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### Compensation for Victims of Crime

Mike Mansfield 1903-2001

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August 1, 1973

STATEMENT OF SENATOR MIKE MANSFIELD (D., MONT.)

Mr. Chairman, Distinguished Members of the Subcommittee:

I am grateful for this opportunity to appear before you this morning. I do so on behalf of the countless thousands of innocent victims of crime. I do so as well out of a deep sense of personal concern for the effects of violence upon society today. Indeed, it is a society where attitudes of concern and compassion have been replaced too often recently by those of apathy and indifference. I doubt that any person in this room today will forget the matter of Kitty Genovese--a young New Yorker put to death by violence not too many years ago as some 32 of her so-called "fellow citizens" looked on. In short, America has suffered deeply and in many different ways from the ravages of crime. The daily press across this land documents seemingly endless stories of violence, of aggravated assault and arson, of burglary and murder, of rape, riot and robbery.

To help meet this condition the Constitution and the law books of this nation provide a carefully framed system of law enforcement and criminal justice. I speak not as a lawyer



but simply as one who is deeply alarmed when I say that my concern chiefly is that recent efforts by the Congress and other institutions to stimulate new approaches to stemming and even reversing the rate of crime and violence have utterly and without justification ignored the criminal victim. Under our code there are but two parties: the people and the criminal. It is a system that too often finds the government bogged down in Court. It is a system that finds the criminal--if convicted--more hardened and even more expert at his trade as he resides in a penal institution ill-equipped and unable to perform its basic task of rehabilitation. And what of the criminal victim? What of his injury and suffering, his personal loss and financial impairment? As a practical matter he is left to pursue a cause of action for damages against a defendant who if apprehended is typically destitute and judgment proof. I do not know the figure today, but two or three years ago according to the President's Commission on the Causes and Prevention of Violence, a bare 1.8% of the victims ever collected anything from their attackers.

In effect, under our system, the criminal victim is virtually separated from the crime. And it is to restore the victim to his proper position within our code of justice that I proposed



Senate bill 300, the Victims of Crime Act of 1973. S. 300, or for that matter, any such victims proposal, revives a concept that finds its historical base in the very first criminal justice code. But without belaboring its traditional validity, I would just say that the justification for such a program stems today from a number of diverse yet totally compelling notions. There is first the idea that once society undertakes to furnish protection to its members by way of police and safety facilities, it should, if those protection efforts fail, assume a responsibility that recognizes the victim and his loss. Beyond this contractual arrangement there are numerous precedents based on similar recognized social responsibilities. A number of steps have been taken in the past 30 years or more which demonstrate governmental obligations with respect to collective community need.

In fact, there is a great similarity in rationale and origin between the idea of compensating workers, assuring them a reasonably safe place in which to work and compensating victims of crime, assuring them a reasonably safe society in which to live.

Social security, and medicare; aid to dependent children, assistance for the handicapped, the aged and the blind, notions of no-fault insurance and national health insurance--all reflect



a recognition of collective responsibility. Fulfilling this responsibility with regard to victims of crime is no easy task. Senate bill 300 attempts to face the problem. If adopted at the federal level, however, it would by no means represent the first such step taken in modern times. Indeed, within the last 10 years, New Zealand, England, particular provinces in Canada and Australia--all have enacted government programs to compensate innocent victims of violence. In addition, the States of California, Hawaii, Nevada, Maryland, Massachusetts, New York and most recently, New Jersey and Alaska and Rhode Island, all have enacted some type of program along these lines.

May I say that I have endeavored to study this problem as deeply as any that has gained my interest and concern in all my years in public life. In my judgment I believe Senate bill 300 by and large represents the best approach. However, since its passage by the Senate, I have become convinced that certain modifications are in order. To reflect my views I have prepared a draft substitute bill that incorporates the modifications. I now submit this draft substitute for the record and with your leave, Mr. Chairman, ask that it be included following my remarks.

In thrust and complexion, my draft substitute makes one most significant change. It structures this program along the lines of reimbursement rather than compensation. Reimbursement, in my judgment, Mr. Chairman, reflects a more accurate characterization of what is here involved. What we are seeking to do is to restore the innocent victim to his financial status immediately before the crime which caused his loss. We therefore are reimbursing him for those losses that are not covered otherwise-- either by insurance, by judgments obtained in a court of law or by whatever means. A second major change would eliminate the so-called "means test." Under Senate bill 300, to qualify for recovery an injured victim of crime would have to suffer what is defined as "undue financial stress." That test has been patterned upon standards set forth in the New York State statute.

In practice it is not a valid test simply because most of those victims of crime to whom it applies are covered by insurance and for that reason would be ineligible to obtain recovery under this act.

