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**THE VICTIM RIGHTS MOVEMENT: A SOCIAL  
CONSTRUCTIONIST EXAMINATION**

by

**Angela Renee Evans**

**A Dissertation  
Submitted to the  
Faculty of The Graduate College  
in partial fulfillment of the  
requirements for the  
Degree of Doctor of Philosophy  
Department of Sociology**

**Western Michigan University  
Kalamazoo, Michigan  
August 2000**

# THE VICTIM RIGHTS MOVEMENT: A SOCIAL CONSTRUCTIONIST EXAMINATION

Angela Renee Evans, Ph.D.

Western Michigan University, 2000

What has been termed the victim rights movement has made great progress in promoting legislative changes regarding victim rights in the United States. This research examines the victim rights movement from a social constructionist perspective by focusing on two pieces of federal legislation passed in the 1980s: the Victim and Witness Protection Act of 1982 and the Victims of Crime Act of 1984. Using the social constructionist perspective, the research examines who was involved in the claims-making activities and which claims were most likely to be heard and acted upon. Rather than seeing social movements as the result of some objectively defined condition, the social construction paradigm examines how social problems come to be defined as problems. In other words, social problems are seen as created rather than objectively existing. From this perspective, a number of interesting questions arise: why have victim rights become popular? What legislation changes have taken place and why? How did the movement emerge?

To answer these questions, this research uses the case study as the method of study. Data analyzed included various congressional hearings pertaining to the previously named legislation and newspaper and magazines articles written from 1965 to 1989. The numerous groups involved in the legislation are also discussed, which

include: women's groups, those with criminal justice administrative concerns, conservatives, liberals, moral entrepreneurs, radicals/progressives, academicians, and various other organizations. Based on the results of this data analysis, two theories of social movements are used to explain the success of the victim rights movement: New Social Movements and Resource Mobilization. The various devices used in the social construction of the problem are also discussed: fear of crime, the use of victim imagery, construction of horror stories, use of the media in the dissemination of claims, the importance of framing victims needs as rights, the importance of support from public officials and private interest groups and finally, the networking that occurred among those groups. Lastly, limitations of this research and suggestions for future research are discussed.

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## ACKNOWLEDGMENTS

One does not successfully meet the requirements of a doctoral degree without the support of numerous people. I would like to begin by thanking my dissertation committee members. I thank my chair, Dr. Ronald Kramer, for his uncanny ability to lead me out of trees so that I instead might see the forest. His help was invaluable in the completion of this project. I would also like to thank Dr. Zoann Snyder who has served on every committee during my graduate career. Although always helpful, she was particularly supportive during the waning days of the dissertation process and I would like to recognize her for that. I will always appreciate the positive attitude of Dr. Paula Brush. Her down-to-earth style always left me feeling that I could successfully complete this program. Special thanks are also given to Dr. George Robeck who continually impressed me with his sociological knowledge. His enthusiasm for my dissertation ideas encouraged me to pursue them.

There are other professors I would like to thank for their support. First is Dr. Susan Caulfield who served as my mentor throughout my graduate career. She was one of the first people to encourage me to go to graduate school and I credit a large part of my success to her. Special thanks to "Mama Duck." I would also like to express my gratitude to Dr. Subhash Sonnad who is one of the most student-centered professors I have met. Let it be documented, in print, that he is one of the best. I would also like to thank Dr. Douglas Davidson not only for the scholarly knowledge that he gave me, but also for allowing me to vent and just "be me." Lastly, I would

## Acknowledgments – Continued

like to thank Dr. Lewis Walker and others involved in funding decisions for the financial help that I received at Western Michigan, which allowed me to pursue this and other degrees.

As important as scholarly support, is support received from family members and friends. I would like to thank my parents, Larry and Sharon Evans, for always believing I could be Dr. Angela Evans and for instilling in me the value of education. Their support was and continues to be invaluable. I also give special thanks to Carl Lee-Daniel Carrico II for teaching me that there is more to life than sociology. He was absolutely instrumental in the progress that I made and believed in me when I did not believe in myself. I wish to thank my fellow graduate students with whom I have shared laughter, tears, anger, and friend-ship. They make this degree priceless. Speaking of friendship, it is important that I express my appreciation for my good friend Betty Cinq-Mars. She taught me valuable life lessons and also encouraged me to believe in myself. I will always treasure our Sunday mornings at the office. I also thank Lois Carl, Amy Doxtater, Pat Martin, and Karen Rice, each of who helped me by answering my incessant questions and listening to my many stories of stress. Lastly, I would like to thank Southwestern Michigan College for giving me a chance: first as a student and now as an employee. I am thrilled to be a part of that community once again. To each person that has helped me to achieve this dream, thank you.

Angela Renee Evans

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## CHAPTER I

### INTRODUCTION

In 1984, Bertram Gross, professor emeritus of City University of New York and representative of Americans for Democratic Action testified in support of federal legislation for victims of crime. He (Gross, 1985, p. 104) reflected

I wonder what people will say about this Congress and this bill by the 106<sup>th</sup> Congress, at which time I would like to appear before this committee again. I ask that invitation. That would be in the year 2000. I would think that by that time much more progress would have been made along those lines than had been made in the past 16 years...

It is now the time of the 106<sup>th</sup> Congress and, while not an invitation for Professor Gross to speak in front of congress, this dissertation does examine the progress made by the victim rights movement in relation to legislation passed at the federal level in the 1980s.

What has been termed the "Victim Rights Movement" has made tremendous progress in creating legislative changes throughout the United States. Those involved in this social movement have invested time, energy and money in the creation of organizations, new laws, changes in old laws, victim services and various other projects designed to help victims. There have been numerous groups and individuals involved in this agitation for change and change has occurred at both the state and federal levels. Because the victim rights movement has been responsible for numerous changes at both levels of government, it is important to define which part of the

movement this research examines. In particular, the focus of this research is the changes made at the federal, or national, level during the 1980s. The two pieces of legislation examined, the Victim and Witness Protection Act of 1982 and the Victim of Crime Act of 1984, were the first of federal legislation to be passed that addressed crime victims. It is for this reason that they are examined. Significant progress has also occurred throughout the 1990s; however, this research focuses on the historical development of the movement.

The research design used for this dissertation is the case study. The movement itself will serve as the case to be studied in order to examine who the claim-makers are, what claims were made and, lastly, whose claims were the most successful as reflected in legislation. In order to do this, as will be discussed in greater detail in Chapter III, congressional hearings pertaining to these pieces of legislation were analyzed. Also examined were articles from major newspapers and newsmagazines for the years 1965 to 1989. These years were chosen because, as will be discussed, the first victim compensation legislation was introduced in 1965. The ending year of 1989 was chosen to delineate the research because the growth of the movement was so explosive in the 1980s and 1990s. This research provides a solid foundation for examining the history of the victim rights movement as it pertains to the passage of federal legislation in the 1980s.

The theoretical framework used in this dissertation is social constructionism. Social constructionism treats social movements as the creation of the people involved in the movement as opposed to an objectively existing condition. From this

perspective, we can ask a number of interesting questions: Why has the fight for victims rights become popular? What legislative changes have been made to protect the rights of victims? How did the victim rights movement emerge? Using this perspective, one examines the claims-makers, or who was involved in the movement, and the various claims asserted by those groups. Further guiding the analysis is New Social Movements theory and Resource Mobilization theory. Used under the framework of social constructionism, these theoretical perspectives are used to explain the success of the movement. New Social Movement theory examines the use of ideology and culture in social movements while Resource Mobilization examines the amount of resources to which claims-makers have access.

As noted, this research is limited to two pieces of legislation passed in the early and mid 1980s. Keeping this focus in mind, the history or the precursors to this movement and legislation are examined. This history is described in Chapter IV. As will be discussed in that chapter, there were a number of forerunners to what became recognized as the victims rights movement: the women's movement, the creation of crime as a problem in U.S. politics, the implementation of the National Crime Victimization surveys, the development of the National Organization of Victim Assistance and the victim compensation movement and lastly, the growing attention given to the elderly and children as victims. Also examined in this chapter are the initiatives by President Ronald Reagan in the early 1980s that furthered sharpened the focus on victims.

This history is then followed by the theoretical analysis, which draws on

social constructionism as a guide. In Chapter V, the many different claims-makers and their corresponding claims are described. There were numerous, and even ideologically opposed, groups that cooperated to enact this federal legislation. The groups examined are women's groups, those with criminal justice administrative concerns, conservatives, liberals, moral entrepreneurs, radicals/progressives, academicians, and various other organizations. Though there was not much organized opposition that which did exist is also discussed in Chapter V. Chapter VI further develops the data analysis using New Social Movements theory and Resource Mobilization theory. In this chapter, the various devices used in the social construction of the movement are explained and then related to the two theories cited above. New Social Movements theory focuses on the use of ideology and culture in explaining the success of social movements while Resource Mobilization theory focuses on the movement's resources. In this research, the following devices for social construction are examined: fear of crime, the use of victim imagery, the construction of horror stories, use of the media in disseminating claims, the importance of framing victim needs as rights, the importance of support from public officials and private interest groups and the networking that occurred among those groups. The final chapter then summarizes the finding of the research, discusses the limitations and makes suggestions for further research.

### Rationale for the Research

There are two related reasons for undertaking this research. First, to the

researcher's knowledge, there has not been an investigation of the victim rights movement from the social constructionist perspective. Therefore, the results of this research will contribute to the development of this perspective. This research also explores, within a social constructionist paradigm, how the victim rights movement relates to other popular theories of social movements: Resource Mobilization theory and New Social Movements theory. As a result, the findings of this research will also further contribute to that literature.

Secondly, this research will add not only to the literature exploring theories in social construction and social movements, it will also provide a more comprehensive analysis of the victim rights movement itself. Considering the changes made at both the state and federal levels of government, it was surprising to find so little information pertaining to the history and construction of the victim rights movement during the initial review of the literature. Though work has been done on parts of the movement (see Elias, 1993; Rose, 1977; Tierney, 1982), the only more comprehensive approaches are Weed's (1995) *Certainty of Justice: Reform in the Crime Victim Movement* and Sebba's (1996) *Third Parties: Victims and the Criminal Justice System*. However, both of these pieces are still limited in scope as a result of the complexity of the movement and neither explores the movement from a social construction approach. Considering the diversity of the groups involved and the large number of changes made in response to the movement, this dissertation can not provide a completely comprehensive examination of the movement. However, it can

help to fill gaps that are currently present in the literature and further add to the scholarly knowledge regarding the victim rights movement.

## CHAPTER II

### REVIEW OF THE THEORETICAL LITERATURE

This chapter is the literature review of the theoretical perspectives used in explaining the social construction of the victim rights movement. The first half of the chapter describes the development of the social constructionist perspective. A brief history is presented, which is then followed by an explanation of claims-making and examples of analyses done within the social constructionist perspective. Lastly, the criticisms of social constructionism are presented. The second half of the chapter discusses the two social movement theories used in conjunction with social constructionism: Resource Mobilization theory and New Social Movement theory. An explanation of these theories is presented and concepts that are applicable to the victims rights movement are highlighted.

#### The Social Construction Paradigm

The social constructionist approach is but one paradigm in the study of social problems. The field of social problems is a multiple paradigmatic field, meaning that there is more than one way to examine social problems and social movements. Hartjen (1977) notes there are two general approaches to the study of social problems: (1) the study of conditions, and (2) the study of processes. Within the first paradigm, "...a social problem is an objective, observable state of affairs...some

‘thing’ that may be studied, measured, and, in one way or another, manipulated or changed” (Hartjen, 1977, p. 6). Within this paradigm, the researcher examines the causes, extent, nature of, and changes in a social problem condition. Hartjen (1997) also points out that those using this paradigm are likely to use a functionalist approach when studying the problem(s).

Within this framework, the social problem’s researcher identifies a condition that is harmful to society. In the language of the functionalist, this condition is dysfunctional. After identification of a problem, the researcher seeks out the condition's cause and makes recommendations for resolving the problem. This knowledge is then added to the previously existing knowledge base, and this process results in the scientific study of social problems (Blumer, 1971).

Best (1995, p. 4-5) argues that although the objectivist paradigm may fit our “commonsense” definitions of how to study social problems, there are two flaws within the objective paradigm. This first problem is that the subjective nature of social problems is minimized or ignored. He (Best, 1995) argues that social problems have a subjective element since social problems are what people think they are. The second flaw in using the objective paradigm in the study of social problems is that there are few characteristics shared in common by those conditions identified as social problems. Instead there is a “hodge-podge” collection of problems (such as poverty, divorce, juvenile delinquency, crime, etc) that share no more in common than the fact they are categorized as social problems (Best, 1995, p. 5). Best argues (1995) that in response to these flaws, a second approach to social problems has

emerged.

Within this second paradigm, social problems are studied through a totally different lens. Rather than treating social problems as existing objectively, social constructionists focus on the subjective elements of social problems. For example, social constructionists note that social problems vary throughout time and place. What may be a social problem to some individuals and groups, may not be a social problem to others. "In this regard, it is the judgements of society's members, not the conditions or properties of conditions, that offer sociology viable criteria for defining social problems" (Hartjen, 1977, p. 9). As Hartjen (1977) points out, studying social problems is studying a set of activities rather than objective conditions. Therefore, social problems "*emerge*" rather than existing independently as conditions (Hartjen, 1977, p. 11, his emphasis). It is on this process which the social constructionists focus.

Though not the first scholars to suggest the importance of the relativity of and the process of defining social problems, Spector and Kitsuse (1977) are often credited with the contemporary development of the social constructionist paradigm with the publication of their influential book *Constructing Social Problems*. Spector and Kitsuse (1977, p. 1) argued, "There is no adequate definition of social problems within sociology, and there is not and never has been a sociology of social problems." This is in response to what was discussed earlier in relation to Best's (1995) critique: the study of social problems produced problems that have nothing in common. Other scholars have also noted the diverse nature and lack of theoretical base in

social problems (Fuller & Meyers, 1941a, b; Manis, 1974; Spector & Kitsuse, 1973).

Responding to this difficulty in defining social problems, Spector and Kitsuse (1973, p. 407) critiqued what were, at the time, the two dominant approaches to the study of social problems: the “functionalist formulation” and the “value-conflict approach.” They (Spector & Kitsuse, 1973, p. 408) critiqued the functionalists for their focus on “objective conditions and dysfunctions” in their definition of social problems. From a functionalist point of view, society is composed of a system of inter-related parts and these parts work together to make up the whole. When a condition maintains the system/society or keeps it running smoothly, it is functional. When the condition hinders the system, it is dysfunctional. Therefore, that which is dysfunctional for a society may be defined as a social problem.

Drawing on the work of Merton, Spector and Kitsuse (1973, p. 411) developed the following table examining the functionalist definitions of social problems (see Table 1).

Manifest social problems are those in which the sociologist’s and the members’ of groups or society definition of a social problem are in agreement. In

Table 1

Definition of a Social Problem

		<b>Sociologist’s Definition</b>	
		<i>Social Problem</i>	<i>No Social Problem</i>
<b>Members’ Definition</b>	<i>Social Problem</i>	“Manifest Social Problem	“Spurious” Social Problem
	<i>No Social Problem</i>	“Latent” Social Problem	“Normal” Social Condition

Merton's (1976, p. 13) words, manifest social problems are "...those widely identified in the society." However, Merton argues there are also latent social problems. These are social problems where "...the conditions...are at odds with current interests and values but are not generally recognized as being so" (Merton, 1976, p. 13). Latent social problems are the problems in which the sociologist defines a situation as a problem while the members of society do not. Though Merton argues that the sociologist is not imparting his or her own values when studying social problem because the sociologist is relying on society's values rather than his or her own values (Manis, 1974), Spector and Kitsuse disagree. They (Spector and Kitsuse, 1973, p. 411) ask, "If the sociologist disagrees with the members of a group or society about what *their* values are, on what basis may he (sic) do this?"

The last cell in the table to be discussed describes "spurious social problems." A spurious social problem occurs when members of a group or society define a condition as a social problem but the sociologist does not. As Spector and Kitsuse (1977, p. 36) note about this situation, there is "much ado about nothing." This is exemplified by Manis's (1974, p. 306) warning of the potential of the members of society "misdirect[ing] sociology toward a concern for public phobias and fantasies." As an example, he explores the definition of bathtubs as a social problem in the 1840s.

In the 1840's the newspapers in the United States attacked the introduction of bathtubs as extravagant and undemocratic. Doctors announced them as dangerous to health, and the government was called upon to restrict or suppress them. In 1843 Virginia put a tax of \$30 a year on bathtubs and in 1845 a Boston Municipal ordinance made bathing unlawful except on medical advice (W. I. Thomas cited in Manis, 1974, p. 306).

Becker (cited in Spector & Kitsuse, 1977, p. 53) argues that even “non-existent” conditions, such as witches and flying saucers, can come to be defined as social problems by the public. But Spector and Kitsuse (1977, p. 53) answer to these “imaginary” social problems, “Can the sociologist determine when there is no factual foundation for an argument?...For example, how could the sociologist decide that flying saucers *in fact* do not and never have existed?”

Based on this discussion, we can begin to see the difficulty involved in trying to define a social problem objectively. Do we rely on public opinion? Do we rely on the “expert” sociologist? We can also begin to see the importance of values or of the subjective in the definitional process. This recognition begins to shift us in the direction of the subjective paradigm.

The other position examined by Spector and Kitsuse (1973), the “value-conflict approach,” took the subjectiveness of social problems into consideration. For example, Fuller and Myers (1941a, p. 25, emphasis mine) note that a social problem consists of the following:

Every social problem has both an objective and subjective aspect. The objective phase consists of a verifiable condition, situation, or event. The subjective phase is the awareness or definition of certain people that the condition, situation, or event is inimical to their best interests, and a consciousness that something must be done about it. *Conditions do not assume a prominent place in a social problem until a given people define them as hostile to their welfare.*

As can be seen from this statement, rather than focusing on social problems as objective conditions that exist outside of the individual, as did the Functionalists, these scholars were also interested in the subjective process, or the definitional

process, surrounding the creation of a social problem. They were interested in both explaining the objective conditions of the social problem and in explaining the process by which social problems came to be defined as such (Spector & Kitsuse, 1973).

This theoretical perspective is explained by Hartjen (1977, p. 11, his emphasis): “...*the dynamic quality of social problems can be analyzed by investigating the process whereby definitions of some condition as troublesome or harmful are formulated and acted upon by members of a community.*” In other words, if social problems change over time and place, then there must not be anything inherent in the behavior/condition that makes it a social problem. The social problem is, instead, created. An example that serves to illustrate this point is slavery in the United States: slavery may have been defined a social problem for slaves in the South and some people in the North, but it was not a problem to Southern slave-owners (Hartjen, 1977).

Blumer (1971) also argued that it was important to see that behaviors or actions that were considered to be social problems came to be so as a result of a collective definition of harmfulness, not because they were intrinsically harmful. He (Blumer, 1971, p. 300) noted, “The social definition, and not the objective make-up of a given social condition, determines whether the condition exists as a social problem.” Or in the words of Fuller and Myers, (1941b, p. 320, emphasis theirs), “*Social problems are what people think they are...*”

Building on this idea of the importance of the subjective, Spector and Kitsuse push the definition even further. They argue that though the value-conflict theorists

have moved away from the notion of objective conditions, they do not push quite far enough: "...they do not move to the position that objective conditions are not necessary" (Spector & Kitsuse, 1973, p. 413). This theoretical strand, that objective conditions are not necessary, marked their departure from previous writers on this subject (Rubington & Weinberg, 1995). As Spector and Kitsuse (1977, p. 73, emphasis theirs) argue, "The notion that social problems are a kind of *condition* must be abandoned in favor of a conception of them as a kind of *activity*." Spector and Kitsuse's (1973, 1977) position is that the objective condition is not the focus of study, rather it should be the definitional process through which social problems arise. Social problems, therefore, become defined as "...*the activities of individuals or groups making assertions of grievances and claims with respect to some putative conditions*" (Spector & Kitsuse, 1977, p. 75). Furthermore, they (Spector & Kitsuse, 1973, p. 414) argue,

Our position is that one need not assume nor explain the existence of this objective condition; indeed to do so would deflect attention from investigation of the definitional process. The definition *may* be accompanied by empirically verifiable claims about the scale, intensity, distribution, and effects of the imputed social conditions; but it *may not* and theoretically it *need not*.

It should be noted that the use of the words "putative" and "imputed" are important. By using these words, Spector and Kitsuse are emphasizing the claims-making aspects of the condition rather than accepting them as objectively defined. The point of the social constructionist perspective is not to study whether the conditions objectively exist or whether the claims that are made about that condition are valid. Rather it is to study the definitional process of how a condition comes to be

defined as problematic.

