Criminals--not innocent taxpayers--will provide the money for the Fund. The principal source of funding is the total of all criminal fines collected from convicted Federal defendants, including anti-trust fines. Criminal fines are also defined to include fines imposed for criminal violation of Federal motor vehicle laws, and forfeited appearance bonds posted by Federal criminal defendants.

The best, most recent figures on criminal fines collected by the courts indicate that just under \$72 million in fines was collected in FY 1983. This figure, however, may be unreliable because it is derived from accounts maintained by the Administrative Office of the United States Courts that do not

identify collected fines as civil or criminal. GAO is presently examining this issue and hopes to have a draft report available for the Department of Justice in the near future. Our bill would require the Director of the Administrative Office of the United States Courts to report to the Attorney General within one year after the bill's enactment on what steps have been taken to improve the accounting of criminal fines and to assure the deposit of fines in the Fund. The report may also make other recommendations for future Federal action to improve the collection of fines.

Absent reliable data on the amount of fines being collected now, it is not possible to definitively project how much money would be realized in the Fund from this source. It is our expectation, however, that with improved accounting techniques and the enactment of the collection procedures delineated in the Administration's "Comprehensive Crime Control Act of 1983", this source would provide approximately \$45-75 million for the Fund its first year.

Under our bill, the Fund would also receive the proceeds of any contract entered into by any Federal defendant for the sale of literary or other rights arising from his criminal act. This proposal, modeled after the "Son of Sam" laws enacted by 15 States, responds to the requirement of the "Victim and Witness Protection Act of 1982" that the Attorney General report to Congress regarding any Federal laws necessary to ensure that Federal felons do not profit from selling the story of their crimes.

To that end, the bill adds a new Rule 32.2 to the Federal Rules of Criminal Procedure. The new rule would authorize a United States District Court judge, at any time after the filing of an indictment or information against a defendant, to order any person or organization with whom the defendant has contracted "for the purpose of having his crime or alleged crime depicted in a movie, book, newspaper, magazine, radio or television production, or live entertainment of any kind, or for the purpose of expressing his thoughts, opinions or emotions regarding such crime" to pay in to the clerk of the court any money which would otherwise be paid to the defendant, his representative, or a third party under the contract. Before entering the order, the court would be required to hold a hearing at which the defendant, the person or organization with whom he contracted, any third party beneficiary of the contract, and the victim would be permitted to speak. The purpose of the hearing would be to permit the court to determine whether the order would be warranted in the interests of justice or to redress the injuries of the victim. The defendant or any third party to the contract would have the opportunity to present any legal challenges to such an order at this hearing.

Any monies paid to the clerk would be deposited in the Fund for the benefit of any victim of the defendant's crimes. The victim could receive the funds only after securing judgment in a civil action brought against the defendant for damages arising out of the crime. If no action was filed within 5 years after the first deposit of money into the Fund, the money would become

part of the Fund. The only other use to which the money could be put would be the payment of the defendant's legal defense fees. No more than 20 percent of the money put into the Fund with respect to the defendant could, however, be used for that purpose. Upon dismissal of the charges or acquittal of the defendant, the clerk would immediately pay over to the defendant all money paid into the Fund with respect to the defendant.

These sections may serve as a deterrent to any contract ever being entered between a defendant and another party for the purposes listed above. As a result, it may be that no funds will ever be deposited in the Fund from this source. New York's experience, however, has shown that some defendants will still enter into such contracts in hope of getting better treatment on parole. No projection of anticipated funding from this source can, however, realistically be made at this time.

50% of the money deposited in the Fund will be available for distribution annually to those States with operating victim compensation programs for the purpose of reimbursing them for ten per cent of their payouts under those programs. To be eligible for this funding, a State must provide the same compensation to nonresident victims as it does to residents, and the same compensation to victims of Federal crimes as it does to victims of State crimes. The States must also agree to compensate victims for mental health counseling required as a result of their victimization.