In practice, I would say, too, that the New York experience has shown that only a very small fraction of claims are denied for failure to meet the "undue financial stress" standard. I



am confident that the able Chairman of the New York Crime Victim Compensation Board scheduled to testify later today will bear this out.

In this respect, also, it should be noted that all citizens of this nation are equal before the bar of justice. I would hope that the same concept of equality might exist for victims of crime; when seeking to assert his rights and redress his wrongs the victim of crime deserves similar equity.

A third change that I have proposed in this draft involves the matter of the indemnity fund which is designed to provide the centerpiece for the financial base of this program at the federal level. There is provided in S. 300 a criminal victim indemnity fund comprised mainly of fines paid into the Federal criminal system by convicted criminal defendants. It is contemplated that supplemental amounts would be provided by way of appropriations. In my draft I suggest that the idea of placing the victims economic burden directly on the criminal be carried one step further. I suggest that the fund also contain monies earned by the convicted criminal in the U.S. Prison Industries Program. Part B of the draft--the state grant portion of the

bill--imposes upon the states a similar undertaking so that in all criminal jurisdictions which recognized the victims rights the criminal is compelled to work in part at least, to pay--truly pay--for his crime. This requirement ultimately would be a condition to the receipt of any federal monies under Part B of the proposal.

This brings me to another point which I believe is of some concern. In my judgment the core of the federal program or of any federal program in this area for that matter must necessarily be provided by the District of Columbia. I certainly would agree with the sentiment that local people and local personnel ought to be depended upon for their particular expertise and knowledge and awareness of crime and its effects within the District of Columbia when administering this type of program. Such a notion, however, would be inconsistent with or preclude the inclusion of the District of Columbia in part A--the federal part--of this bill. Indeed, I think it is indispensable to the viability of a federal program that the District be so included.

Mr. Chairman, this whole matter of crime victims' reimbursement or compensation has undergone exhaustive study by the Senate Committee on the Judiciary. I feel confident that I speak on behalf of that Committee in saying that the investigation that



your Subcommittee and the full House Judiciary Committee is undertaking here is most welcome. With the study that has already transpired and with these hearings and the investigation that undoubtedly will follow, I am certain that many of the features of this proposal will undergo change--as they have already. This of course is the essential purpose of the legislative process. May I say, too, that it would be in order in my judgment to consider President Nixon's recommendation for special compensation for injured policemen and their survivors along with this proposal. I think it most appropriate that both programs be considered in the same vehicle since both are so similarly and in many ways inextricably related.

One final note, Mr. Chairman. It was five years ago this summer that a young Marine named Thaddeus Lesnik who happened to come from Fishtail, Montana, was shot down as he was about to pay for his dinner in a restaurant here in the District of Columbia. Thad died and this wanton killing touched me deeply and compelled me to review and reshape my attitude toward crime and its effects on society. Having occurred here in the District of Columbia, Thad's pain and suffering, and the rest of the cost of his murder were not covered by compensation, by reimbursement or by anything at all. Nor would they have been in Montana. Had the murder occurred in New York, however, or indeed in New Jersey today--the home



state of the able and distinguished Chairman of the House Committee on the Judiciary--recognition would have been provided for Thad and for his loss as an innocent victim of violence.

Before this session adjourns this year, it is my hope and prayer that hereafter victims will be treated alike. It is my hope that the legislative process will have been completed and that there will be established on the federal level the principle that violent crime is not just a two party affair, but that it includes three parties--the victim, the criminal and the state.

In the last 100 years the criminal and the state have dominated the arena of crime and punishment to the injurious exclusion of the victim. To revive at this time the proposition that citizens are entitled to protection, and failing such protection, that citizens are entitled at least to be reimbursed for the losses they suffer from violence, can only serve to strengthen the social fiber of our nation.

I know this as a proposition in which the distinguished Chairman of the House Committee on the Judiciary concurs. Believe me, his leadership on this issue is greatly appreciated. I could not be more pleased than to join with him today in voicing support for the victim of violence, so that beyond today the victim may assume his proper place in this nation's system of criminal justice.

Thank you.



# VICTIMS OF CRIME

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,  
AND INTERNATIONAL LAW  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
NINETY-THIRD CONGRESS

FIRST SESSION

ON

**H.R. 8777**

AND

**S. 300**

TO PROVIDE FOR THE COMPENSATION OF PERSONS INJURED  
BY CERTAIN CRIMINAL ACTS, TO MAKE GRANTS TO STATES  
FOR THE PAYMENT OF SUCH COMPENSATION, AND FOR  
OTHER PURPOSES

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AUGUST 1, 1973

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