Mauss (1975) discusses this definitional process – the construction of reality – in a clear and concise manner. He explains that within this paradigm, there is no objective reality. There are instead many competing realities over which different groups, cultures, and/or people battle. He explains with an example: prior to Galileo, the dominant belief (or social reality) was that the sun revolved around the earth since the earth was considered the center of the universe. Challenging this dominant belief, Galileo argued against this conception of reality by arguing the earth was not the center of the universe. The point of this example is that prior to Galileo, people believed the sun circled the earth: that was their reality, or what was “real” to them. With the acceptance of Galileo’s beliefs, however, we now believe that the earth revolves around the sun. The earth is no longer seen as the center of the universe and this belief is objectively “real” because, as Mauss (1975) explains, it “works” for us. We can only guess what theories lie ahead in the future that may cause a “change” in how we “see” the solar system, and therefore how we define reality.

Just as we can look back and examine the differences in explanations of the solar system based on religion as opposed to science, Spector and Kitsuse (1977) ask us to examine today’s social problems with the same lens. How is it that we come to define one reality as the “correct” reality of the many realities that exist? How is it that we come to choose what will be seen as a social problem out of the many conditions that exist in the social world? How can the sociologist *really prove* that one condition is or is not a social problem? Their answer is that the sociologist can not,

but he or she can examine how that social problem emerges.

To summarize, Spector and Kitsuse were reacting to both the functionalist and value-conflict approaches. In reaction to the functionalist approach, they critiqued the notion that social problems were a result of existing, objective, intrinsically harmful situations. They were arguing that rather than focusing on objective harms - whether those harms are chosen for study by researchers (which could be critiqued as either biased or elitist) or by the larger society or public opinion (which could be critiqued for not recognizing some harmful behaviors or for focusing on the trivial) – scholars in the subjectivist paradigm focus on how social problems are constructed in the society in which they exist. Spector and Kitsuse (1977) then extended the value-conflict approach, which focused on both the objective and the subjective, by not relying on objective conditions at all. The only focus of study was the definitional process.

Spector and Kitsuse (1973) were creating a “sociology of social problems.” Gusfield (1984) argues that the social constructionist researcher becomes the “expert” of the *process* of social problems rather than of the conditions of social movements. Rather than studying a “hodge-podge” of ideas that are very different from one another, as described by Best (1995, p. 7), social constructionists are examining the commonalities among claims: “What sort of claims get made? When do claims get made, and what sorts of people make them? What sorts of responses do claims receive, and under what conditions?” These are the questions that drive social construction research (Best, 1995).

## Claims-making

An important part of this definitional process examined in social constructionist research is the claimsmaking activities of those people that define a condition as a social problem. Spector and Kitsuse (1977, p. 76, emphasis theirs) explain, “*The central problem for a theory of social problems is to account for the emergence, nature, and maintenance of claims-making and responding activities.*” So what are these claims and how do they occur? Claims occur when “Definitions of conditions as social problems are constructed by members of a society who attempt to call attention to situations they find repugnant and who try to mobilize the institutions to do something about them” (Spector & Kitsuse, 1977, p. 78). As noted earlier, the “falseness” or “truthfulness” of those claims is not examined. These claims are made in many forms: letters, newspaper ads, speeches, congressional hearings, press conferences, petitions, resolutions, publications, filing of lawsuits, etc (Spector & Kitsuse, 1977). Anyone may file these claims: members of the media, political organizations, volunteer organizations, professionals, moral crusaders, and even social scientists (Spector & Kitsuse, 1977). “Claims are a commonsense category, understood by members of a society and often associated with such terms as demands, complaints, gripes, and requests” (Spector & Kitsuse, 1977, p. 79).

Best (1995) notes that claims are an act of communication that may involve the media, rhetoric, and dramatic examples. He discusses the “grabber,” a certain type of claim that is often used as a method to get people’s attention (Best, 1995). An example of analyzing these types of claims is Johnson’s (1995) work on “Horror

stories and the construction of child abuse.” Johnson (1995) explains how horror stories in the media were used in the construction of child abuse as a social problem. Drawing on research examining newspaper articles on child abuse and neglect, Johnson (1995, p. 20, 23) explains how the “shocking details” of these stories “evokes negative emotionality” for readers. These stories generally decontextualized the abuse situation, relied on “official sources” for the accounts, and focused on the individual as at fault. These newsmedia accounts legitimized child abuse as a social problem and “serv[ed] at all phases to present the official conception and definition of child abuse, as well as promoting existing or planned official interventions, policies, programs, and budgetary requests” (Johnson, 1995, p. 29). These horror stories also focused on the most extreme examples of child abuse while ignoring the “typical” case, which usually is not very dramatic (Johnson, 1995, p. 23).

Just as Johnson has done in the previously discussed analysis, there have been a number of other scholars who have utilized the social construction perspective. The next section of this chapter highlights social constructionist research that has tapped into the notion of victimization.

### Social Construction Analysis

Numerous scholars have approached social problems from a social constructionist perspective. Because of the volume of work that has been done within the social constructionist framework, only social constructionist work that is related to victimization is presented. One piece often cited is Stephen Pfohl’s (1977), “Discovery of child abuse.” In this work, Pfohl (1977) argues that although there is evidence

of child abuse throughout the ages, it was only in the 1960s that it became defined as a social problem. Early movements regarding children, the House of Refuge movement, the Society for the Prevention of Cruelty to Children, and Juvenile Justice movement, had focused on the “saving” of children, but had not deviantized or medicalized parent behavior. Beginning in 1962, this changed with the announcement of the “The Battered Child Syndrome” in the Journal of the American Medical Association. Pfohl (1977) argues that this “discovery,” made by pediatric radiologists, occurred as a result of the following. First, radiology was one of the lower status occupations within the medical community. Being able to identify a “killer” such as child abuse elevated their status within that community. Radiologists were also removed from the families in which this abuse took place so that they had less difficulty naming the abuse than family practitioners that technically were hired by parents. “Battered Child Syndrome” also framed child abuse as a medical problem rather than a criminal problem, which allowed the medical profession to retain control over “treatment.” If it had been defined as criminal, the medical profession would not have retained control over the situation. As a result of this situation, other professionals within the medical field stood behind the diagnosis.

Keeping in mind the earlier discussion of social constructionism, we can clearly see the construction of child abuse in Pfohl’s (1977, p. 319) statement, “A diagnostic category had been invented and publicized.” This new “Battered Child Syndrome” was created and then disseminated throughout the media. As a result, reality was socially constructed. An example of this is clearly seen when Pfohl

(1977, p. 320) writes of the success of claimsmakers, "The problem had become 'real' in the imaginations of professionals and laymen alike."

Rose (1977) analyzed the social construction of rape as a social problem. Identifying the construction of rape as a "byproduct of the feminist movement," Rose (1977, p. 75) notes the success this movement had in the community and in the legislative and judicial arenas. Feminists have been successful in garnering attention to the social problem of rape in the United States. New laws were created while old laws were changed. Other scholars have examined other aspects of women's victimization. For example, Tierney (1982) wrote about "...the creation of the wife beating problem." Parallel to Pfohl's (1977) argument about child abuse, she argues that the *acts* of wife beating did not become more widespread, rather the attention to it became more widespread. In her work, she (Tierney, 1982, p. 211) argues that the "production" of wife beating as a social problem was a function of three things: (1) a pre-existing organizational base, (2) the flexibility in the movement and (3) sponsor incentives. The media also played an important role in the recognition of wife beating as a social problem.

Wife beating was a good subject for the media....It was controversial. It mixed elements of violence and social relevance. It provided a focal point for serious media discussion of such issues as feminism, inequality and family life in the United States – without requiring a sacrifice of the entertainment value, action, and urgency on which the media typically depend (Tierney, 1982, p. 214).

In return, this media attention further spurred the success of the movement (Tierney, 1982).

Loseke (1989) examines a slightly different aspect of wife abuse. Rather than

examining how claims came to the attention of the public, as Tierney (1982) did, she examines the precise content of those claims. Loseke (1989) analyzes popular magazine articles regarding the construction of wife abuse. In examining the public image of wife abuse, she finds that it is presented as extreme forms of physical and emotional violence, that abusers are not always poor and uneducated, abusers and abused do not always have mental problems, abusive men do not always use alcohol and, and lastly, abused wives' behavior is not different from non-abused wives. Loseke (1989) argues that wife abuse is constructed as a family problem rather than an individual problem, which serves as a justification for the claim that something needs to be done. At the same time, this characterization of wife abuse serves to exclude certain behaviors. Just as the "typical" case of child abuse was not recognized in Johnson's (1995) work on horror stories, women who are not the victims of extreme abuse may not be recognized as victims. Loseke (1989, p. 202) notes that "Claimsmakers have constructed the content of this problem to include only some of the violence actually going on in American homes."

However, by not challenging all forms of violence (pushing, shoving and slapping, which is considered "normal"), the claimsmakers may have more success in having their claims aired because they do not radically challenge the structure of society (Loseke, 1989). "This reflects the political realities of claims-making in that successful social problem claims will attempt to modify the boundaries of the social order – but not too much" (Loseke, 1989, p. 202). Loseke (1989) concludes by noting that the images constructed by claimsmakers shape the policies designed to cure

the problem. If those policies are based on extreme cases, the majority of cases, which fall into the gray area will either be harmed by the policies, or at best, not effected at all.

Baumann (1989) conducted research on the social construction of elder abuse, which began to be recognized in the 1980s. Sharing a similarity with Pfohl's (1977) analysis, she (Baumann, 1989) notes that the construction of elder abuse served a specialized professional interest. "With its applied focus, the professional literature on elder abuse conveys the message that abused elders and their abusers cannot solve their problems without specialized help" (Baumann, 1989, p. 56). These same professionals, gerontologists and other applied researchers, were actively involved in the construction of the problem when they carried out their research, which Baumann (1989, p. 59) terms "research rhetoric." For example, when they defined the term "elder abuse" in their research, it was usually in quite broad terms. Baumann (1989, p. 61) also discusses the use of "examples" which are similar to Johnson's (1995) discussion of "horror stories." Some professionals used particularly graphic stories to grab the reader's attention in the hopes of causing moral outrage on the part of the reader. Lastly, Baumann (1989, p. 62) discusses the use of "estimates" of elder abuse. The claims were that elderly abuse was widespread and growing. Though the claims made by these professionals were based on methodologically limited studies, these limitations often were not mentioned. When repeated often enough, Baumann (1989) notes, these results become "facts." And these "facts" are then used to justify that something must be done about the problem.

Baumann (1989) was drawing, in part, on the work of Best (1987) who has written numerous pieces using social constructionism as an analytic tool. Best (1987) discussed the rhetoric surrounding the claims of “missing children” heard in the 1980s. He argues that rhetoric, or persuasion, is extremely important to claims-making. Again, the definitions of “missing children” were quite broad and articles describing the social problem often began with “atrocious tales” (Best, 1987, p. 106). These tales were used to signify the horror and harmfulness of the problem. Best (1987) noted that the least common occurrence, stranger abductions, was used as the reference group the most often. “Atrocious tales do not merely attract attention; they also shape the perception of the problem” (Best, 1987, p. 106). Once gaining people’s attention, the claimsmakers can then proceed to discuss “incidence.” High incidence rates are important: the more people that are affected, the more likely the people within the society are to search for solutions.

Best (1987) also discusses 6 justifications for these claims, which, he argues could be applicable to other social movements (though in his research, they are tailored to fit missing children claims). The first justification is the value of children: they are seen as “priceless” and are sentimentally valued (Best, 1987, p. 109). The second justification is that the victims are blameless. “Blameless victims offer rhetorical advantages to claims-makers” since it is more difficult to be unsupportive of the claims (Best, 1987, p. 110). When victims are blameless the claims are more likely to be legitimated. The third justification taps into “associated evils” (Best, 1987, p. 110). In this case, the claimsmakers paid little attention to structural causes

of the problem, but instead focused on individual pathology. Fourth are “deficient policies” (Best, 1987, p. 111). With this justification, the claimsmakers argue that the policies that exist are insufficient to solve the social problem. In this case, FBI was critiqued because it did not respond to missing child cases quickly enough. With the fifth justification, historical continuity, the claimsmakers appeal to history either by emphasizing and/or expanding it or making a break from it. In the case of missing children, claimsmakers argued that the FBI was created to investigate kidnapping and therefore should play a major part in finding missing children. The final justification discussed by Best (1987, p. 112) is “rights and freedoms.” This taps into the ideology of the United States that every person has certain inalienable rights that he or she deserves. With regard to missing children is the right to be free from victimization or the right to be protected by the authorities.

These studies pertaining to victimization are but a few examples of the work done within the social constructionist perspective. They are discussed to give the reader a taste of the type of analysis done in this research.

### Criticisms of Constructionism

There are several important issues in social constructionism, which must be clarified for the purposes of this research. This first deals with the debate over whether social constructionist research falls under the broader category of social movement research. Mauss (1989, p. 19, his emphasis) argues, “...constructionist or ‘subjectivist’ theories...with their focus on claims-making activities, are only

theories about *collective behavior and social movements*, not about an altogether different class of phenomena called ‘social problems.’” Mauss (1989) argues that although Spector and Kitsuse contributed much to the field of social problems, they did not forge a new territory into the study of social problems. Social problems are just a variant of studying social movements. Schneider (1985) and Troyer (1989) argue that the two are something distinct from one another. Schneider (1985) argues social constructionism should not be subsumed under the social movement process but that social movements serve as an example of the social problem process. He (Schneider, 1985) argues the opposite of Mauss, that social movements should fall under social problems. Troyer (1989) also argues that the study of social problems and social movements are different enough to be kept distinct. According to Troyer (1989) social movement approaches (he examines traditional social movement theory and resource mobilization) focus on the organizations or the collective actors involved while social constructionists focus on the claims-making process.

This research treats the approaches as different, yet uses them within a holistic framework. Social constructionism is used to examine the claimsmaking that has taken place concerning the rights of victims. It then, however, uses other theories, from social movement research, in explaining the success of those claims. Rather than seeing social movement theory and social constructionism as one and the same, it uses both to more fully explain the process as developed in the victim rights movement. However, this research does not treat them as totally distinct either. Each of these approaches is treated as though they compliment one another in a larger

holistic approach that explores the victim rights movement.

The second issue deals with the concept of ontological gerrymandering. As the social constructionist perspective grew, and as more and more research was done under its umbrella, criticism surfaced. One of the most widely cited of those critics is Woolgar and Pawluch (1985). Woolgar and Pawluch (1985, p. 214) charge social constructionist theorists with what they term “ontological gerrymandering”. In summary, this is the process by which some parts of social problems are seen as relative while others are not. In particular they cite Pfohl’s (1977) work on child abuse as an example. As discussed earlier, in this work, Pfohl (1977) writes of the “discovery” of child abuse by radiologists which allowed this group, in return, some prestige as they were placed in an “expert” status. Woolgar and Pawluch (1985) note that although Pfohl uses “discovery,” in quotation marks, to imply that child abuse existed before the claim of child abuse was forwarded, he does not use “evidence” but rather evidence, without quotation marks, to show that child abuse existed before the claim was validated. In other words: “The evidence is neither to be understood as fabricated, nor as the result of claims-making activities. It is to be taken on trust, the objective touchstone for a telling contrast” (Woolgar & Pawluch, 1985, p. 220). Pfohl discusses the “discovery” as relative, while the evidence he presents is not.

Reactions to this critique have led to two strands of constructionist approaches: strict social constructionists and contextual social constructionists (Miller & Holstein, 1993). (Though it should be noted that Ibarra and Kitsuse (1993) defend Spector and Kitsuse’s original formulation. Though they believe this critique

does not apply to the original social constructionist statement, they do agree it does apply to a number of others writing under the guise of social constructionism). Strict constructionists avoid making any reference to the nature of objective reality while contextual constructionists examine claimsmaking within its sociohistorical context (Best, 1995). Supporting a contextual constructionist perspective, Best (1995, p. 346) notes: "...the key point is that any analysis of the social construction of child abuse – or any other social problem – requires locating claimsmaking within at least part of its context. Contrary to what strict constructionism demands, it is neither possible nor desirable to ignore the context of claims." He argues that it is impossible for analysts to avoid *all* assumptions, so instead they must be acknowledged and the researcher should be ready to defend his or her choices (Best, 1995). In this project, the researchers writes within a contextual social constructionist perspective. The goal is to make the assumptions explicit and to also note what part these play in the claimsmaking process.

### Social Movement Theory

While social constructionism serves as a paradigm or umbrella under which this research is conducted, there are two theories from the social movement literature, which are used to analyze the success, or lack thereof, of the claims making in the victim rights movement. These two theories are (1) Resource Mobilization theory, and (2) New Social Movements theory. These two theories are sometimes presented in opposition to one another since New Social Movement theory is a relatively recent

reaction to Resource Mobilization theory. However, rather than dichotomizing the two theories, this research explores which parts of these theories best explain the victim rights movement. The researcher agrees with Klandermans (1986), Klandermans and Tarrow (1988), and Zald (1992) that, rather than being in opposition, the two theories can serve to compliment one another at their respective weak points. Klandermans (1986) notes that Resource Mobilization answers the “how” of social movements while New Social Movements explains the “why.”

### Resource Mobilization Theory

Resource Mobilization theory constituted the dominant approach to social movement theory from the 1970s to the 1990s (Gladwin, 1994). In the 1970s, over half of the articles on social movements and collection action in the *American Sociological Review*, the *American Journal of Sociology*, *Social Forces*, and *American Political Science Review* used Resource Mobilization theory for analysis. This increased to 75% in the 1980s (Mueller, 1992). Resource Mobilization became popular, in part, because the existing theories did a poor job of explaining the social movements of the 1960s. In other words, sociologists were caught by surprise because existing theories did not seem to adequately explain what was occurring (Morris & Herring, 1988). Previous theorists, termed classical or traditional theorists, believed social movements to be a result of irrationality and they focused on the social psychology of participants (McCarthy & Zald, 1977; Morris & Herring, 1988). Discussing these classical theories (mass society theory, relative deprivation, and

collective behavior theory), Jenkins (1983, p. 528) notes, “While specific hypotheses varied, these traditional theories shared the assumptions that movement participation was relatively rare, discontents were transitory, movement and institutionalized actions were sharply distinct, and movement actors were arational if not outright irrational.” This line of thinking didn’t seem too applicable to the movements of the 1960s.

Rejecting the notion that social movement actors were pathological, McCarthy and Zald (1977) saw participants of social movements as rational. They (McCarthy & Zald, 1977) were also interested in moving the study of social problems from the realm of the social psychology of the participants (values, grievances, attitudes) to a more structural level of analysis to include sociology, economics, and politics. Previously existing theories had studied social movements as a result of widely shared grievances and had ignored how people from outside of this mass became involved in the movement (McCarthy & Zald, 1977). McCarthy and Zald (1977) challenged this argument, positing instead that grievances are only one part of the creation of social movements.

Drawing on Resource Mobilization theory as explaining the creation of wife beating as a social problem, Tierney (1983) illuminates the difficulty of relying on grievances as the sole explanation of a social movement as suggested by the classical social movement theorists. She (Tierney, 1983, p. 210-11) notes,

Contrary to the assumption that social concern precedes the development of a movement... the battered women movement did not ride a wave of public sentiment demanding solutions to the problem. The public has shown indifference – even tolerance – toward this form of violence.

In other words, widespread grievances had not spurred the attention to wife beating.

When using Resource Mobilization theory, the success of social movements is explained in terms of resources. There are a number of resources to be examined: student involvement, professionalization, institutional funding (such as churches and foundations), government funding, organizational networking, and use of the media (McCarthy & Zald, 1973, 1977.) Tilly (cited in Morris & Herring, 1988, p. 183) argues that in analysis one should “look for organizing groups, look for recruiters, look for the making of coalitions, look for people deciding that the enemy of my enemy is my friend.” McCarthy and Zald (1977, p. 1221) argue “...the amount of activity directed toward goal accomplishment is crudely a function of the resources controlled by an organization...resources must be controlled or mobilized before action is possible.” The authors also point out that the value of time should not be underestimated as it is just as important as the donation of monies (McCarthy & Zald, 1973, 1977).

McCarthy and Zald (1977) created new sociological language with their discussion of Social Movement Organizations, the Social Movement Industry and the Social Movement Sector. A Social Movement Organization (SMO) is “a complex, or formal, organization which identifies its goals with the preferences of a social movement or a countermovement and attempts to implement those goals” (p. 1218). The Social Movement Industry (SMI) consists of “...all the SMOs that have as their goal the attainment of the broadest preferences of a social movement” (p. 1219), while the Social Movement Sector (SMS) consists of “all SMIs in a society no matter

to which [social movement] they are attached” (p. 1220). Morris and Herring (1988, p. 164) point out, “The central message of this model is that the growth and spread of modern movements is a function of societal wealth available to SMOs, SMIs, and SMS.”