30% of the Fund will be distributed to the States (and the territories and commonwealths of the United States) on the basis

of their population for the purpose of improving the assistance provided to victims of crime by State governments, local units of government, and nonprofit organizations. To be eligible to receive funding from this portion of the Fund, organizations must demonstrate a record of quality assistance to victims, promote the use of volunteers, demonstrate a commitment from other organizations to provide necessary services to all victims of crime, and assure coordination with other service providers.

The remaining 20% of the Fund will be distributed among Federal law enforcement agencies for the purpose of improving the assistance offered by the Federal government to victims of crime. This money could be spent for establishing victims assistance positions or units in Federal agencies, providing services to the victims of Federal crimes, training Federal law enforcement and court personnel in victims assistance, and disseminating information about Federal victims assistance services. A Federal Victims Assistance Administrator appointed by the Attorney General will administer this share of the Fund.

The Administrator will be guided by a Federal Victims of Crime Advisory Committee to be appointed by the President. The Committee would be chaired by the Attorney General, and would include the Secretary of the Interior (to represent, among others, the Park Police and the Indian Police), the Federal Administrator, such other Federal officials as the President may appoint, and at least two members of the public who have special knowledge of the needs of victims. The Committee would also make periodic recommendations to the President about other actions the

Federal government could take to improve treatment of the victims of Federal crime.

The Federal Administrator must seek to avoid funding activities that duplicate assistance already effectively provided by local organizations. The Administrator would also be responsible for overseeing Federal compliance with the "Guidelines for Fair Treatment of Federal Crime Victims and Witnesses" enacted pursuant to the Victim and Witness Protection Act of 1982.

The bill would also provide victims the opportunity to appear at Federal parole hearings to inform the Parole Commission of the emotional, psychological, physical, and financial impact a prospective parolee's crime had on their lives.

The legislation contains a sunset date of September 30, 1988 and incorporates administrative provisions of the Omnibus Crime Control and Safe Streets Act, as amended, concerning nondiscrimination, audit of fund recipients, and confidentiality of information.

Comparison of H.R. 3498 and Administration Proposal

H.R. 3498's funding and disbursement provisions differ in several respects from the Administration's bill. I would like to touch upon the most significant of these differences.

The Crime Victims Fund created by H.R. 3498 (the Rodino-Berman bill) would receive all Federal criminal fines, the proceeds of all criminal forfeitures, new penalty assessments imposed on convicted Federal criminals, and the taxes collected

on the sale of pistols and revolvers. The Administration proposal would place criminal fines and that portion of "Son of Sam" proceeds not claimed by individual victims in a Crime Victims' Assistance Fund.

Unlike the Administration's bill, H.R. 3498 does not include the proceeds of forfeited appearance bonds posted by Federal criminal defendants in its Fund. Appearance bond forfeiture proceeds presently go to the General Fund of the Treasury. Department of Justice figures indicate that more than \$6 million in cash was collected from that source in FY 1983. We believe that, as revenue derived from accused criminals who have fled or otherwise avoided prosecution, this money is an appropriate source of funding for the relief of victims of crime.

The Administration has proposed to earmark criminal forfeitures for other high priority law enforcement purposes. Under the "Comprehensive Crime Control Act of 1983", recently passed by the Senate, racketeering profits, seized drug profits and customs forfeitures are to be placed in discrete forfeiture funds. The proceeds of these forfeitures are to be used to pay the expenses of the forfeiture, storage, and sale of seized property. Drug and custom forfeiture proceeds may be also used to pay rewards to informers. Dedication of these proceeds to the purposes cited is critical to the Government's effort to more efficiently and productively combat RICO, drug, and customs violations. This critical need and the nexus between the source of the proceeds and their intended use makes it highly appropriate to use the funds in question for the purposes set forth in the Administration's earlier proposal.