Mueller (1992, p. 3-4) notes that the central questions for those working with Resource Mobilization theory are: “where are the resources available for the movement, how are they organized, how does the state facilitate or impede mobilization, and what are the outcomes?” Tilly (cited in Zald, 1992) was instrumental in bringing focus to the role of the state in social movements. “The state generates many of the issues with which social movements wrestle; as well, the state facilitates or hinders movement, lowering or raising the cost of collective action, operating in coalition with the movement or opposing it” (Zald, 1992, p. 339). Political parties have a “symbiotic relation” to the social movement so that they are also important to the analysis (Zald, 1992, p. 339).

There are some problem areas for Resource Mobilization, however. Zald (1992) notes that this perspective does not deal well with the construction of meaning and the use of rhetoric: an important part of the social movements. With this point in mind, we move to the examination of the theories of New Social Movements.

### New Social Movements Theory

Mueller (1992) notes that Resource Mobilization theory came to be increasingly strained. This is, in part, a reaction to New Social Movement theories. New

Social Movements theories also developed in response to the social movements of the 1960s, though it focused on different aspects of social movements than did Resource Mobilization. New Social Movement theories developed in response to social movements in Europe while Resource Mobilization theory developed in response to those in the United States (Klandermans, 1986).

New Social Movement theorists argue that “new” social movements are different from “old” social movements (Gladwin, 1994; Klandermans, 1986). These new social movements are those that developed in the 1960s: (in the U.S) the Women’s Movement, the Civil Rights Movement, the Environmentalist Movement, and the Peace Movement. New Social Movement theorists argue that these movements are a result of the change to a post-industrial society. As a result they are less concerned with materialistic conditions of the industrial age and more interested in postmaterial, quality of life issues (Pichardo, 1997). New Social Movement theorists do not see material conditions, in and of themselves, as generating social problems. Rather, it is the work of activists who draw on cultural tools to generate support for a movement. These new social movements are seen as antimodernistic, non-hierarchical, decentralized, egalitarian, and middle class (Gladwin, 1994; Klandermans, 1986). Melucci (1980, p. 218) argues that, in new social movements:

The mechanisms of accumulation are no longer fed by the simple exploitation of the labour force, but rather by the manipulation of complex organizational systems, by control over information and over the processes and institutions of symbol-formation, and by intervention in interpersonal relations.

As a result, New Social Movements analysts focused on theoretical concepts that were ignored by Resource Mobilization theorists. This social movement

approach focuses on larger structural and cultural issues such as structural causes of social movements, the importance of ideology and the relation of the movement to capitalism (Klandermans, 1986; Klandermans & Tarrow, 1988). Another important dimension is that New Social Movement theorists connect personal problems to larger social issues. They work to illustrate how the personal problem is enmeshed in a broader socio-historical context.

Buechler (1993) notes that the Resource Mobilization framework downplayed the importance of ideologies in social movements because it is so focused on resources. Ideology, quickly defined, is a set of ideas, beliefs, values, and/or opinions (Abercrombie, Hill & Turner, 1994; Snow & Benford, 1988). Buechler (1993, p. 222) argues, "Ideology often performs multiple functions, including transforming vague dissatisfactions into a politicized agenda, providing a sense of collective identity, and defining certain goods as potential movement resources." Using the women's movement as an example, Buechler (1993) argues for the importance of ideology. Women in this movement created the ideology that allowed for their grievances to be heard: for example, "the personal is the political." Ideology is, therefore, a critical piece of a social movement (Buechler, 1993). Even Resource Mobilization theorist Tilly (cited in Morris & Herring, 1988, p. 190) argues for the importance of examining ideology as we need to examine "how certain world views become credible and vital at some times but not others."

Responding to this weakness in Resource Mobilization theory, Snow and Benford (1988) discuss the importance of ideology in "framing" claims in social

movements. Framing is “assign[ing] meaning to and interpret[ing], relevant events and conditions in ways that are intended to mobilize potential adherents and constituents, to garner bystander support and to demobilize antagonists” (Snow & Benford, 1988, p. 198). Framing helps to create “reality:” it focuses on who is to blame and what can be done to institute change (Hunt, Benford & Snow, 1994). There are three types of framing that may occur: (1) Diagnostic framing, (2) Prognostic framing, and (3) Motivational framing (Hunt et al., 1994; Snow & Benford, 1988). Diagnostic framing identifies blame or culpability. Prognostic framing offers solutions and strategies or tactics for change. Motivational framing outlines motives and rationales for change (Hunt et al., 1994; Snow & Benford, 1988).

Snow and Benford (1988, p. 208-211) discuss the ways that motivational framing is attempted:

1. Empirical credibility: is there “empirical evidence” to substantiate the claim?
2. Experiential commensurability: are the solutions offered commensurate to the personal experiences of those the claims-makers are attempting to motivate?
3. Narrative fidelity: does the frame “ring true” with current cultural practices?

Of particular interest to the victim rights movement is Gamson’s (1995, p. 91) “injustice frame” which taps into “...righteous anger that puts fire in the belly and iron in the soul.” The point of this discussion of ideology is that it is just as important to understand the way that “reality” is constructed for participants as it is to

study the impact that monetary resources have on the movement (Snow & Benford, 1988).

Closely related to the importance of ideology, Buechler (1993) also notes that culture is ignored in Resource Mobilization theory. Culture affects how meaning is constructed through symbols and signs. As noted by Melucci (1995), collective action is not simply a reaction to a particular environment, it creates symbols and meanings that others are able to recognize. For example, in the women's movement, Buechler (1993) discusses the importance of the creation of a "women's culture" which supported and validated women's ideas. This type of "resource" would have been ignored if the earlier discussed Resource Mobilization theory were the tool for analysis.

Swidler (1995, p. 30) also discusses the importance of analyzing culture because it plays a part in "...formulating grievances, defining a common identity, or developing solidarity and mobilizing action." For Swidler (1995), culture is tied to power in three ways: codes, contexts and institutions. To explain the complex concept of culture codes, Swidler (1995) tells a story. She asks us to imagine it is National Secretaries Week and every newspaper in the country has been running ads for weeks advertising flowers as a symbol for appreciation. Because the boss does not want to offend the secretary, he or she buys the secretary flowers. Swidler (1995, p. 33) then asks us to imagine that the secretaries union has launched a "bread, not roses" campaign which calls for raises, not flowers, to show appreciation for secretaries. Now, in order for the boss not to offend, he or she must give the secretary a

raise. Swidler (1995, p. 33) concludes, “This would be the direct use of culture to influence action, not so much by shaping beliefs as by shaping the external codes through which action is interpreted.”

Context of culture is also important to social movements. Many struggles related to social movements take place within a political context “...where the stakes are high, risks are great, and political alliances are both essential and uncertain” (Swidler, 1995, p. 36). Within this context, ideological dividing lines are strict: the claimsmakers demand, as the popular saying states, that “you are with us or against us.” Lastly, Swindler (1995) discusses the power of institutions. In an example that is particularly relevant to the victim rights movement, Swindler discusses how institutions shape social movement identities. In the United States there is a belief that “rights” are a trump card in the struggle for claims, therefore claimsmakers that frame their claims as rights may be more likely to have their needs met. As we shall see, victim claimsmakers often refer to the “rights” of crime victims.

Gray (1993), who writes from a social constructionist perspective, agrees with Swidler about the importance of studying culture as he argues for greater interdisciplinary dialogue between social constructionists and cultural theorists. Gray (1993) argues:

Social problem activities are the rhetorics, languages, and vernacular practices of the members, and they are expressed as different kinds of knowledges (e.g., mundane as well as expert) at various sites of social life – street corners, political rallies, and smoke-filled back rooms, courtrooms, classrooms, and television. Constructionism directs attention to the textual expressions and interpretive meanings of these representations and accounts; the processes, negotiations, and struggles they produce; and the sites where such activities take place.

Melucci (1995) points out the importance of meaning construction for social movements. Critiquing Resource Mobilization's emphasis on rationality, he argues for examination of feelings: "Passions and feelings, love and hate, faith and fear are all part of a body acting collectively, particularly in areas of social life like social movements that are less institutionalized" (Melucci, 1995, p. 45).

Also emerging from the interplay between Resource Mobilization theory and New Social Movement theory is the notion of "consensus movements" in which the social movement enjoys 80 to 90% of the population's support with little or no opposition (McCarthy & Wolfson, 1992; Schwartz & Paul, 1992). In relation to the victim rights movement, Clark (1994) notes a situation in which a defense lawyer in opposition to some of the legislative changes supporting victims tames his opposition because he does not want to appear anti-victim. This may explain part of the success of claimsmakers of the victim rights movement since few people want to appear anti-victim.

However, there is debate over whether consensus movements can lead to social change. Schwartz and Paul (1992) argue that consensus movements (Mothers Against Drunk Driving and the Twin Cities movement) were not as successful as previous conflict movements (where there is organized opposition). The reason for this *relative* lack of success is that consensus movements depend more on institutional rather than constituent support. For example, Mothers Against Drunk Driving had extensive government and institutional funding, bountiful media coverage and a strong infrastructure. Consensus movements often carry out their work in

legislative arenas, which calls for special knowledge that the general public does not have. As a result, “[there] is a basic contradiction in consensus groups: their strength – broad institutional support – becomes their weakness” (Schwartz & Paul, 1992, p. 215).

### Summary

In summary, this dissertation examines the victim rights movement using three theoretical perspectives. Social constructionism serves as the framework for carrying out the research. Rather than assuming that violations of victim’s rights objectively exist, the definitional process of bringing victims to the forefront of the national consciousness is examined. Resource Mobilization and New Social Movement theories are then used to examine the success of those claimsmakers. Resource Mobilization focuses on the use of money, existing organizational networks and governmental support while New Social Movements focuses attention on the importance of culture and ideology. The researcher believes that the use of all these theories strengthens the explanation. The next chapter discusses how the research was carried out.

## CHAPTER III

### METHODOLOGY

The design for this research on the victim rights movement is a case study. Stake (1995, p. xi) defines the case study as "...the study of the particularity and complexity of a single case, coming to understand its activity within important circumstances." Merriam (1998, p. 34) defines it as "...an intensive, holistic description and analysis of a single entity, phenomenon or social unit." In this research, the victim rights movement is the "case" to be examined. It serves as a case study of the social construction that has occurred in one social movement.

Some have argued that the groups within the victim rights movement are so diverse that it is probably inaccurate to see it as one entity (Best, 1997; Elias, 1986). However, much of the literature on this movement names it the "victim rights movement" or perceives the changes resulting from something called the "victim rights movement." So it seems that it is being constructed as a movement. As a result, this research treats the movement itself as the case while examining the variety of groups involved as the individual parts making up the whole.

Yin (1994, p. 4) suggests three conditions that must be examined when deciding which method to use in research: (1) the type of research question posed, (2) the extent of control the investigator has over events effecting the research, and (3) whether the focus of the research is on contemporary or historical events. In

response to condition number one, the type of the question posed, Yin (1994, p. 8) notes there are five types of questions: “who” “what” “where” “how” and “why.” The type of question affects the method to be chosen for research. In this research, under the social constructionist rubric, the interest is in examining how the victim rights movement came into existence. Or in other words, how was it constructed? This research question is a “how” question. “How” questions are explanatory in nature rather than predictive. This type of question leads to establishing links over time rather than counting frequencies. Therefore, “how” questions are more amenable to case studies, experiments, and histories. Further examination will show that we may rule out experiments and history as methods to be used for the victim rights movement.

In response to the second condition, Yin (1994, p. 8) notes that case studies are preferred when the researcher does not have control over the “relevant behaviors” in the research situation. Experimentation can not be used because the researcher has no control over the events taking place within the victim rights movement. Turning to the third and final condition Yin (1994) discusses, the contemporary or historical focus, we find the victim rights movement is a contemporary event. This removes it from the realm of completely historical research. This examination of the research question from Yin’s (1994) perspective shows the case study research design as appropriate for this topic.

The research undertaken will be qualitative. Berg (1998) defines the main differences in qualitative and quantitative research as follows: qualitative research

focuses on quality while quantitative research focuses on quantity. Qualitative research focuses on the essential nature of phenomena while quantitative research focuses on amount. Merriam's (1998, p. 6, her emphasis) explanation of qualitative research shows how nicely it fits within the social construction paradigm: "Qualitative researchers *are interested in understanding the meaning people have constructed*, that is, how they make sense of their world and the experiences they have in the world." One of the characteristics noted by Merriam (1998) describing qualitative research is the use of an inductive research strategy. Using inductive reasoning, the researcher builds theory by immersing him or herself in the data. Rather than forging into data collection with an exact theoretical model in place and concrete research hypothesis to test, data will be collected and this process will tell the story of the victim rights movement. During and after this data collection, existing theoretical concepts will be applied to what is discovered.

The goal of this qualitative piece of research is understanding and discovery rather than the prediction and control in more quantitative inquiries (Merriam, 1998). As noted by Reinhartz (1992), the case study is used to examine history and generate theory. "It defies the social science convention of seeking generalizations by looking instead for specificity, exceptions, and completeness" (Reinhartz, 1992, p. 174).

### Data Collection

As part of the qualitative research process, data collection proceeds with the researcher being the primary data collection instrument. The qualitative researcher

uses interviews, observations, and documents rather than "...through some inanimate inventory, questionnaire, or computer" used by researchers in quantitative research (Merriam, 1998, p. 7). An advantage of this type of data collection is that the researcher can be responsive to the context of the research: clarification, exploration, and summaries can occur as part of the data collection process (Merriam, 1998).

Yin (1994) notes there are 6 sources of evidence in case studies: documentation, archival records, interviews, direct observation, participant observation and physical artifacts. This research draws mainly from documentation, archival records, and interviews to examine who made claims regarding victims. In particular, this piece of research focuses on legislative hearings and the claims-making that occurred in the 1980s when the currents surrounding the movement were very strong. Research questions include the following: Are all the claims-makers found in an initial, broad sweep of the literature--conservatives, liberals, radicals, feminists and/or scholars--represented in the legislative hearings? Whose views are represented in the final legislative forms? To reach this end, a variety of documentary evidence and archival records were examined in the search for that information.

To begin to answer these questions, the Congressional Information Service Index, which catalogs congressional publications from 1970 to the present was searched. The researcher searched the years 1970-1989 for the major legislation and hearings pertaining to victim's rights. These years were chosen because the bulk of claims-making activity was taking place during these years. Only the major pieces of federal legislation were examined because there were far too many changes at the

state level to accurately portray what was occurring within the space and time limitations of dissertation research. As a result, the federal legislation focused on are the Victim and Witness Protection Act of 1982 and the Victims of Crime Act of 1984. After determining the focus of the research, congressional hearings and published reports pertaining to these pieces of legislation were analyzed. Also examined various hearings/reports on elderly victimization, as this seemed to be popular during this time period. Information on victims of international crime, juvenile crime, terrorism, arson, and injuries from experiencing crime while a federal employee are also available but were not included in this study because these issues were not as well developed or as far-reaching as the included issues.

In addition to these congressional publications, to investigate “popular culture,” or how the victim rights movement was presented to the general public, major newspaper and magazine articles were examined. To do this, the researcher searched the Guide to Periodical Literature from the years 1963-1989. It was important to search back as far as 1965 since this was first year that victim compensation legislation was published, however the Periodical Guide to Literature indexes the year 1965 with years 1963 and 1964, hence the beginning year for the search was 1963. The final year of 1989 was chosen because the focus of this research was on the 1980s. Articles in popularly read magazines were collected and analyzed for their references to the pieces of legislation. Magazines searched included: Time, U.S. News & World Report, Good Housekeeping, Aging, Newsweek, People Weekly, Psychology Today, Jet, McCalls, Glamour, Reader’s Digest, Ms., the Saturday Evening Post, USA

Today, Life, Vogue, and Better Homes and Gardens. Lexus Nexus, Infotrac, and other computer databases were used to search for newspaper articles focusing on the legislation. The newspapers examined were the Washington Post and the New York Times because of their national readership.

Finally, data was collected from telephone interviews with claims-makers in the victim rights movement. Three interviews were conducted. Those interviews were with Judge Lois Haight Herrington, former Chairperson of the President's Task Force on the Victims of Crime; Marlene Young, Executive Director of the National Organization of Victim Assistance; and John Stein, Deputy Director of the National Organization of Victim Assistance. Multiple attempts were made to contact Representative John Conyers, Senator Paul Laxalt, former Representative Peter Rodino, Senator Arlen Specter. However there was no response to these requests. Senator Strom Thurmond was also contacted, but he was unable to be interviewed in the specified time period. One final claims-maker identified, Frank Carrington of the Victim Assistance Legal Organization, is no longer living.

This examination of data collection leads to an important question asked by Meloy (1994, p. 35) of those doing qualitative dissertations: "When is enough, enough?" In other words, when does data collection end? In this study, the goals are to identify: (a) the major claimsmakers, (b) the major organizations participating in claimsmaking, and (c) the pivotal events involved in the movement. Though the initial scope was quite broad, the focus narrowed as further and further data collection was completed. For example, when first attempting the research, the researcher

did not have the specific pieces of legislation in focus. Based on the various searches however, as discussed earlier, the decision was made to focus on those pieces of legislation because they were the capstone achievements of the era and they affected people on a nationwide basis. As noted earlier, the movement is quite diverse so restrictions had to be imposed on the research because of time and space limitations. It is intended that this research serves as an initial foray into the victim rights movement and will serve to spur further research.

A number of scholars have noted the difficulties associated with documentary research. Yin (1994) cautions the researcher about accepting documents as unbiased. He notes that documents were written for an audience other than the researcher so the researcher must be cautious about a document's "truth." Likewise, Merriam (1998) cautions of assuming authenticity and accuracy of documents. She notes that even public records that claim to be objective may not be so. Using crime data as an example, she notes that this is actually a function of definitions of crimes or of reporting procedures (Merriam, 1998). It is important, therefore, to get data from as many different sources as possible to double check information for accuracy. Yin (1994) discusses the importance of triangulation, particularly to help with construct validity, when conducting this type of research.

Though it is wise to keep these cautions in mind, it is important to note that from a social constructionist perspective the establishment of the "truth" of a document is not a major concern in the research process. Rather than focusing on truth of a document, the analysis focuses on the claims made about victim rights in that

document. These claims may or may not be true. The point is to analyze the claims themselves regardless of whether they are seen as true or not.

### Data Analysis

Yin (1994) argues that the analysis of the data is one of the most difficult and least developed aspects of doing a case study and can be a frustrating process. Merriam (1998) would probably agree since she notes that the analysis emerges from the data collection. She (Merriam, 1998, p. 155) argues,

A qualitative design is emergent. The researcher usually does not know ahead of time every person who might be interviewed, all the questions that might be asked, or where to look next unless data are analyzed as they are being collected. Hunches, working hypotheses, and educated guesses direct the investigator's attention to certain data and then to refining or verifying hunches. The process of data collection and analysis is recursive and dynamic.

With this caveat in mind, this research draws on the suggestions of Yin (1994) to give direction to the data collection and analysis. He describes two strategies for organization in case studies: (1) developing a case description, and (2) relying on theoretical propositions. In this research, the attempt was to do both of these tasks. In the first strategy, Yin (1994) suggests developing a case description. As an organizational tool, the development of the victim rights movement is laid out in linear progression in Chapter IV. Merriam (1998) also discusses this strategy, calling it a descriptive account. However, she notes that though this is an important part of the qualitative research process, few studies stop with this type of analysis.

This taps into the second strategy discussed by Yin (1994), the most

preferred, in which the researcher relies on theoretical propositions in collecting their data. This research, for instance, examines in Chapter VI, data relevant to Resource Mobilization (as discussed earlier, things such as available resources and governmental and media support) and New Social Movements (as noted earlier, the importance of culture and ideology).

Merriam (1998, p. 179) also suggests “category construction,” which can be used as a comparative method of data analysis. In the comparative method, using induction, the researcher begins with categories and constantly compares across and within categories until theory may be formulated. This process was started in a pilot study for this project. Drawing on an inductive approach, the following claimsmakers categories were created and examined in further data collection: the women’s movement, criminal justice administrative concerns, conservatives, liberals, individual moral entrepreneurs, radicals, academicians, organizations and opposition. The researcher also created some “social construction” categories which were expanded throughout the research: use of imagery, use of horror stories, fear of crime, use of the media, support of public officials and private interest groups.

To further the data collection process, Merriam (1998) also suggests keeping a field journal of impressions, hunches, thoughts, musing, and speculations as one works through the data collection phase. She argues that it is a mistake for the researcher to collect all the data and then begin the analysis as this can lead to sensations of being overwhelmed, which was readily apparent in the pilot study for this research. Analysis should flow along with the collection of data. As noted earlier,

although the initial data collection was quite broad, the scope of the research narrowed the scope as further data were collected and analyzed. This field journal also served to chronicle the decisions made regarding the direction of this research.

Yin (1994) discusses four tests for judging the quality of research designs: construct validity, internal validity, external validity and reliability. He notes that construct validity has been particularly problematic for case study research. As noted earlier, to control for this triangulation, or multiple sources of evidence, was used to check the accuracy of the data being collected. For example, when found the major claims-makers within the congressional hearings were found, this was then compared with the various popular culture and newsmedia articles to see if the same persons were speaking. By this cross-referencing process, there was a more complete picture of who was involved in the victim rights movement. A second tactic suggested by Yin (1994) is maintaining a "chain of evidence," or detailed citations that allow for the reader to retrace the steps of the researcher. This is done throughout the dissertation.

Internal validity concerns the effects the observations may have on the research findings (Denzin, 1989). Yin (1994) argues that internal validity *as it applies to causal research* does not apply to case studies because they are exploratory. However, he does note that it is a problem for case studies when an event is not directly observed because, in this situation, an inference must be made. With this inference comes the potential for error. He, therefore, discusses "pattern matching" as a method to deal with this difficulty (Yin, 1994, p. 35). In this case, the researcher

posits different explanations for the phenomena. It seems the procedure most amenable to this problem for this work in the victim rights movement is “rival explanations as patterns” (Yin, 1994, p. 108). After gathering the data, the existing theories on social movements, Resource Mobilization and New Social Movement theory, were examined to see which parts best explain the development of this movement. Theoretical concepts that were less robust are then given less emphasis, which in turn, gives more strength to the one that works as an explanation.

External validity, as discussed earlier, deals with whether the results from the research can be generalized beyond the case studied. Some critics argue that case studies are not helpful to the scientific endeavor since they are based on only one case. However, Yin (1994, p. 36, his emphasis) argues, “*This analogy to samples and universes is incorrect when dealing with case studies.*” Rather than relying on generalizations about statistics and frequencies, he argues the generalization in case studies is “analytic” or expanding on or generalizing about theories. Again, this is choosing between alternative explanations in terms of social movement theory and the victim rights movement.

Reliability is the criterion that the research could be conducted again and the same results would be found. Again, Yin (1994) has suggestions. He argues for the use of a case study protocol to document the decisions made and the steps taken. In the case of this dissertation, the goal is to provide enough information about the decisions made along the way that someone could repeat this study and compare the results.

## Summary

This chapter has explained the method, case study, which is used in this particular research. A case study is deemed appropriate in this research because the research question is an explanatory one. This is a qualitative analysis of congressional hearings, personal interviews, and articles from major newspapers and news magazines. Strategies for dealing with reliability and validity were also discussed. The next chapter lays out, in detail, the development and history of the victim rights movement.

## CHAPTER IV

### VICTIM RIGHTS MOVEMENT IN HISTORICAL CONTEXT

This chapter describes the historical development of the victim rights movement as it relates to the two pieces of federal legislation passed in the 1980s. First, the role of the victim within the criminal justice system will be examined since this is often referred to by claims-makers. Then the early history of the movement itself is examined, which spanned from the 1960s to the late 1970s. As will be noted, there were many precursors or contributors to the victim rights movement. In particular, this chapter will explore the women's movement, the emphasis of crime as a problem in politics, the importance of the National Victimization surveys, the development of the National Organization for Victim Assistance (NOVA), the victim compensation movement, the focus on elderly victimization and finally, the focus on children's victimization. The last section of the chapter examines the growth of the movement in the 1980s. This is the time that the movement began to have great impact at the federal level. In particular President Reagan's initiatives in the early 1980s are focused on. This is then followed by a chronicling of the passage of the Victim and Witness Protection Act and the Victim of Crimes Act of 1984, which were the major pieces of legislation to be passed in the 1980s.

## History of the Victim's Role in the Criminal Justice Process

"After centuries of neglect, the crime victim is being rediscovered" (Galaway & Hudson, 1981, p. 1)

"[The crime victim's] condition for centuries aroused little comment or interest. Suddenly they were 'discovered,' and afterwards it was unclear how their obvious neglect could have so long gone without attention and remedy" (Geis, 1990, p. 255).

To understand claims of neglect, one must understand the history of the victim since it is referred to by many claims-makers. As Elias (1986, p. 9) has suggested, "We must understand our newfound concern for the victim in its historical context." Numerous articles, books, chapters, etc. on victims and/or the victim rights movement begin by presenting this history to the reader. Essentially, scholars examining the victim rights movement and those within the movement point out that we are in the process of the "rediscovery" of the victim.

In examining this historical context, many authors note that throughout history, the role of the victim became less and less prominent in the administration of the criminal justice system. There was a shift from private justice on the part of the individual victim to social justice delivered by the society as a whole (Henderson, 1985). Though we currently have an institution called the criminal justice system in which the state prosecutes the offender, historically, justice resulted from the actions of the victim him or herself or of his or her family (Elias, 1986; Henderson, 1985).

Beginning with "early history," Elias (1986, p. 10) notes that justice occurred strictly within the realm of the individual. He (Elias, 1986, p. 10) notes "Victim

retaliation served as the earliest form of social control, albeit an unorganized one.” With the emergence of clans or tribes, however, a more collective responsibility for victim justice emerged. “Blood feuds” developed during which the victim’s clan would exact revenge for a wrongdoing. The problem, notes Elias (1986), is that with this feud came the potential for endless cycle of attacks and retaliations between the victim’s and offender’s families or kinship groups. As a result, alternatives for addressing justice developed.

With the accumulation of wealth, restitution (first as property, later as money) was used as a less violent, more viable response to victimization (Elias, 1986). The Code of Hammurabi, which called for restitution for harm done and the “death fines” of the Greeks, early Hebrews, the Indian Hindus and the Turkish Empire are examples (Elias, 1986, p. 10). Henderson (1985) also discusses the use of fines as blood feuds became less common: “bot” and “wer” payable to the kin and “wite” payable to the kings. Though the victim was still at the center of the process at this time, it can be seen that his or her interests were beginning to compete with the interests of deterrence and third parties (Elias, 1986).

This was further strengthened with the emergence of the state (kings) because part of this victim restitution began to be paid to the state. As the authority of King’s solidified, the “king’s peace” was created and, in time, offenses were seen to be against the crown rather than the individual (Henderson, 1985). As early as the 13<sup>th</sup> century in England, felony law served the needs of the feudal system more than those of the victim, with approximately 1/6 of the King’s income stemming from the

criminal justice process (Elias, 1986; Henderson, 1985). Gradually the fine held the same importance as restitution and Elias (1986, p. 11) argues, “victims had substantially lost their criminal justice role by the end of the Middle Ages.”

Elias (1986) does note that some systems retained the victim's role longer than others. Simonson's (1994) points to the victim's role in U.S. history. In the 17<sup>th</sup> century, England relied on a system of private prosecution in which law was enforced by the “hue and cry.” Within this system, which was transferred to the United States, it was the victim who pursued the criminal with the help of family and friends. If the offender was poor, the victim had the option of selling the offender's services until payment for damages was complete. However, it was the victim who was responsible for paying for the warrant, constable services, prosecution, and the cost of keeping the offender in jail (McDonald, 1976; Simonson, 1994).

With the onset of the Enlightenment period, this system began to change (McDonald, 1976; Simonson, 1994). With this period came a focus on the social contract and individual rights. As a result, the criminal justice system was envisioned as serving the needs of society as a whole rather than the individual victim. This notion was further reinforced by the creation of the public prosecution offices and the modern police force (McDonald, 1976). These roles placed victims in the role of witness rather than their earlier role of pursuer and prosecutor. This shift also attempted to take the inequality out of enforcement of the law since those with the most money could better afford to convict their offender (Simonson, 1994). Today, many victim advocates argue that the pendulum has swung too far in the offender's direction at the

expense of the victim. Hence began the claims of the dismissal of the victim.

As one Florida victims' rights advocate, Robert Preston, has argued in his fight for victim rights, "For nine hundred years, all crimes have been considered crimes against the state...Once a victim reports a crime, the state takes over, and the victim essentially vanishes" (cited in Ralston, 1985, p. 99). This begs the question, why the "rediscovery" of the victim and why at this point in time? A social constructionist view can help answer this question. But before answering that question, the history of the victim rights movement itself is examined.

### The Early History of the Victim Rights Movement

The following section chronicles the development of the different influences from the 1960s until the late 1970s that culminated in the victim rights movement. Before beginning that journey, however, a few cautionary statements are in order. First, as discussed earlier, this movement is a large and diverse one, so the researcher does not claim this to be an exhaustive portrayal of all the events and changes that have contributed to or resulted from the victim rights movement. Because of time and space limitations, the movement is chronicled with two pieces of federal legislation foremost in mind. Those major pieces of federal legislation are the Victim and Witness Protection Act and the Victims of Crime Act of 1984.

This exploration is further complicated by the argument that there is no exact date cited for the beginning of this movement. Rather, as discussed by Carrington and Nicholson (1984) there are "'landmarks' for the movement's escalation." In

addition, Weed (1995) also argues that in the beginning, the movement was not a unified one but was instead composed of different activist groups focusing on different crimes that had effected them: rape, domestic violence, homicide, drunk driving and child molestation, to name a few. Though these groups differed in “their own beginning and their issues”, Weed (1995, p. 12) argues that they began to develop along similar lines resulting in a broader movement.

As a result, the development of this movement is viewed as similar to that of a river. There are small tributaries that meet creating a larger flow of water. More tributaries flow into this larger body of water until there is a large river. As with the development of a larger river, there are numerous groups, individuals, and organizations contributing to the development of the victim rights movement. Also similar to the many tributaries that make up an existing river, were the different claims and issues being aired which were developing simultaneously to one another. Though they developed separately, there was a weaving among one another because they all shared a concern for victim’s rights in one fashion or another. Keeping this metaphor in mind, the following are discussed as those simultaneous movements: the women’s movement, crime in politics, the national victimization surveys, the development of the National Organization for Victims Assistance (NOVA), the victim compensation movement, the attention given elderly victimization and, lastly, child victims of crime.

### The Women's Movement

A number of other scholars have credited the women's movement as a starting point in the victim rights movement (Davis & Henley, 1990; Friedman, 1985; Weed, 1995; Young 1988). As a result of this movement, women were recognized as suffering from victimization: particularly as victims of sexual assault and battering. Weed (1995) discusses the first grassroots activism stemming from the crimes of rape and battering. The first rape crisis center was developed in Berkeley, California in 1972 while the first feminist shelter for battered women was created in St. Paul, Minnesota in 1974 (Weed, 1995). Weed (1995) argues that these types of centers generally came from the radical wing of the feminist movement, which sought recognition of women as victims of sexual assault and domestic violence and challenged the existing social and criminal justice systems.

Using a social constructionist perspective, two scholars in particular, have written of the "creation" of rape (Rose, 1977) and battering (Tierney, 1982) as a result of actions of the women's movement. These scholars discuss the changes made in social and legislative arenas that resulted in greater recognition of women as victims. Rose (1977, p. 76) notes that the first "stirrings" of the "anti-rape movement" took place in the late 1960s with the creation of "consciousness-raising groups." In the early 1970s, there were "speak-outs," workshops and conferences creating a feminist ideology, which allowed for the critique of traditional view of rape. After discussing changes that took place in the 1970s, Rose in 1977 (p. 85) concluded,

...the anti-rape movement has made considerable progress during its short life-span, largely as a result of the efforts of feminist forces for which the rape issue serves as a nonpartisan, uniting cause. Due chiefly to its accomplishments, more people are becoming aware of the movement's existence and are gradually accepting its definition of rape as a serious social problem.

Writing 5 years later Tierney (1982) examines the role of the women's movement in the construction of "wife beating" as a social problem. Organization in the recognition of battering moved along similar lines as those involved with sexual assault. However Tierney (1982) makes an observation that is relevant to claims-making when she suggests that though there were many different viewpoints aired on battering, sponsors were more attracted to moderate as opposed to radical feminist views on battering. As a result, the author concluded that the future would bring further decline of the "feminist" emphasis: "Influential sponsors, including federal law enforcement and social welfare agencies, have directed the movement away from 'radical' programs that challenge society's patriarchal values and advocate large-scale social change" (Tierney, 1982, p. 216). So though these activists were successful in having their claims heard, the most successful claims were those that were moderate in their view.

In summary, the women's movement served to bring attention to women as victims of sexual assault and battering laying a foundation for the victim rights movement. These activists were aggressive in airing their claims and, in hindsight, were relatively successful in establishing legislative and social changes. However this brief examination has also shown the interplay of differing ideologies in that more moderate views were more likely to be supported with funding for their centers.

## Crime in Politics

As this struggle occurred within feminist organizations, Geis (1990, p. 255) argues that U.S. politics was responsible for moving victim rights “center stage.” He notes that although Barry Goldwater, the Republican candidate for president in 1964, lost the presidential race, he was quite successful in moving concern about crime control center stage in political battles. Though Johnson had won the election, he did not want to be caught unprepared for the crime issue as had happened during his campaign. As a result he appointed a commission to study crime, The President’s Commission on Law Enforcement and Administration of Justice (Geis, 1990).

Weed (1995), in his examination of the crime victims movement, also discusses the importance of politics. He argues that it was Richard Nixon who was successful in making violent street crime a campaign issue. Drawing on George Wallace’s “law and order” theme, Nixon won “...a substantial number of votes and a victory” (Weed, 1995, p. 6). This campaign promise had to be converted into action, however. Weed (1995, p. 7) argues that as a result the role of the Law Enforcement Assistance Administration (LEAA) was expanded and John Mitchell, who was willing to portray a “Mr. Law and Order” image, was appointed the Attorney General. An increase in the attention to crime meant an increase in the attention to victims and Geis (1990) argues that there were political benefits for a focus on victims. For example, it

...provides an opportunity to conciliate those who have been injured or deprived, and therefore are likely to be among the most disenchanting. Such a focus truly offers a decent chance to do something constructive and helpful

about the generally intractable crime problem. The movement to aid crime victims made both logical and emotional sense. Their case is compelling, and they traditionally have been ignored. Strong overt opposition to programs providing assistance to crime victims is not likely to surface. Who, after all, is willing to go on record as opposed to so preeminently worthy a cause? (Geis, 1990, p. 260)

In summary, as a result of politics on a national level, crime was elevated as a major concern for the United States public. As a result, closer attention was paid to crime, criminals and their victims. This attention led to the creation of the National Victimization surveys further elevating the victim's status.

#### National Victimization Surveys

Simonson's (1994) work agrees with and further adds to Geis and Weed's analyses of politics. She notes that victimization surveys, developed in the late 1960s, were used to discover more about the "problem" of crime because the United States was becoming obsessed with it. To illustrate this point, Young (1988, p. 320) and Carrington and Nicholson (1984) credit the beginnings of the movement, in part, with the "extraordinary rise in the rate of crime." In 1965, Albert Biderman, who worked for the Bureau of Social Research, suggested that victims of crime should be interviewed since they were "closer" to crime than were police, who were at that time, seen to be the best measure of crime (Geis, 1990). The first "rough results" of the pilot studies using this technique indicated the possibility that there was 10 times more crime than reported to the police (Geis, 1990, p. 258).

Meanwhile, the role of the LEAA expanded and in 1972 it sponsored this new technique in gathering crime statistics, which became known as the National Victim

Survey (Weed, 1995). This survey became “an authoritative source of data” supporting what victim advocates had been saying; that victims needed more attention and services (Weed, 1995, p. 9). The results of these surveys were used to support the claim that there was a lack of reporting on the part of crime victims. This failure of victims and witnesses to cooperate was seen as resulting in high dismissal rates (Simonson, 1994; Weed, 1995). In response to this lack of victim and witness cooperation, the LEAA began the Citizens’ Initiative Program in 1974. The goal of the program was get citizens involved in apprehending and convicting criminals. To reach this goal, the Citizen’s Initiative Program offered grants for programs designed to increase victim and witness cooperation (Weed, 1995) and nineteen victim/witness programs were funded throughout the country (Davis & Henley, 1990).

To summarize, the attention to crime in politics and the resulting attention to victims within the national victimization surveys gave further impetus to the movement. With the advent of the victimization surveys, there were statistics to use as fuel in the fight to bring attention to the victims of crime. One can also begin to see the different motivation that spurred the claims for helping victims of crime: feminists were more humanitarian in nature with their rape and battering shelters while the Citizen Initiatives were designed to increase conviction of criminals.

#### National Organization of Victim Assistance

Also contributing to the victim rights movement was the development of the National Organization of Victim Assistance (NOVA). NOVA was established in

1975 by various victim advocates and service providers to be an umbrella organization for the many different groups involved in the movement (Young, 1997). This organization was created as a result of two national LEAA conferences to fulfill training and information needs for the victim advocates employed in the various victim/witness programs developed (Weed, 1995).

Young (1988, p. 323) notes that though victim advocates seemed "...well on their way to launching a victim's movement," there was instability as result of inconsistent funding and dissension within the organization itself. In 1976 funding diminished because there was a shift in federal interests, but by late 1978 there was more money for victim and witness programs. However, in 1979, the funding tides turned once again with the disbanding of the LEAA, which left some victim services programs struggling (Young, 1988). Outside of this funding problem, at the 1978 national conference, sexual assault program representatives voted to establish a second organization: The National Coalition Against Sexual Assault based on the perception that women's needs were not being served by those in leadership positions (Young, personal communication, February 9, 2000).

Despite these difficulties, by 1980 NOVA hired its first staff members and began the process of professionalizing (Weed, 1995). Marlene Young, (1997, p. 197) who was hired in 1981 as the Executive Director of the organization, argues that "NOVAs initial contributions to the field were to sponsor annual national conferences, to promote victim issues and to make available early training opportunities to those working with victims." Weed (1995, p. 61) argues these national conferences

are the “Mecca” of the victim rights movement. Data will be presented later to show the central role that NOVA played in the passage of the Victim and Witness Protection Act and the Victims of Crime Act.

### Victim Compensation Movement

Alongside the focus on victim services, there was a push for compensating the victims of crime. Young (1988) argues that the creation of victim compensation legislation was also responsible for spearheading the victim rights movement. The first legislation was enacted in California in 1965 and by 1983, there were 33 states (including the Virgin Islands) that had programs in operation and 6 more states (including the District of Columbia) in the process of implementing programs. An additional state, Georgia, provided compensation for “Good Samaritans” only (McGillis & Smith, 1983, p. 10). McGillis and Smith (1983, p. 10) argue that growth at the state level was “impressive,” particularly in the late 1970s.

The roots of this victim compensation may be found in Europe. Weed (1995, p. 3) credits the beginning of the “modern crime victims-movement” to Margery Fry, a “wealthy, well-educated, shrewd reformer with a deep sympathy for humanity.” Fry drew on her experience with penal reform and social anthropology when developing her Criminal Injuries Compensation Scheme, which was eventually enacted in New Zealand in 1963 and then in Britain in 1964 (Rock, 1990; Weed, 1995). Criminal Injuries Compensation was based on the notion that victims should be compensated by the state in the same way that workers are compensated in worker

compensation. Fry did not see victims of crime any differently than others who were already helped by the government through other welfare programs (Weed, 1995).

In the United States, agitation for victim compensation at the federal level began as early as 1965 with introduction of a victim compensation bill by Senator Yarborough (1973) in the first session of the 89<sup>th</sup> congress. Though the bill covered only a limited geographical area, after referral to the Committee on the Judiciary, no further references to it were found. Further bills were introduced in the 89<sup>th</sup> and 90<sup>th</sup> Congresses, but all died in the House and Senate Judiciary Committees (Crime victim compensation, 1976, p. 471). In the 91<sup>st</sup> Congress, Senator Yarborough introduced another victim compensation bill, which was passed by the Senate as part of the District of Columbia Court Reform Act. However, this provision was dropped in a House/Senate Conference (Crime victim compensation, 1976, p. 471). There were numerous victim compensation bills introduced throughout the early 1970s, however, most of them were unsuccessful in garnering enough support in the House (Senate Report 98-497, 1984).