Although we have no strong objection to imposition of a nominal penalty assessment fee on convicted Federal defendants, it is our feeling that if money coming into the Fund from other sources were adequate, this money might best be spent elsewhere, for other law enforcement purposes currently under study.

With respect to the tax on pistols and revolvers, we refer you to the views submitted by the Department of Interior on behalf of the Administration.

On the disbursement side, the Rodino-Berman bill would allocate 80% of the Fund for victims compensation. From that allocation, each State operating a victims compensation program would receive a grant of up to 50% of its covered costs of compensating victims of State crimes and 100% of its covered costs of compensating victims of exclusively Federal crimes. A State would be eligible for this grant only if its program offered compensation for medical expenses, including mental health counseling and care; prosthetic devices; dental services; other services "rendered in accordance with any method of healing" recognized by State law; and funeral expenses attributable to a death resulting from a compensable crime.

State eligibility would be further contingent on the State's promotion of victim cooperation with law enforcement; its ability to diminish compensation to the extent of a victim's or beneficiary's contributory misconduct; its subrogation to a beneficiary's claims against the perpetrator of a compensable crime to the extent of compensation paid; its nondiscrimination against nonresidents of the State; and its compensation of

victims of exclusively Federal crimes.

By contrast, the Administration's proposal conditions State eligibility for Federal victims compensation assistance only on certification of the amount spent by the State for victims compensation during the prior fiscal year, a certification of non-supplantation, and the State's assurances that it will provide compensation for mental health counseling, and compensate nonresident victims and victims of exclusively Federal crimes.

Although the conditions H.R. 3498 would place on the States are well intentioned, they place the Federal Government in the position of dictating State policy on matters that are best left to the States to decide. The nature and extent of compensation a State chooses to pay to victims of crimes committed within its borders must be, first and foremost, established according to the popular will of the residents of the State and their elected representatives. Those policy choices must be made in the context of the fiscal, political, and administrative realities existing in the State. The Federal Government should respect the State's choices in these matters and act to assert its will only on those issues of overriding national interest. Our bill is designed to permit the State to fashion its own remedies to these problems, with Federal assistance available to help the State implement those remedies.

The Administration's bill allocates 50% of the Fund to state victims compensation programs. The provision awarding States up to 10% of their prior year's compensation spending is principally intended to encourage the States in their compensation endeavors,

to reimburse them for compensating Federal victims, and to demonstrate a Federal commitment to provide assistance in this area. The 50% match in H.R. 3498 could result in the unanticipated commitment of far more Federal money than necessary in this area, or prove to be an illusory promise to States whose compensation spending accelerated faster than the growth of the Fund.

H.R. 3498 would allocate only 20% of the Fund to victims' assistance, in contrast to the 50% allocated by the Administration proposal. Further, the eligibility requirements imposed on prospective recipients of assistance money are much more restrictive in H.R. 3498 than in the Administration bill. For example, in order to be eligible for assistance under the Rodino-Berman bill, an organization must be "established exclusively" to provide services directly to crime victims. This would apparently render ineligible a broad range of victim service providers--from hospitals to counseling centers to district attorneys' offices--that would be eligible for assistance under the Administration's proposal. We believe that if the organization can provide quality services to victims, it should not be ineligible for funding merely because it provides those services to others as well.

In addition, H.R. 3498 imposes a series of cumulative eligibility requirements on service providers that, in our view, would again constrict the range of organizations eligible for

assistance. Our proposal would make eligible those providers who could demonstrate an ability to provide only one of a list of direct services.

This Administration is committed to helping the criminal justice system of this nation provide fair and compassionate treatment to the victims of violent crime. It is obvious that the drafters and sponsors of H.R. 3498 share the same goal. I hope that the continuation of our constructive dialogue on these issues will result in the passage of effective legislation that will benefit both the victims of crime and the criminal justice system as a whole.

Thank you, Mr. Chairman, I will be pleased to respond to any questions you or members of the Subcommittee may have.