In the 94<sup>th</sup> Congress, a favorable report was issued from the Committee on the Judiciary in the House of Representatives on the "Victims of Crime Act of 1976" (see House of Representatives Report No. 94-1550, 1976). However, once again, no legislation was passed as Congress adjourned before the House could act on the bill (Mann, 1979, p. 1). During the first session of the 95<sup>th</sup> Congress, compensation bills were approved in both the House and Senate but the Conference report was not approved by the House before Congress adjourned (Sen. Rep. No. 98-497, 1984).

Much of the debate in the discussion of this bill centered on how restrictive services should be (Victim compensation and the elderly, 1979). In the 96<sup>th</sup> Congress, legislation for victim compensation was introduced again in both the Senate and the House and though the House Judiciary reported the bill, it was opposed by the Carter administration (Sen. Rep. No. 98-497, 1984.) In the 97<sup>th</sup> Congress, another piece of legislation was introduced into the House, however the Victim and Witness Protection Act was instead passed (see later discussion) (Sen. Rep. No. 98-497, 1984).

There were a variety of reasons given for justification of victim compensation programs that resounded throughout the various hearings for victim compensation. The first of these was parity in resources spent on victim and offender (Rothstein, 1976, p. 59). An example of this is seen in testimony from a 1976 hearing, however this sentiment was repeated throughout the fight for victim compensation.

In times when we spend billions of dollars on crime prevention programs which do not prevent crime, crime deterrence programs which do not deter, criminal correction programs which do not correct and criminal rehabilitation program which do not rehabilitate, isn't it time to consider the victim of the crimes...? These, after all, are the same people who pay the bulk of the taxes which support these programs. They are the wage-earning taxpaying, law-abiding citizen whom up until now we have completely ignored (Jahnke, 1976, p. 292).

A second justification was that society has broken its promise to protect the victim (Rothstein, 1976, p. 59) which is otherwise known as the "social contract." An example of this is testimony from Representative Mikva (1970, p. 68) from Illinois:

Compensation for injuries to victims of crime follows logically for the purposes of social organization and the criminal law. Men organize themselves in societies in order to better protect themselves from the depredations

of nature *and* of other men. This is really the reason that the first men banded together to work, hunt and live in groups: because collective protection for the threat of violence was more effective than the protection that any single man could provide for himself.

Closely related to the previous justification, was the claim society has failed the victim by not preventing crime (Rothstein, 1976, p. 59). This has also been termed “duty theory” (Lamborn, 1976, p. 141). Senator Yarborough, (1970, p. 20) gives an example of this justification when introducing his compensation bill:

The genesis of this bill, Mr. Chairman, is that in an organized society the frontier days are gone. A hundred years ago in my State, every man wore his own gun, protected himself and his family... Society, having declared it is illegal for a man to go armed to protect himself, owes the duty to protect him.

The claim is that the state has a duty to protect the victim and when the state fails in that duty, then the victim should be compensated.

Another justification posited is that of “crime prevention” (Special Commission on the Compensation of the Victims of Crime, 1972, p. 267). Using this justification, Prosecutor James Unger (1976, p. 76), in his testimony, noted that there is a chain reaction when criminal justice officials show concern to the victim: the victim will be more likely to help with prosecution, which in turn will result in more effective prosecution and lower crime rates.

The final justification was the “social welfare” model. This model posits that “Just as universally-held concepts of modern industrial democracy dictate public assistance for the disabled veteran, the sick, the unemployed and the aged, so that require that victims of crime be supported” (Special Commission on the Compensation of the Victims of Crime, 1972, p. 267). This is essentially the same

idea promoted by Margery Fry and Senator Yarborough in their support for victim compensation.

Though these various justifications were used throughout the hearings on victim compensation, the movement for victim compensation in the United States had some similarities with the movement in Europe. Rock (1990, p. 83), in his study of victim compensation in England and Wales, argued "There was such an overwhelming agreement about principle that debate centred entirely on practical matters of costings, definitions, and applications." Concern over the various bills introduced were not that victims did not deserve to be compensated, but that the federal government had no justification for payment or could not afford the payment.

This concern was seen early in the movement for victim compensation. In the 1969 hearings on Senator Yarborough's victim compensation bill, one person, the Mayor-Commissioner of Washington D.C, expressed opposition. Expressing a sentiment that would be repeated throughout the years, the Mayor-Commissioner was opposed to the bill because of cost. Writing on behalf of the Commissioner, the Acting Assistant, noted that though "...sympathetic to the fact that all too often the victim ...must himself bear the cost of medical treatment and other costs...Since the District Government is to be responsible for such costs, the Commissioner is quite concerned with this added demand on the financial resources of the District of Columbia" (Duncan, 1970, p. 71).

The Mayor-Commissioner, however, was not the only person to oppose victim compensation. For example, the administration did not support the Victims of

Crime Act of 1972 because “enactment of legislation...would be premature at this time” since they were waiting for the results of further study (Sen. Rep. 92-1104, 1972, p. 12). This same caution was expressed the following year, in another hearing. James McKevitt (1973, p. 74) of the Department of Justice noted that the department had not taken a position though “...we have a strong interest in it.” He (1973, p. 74) continued, “Really, our testimony today will be directed primarily at raising some of the questions of concern to the Department of Justice.” Those questions asked in 1973 foreshadowed much of the coming debate.

What crime should be covered? All common law crimes? Property crimes? Violent crimes? Which victims should be eligible for compensation? All victims? Should this be determined by a relationship to the offender? Should it be determined by the circumstances of the crime or should it be determined by financial need? What are the projected costs of a program with restricted eligibility? What are the possible effects of a victim compensation program on the criminal justice system, private insurance, etc.? How can such a program be best administered by the Federal Government? Would this be through its social welfare program, through LEAA, or through the courts? Should the Federal Government establish stringent guidelines for State-administered programs? Should it consider victim compensation part of the revenue sharing program, with few guidelines? Should it use Federal legislation as a model, by not a requirement for State legislation? (McKevitt, 1973, p. 77)

More formal opposition is found in the House reports and various hearings held in the late 1970s. Again, though not directly opposing the concept of victim compensation, these individuals could find no justification for the federal government to be involved in compensating victims or they were concerned with the cost of the program. For example, in House Report 96-753 (1980), there is critique of victim compensation as inappropriate for a state-federal relationship. The Representatives argue that should a state chose to compensate the victims of crime, then it should be

allowed to do so but that the federal government should not be expected to “bail out” the states (H. R. Rep. No. 96-753, 1980, p. 4). “At it’s core, the basis for this legislation is the misguided notion that Federal dollars can somehow (sic) always more efficiently fund State program than can State dollars” (H. R. Rep. No. 96-753, 1980, p.15). This, they argue, represents a “...quantum leap in the Federal-State relationship...” that the Federal government can more efficiently control crime or it’s consequences (H. R. Rep. No. 96-753, 1980, p.15).

Representatives in opposition also cautioned about the cost of the bill: “H.R. 4257 is a vast, new Federal welfare program poised on the launching pad; like all skyrockets, once fired, it will only go higher and higher” (H. R. Rep. No. 96-753, 1980, p.15) and it is “...merely a head-long plunge into another fiscal tunnel so blind that there is not even light at the end” (H.R. Rep. No. 96-753, 1980, p.16). Henry Hyde, who had supported the legislation earlier, changed his mind and opposed the legislation because he found inflation a more important priority than the compensation of victims. “After all, we are all victims of the crime of inflation, and that *is* a federal responsibility” (H. R. Rep. No. 96-753, 1980, p.17). As noted by the supporters, and emphasized by the opposition: “We always keep No. 1 in mind; that we are spending taxpayer’s money” (H. R. Rep. No. 95-337, 1977, p. 3).

Some even suggested that, in opposition to the supporters of victim compensation, crime might increase rather than decrease because, “It is reasonable to suppose that that criminals will feel less restraint against injuring others and less guilt afterward with the knowledge that the damages he or she causes will be rectified by

others” (Barnett, 1979, p. 238). Or as argued by Representative Kindness (1980, p. 37),

In the history of automobile insurance...there has developed over a period of years a tendency on the part of many drivers to feel that when an accident occurs the insurance takes care of it. It's all societal somehow. And I have a genuine concern that this type of program could have a similar effect on thinking of would-be miscreants, muggers, rapists, robbers, what have you... Personal responsibility is annihilated with this type of thinking and the tendency toward the commission of a crime is increased.

In a slightly different spin, there was also opposition from the Firearms Lobby of America. The National Director of this group posited a different point of view on victim compensation. Based on the notion that victims will be more likely cooperate with the criminal justice system, he argues

...we will certainly see a dramatic increase in reported crimes, which will surely lead to a public outcry demanding that something be done about it. This will be seized upon as an opportunity by the anti-gun forces to push for further restrictive gun control legislation. (Norval, 1979, p. 258)

In summary, during the late 1960s and throughout the 1970s, there were many debates over the merits of victim compensation and this debate brought further attention to the victims of crime. The major issues that rose to the surface dealt with concerns over cost and the appropriateness of the legislation for the federal-state relationship. Though these claims-makers were not successful in enacting legislation in the 1970s, it did lay a foundation for the passage of the Victims of Crime Act of 1984, which will be discussed shortly.

### Elderly Victimization

To those activities and organizations previously discussed as contributing to

the victim rights movement, attention to elderly victimization should be added. Victim compensation was discussed throughout hearings dealing with elderly victims. For example, the Housing and Consumer Interests Subcommittee held seven hearings and produced a report, "In search of security: A national perspective on elderly crime victimization" out of which came the major legislative recommendation for victim compensation (Victim compensation and the elderly, 1979). The members of the subcommittee drafted a bill to address the special needs of elderly victims because they did not believe that the currently existing bills adequately addressed those needs. Though Congress did not pass that bill, provisions of the bill were included in the Victims of Crime Act of 1978 (Victim compensation and the elderly, 1979).

During the late 1970s and then in 1984, the Select Committee on Aging held hearings on crime and the elderly, which overlapped with the compensation and victim rights movements. For example, in the 1977 hearing, Elderly crime victims compensation, chairperson Biaggi (1977, p. 1) noted,

It is our purpose to focus attention and make people and governments aware of the need for providing such compensation. We will be focusing more heavily on elderly crime victims, but today we expect a series of victims who will range in age, and they will tell their story graphically. The important thing is to deal with the total picture.

There were a number of reasons that the elderly were focused on as victims. The testimony of George Bohlinger, of the Law Enforcement Assistance Administration, showcased some of these reasons. In discussing the results of the first crime panel surveys, Bohlinger (1977, p. 7) noted that although the elderly were at less risk for victimization than were younger people, they were still greatly effected by crime:

These statistics may cast a cold light on reality, but they do not measure the misery of fear, the apprehension - and perhaps terror - which keeps many of the elderly in our cities virtually prisoners in their homes or apartments. More than one-half of the oldest persons surveyed indicated that they had limited or changed their patterns of living in order to minimize their risk of victimization. Add to this the diminished activity and increased infirmity that often accompany aging, and we have a groups of people who are infrequently in high-risk crime situations. In the usual sense of the word, they may not be victimized, but such fragile "safety" exacts a high price by restricting their freedom to go about normal activities and lessening their peace of mind. There is little question about the vulnerability of senior citizens - physical, psychological, and financial.

In summary, the elderly were seen by some as a special group of victims. For example, although they were statistically less likely to be the victims of crime compared to younger people, they lived in greater fear of crime resulting in a change of lifestyle not experienced by other groups. The elderly were also seen as enduring greater suffering when they are victimized because of their frailty and lower financial status, especially compared to a younger population. They were claimed to be more likely to be represented in high crime areas and therefore at greater risk of victimization. As a result, there was a strong coalition of people that were interested in serving the needs of the elderly as crime victims. These concerns with elderly issues overlapped nicely with the interests of those working with a larger population of victims in mind, which added yet another dimension of support to those agitating for attention.

### Child Victimization

The last group or activities to be discussed that contributed to the development of the victim rights movement is that of child victims. This is yet another sub-

group of specialized victims that have been interwoven into the movement adding further supporters. Young (1988, p. 321; personal communication, February 9, 2000) credits the “discovery” of child abuse and government commitment to ending it as a precursor to the victim rights movement. An examination of an historical overview developed by the Office for the Victims of Crime shows quite a few pieces of legislation passed for child victims (Office for Victims of Crime, 1999). An example is the passage of the Child Abuse Prevention and Treatment Act, which established a National Center on Child Abuse and Neglect in 1974. Another example was the founding of the group, Parents of Murdered Children in 1978, which was active in spurring legislative change at the state level. In 1980, the Parental Kidnapping Prevention Act of 1980 was passed while in 1981, the disappearance of Adam Walsh motivated a national campaign to bring attention to child abduction. In 1982, the same year the Victim and Witness Protection Act was passed, the Missing Children’s Act of 1982 was passed, which required that information for missing children be promptly entered into the FBI database (Office for Victims of Crime, 1999). The Missing Children’s Assistance Act was passed at the same time that the Victims of Crime Act was passed in 1984 (Public Law 98-473, 1986, p. 2125)<sup>1</sup>.

As can be seen, the child victimization movement was developing in a parallel fashion to the other groups and activities discussed. However, it should be noted that there was not as much cross-pollination as there were with the women’s

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<sup>1</sup> For further discussion of the development of the “child abuse revolution” see Jenkins (1998) Moral Panic.

movement or with elderly victimization in terms of their representation in the passage of the Victim Witness Protection Act and the Victims of Crime Act. Rather, the legislation that developed regarding to child victims was occurring simultaneously to that dealing with victim compensation and victim services. However, the two movements were not independent of one another, which is why it is mentioned here. There were various links between the two movements. For example, Parents of Murdered Children testified in hearings related to VOCA and were active in what Jenkins' (1998) titled the "child abuse revolution." Senator Arlen Specter was also involved in both areas of legislation (see Jenkins, 1998) as well as John Stein (1984) of NOVA.

In summary, legislation regarding a special groups of victims, children, was developing simultaneously with the victim compensation movement and the elderly crime victim movement. Though each focused on different types of victims, they were contributing to the recognition of crime victims in general. As with the other activities and organizations discussed, child victimization was yet another aspect making a contribution to the movement as a whole.

### Growth in the 1980s

To this point, the research has explored the different organizations and activities contributing to the victim rights movement that were gaining momentum in the 1960s and 1970s. This section of the dissertation discusses the growth of the movement that occurred in the 1980s. Despite the funding situation and the fears of some,

the 1980s produced an outpouring of victim rights legislation at both the state and federal levels. Young (1988, p. 326) noted that this time was "...marked by extraordinary growth in the public's awareness of victim issues and the translation of the ideas of victim harm, treatment, and rights into tangible reforms." Prior to this, Carrington and Nicholson (1984) argue that most of the movement's success was at the state level because the federal government was lacking in leadership. This, however, began to change in the early 1980s. In particular, as noted earlier, the passage of the Victim and Witness Protection Act in 1982 and the Victims of Crime Act in 1984 are examined.

### The Reagan Initiatives

As Young (1990) notes, a major impetus was President Reagan's support for victim rights at the presidential level. Other scholars have also noted Reagan's support for victim rights. Elias (1993) argues that the "heyday" of the movement began in April 1981 when President Reagan supported National Victim Rights Week. This action was repeated in 1982, 1983, and 1984 (Carrington & Nicholson, 1984). In each these years, the President noted his support for victims rights and called for other public officials at all levels of government to show their support and take action for the needs of victims (Reagan 1981, 1982, 1983, 1984). Though the movement may have previously experienced funding difficulties, it was given new life through the President's actions.

The first National Victim Rights Week was soon followed by the creation of

the Attorney General's Task Force on Violent Crime in 1981 (Young, 1997). The major task facing this group was to make recommendations to the Attorney General for ways that the federal government could combat violent crime (Attorney General's Task Force on Violent Crime, 1981). Some of these recommendations did tap into the needs of crime victims. For example, the Task Force (1981, p. viii) recommended, "The Attorney General should take a leadership role in ensuring that the victims of crime are accorded proper status by the criminal justice system." The Task Force (1981) also recommended establishing "federal standards for the fair treatment of victims of serious crime" (p. 88), allowing "suits against appropriate federal government agencies for gross negligence involved in allowing early release or failure to supervise obviously dangerous persons or for failure to warn expected victims of such dangerous persons" (p. 90) and studying the existing compensation programs for effectiveness (p. 91).

The Attorney General's Task Force was followed shortly by a President's Task Force. The President's Task Force on Victims of Crime was appointed by President Ronald Reagan on April 23, 1982 to examine the treatment of crime victims. The Task Force produced a report in December of 1982 after gathering documentation and listening to victims and other witnesses in 6 hearings held throughout the United States (Carrington & Nicholson, 1984; President's Task Force on the Victims of Crime, 1982; Young, 1988). This final report consisted of 68 recommendations for government action at both state and federal levels; for those in the criminal justice system such as police, prosecutors, the judiciary and parole

boards; and other organizations such as hospitals, the ministry, the Bar, schools, mental health agencies, and the private sector (President's Task Force, 1982). Those recommendations varied from providing separate waiting rooms for the victim and offender to the abolishment of parole.

Suggestions for the Federal government included: enactment of legislation to compensate crime victims, provision of federal funding for victim/witness assistance programs, establishment of a national resource center, creation of a task force to study violence within the family, undertaking a study of the juvenile justice system from the victim's perspective, and the establishment of a study to determine the circumstance under which "the principle of accountability for gross negligence of parole board officials in releasing into the community dangerous criminals who then injure others" (President's Task Force, 1982, p. 37). President Reagan then appointed the chairperson of the Task Force, Lois Herrington, to the position of Assistant Attorney General to oversee the Office of Justice Assistance, Research and Statistics with the task of implementing the task force recommendations (Carrington & Nicholson, 1989).

### The Victim and Witness Protection Act of 1982

While the Task Force was in the process of working on its task, members of Congress were also hard at work on the establishment of victim legislation. On October 12, 1982, the Victim and Witness Protection Act (the Protection Act) was signed into law which provided victims of federal crimes with protection from intimi-

dation, restitution, and “fair-treatment standards” (Young, 1988). When signing the act, President Reagan (“Victory for Victims Bill,” 1982, p. 1) stated, “It is high time the legal system showed the honest citizen as much concern as it does the criminal.” As the first major piece of federal legislation serving victims, The Protection Act was enacted:

(1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process, (2) to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant, and (3) to provide a model for legislation for State and local governments. (PL 97-291, 1984, p. 1249)

Before describing the legislative process, the Protection Act itself is first described. The Protection Act contains a number provisions for what is claimed to be better treatment of crime victims. The first of these is allowing a victim impact statement (VIS) in federal sentencing procedures. The VIS allows information concerning “any harm, including financial, social, psychological and physical harm, done to or loss suffered by any victim of the offense” (PL 97-291, 1984, p. 1249). Though one of the more controversial changes from The Protection Act (Simonson, 1994), at the time of the passage, there was little organized opposition to the Act or the use of a VIS (Young, personal communication, February 9, 2000).

Second were measures for protecting victims and witnesses from intimidation in the forms of tampering, harassment and retaliation. Though there were already some provisions for tampering with witnesses in existence, the Protection Act expands these protections. As witnesses at American Bar Association hearings argued, intimidation was “...a widespread and pervasive problem which inherently

thwarts the administration of criminal justice” (Sen. Rep. No. 97-532, 1982, p. 15).

The third provision was for restitution as a condition of probation or parole or as an additional sentence (S.A.W., 1984). The Senate provided the reason for this provision:

The principle of restitution is an integral part of virtually every formal system of criminal justice, of every culture and every time. It holds that, whatever else the sanctioning power of society does to punish its wrongdoers, it should also ensure that the wrongdoer is required to the degree possible to restore the victim to his or her prior state of being (Sen. Rep. No. 97-532, 1982, p. 30).

This was an expansion of the “Federal Probation Act” which allowed for restitution as a part of federal probation. However restitution was not mandatory and was rarely used (S.A.W., 1984). The Protection Act challenged this by requiring the judge to record the reasons for doing so if he or she did not order restitution, or ordered only partial restitution.

Fourth, was the creation of “federal guidelines for the fair treatment of crime victims and witnesses in the criminal justice system.” The guidelines were to focus on the following areas: services to victims of crime, notification of availability of protection, scheduling changes, prompt notification to victims of major serious crimes, consultation with victim, separate waiting area, notification to employer, training by federal law enforcement training facilities and general victim assistance (PL 97-291, 1984, p. 1256-1257). The Senate felt it important to enact this provision because both the President’s Task Force on Violent Crime and Chief Justice Warren Burger, in his State of the Judiciary address, had expressed concern for the rights and status of crime victims (Sen. Rep. No. 97-532, 1982).

Lastly the Protection Act calls for an examination of what has been termed “Son of Sam” laws. The “Son of Sam” law originated in New York as a result of a series of murders in 1977. Because publishers were offering great sums of money for the killer’s story, Emanuel Gold introduced a bill in New York that would prevent an offender from gaining profit from his or her story (Sen. Rep. No. 97-532, 1982). Applying this concept at the federal level, the Protection Act declares, “Within one year after the date of enactment of this Act, the Attorney General shall report to Congress regarding any laws that are necessary to ensure that no Federal felon derives any profit from the sale of the recollections, thoughts, and feelings of such felon with regards to the offense committed by the felon until the victim of the offense receives restitution” (PL 98-97-291, 1984, p. 1257).

The legislative history of this Act is relatively simple (especially when compared to the later discussed Victim of Crime Act). In the words of Lois Herrington (1985a, p. 147), “That measure enjoyed virtually unanimous support in the Congress and was quickly approved by the Senate and the House.” John Stein and Marlene Young (personal communication, February 9, 2000) also noted that there was little or no organized opposition to the act because it was “feel good” legislation and there was no financial consequences to enacting it. Posner (1984) notes that it was passed rather quickly as a result of executive pressure (for example: National Victims Right Week) and the approaching congressional elections.

Senators Heinz and Laxalt introduced the bill along with 39 other senators on April 22, 1982. The bill was then passed on to the Committee on Judiciary and then

the Subcommittee on Criminal Law (Sen. Rep. No. 97-532, 1982). There was one hearing held on May 27, 1982. At this hearing there were statements from Senators Laxalt (Republican, Nevada), and Heinz (Republican, Pennsylvania) and Representative Fish (Republican, New York). Organizations that were represented were Victim Assistance Legal Organization (VALOR) by Frank Carrington, NOVA by Marlene Young, and the American Bar Association by Michael McCann. Accompanying Mr. Carrington was one crime victim, Douglas Payton, while two more accompanied Marlene Young (of NOVA): Geraldine X and Virginia Montgomery. D. Lowell Jenson represented the Department of Justice and lastly, were a district judge and Chief probation officer from the state of Maryland. In addition, Deborah Kelly from the University of Maryland supplied a written statement of her support for the bill based on her research with rape victims. Opening the hearing, Senator Laxalt (1982, p. 1), introduced S. 2420, the Omnibus Victims Protection Act of 1982, by noting, "This legislation...represents an important legislative response to many of the problems and traumas suffered by countless thousands of victims and witnesses. The thrust of this legislation is to protect and enhance their role in our criminal justice system." He was followed by each of the above stated witnesses who each supported the bill, though with various suggestions to make it better.

In August of 1982, a report by the Committee on the Judiciary was issued indicating the bill was voted out with 17 of the 18 members voting in favor and one abstaining (Sen. Rep. No. 97-532, 1982). At this point, S. 2420 had provisions for a victim impact statement, protection for victims and witnesses against intimidation

(intimidation, retaliation, penalties, witness relocation, and civil action), restitution, federal accountability, guidelines for the fair treatment of victims/witnesses and the “Son of Sam” (Sen. Rep. No. 97-532, 1982).

On September 14, 1982 the Senate considered the bill. A technical amendment, UP No. 1262, was proposed by Senator Heinz and agreed to by the Senate. Senator Heinz (1982a, p. 23395) then encouraged “swift approval” of the act because “Every day we delay, thousands of new victims are being added to the rolls; every day we wait, new victims are being ignored and mistreated.” Senator Heinz (1982a, p. 23396) also included a letter from the Congressional Budget Office specifying that this legislation had only “minimal costs.”

Meanwhile, in the House, Representative Rodino (Democrat, NJ) had introduced a bill called the Victim and Witness Assistance Act on May 20, 1982 “designed to prevent crime victims from being twice brutalized: Once by the criminal and then by an insensitive criminal justice system” (Rodino, 1982a, p. 11051). On September 30, 1982, after the Senate passed S. 2420, Rodino introduced H.R. 7191, “Comprehensive Victim and Witness Protection and Assistance Act of 1982” which was a combination of his earlier bill and another bill introduced by Representative Fish in the spring of 1982 (Rodino, 1982b). H.R. 7191 provided for a victim impact statement, clarification of and additional protections for victim and witnesses in terms of intimidation and retaliation, civil action for harassment of a victim or witness, restitution as a part of an offender’s sentence, federal guidelines for the fair treatment of victims and witnesses, orders for the attorney general to examine a Son

of Sam provision and, lastly, insertion of a requirement that the defendant not harass the victim/witness as a condition of bail. Representative Rodino then asked that the provisions of H.R. 7191 replace S. 2420, which was passed (lying H.R. 7191 to rest).

On October 1, 1982 both the Senate and House again examined the bill, S. 2420. In the Senate, UP Amendment 1376 was proposed "To resolve certain differences between S. 2420 and H.R. 7191" (Congressional Record, 1982, p. 26806). In this amendment, the "findings and purposes" were added back in from the original Senate bill and the title was changed to the Victim and Witness Protection Act of 1982. Senator Thurmond (1982, p. 26809) noted the proposal was a "reasonable accommodation between what both Houses have proposed." The section of the bill that called for federal accountability for "early release of dangerous offenders" was dropped because "The Department of Justice would like more time to examine the issue, and many interested parties would like further hearings on it" (Heinz, 1982b, p. 26810). Though Frank Carrington of VALOR called this section of the legislation the "most important part" ("Senate Looks" 1982, p. 13), it was dropped from the final bill "in the spirit of compromise" (Thurmond, 1982, p. 26809). The proposal which called for a "fresh look at compensation for the victims of Federal crimes, as well as innovative methods of financing such a program" were also dropped since the President's Task Force on the Victims of Crime was already looking into and the Department of Justice promised to look into these issues (Heinz, 1982b, p. 26811). On October 1, 1982, with both the House and Senate satisfied, the measure was passed and it was presented for Presidential signature on October 12, 1982

(THOMAS, 1999; also see Posner, 1984.) Those credited with helping draft the legislation were the Justice Department, the American Bar Association, the American Civil Liberties Union, NOVA and the National Organization Against Sexual Assault (Rodino, 1982c, p. 27392).

#### Victims of Crime Act of 1984

Two years later, on October 12, 1984, the second major piece of legislation for the victims of crime was enacted: the Victims of Crime Act of 1984 (VOCA). This piece of legislation is Chapter 14 of the Comprehensive Crime Control Act of 1984 (PL 98-473). To place VOCA within this context, the Comprehensive Crime Control Act of 1984 has 23 chapters covering a wide variety of changes in federal law. In other words, VOCA is only one small part of a much larger piece of legislation dealing with criminal justice issues.

VOCA was, in Young's (1988, p. 327) words, the "capstone legislative achievement of the era." Though there were numerous bills as part of this process, one of the bills that eventually became part of this legislation was introduced by the Reagan administration itself. As Lois Haight Herrington (Indexed legislative history of the Victims of Crime Act of 1984, 1985b, Foreword), then Assistant Attorney General and Chair of the President's Task Force on the Victims of Crime, explained, "The Reagan Administration submitted legislation based on the Task Force's recommendations to Congress in March 1984. The enactment of the Victims of Crime Act just seven months later was possible only with the dedicated support of a

bipartisan coalition in both houses of Congress.” So what was VOCA as enacted in 1984?

First, VOCA created the Crime Victims Fund. The money in this fund was funneled into two different areas: crime victim compensation and crime victim assistance. There are four funding sources for this fund: (1) fines collected in federal cases; (2) the creation of new penalty fines ordered on convicted persons; (3) proceeds from forfeitures in federal cases (such as appearance bonds, bail bonds, collateral); and (4) “literary profits” of convicted federal offenders (U.S. Department of Justice, 1984, p. 182). The fund was capped at 100 million dollars with any excess above that deposited into the general treasury. Fifty percent of the collected funds are given to state compensation programs while the remaining fifty percent were reserved for state victim service programs (45%) and federal victim service programs (5%) (U.S. Department of Justice, 1984).

To be eligible for federal funds, State compensation programs had to meet certain requirements. These programs had to compensate for medical expenses, loss of wages and funeral expenses; the grant funds could not be used to supplant state funds; the program had to require cooperation with the criminal justice system and the program had to compensate non-residents as well as residents of the particular state (PL 98-473, 1986; U.S. Department of Justice, 1984). If the State program met these requirements, then the grants given “shall not exceed 35% of the state’s prior year compensation awards” (U.S. Department of Justice, 1984, p. 183). Any remaining money is to be added to the 50% of the fund that is distributed for victim

services (U.S. Department of Justice, 1984).

The other part of the Crime Victim Fund was to be distributed to Victim Service programs and included “crisis intervention services, emergency transportation to court, short-term child care services, temporary housing and security measures, assistance in participating in criminal proceedings and payment for forensic rape examinations” (U.S. Department of Justice, 1984, p. 183). For the State to be eligible for such grants (\$100,000 to each state with the remainder distributed on a population basis), it had to give priority to programs dealing with sexual assault and domestic violence and, again, those funds could not be used to supplant state funds. For individual programs to be eligible for the state grants, they had to be operated by a public agency, nonprofit organization or a combination those organizations/agencies, which “provide services to victims of crime” and demonstrated “a record of providing effective services to victims of crime and financial support from sources other than the Fund” (PL 98-473, 1986, p. 2173). The program also had to use volunteers (unless the Chief Executive finds “compelling reasons” to waive this requirement), promote coordinated services between public and private resources within the community and help victims in seeking victim compensation (PL 98-473, 1986). Up to 5% of the money could be used to fund federal victim services programs and for training, salaries and information dissemination (U.S. Department of Justice, 1984). The Attorney General was also to appoint a “Federal Crime Victim Assistance Administrator” to help with coordination and monitor compliance with the “Guidelines for Victim and Witness Assistance” (U.S. Department of Justice, 1984).

As noted earlier, the law also created new penalty fines for those convicted of federal crimes to help fund the Crime Victim Fund. These new assessments were \$25 on individual misdemeanants (\$100 for other misdemeanants) and \$50 on felons (\$200 for other felons) (PL 98-473, 1986; U.S. Department of Justice, 1984). As alluded to in the Protection Act, the Fund also drew on the “Special forfeiture of collateral profits of crime” (PL 98-473, 1986) or what were otherwise known as “Son of Sam” laws. The money collected was to be placed in escrow for 5 years and used for the following: payment of judgements rendered by a federal court or any other court to the victim, payment of any fines or it could be used to pay up to 20% of the total proceeds to pay for the defendant’s defense.

Lastly, VOCA made amendments to the parole process. It allowed victims to make a statement at the parole hearing about the “financial, social, psychological and emotional harm” that the crime caused (U.S. Department of Justice, 1984, p. 187). This was an expansion of the provision in the Protection Act allowing VIS in presentence reports. Senator Thurmond (1984a, p. 5349) explained,

In 1982, we made this information available to the judge in the presentence report. The Parole Commission must be given the same appreciation for the damage inflicted by an offender before it releases him prior to the expiration of his sentence.

VOCA also made U.S. Attorneys responsible for informing victims of parole hearing dates (U.S. Department of Justice, 1984).

Lastly, the legislation also contained a “sunset” provision meaning that the fund would expire, if Congress took no action by September 30, 1988 (“Congress begins...”, 1987). This provision stated “No deposits shall be made in the Fund after

September 30, 1988” (PL 98-473, 1986, p. 2171).

The legislative history of this law is far more complicated than the previously discussed Protection Act. The Indexed Legislative History of the Victims of Crime Act of 1984 (1985) discusses the recommendations of the President’s Task Force on the Victims of Crime and three bills, Senate bill 2423, and House bills 3498 and 5124, as the main influences on VOCA. Each of these will be discussed in turn. As discussed earlier, in 1982, the President’s Task Force on the Victims of Crime made several suggestions for federal involvement to address the victims of crime.

Recommendations for federal action included: “Congress should enact legislation to provide federal funding to assist state crime victim compensation programs” and “Congress should enact legislation to provide federal funding, reasonably matched by local revenues, to assist in the operation of federal, state, local, and private nonprofit victim/witness assistance agencies that make comprehensive assistance available to all victims of crime” (President’s Task Force, 1982, p. 37). The President’s Task Force on the Victims of Crime supported the funding of compensation programs, particularly because some states were having such financial trouble, however they did not support the creation of another federal bureaucracy because of the administrative costs and the duplication of efforts this would create.

The Task Force also used a justification for victim compensation that was reminiscent of the past. If the federal government was making “substantial sums of money” available for state prison program then, “it seems only just that the same federal government not shrink from aiding the innocent taxpaying citizens victimized

by those very prisoners the government is assisting” (President’s Task Force, 1982, p. 43-44). Therefore the Task Force called for the creation of a “Crime Victim’s Assistance Fund” funded by 6 measures: (1) increasing the fines for Title 18 and 21 of the United States Code by double or triple; (2) doubling or tripling the fine by the judge if the criminal gains or the victim loses more than the maximum fine; (3) improved efforts at fine collection resulting in more money for the fund; (4) assignment of additional fees for those convicted of a federal offense (\$10 – \$100 for misdemeanors, \$25-\$500 for felonies); (5) earmarking a percentage of federal forfeitures for the fund; and (6) diversion of the money collected from the excise tax on the sale of handguns to the fund (President’s Task Force, 1982, p. 44-45). Fifty percent of these funds were to be for victim compensation and 50% for the victim/witness programs. To be eligible for victim compensation funding, the Task Force supported the requirements that it compensate residents and non-residents alike and victims of both federal and state crimes and compensation should be provided for psychological counseling. The other half of the fund should be reserved for the “Federal Crime Victims/Witness Assistance Fund.” The Task Force also claimed that “high priority” should be given to those programs that utilize volunteers and who receive other support (President’s Task Force, 1982, p. 48). In addition, 20% of these funds were to be reserved for a federal program (President’s Task Force, 1982). The Task Force also suggested a sunset clause be inserted to evaluate effectiveness of the program.

Another major influence on the final legislation was Senate bill 2423. This bill, “The Victims of Crime Assistance Act of 1984,” was introduced by Senator

Thurmond (Republican, South Carolina) on behalf of the Reagan administration, on March 13, 1984 and was passed 5 months later by the Senate on August 10, 1984. Co-sponsors of the bill included Senators Biden (Democrat, Delaware), Laxalt (Republican, Nevada), and Grassley (Republican, Iowa) (S. Rep. 98-497). Breaking new ground, S. 2423 was the first bill concerning victim compensation that was sent to Congress by a president (Sen. Rep. No. 98-497, 1984). This piece of legislation, as might be expected, was based on the recommendations made by the President's Task Force on the Victims of Crime final report (Sen. Rep. No. 98-497, 1984). One hearing was held on May 1, 1984. At this hearing were Senators Thurmond (Republican, South Carolina), Laxalt (Republican, Nevada), Grassley (Republican, Iowa), Specter (Republican, Pennsylvania), Biden (Democrat, Delaware), Denton (Republican, Alabama) and Cochran (Republican, Massachusetts), all of whom gave opening statements in support of the bill. Representative Fish (Republican, New York) and former Representative Butler (Republican, Virginia) also supported the legislation. Other witnesses included a panel of William Greenhalgh, formally of the American Bar Association's Criminal Justice Section; Marlene Young of NOVA; Lillian Hammack of MADD; Donald Logan from the Delaware Council on Crime and Justice; and Mary Ann Largen of the National Coalition Against Sexual Assault. The second panel consisted of Ronald Zwiebel of the National Association of Crime Victim Compensation Boards, H. Jerome Miron of the National Sheriffs' Association Victim Witness Program; Williams Matthews of the National Association of Black Law Enforcement Executives and Donna Medley of the National Coalition Against

Domestic Violence. Again, all of these represented groups were supportive of the legislation in idea and offered only minor suggestions as to how each felt the legislation could be improved.

The Committee on the Judiciary issued a report on May 25, 1984. S. 2423 established a crime victim's fund, which was not to exceed \$100,000,000. Reminiscent of past concerns regarding victim compensation, the cap was placed on the fund in response to concerns expressed by members that there would be spending increases. There had also been disagreement by witnesses with the original formulation of the bill concerning the return of unspent money into the general treasury (S. Rep. 98-497.) At that point in time, the Crime Victim Assistance Fund was funded by (a) criminal fines, (b) donations for victim assistance, (c) penalty assessment fees and (d) "payment of moneys received from sale of rights arising from a criminal act" (Legislative history, 1985, p. 155). Forty-five percent of the funds would be for state compensation programs, 45% for state victim/witness programs and 10% for the federal government victim/witness services while each state and Washington D.C. would receive at least 100,000 dollars as a base. The committee lowered the original percentage to be given to the federal governmental programs since the states were most likely to be the ones to respond to violent crimes (Sen. Rep. No. 98-497, 1984).

The requirements needed for state compensation included: federal funds could not supplant state funds, financial benefits had to be paid to non-residents as well as residents, federal crimes had to be compensated the same as state crime, and there had to be compensation for mental health counseling. There was also a specific

limitation in that federal funds could not be used for administrative costs. In order to qualify for victim assistance grants, the state had to appoint a "State Victim Assistance Administrator" and the organizations had to "demonstrate a record of quality assistance," promote the use of volunteers "to the extent possible," have financial support from outside resources, show that services could be provided by other organizations that the program can not provide for and, it had to promote cooperation with other agencies (Sen. Rep. No. 98-497, 1984, p. 10). The bill also called for the appointment of a "Federal Victim Assistant Administrator" who would be responsible for the money distributed to the federal program and for overseeing compliance with the Guidelines for the Fair Treatment of Crime Victims and Witnesses" (Sen. Rep. No. 98-497, 1984, p. 12). The bill also contained the "sunset date" which in effect would cancel out the legislation if Congress did not reauthorize it by September 1988 (Sen. Rep. No. 98-497, 1984, p. 13). This bill also provided "compensation to victims of a federally protected witness," which was added in the committee amendment based on legislation introduced by Senator Cochran. The point of this section was to compensate those people who have been violently victimized by persons who have been relocated with new identities under the Federal Witness Protection program. The committee noted that since 1976, this had occurred to 12 persons (Sen. Rep. No. 98-497, 1984, p. 20). Lastly, was a provision for a Victim Impact Statement in the parole hearings and addition of payment of fines to parole conditions (Sen. Rep. No. 98-497, 1984).

On August 10, 1984 debate was held in the Senate over S. 2423. The only

reservations were expressed by Senator Mathias (Legislative history, 1985 p. 153) (Republican, Maryland) who argued, “two areas of the bill...need further study and refinement.” He was concerned with the Son of Sam provision violating free speech and the requirement that no federal funding could be spent for administrative purposes. At this time, there were three amendments to the bill. Two of those were technical in nature while the third gave priority to victim services that address the victims of sexual assault, spousal abuse and/or child abuse (Cong. Rec., 1984b, Aug 10). Senator Spector proposed this additional amendment August 10, 1984. His reason for doing so? “Victims of sexual assault and child abuse often have special needs that require treatment by persons with special training” (Spector, 1984a, p. 23803). Showing the influence of the women's movement, he also noted that women face “twisted social attitudes” while children must be understood within their own developmental context (Spector, 1984a, p. 23803). Senator Spector's wife was a member of a rape crisis center in Philadelphia (Young, personal communication, February 9, 2000) which, more than likely, influenced his support for such priorities. Interestingly, Mary Ann Largen of the National Coalition on Sexual Assault was never approached about the priorities (Stein, personal communication, February 9, 2000).

While the Senate heard arguments about it's bill, there were numerous bills introduced in the house that related to victim compensation and victim services. These House bills, H.R. 5124 and H.R. 3498, were also a major influence on VOCA (Indexed legislative history, 1985). Closely related to S. 2423, H.R. 5124 was introduced by Representative Fish (Republican, NY) for the administration on March

14, 1984, while Representative Rodino (Democrat, New Jersey) introduced H.R. 3498 on June 30, 1983 (Indexed legislative history, 1985). Though these two bills were the focus of the Indexed legislative history, it should be noted that there were a number of other bills that were introduced at various times: H.R. 2661 by Representative Russo (D, Ill.) on 4/20/83; H.R. 2978 by Representative Fish (R, NY) on 5/11/83 [related bill in the Senate is S. 704 by Senator Heinz on 3/8/83]; H.R. 5366 by Representative LaPlace (D, NY) on 4/4/84; H.R. 6059 by Representative Fish (R, NY) on 8/1/84; and H.R. 6403 by Representative Rodino (D, NJ) on 10/4/84 (THOMAS, 1999).

Six hearings were held in the House before the subcommittee on Criminal Justice of the Committee on the Judiciary on H.R.2661, H.R. 2978, H.R. 3498 and H.R. 5124 from February to August 2, 1984. These hearings focused on H.R. 5124 (the administration's bill) and H.R. 3498 (Rodino's bill) with particular attention being given to H.R. 3498. H.R. 3498 was the most controversial of the bills because it called for a Crime Victims Fund that drew its resources in part from "the taxes which are imposed by sections 4181 of the Internal Revenue Code of 1954 on pistols and revolvers..." (Legislation to help crime victims, 1985, p. 7). Recalling the difficulties with the victim compensation movement during the 1970s, when defending this idea, Representative Russo (1983, p. 13) argued, "Basically we would set up a Victims of Crime Trust Fund. The Congress would authorize and appropriate specific amounts each year out of this trust fund, so this handles the often-made criticism, that really doesn't exist, of it being a runaway entitlement program." In

fact, one hearing, March 22, 1984 was dedicated to examining this provision only.

To explain the provision, in 1937 Congress enacted the Pittman-Robertson fund which was an excise tax on the sale of rifles, shotguns and ammunition. This money was to be distributed to the states for "wildlife restoration projects" (Conyers, 1985, p. 217). In 1971, this excise tax was expanded to include taxes on handguns and archery equipment for "hunter education projects" (Conyers, 1985, p. 217). H.R. 3498 called for the diversion of the funds from the handgun excise tax only to the Crime Victims Fund (Conyers, 1985). Representative Russo (1985, p. 33) called for support for H.R. 3498 and his own bill, which also contained the Pittman-Robertson fund (H.R. 2470), by arguing

We're all having to deal with tightening our belts in every particular phase of the budget. Why shouldn't the hunter do the same? It's only the American way that when the time comes for the President to say we need to sacrifice, why shouldn't they be willing to sacrifice? Victims of crime have been sacrificing for years. They haven't gotten a thing from the Federal Government. All we're saying is, why don't you share a little bit of the wealth you've been able to have since 1937, and the biggest bulk of what you'll receive since 1970 under the handgun tax. Let's use it for victims of crime that are wounded by handguns all the time.

A second justification for this diversion of funds was the earlier discussed President's Task Force on the Victims of Crime suggestion that the Pittman-Robertson funds be diverted (Russo, 1985, p. 34). In the final report, the Task Force noted, "There is little if any relation between handguns and hunting or wildlife activity. There is a substantial relationship, however, between handguns and the commission of violent crime" (President's Task Force, 1982, p. 45). However, Representative Conyers (1985, p. 53), Chairperson of the Subcommittee on Criminal

Justice hinted early in the hearings that the Pittman-Robertson diversion provision might be problematic:

I've been looking at the possibility of how successful we might be by placing an excise tax on handgun sales. I think we might be doing a very salutary act, but we probably will be getting the legislation into an incredibly controversial situation, in view of the powerful lobby that the NRA exercises over many of the courageous Members that you would summon to the front ranks on this legislation.

This remark proved to be accurate when moving into the March 22 hearings.

In the opening statements, Representative Conyers (1985, p. 217) noted that in the previous 3 hearings held on the issue, "...we received testimony from a wide range of viewpoints, and they have supported, generally, the goals of the legislation...differences seem to be 'technical.'" However, during the March 22 hearing there were strong voices of opposition to H.R. 3498 and its Pittman-Robertson fund diversion. The first opposition was heard from Representatives John Dingell (Democrat, Michigan), Silvio Conte (Republican, Massachusetts) and John Breaux (Democrat, Louisiana). Though all supported victim compensation in concept, they were unhappy with the shift of monies away from the Pittman-Robertson fund. Representative Dingell (1985, p. 219) noted that it was a "leap of faith" to inscribe a connection between crime and the purchase of handguns, while Representative Conte (1985, p. 223) argued the end result was to "raid" and "rob" the fund. Representative Breaux (1985, p. 242), in his statement wrote that he was supportive of compensation but asked, "Why pick on wildlife?" Senator Dingell (1985, p. 219) suggested, and most succinctly, "...I hope that you will strike that provision from the bill, so that we can all vote for the bill and get it through and signed into law."

Strong opposition was also expressed by the National Rifle Association (NRA). J. Warren Cassidy (1985, p. 246), who represented the NRA, noted that though the organization had taken no formal position on victim compensation, they were “strongly opposed” to the diversion. In fact, to them, the diversion of funding would be a “direct slap in the face to the millions of law-abiding sportsmen and fire-arms owners who pay this excise tax” (Cassidy, 1985, p. 246). Mr. Cassidy (1985, p. 255) also noted, “I resent on behalf of our membership that we are classed with felons, misdemeanor conductors, forfeitures and fines.” Two other witnesses, Alan Wentz of the National Wildlife Federation and Herbert Doig of the International Association of Fish and Wildlife Agencies, both opposed the Pittman-Robertson diversion, however they noted they would support the Fish/Administration bill (H.R. 5124), which did not contain the diversion of funds.

Other groups sending in statements of opposition were Representative Forsythe (Republican, New Jersey) (1985, p. 409), who concluded “If, during your deliberations on the bill, changes cannot be made in the funding mechanisms, I will be forced to withdraw my cosponsorship,” Honorable Walter B. Jones of the Committee on Merchant Marine and Fisheries, Remington Arms Company, Inc, the Wildlife Legislative Fund of America, Safari Club International, and the Sporting Arms and Ammunition Manufacturers’ Institute, Inc (consisting of 11 companies including Remington and Smith & Wesson). The only witness in support of the provision heard during this hearing is a group named Friends of Animals. However, Sanford Horwitt, spokesperson for the group, did not do so because they had taken a

formal position on victim compensation or victim rights. This group supported H.R. 3498 because they argued the money from the Pittman-Robertson fund does more harm than good to wildlife and was simply "...little more than thinly disguised subsidy for special interests; namely the National Rifle Association and the hunting industry generally" (Horwitt, 1985, p. 268).

The above named opposition diligently argued against each of the arguments given by the supporters of the diversion of funds. Many of those in opposition critiqued the position taken by the President's Task Force on the Victim of Crime when they posited there was no relation between handguns and hunting. Lois Haight Herrington, the chairperson of that Task Force, was a witness in the March 15, 1984 hearing. When asked about the Administration's position, she deferred to Mr. Phenecie of the Department of the Interior. Mr. Phenecie answered that the Department opposed H.R. 3498, the bill containing the diversion. To explain the change in support, Herrington (1985a, p. 159) noted,

When we first started on the task force, we, of course, were assuming a different funding level. We were looking at the fines that were collected the year before that were quite a bit smaller than the fines that are now available. We were looking around for any fund source that we could possibly get, and this was one of the sources. And we only said a "possible source of funding. As it appears now, we will be able to get the total funding from criminal fines without dipping into an area already earmarked fund which does go to wildlife preservation and environmental issues.

Representative Conyers (1985, p. 154) added that although the President may have stated recommendations in his State of the Union address that he supported implementing the Task Force recommendations, with regard to the Pittman-Robertson fund, "...there is not a lot of agreement." As noted earlier in the discus-

sion of VOCA, the Pittman-Robertson fund diversion was not found in the final version of the bill as enacted. In addressing the House on October 10, 1984 – just two days before VOCA was signed into law – Representative Rodino (1985, p. 210) noted,

The administration, unfortunately, backed away from this recommendation, and the bill passed by the other body [S. 2423] does not call for the use of the handgun excise tax to help crime victims. In order to fashion a compromise bill that could be enacted this term, I agreed not to push for the use of that tax, and the compromise does not derive any revenue from that source.

After the House hearings and after the Senate passed S. 2423, Representative Rodino began negotiations with the administration and leadership of the Senate's Judiciary Committee. This group worked to resolved the differences between S. 2423, H.R. 3498, and H.R. 5124 and this resolution became H.R. 6403. This compromise was included in the "crime package amendments" in H.R. 5690 "The Anti-Crime Act of 1984" (Indexed legislative history, 1985). Speaking in support of H.R. 5690, Representative Biaggi (1985) noted that the package form was chosen because of the limited time remaining in the 98<sup>th</sup> Congress.

There was some controversy within the House debate over the use of the package form (see Cong. Rec., Oct 2, 1984, p. 28533-28611). For example, Representative Sawyer (1984, p. 28596) noted, "I think this is a heck of a way to legislate to come down to the last days of the Congress and deliver a stack 4 inches thick of some 23 bills to my side of the isle." Representative McCollum (1984, p. 28596) noted, "We are dealing here today with a bill which has been put together in the 11<sup>th</sup> hour, composed of several things that I agree with but quite a few things I do not

agree with.” Despite this disappointment, most of the Representatives spoke in support of the bill. As Representative Hughes (1984, p. 28609) argued, “...we have tried to pass crime legislation several different ways. We have tried to pass them individually, and now we are going to try them again in a package. I am willing to try it any way, because all I want to do is pass crime legislation.” Despite this controversy, the House did approve H.R. 5690 on October 2, 1984.

On October 4, 1984, the Senate then attached this compromise, in amendment 7043 under the name of “The Comprehensive Crime Control Act of 1984” to the continuing resolution (H.J. Res. 648-334) (Cong. Rec., 1984c, p. 29870). However, there was some tension between the House and Senate regarding the continuing resolution to which VOCA and the Comprehensive Crime Control Act were attached, and a conference was held between the House and Senate to work out these differences (Cong. Rec., 1984c, p. 29730). This conference agreement was examined in the House on October 10, 1984 and the House accepted the language (Indexed legislative history, 1985, p. 210; THOMAS, 1999). On October 11, the Senate then agreed to the continuing resolution (Cong. Rec., 1984d, p. 21811). This resolution for “continuing appropriations for fiscal year 1985 and for other purposes,” (PL 98-473, 1986, p. 1837), was signed into law by the President October 12, 1984.

### Summary

This chapter discussed the history the victim rights movement as it related to the passage of two pieces of federal legislation in the 1980s. These pieces of

legislation, the Protection Act and VOCA, were the first federal legislation to be passed which concerned victim rights. As explained, the victim rights movement is a quite diverse movement. As a result it can be difficult to trace all of the contributors to the movement. In this case, the movement was likened to a large river, which develops through the joining of many smaller tributaries. In the victim rights movement, a number of groups or movements have been traced as contributing to the passage of the final legislation: the women's movement, the emphasis of crime as a problem in politics, the importance of the national victimization surveys, the development of the National Organization for Victim Assistance (NOVA), the victim compensation movement, the focus on elderly victimization and lastly, a focus on children's victimization. Each of these was discussed in relation to the historical context of the victim rights movement. The second half of the chapter explained the development of the legislation that was passed. The next chapter will begin the analysis of the social construction in the movement. In particular, it will discuss the many different claims-makers in the movement, the claims they made and the success they had in making those claims.

## CHAPTER V

### VICTIM RIGHTS CLAIMSMAKERS

#### Claimsmakers

There are a variety of claimsmakers involved in the victim rights movement. As noted in the last chapter, this movement is a large and complex one composed of ideologically diverse groups. Part of this variety is evidenced by the unusual pairings of groups whom, under other circumstances, would not agree with one another in terms of ideology and public policy. The old maxim, "politics makes for strange bedfellows," also applies to the victim rights movement (Viano, 1987). As Clark (1994, p. 628) argues "Politically the movement is a hodge-podge of feminists and law-and-order purists, 'a coalition of bleeding heart conservatives and hard-nosed liberals.'" An example of this can be seen in The National Victim Center, which unites the quite divergent National Organization for Women and the Heritage Foundation (Clark, 1994). Another example is provided by Jenkins (1998, p. 120-1) concerning the movement to recognize child abuse:

Although feminists and humanitarian groups did much to reformulate popular notions about sex crime and child abuse, these ideas also appealed to conservative and traditional-minded groups who were on other issues deeply unsympathetic to the women's movement. Both feminists and conservatives found themselves in hearty agreement on the dangers posed by unrestrained sexual license and on the need to combat threats against the children.

The fact that it is a large, diverse, loosely connected coalition of groups, individuals

and organizations has likely contributed to the success of the movement.

This chapter and the next contain the theoretical analysis of the previously described changes in the victim rights movement. To begin, in this chapter, the claims-makers that have been involved in the movement are examined. Those claims-makers are representatives from the women's movement, those with criminal justice administrative concerns, conservatives, liberals, moral entrepreneurs, radicals/progressives, academicians, and organizations. Each of these groups has supported the movement in one form or another. Last discussed is the opposition.

### The Women's Movement

As noted earlier, numerous individuals have credited the origin of the victim rights movement to the women's movement (Simonson, 1994). One of them is Lois Haight Herrington, who was Assistant Attorney General and Chairperson of the President's Task Force on Victims of Crime. In an update to the 1984 Task Force report she wrote to the President, "You gave much needed support to the movement begun by the rape crisis center and family violence shelters which have acted as the conscious for us all" (President's Task Force, 1986, p. ii). It was in the mid- to late 1960s when feminists, as part of a larger social movement, began to question the treatment of victims of sexual assault and battering by the criminal justice system (Doerner & Lab, 1995; Simonson, 1994). These first centers and shelters were grass-roots organizations that worked with humanitarian aims to help women victims and were not particularly interested in working with the criminal justice system since it

was seen as structurally flawed (Davis & Henley, 1990). These activists were interested in bringing attention to women as victims of battering and sexual assault.

When examining the federal legislation focused on in this dissertation, the participation of women's groups was less than that of other groups to be discussed. Women's groups were not in attendance during the hearing held for the Victim and Protection Act of 1982. As discussed earlier, the witnesses at this hearing were, for the most part, public officials, NOVA, Frank Carrington and victims. However, there were women's groups participating in the discussion related to VOCA. Though the first victim compensation legislation was introduced in 1965, representatives that could be traced to the women's movement, such as the National Coalition Against Sexual Assault (NCASA) or the National Coalition Against Domestic Violence (NCADV), were not heard from until the hearings held in 1983 for VOCA.

As discussed earlier, VOCA was passed to provide funds for victim compensation and victim services at the state level. Many of these groups serving women testified in support of the legislation because of a need for funding. For example, NCASA representing "nationwide rape crisis centers...and the thousands of women, children, and families served by those centers..." testified in support of monies for victim services in the House since "...all rely heavily on the use of volunteers to provide their services, and it can be accurately said that all exist on incredibly low budgets; shoestring budgets" (Largen, 1985b, p. 91; 1985a, p. 182). NCADV was also represented at the senate hearing for VOCA:

NCADV is a grassroots membership organization representing more than 700 shelters for battered women and many other domestic violence programs and

supporters throughout the country. Although our expertise is in the field of domestic violence, we can easily expand our concern and advocacy for fair and compassionate treatment for all victims of violent crime. We do so today by voicing our support of Senate Bill 2423 (Medley, 1985, p. 175).

Again, a major concern for Medley was receiving the needed funding for victim service programs.

Along side these national organizations, was the testimony of local grassroots groups who also expressed a need for funds. For example, Althea M. Grant (1985), Director of Detroit Police Department's Rape Counseling Center and president of the Southeastern Michigan Antirape Network testified spoke in favor of the VOCA, citing that she needed "...more staff. It's almost totally impossible for eight social workers to do a 24-hour, 7 day-a-week job... We had been told by the Detroit Police Department that we had to keep our time at a minimum... As a result, the Friday and Saturday afternoon shifts went uncovered..." (Grant, 1985, p. 337-8).

Regardless of the needs for funds, there was some fear of co-optation expressed. Reminiscent of the concerns expressed by Tierney (1985) in the last chapter, Mary Largen of NCASA cited a letter as part of her testimony, which discussed the problems that a New Jersey victim assistance program had with federal funding. Among other difficulties, in particular the letter noted, "The problem is one of monies going toward prosecution rather than support..." (Largen, 1985a, p. 201). Florence McClure of Community Action Against Rape (CAAR) noted a similar incident. When first organizing this group the community supported the group as being community based, rather than joined with the prosecutor's office or the police department so they could be "true advocates of victims" (McClure, 1979, p. 240). The

local district attorney had wanted the names of all rape victims whether they wanted to give them or not. CAAR had told them this would ruin the credibility of the organization. Peggy Spector (1985, p. 64-65) of the Minnesota Program for Victims of Sexual Assault, explained the difference between a criminal justice and humanitarian focus:

A sexual assault program is designed to meet the social service needs of the victim, not just the needs during prosecution. It is designed to provide crisis intervention services, not just prosecution. It is designed to address prevention, not just prosecution. It is designed to improve all aspects of the service delivery systems, not just prosecution. And, finally, victim/witness programs are usually located or connected with a prosecutor's office, which sometimes is very threatening to victims, and victim assistance programs are in agencies that don't have such a limited view.

So though there was a need for federal funding, there was also a push for some degree of autonomy in how to spend that money.

A second motivation that arose for supporting VOCA was more sensitive treatment of victims. Evelyn Craig, Executive Director of Crisis Center for South Suburbia, Worth Illinois and the Illinois Coalition Against Domestic Violence discussed the insensitivity victims face in the criminal justice system.

Recently a Cook County Circuit Court judge dismissed the case of a severely battered woman because she cried while giving testimony against her husband of more than 20 years. This judge further threatened to find the victim in contempt of court unless she ceased "blubbing in the courtroom." (Craig, 1983, p. 47)

In 1983, a hearing was held to address women as a specific group of victims (Crime victim assistance programs, 1984). The Senators of the Subcommittee on Juvenile Justice heard from a panel of four women: three were victims of sexual assault and one a victim of domestic violence. The victims described the difficulties

they experienced after their victimization: lack of money for counseling, lack of a victim compensation program, insensitive insurers, financial burdens, effects on the family, etc. Issues of insensitivity that may not have been recognized before the women's movement were being recognized within this hearing. The influence of the women's movement was also evidenced by Senator Spector's (1984b, p. 96) comment in response to the testimony of a battered woman, "A husband is just as guilty of assault and battery, when he strikes a wife, as he is when he strikes a neighbor." Prior to the women's movement, this statement was less likely to be voiced as the family was considered a private place in which the government did not interfere.

Supporters of the women's movement were also influential in directing the President's Task Force on Victims of Crime. In an interview, Lois Haight Herrington, explained that the Task Force was picketed by persons stressing domestic violence because they felt that the original President's Task Force had ignored the issue. As a result of this picketing another task force, the Attorney General's Task Force on Family Violence, was created to study the victims of domestic violence (Herrington, personal communication, February 10, 2000). In the preface of this final report, Herrington (Attorney General's Task Force on Family Violence, 1984, p. iii) writes,

When the President's Task Force on Victims of Crime studied the experience of crime victims in this country, it recognized that family violence is often much more complex in causes and solutions than crimes committed by unknown attackers, because of this realization, the President's Task Force recommended that the present study be undertaken to give this problem the individualized consideration that it requires.

Young (personal communication, February 9, 2000) noted that conservatives

were appointed to the Task Force so that when they argued that violence within the family was a crime, it would carry more weight with other Conservatives. Lois Haight Herrington (personal communication, February 10, 2000) noted that in the 1980s when President Reagan and others were calling violence within the family a crime, "this was a pretty big thing at that time."

As claims-makers, representatives from the women's movement surfaced relatively late in terms of appearance in federal hearings. They were not heavily involved in the early history of the victim compensation movement. However, with the introduction of VOCA in which half of the funds would be given to victim services, members from NCASA, NCADV, and local grassroots services began to participate, expressing their funding concerns. Indirectly, the women's movement influenced the victims' movement by redefining who could be defined as a victim. As noted above, family violence began to be accepted by conservatives as constituting a crime. Victim activists also challenged how victims were treated in the system and focused on increasing sensitivity. For example, it was seen as unconscionable that rape victims should have to pay for their own rape kits or that judges should castigate domestic assault victims for crying in the courtroom. The women's movement created recognition of women as victims of violence and promoted services to help victims. In the early 1980s, they were involved in securing funds for those programs and services.

### Criminal Justice Administrative Concerns

Simonson (1994) posits that at the same time that feminists were arguing for women's rights, those working within the justice system found that unwilling victims were a reason that convictions were not forthcoming. The Courts Task Force of the National Advisory Commission on Criminal Justice Standards and Goals found that dismissals were occurring in large part because of the failure of victims and witnesses to appear at court (Davis & Henley, 1990; Simonson, 1994). Those attempting to administer "justice" were interested in finding ways to enhance convictions. One of the suggestions was the use of victim/witness programs to coordinate efforts and help victims and witnesses through the criminal justice process. Rather than serving humanitarian aims as many of the first rape crisis and battering shelters intended, the focus with victim/witness programs was to serve the needs of the criminal justice system. This justification for federal involvement in victim services was heard numerous times: in the Task Force report, the Protection Act and VOCA.

For example, two of the Task Force groups discussed in the last chapter touched on this theme of victim and witness cooperation of victims. The Attorney General's Task Force (1981, p. 88) argued for the establishment of "federal standards for the fair treatment of victims of serious crime," later passed in the Protection Act, because

...experience has shown that victims and witnesses are much more apt to report crimes in the first place, and, secondly, to cooperate with the authorities once a case is brought to their attention, if they perceive that the government cares about them and will do everything feasible to protect their rights. If victims and witnesses cooperate fully with the criminal justice system, it

will be much easier to bring to justice and punish those responsible for breaking the law. Our society will thus become much safer.

The following year, the President's Task Force (1982, statement) claimed in its final report, "Without the cooperation of victims and witnesses in reporting and testifying about crime, it is impossible in a free society to hold criminals accountable." Although it is the state, rather than the victim, that is responsible for pressing charges, the victim or other witnesses is needed to make a case against the defendant. The fear, as evidenced in this type of claim, is that without the cooperation of the victim the criminal justice system will fail in its duties.

This same claim was pressed in the passage of the Protection Act. Senator Hawkins (1982, p. 23399) used the following quote from a victim to urge other Senators to pass S. 2420:

My life has been permanently changed, I will never forget being raped, kidnapped, and robbed at gunpoint. However, my sense of disillusionment with the criminal justice system is many times more painful. I could not, in good faith, urge anyone to participate in this hellish process.

Without this cooperation, those supporting the claim feared crime would continue unabated.

This theme was also used throughout the 1970s in the debates surrounding victim compensation. In a 1975 hearing, to justify passage of victim compensation, Representative Russo (1976, p. 50) argued, "I think that if we want any help from our citizenry in the future, we have to bend over backwards to be nice to them because, frankly, they are really turned off by the criminal justice system." Various employees of the criminal justice system spoke of the advantages victim compensation

would provide. In 1976, Glen King (1976, p. 262) Executive Director of the International Association of Chiefs of Police, wrote a letter of support for victim compensation: "...not only would victims benefit, but police, through further cooperation on the part of victims, would be better able to serve their communities." Or there is Judge Burks (1976, p. 113) of the Illinois Court of Claims, who described the reason for this type of programming: "Indeed, it is one of the purposes of the act to secure the victim's full cooperation with the police. Many crimes are never reported because of fear, making the police and law enforcement officials' job much more difficult because of lack of cooperation on the part of the victim." James Unger (1976, p. 73), Prosecuting Attorney in Ohio, even went to the extent of claiming that more victim and witness cooperation could lower the crime rate:

As society shows that it cares about victims and as government aids victims in coming to grips with their problems and misfortunes which have resulted from criminal acts, victims are more inclined to cooperate with government and, in particular, with the Criminal Justice System in effective prosecution. Effective criminal prosecution produces a decrease in the crime rate.

If the problem was not addressed, there were warnings of the danger that could result: "The fact is that our citizens are becoming alienated from the very process that we hold up to all the world as an example of a free and open and democratic society. That alienation threatens to unravel the very fabric of our society" (Cohen, 1977, p. 2). Or as claimed by Senator Heinz (1985b) in the introduction of S. 2423 (VOCA): "We must not be deaf to the pleas of those who have been victimized. Without the cooperation of victims, the criminal justice system would collapse."

The LEAA was also particularly interested in criminal justice administrative

concerns. “The LEAA victim/witness program support the provision of assistance to victims and witnesses of crime so that these persons will not only be given relevant and sensitive attention, but will be motivated to cooperate more readily with personnel in the criminal justice system” (Bohlinger, 1977, p. 10). Survey research was even discussed. Discussing the Nation Crime Panel survey, Bohlinger (1977, p. 10) argued:

These surveys indicated that actual crime was two to five times more than reported crime. The reasons given by many respondents to the survey for not reporting crime was, in essence, a feeling that the criminal justice system was unable to help or protect them.

This type of argument was often used by those working within the justice system in their claims-making pertaining to federal legislation. It fit nicely into a crime control ideology and was an answer to the critique that victims were being ignored. In the case of victim compensation, support for the legislation meant further monies for programs serving victims and witnesses, which was important with the disbanding of the LEAA. There was also a need to address “the crime problem” after the results of the National Crime Victim surveys were used to show the crime rate was higher than previously thought as a result of unreported crime. There was a feeling that if only victims and witnesses could be enticed to cooperate that “something” could be done about the crime problem.

### Conservatives (“Law and Order”)

Conservatives are another claims-making group that have taken interest in the victim rights movement and in the federal legislation passed in the 1980s.

Conservative crime ideology is based on a “get tough” approach. To address the “crime problem,” from a conservative point of view, one needs to arrest, prosecute and punish the criminal (Walker, 1989). Some of the ideas surfacing during the victim rights movement which are more conservative in nature include: harsher and longer sentences, modification of the exclusionary rule, abolishment of parole and/or plea bargaining, and denial of bail. Essentially, Conservatives believe in Herbert Packer’s (cited in Walker, 1989) crime control model which focuses on controlling crime and keeping order within society.

In discussing what he calls the “victim industry,” Best (1997) argues that the victim’s rights campaign fit nicely with conservative distaste for the liberal decisions of the Warren court in the 1960s. Many who write within and about the movement have discussed the claim that victim’s rights were being ignored while the “criminals” were having their rights protected. Fattah (1986, p. 2) noted that some victim advocates did not stop at guarding victims’ rights but also demanded “harsher penalties, stricter measures and more oppressive treatment of offenders” which are in line, ideologically and politically, with conservative thought.

An example of this conservative thought is seen in the debate over passage of S. 2420, the Protection Act. Senator Murkowski, (1982, p. 23399) a Republican from Alabama argued that, for victims, “The final indignity may come when a too lenient, overburdened criminal justice system permits the acknowledged criminal to walk away unpunished while the victim of crime pays an unrecognized financial, psychological, and social price.” Another example of a conservative claim is found with

Frank Carrington representing Americans for Effective Law Enforcement. He (Carrington, 1976, p. 513), noted his support for victim compensation but expressed caution that:

If victim compensation embodied in the Act is enacted into law, as it should be, the criminal justice system should still bend every effort to prevent crime from happening in the first place. This can only happen by ensuring swift and certain punishment for criminals.

Another example of Conservative thought is that given by Barry Sidiker (1977, p. 40), a crime victim and president of the Crime Victim Rights Organization of New York who argued that,

I really think in our society crime pays...I am doing my thesis on crime. The facts are that less than one percent of those arrested are arrested and convicted...I think that it is kind of shocking when you realize that for every hundred offenses that are committed, only one will actually go to trial and the person involved will actually be convicted.

In keeping with Conservative thought, to control crime one needs to make the punishment outweigh the crime. An example of this type of thinking is offered by an audience member at a hearing addressing elderly crime compensation.

A prison is a place where punishment must be exacted. It is a penal institution and not a corrective institution. The thing you people in Congress should do is change the name from corrective to penal. I don't care how many years they get, whether it is 1 or 2 years, but make those SOB's remember the 2 years they served. In other words, we should put a little barbarism in the treatment of our criminals. (Kotch, 1977, p. 43)

Not only were there conservative claims-makers involved in the hearings pertaining to these pieces of legislation, it should be noted that the victim rights movement came to its fruition during the years dominated by a Republican president. Ronald Reagan was the first president to "...put the full weight and influence of that

office behind the victims' movement" by proclaiming National Crime Victim Rights Week within 3 months of his first term (Carrington & Nicholson, 1989, p. 4). The President shortly thereafter created the President's Task Force on Victims of Crime, whose 1982 final report listed 68 recommendations for serving the needs of victims. A number of observers have argued those recommendations catered to a conservative point of view (Carrington & Nicholson, 1989; Walker, 1989), though Stein and Young (personal communication, February 9, 2000) argue that Lois Haight Herrington actually wrote a less conservative report than was originally planned.

Contrary to expectations, conservative voices did not overwhelm the dialogue concerning the Protection Act and VOCA. Though, a conservative voice may have been present in the President's Task Force report, as numerous individuals have commented on its conservative recommendations, they did not dominate the discussion when it came to victim services and compensation. When asked for their response to the claim that the victim rights movement was co-opted by the Right, both Marlene Young and John Stein of NOVA expressed disagreement. Though they did not deny that there were conservative elements, Young answered "I personally have always felt that when I heard that statement - that it was co-opted by the law and order factions - I have not found that a whole lot in practice" (personal communication, February 9, 2000). Stein argued that people within the movement try to stay "trans-ideological" (personal communication, February 9, 2000). It is this type of strategy that, no doubt, contributes to the success of this movement because it does not alienate the differing factions of the movement. As described by one movement activist,

there are three issues: victim assistance issues, law and order issues, and victim right issues. When one focuses on victim assistance issues, law and order issues are put aside (Stein, personal communication, February 9, 2000).

### Liberals

As just alluded to, support for victims' rights was one of those areas of interest that have received bi-partisan support. Weed (1995, p. 5) argues,

The crime-victims movement in the United States is...a product of conservative backlash, but because of the pluralism of the American political structure, particularly the fact that violent crime is almost exclusively the responsibility of local government, the politics of victimization is far more complicated. Both the liberal and the conservative ends of the political spectra have contributed to the development of the crime-victims issue.

The Liberal approach to crime is quite distinct from the conservative approach. Rather than seeing crime as a function of the individual bad seed, the liberal philosophy traces criminality to a lack of social and economic opportunity. Liberals are known for their focus on rehabilitation rather than punishment (Walker, 1989). Liberals are also more likely to subscribe to Packer's "due-process" model of crime control, which focuses on the protection of individual rights (cited in Walker, 1989). When discussing the rights of victims, the liberal perspective emphasizes balancing the rights of crime victims without diminishing the rights of the defendant. Attention to crime victims allows liberals an answer to, or maybe a diversion from, the critique that they are soft on crime. Deborah Kelly (quoted in Clark, 1994, p. 637), a Washington Attorney reminds those outside the movement, "Most people forget that the movement has liberal elements...They assume we must be to the right of Attila

the Hun. But I'm a feminist who wrote a Ph.D. on rape victims." Tapping into a further reason for liberal interest in crime victims, she (Kelley, quoted in Clark, 1994, p. 637) continued "What's more, the left should be involved because crime victims are disproportionately minorities and poor."

Though the 1960s was not a time of focus on victim rights, Weed (1995) argues that there was support for the idea of the state as responsible for victims from Supreme Court Justice Arthur Goldberg and the political philosophy of Johnson's "Great Society" and Kennedy's "New Frontier." Arthur Goldberg (1970) wrote a letter of support for the first hearings on victim compensation in 1969. He first recommended the subject in a lecture at New York University Law School in 1964. He argued that victim compensation could be justified because society must bear responsibility for crime. True to the liberal point of view, he (Goldberg, 1970, p. 98) asserted:

Crime is, after all, a sociological and economic problem as much as it is a problem of individual criminality... Attempts to understand the roots of crime take us into a complex of factors, including economic deprivation, alienation, racial discrimination, and ignorance.

There were a number of other Democrats actively involved in the compensation movement.

One of these Democrats was Senator Hubert Humphrey (1979, p. 248-9) who argued in support for the Victims of Crime Act of 1977:

Society has failed the victims in two ways. First, society has allowed conditions that breed crime to continue to exist and even become worse. In 1975 alone, the number of poverty stricken people increased by 2.5 million – an indictment of society's inability to provide Americans willing and able to work with meaningful jobs. Second, society has also failed to protect its

members from criminal acts... Many of these victims were the poor or the elderly – people who can least afford to be hospitalized.

Liberals ideals were also served by the presence of Democratic Representative Conyers who was Chairperson of the Subcommittee on Criminal Justice. Consistently throughout the hearings that he chaired, he argued,

I must add that some of the suggestions to help crime victims go to some extremes, such as abolishing the exclusionary rule, overturning legal safeguards against Government overreaching, and making the penal system more harsh with mandatory and longer prison terms. These are proposals that I think ought to be carefully weeded out as we move toward crafting legislation. We must make sure that the legislation will really address the financial, emotional, and medical needs of the victims, and not become a vehicle to make the criminal justice system more harsh than it already is (Conyers, 1985, p. 12).

In addition to Senator Humphrey and Representative Conyers, were numerous Democratic Senators and Representatives working with their Republican counterparts as can be evidenced by noting the political parties of the Congresspersons listed in Chapter IV.

Contrary to expectations that this legislation would be driven by only conservative thought, the Protection Act and VOCA appeared to be a bi-partisan movement. Senator Mathias, (1982, p. 23397) a Republican, noted during the final deliberations in the Senate before passing S. 2420, the Protection Act, “This legislation has strong bipartisan support, and its nearly 60 co-sponsors represent every point on the ideological spectrum.” The same sentiment was expressed during the examination of VOCA. Senator Spector (1985, p. 6) argued in support for S.2423, “With Republicans and Democrats working together, and with the much appreciated help of the Administration, I am optimistic we will move swiftly to consider and pass

legislation in the very near future.” Senator Thurmond (1984b, p. 29670-1) argued that the crime control act, which contains VOCA, was important because the crime problem is a high priority for the American people and “...is not a Democratic issue or a Republican issue.”

Best (1997) argues that the victim image is just as politically viable for the liberal as for the conservative. He (Best, 1997, p. 10) explains “Part of its appeal may have been its ambiguity; it let one identify victims without necessarily specifying who was doing the victimizing.” Though liberals and conservatives may be ideologically different, each found advantages to show their support for victims of crime, allowing them to stay within their ideological bounds.

### Entrepreneurs

Becker (cited in Mauss, 1975) coined the term moral entrepreneur to characterize individuals who embark on a “crusade” to have their morals enforced on other groups. There are numerous moral entrepreneurs that have agitated for reform outside of the groups previously discussed. Many of these individuals involved in the victim rights movement began agitating after experiencing victimization – their own or a family member’s. The movements that these individuals are involved in are grassroots movements and there are a number of them that have been associated with the victim rights movement over the years.

One group that has been particularly influential is Mothers Against Drunk Driving (MADD) which has helped institute changes in approximately 4000 drunk

driving laws (Davis and Henley, 1990). Another such organization often cited in the literature on the victim rights movement is Parents of Murdered Children (POMC) started by a couple after their daughter was murdered. Other groups include Violent Crime Victims organized in 1974 in Washington state; Protect the Innocent, established by Betty Jane Spencer, after she was attacked in her home and her four sons were killed; and Families and Friends of Missing Persons (Young, 1997). Probably one of the most notable for his weekly crime fighting television show, "America's Most Wanted," John Walsh can also be placed in this claims-making category. Walsh turned to the show as a result of the abduction and murder of his 6 year old son Adam in the early 1980s and has repeatedly spoken out for victim rights (Clark, 1994). Agitating against what they term "secondary victimization" by the justice system, Weed (1985) argues that many of these grassroots reformers were middle class citizens that had faith in the system until they became a part of it.

Interestingly, and contrary to expectations at the beginning of this research, very few of these groups were represented in the hearings pertaining to the legislation examined in this dissertation. There are a number of explanations for this finding. It is hypothesized that this is a function of the choice of topic of the study, federal legislation, which does not represent the movement at a state level. Grassroots driven legislation was occurring more at the state level, particularly when the fight for victim constitutional amendments began in the early 1990s (Young & Stein, personal communication, February 9, 2000). Young (personal communication, February 9, 2000) suggested that the victim compensation was more a function of professional

politicians than grassroots groups. She also notes that VOCA was a fairly complicated statute and difficult to explain to others, which inhibited enlisting support. Another difficulty stemmed from the fact that supporters did not know what monies would be available for funding because it relied on federal fines and changes in the collection procedure. In other words, they had no idea what amount of money would be available. Young (personal communication, February 9, 2000) hypothesized "Looking back, if we could have said, 'well, there will be a day when there will be a billion dollars in [the crime victim's fund],' we probably could have gotten a lot of people rallied."

The lack of grassroots participation found in this research is also explained by the fact that the hearings for the President's Task Force report were not analyzed. A special effort was made by the Task Force to hear from as many different groups as possible. Herrington (personal communication, February 10, 2000) noted that the Task Force heard from approximately 1,000 victims and worked specifically to talk to as many different groups and individuals as possible. All three individuals interviewed noted that in the congressional hearings held, there was more selectivity in who was speaking, which obviously affected the results of this research.

However there were some grassroots that were involved in the congressional hearings held. Frank Carrington (1984), considered by some to be the father of the victim rights movement, testified on behalf of the Victim Assistance Legal Organization (VALOR) which is a national clearinghouse of information for lawyers. As a lawyer, Mr. Carrington had a professional interest in obtaining legal rights for

victims, in particular establishing suits regarding third party negligence. He was involved in the highly publicized Connie Francis suit against Howard Johnson for claims that their negligence resulted in her sexual assault. Mr. Carrington also served on the President's Task on the Victims of Crime (Crime victims' assistance programs, 1984). John Stein even credits him with getting Reagan involved in the movement (personal communication, February 9, 2000). Carrington (1976, 1979, 1985) also testified in earlier hearings on victim compensation representing Americans for Effective Law Enforcement and the American Bar Association so he had quite a long history dealing with victim issues.

Another grassroots group represented was Parents of Murdered Children (POMC). Chicago chapter leaders, Robert and Margaret Coombs (1983) sent a letter of support for a victim compensation bill that diverted monies from the Pittman-Robertson funds. To refresh the reader, this victim compensation bill proposed that funds used to support wildlife restoration and hunter education be diverted to compensate victims of crime. The Coombs supported this idea. Forming POMC after the murder of their 27 year old son, the Coombs (1983, p. 55) argued, "There is little enough our Government can do to help those deprived of son, daughter, parent or spouse. To do less, will show an immense lack of compassion. Something our Countrymen have never shown as a People, as a Nation. We urge you to do all within your power in order to pass this much-needed bill." In addition to POMC, another well-known group, MADD, also testified at hearings for victim compensation in 1984. Lillian Hammack, (1985, p. 55) of the Aiken county (South Carolina)

chapter of MADD, testified in support of VOCA since drunk driving victims were considered for compensation under S. 2423.

Another group, not as well known as MADD, called the Victims Family Committee, was also represented at the hearings on the Pittman-Robertson Diversion Fund (Crime victim trust fund, 1983). Carolyn Budde began the group in response to the murder of her son. He was shot to death in a quarrel after a traffic accident. She (Budde, 1983, p. 31) “strongly” supported the victim compensation bill because “Although I am not opposed to target-shooting ranges, it is only fitting that money spent on those weapons that create so many victims should be used to compensate them and their survivors. Let’s use the money where it’s really needed.”

Weed (1995, p. 19) argues, “These organizations [groups such as POMC, Society’s League Against Molesters, Victims for Victims] have as a central mission increasing public awareness of a particular crime and revealing to the public the emotional suffering of victims and their families.” That certainly seemed to be the case for their participation in these hearings. With the exception of Frank Carrington, who had a professional interest as a lawyer in meeting the needs of victims, each of the other groups discussed were motivated by their own mistreatment or dissatisfaction with the criminal justice system. Their own personal horror stories had motivated them into social action in the attempt to save others from sharing their own fate.

### Radicals/Progressives

Some writing about the victim rights movement do so from a different

perspective than those above. In general, those people writing from a “radical” or “critical” point of view are interested in expanding the definition of victimization to include those who are victims of socioeconomic and/or political oppression or human rights abuses (Sebba, 1996). In fact, Sebba (1996) argues that “radicalism” has often *not* been associated with the movement because it has often been linked with the “law and order” campaign. Simonson (1994, p. 181) offers what she terms a “critical view” exposing a “possible hidden agenda” within the victim rights movement by suggesting that victim services may actually serve the criminal justice system more than victims themselves.

Others share her concern. Robert Elias (1993) was quite critical of what he claims is the political manipulation of the victims in the Movement in his book *Victims still: The political manipulation of crime victims*. He (Elias, 1993, p. 53) noted, “We rarely examine the movement’s political perspective or direction; indeed, we act almost as if it has no politics at all. In fact, the prevailing victims’ rights movement has a very pronounced politics...it is a movement of political conservatism.” He (Elias, 1993) also argued that many of the 68 recommendations in the final report of the President’s Task Force on Victims of Crime were conservative in nature and focused on limiting offenders rights established under the Warren Court. He argues that among those reforms that have been most successful are those that center on conservative politics: new prison construction, longer sentences, less parole, preventive detention, and more spending on law enforcement. And these, he further argues, are the least helpful for victims of crime (Elias, 1993).

In agreement with Elias (1986), Fattah (1986) argues that the current focus of the movement, which he sees as retribution for victims, does not attempt to address causes of crime or to take preventive measures. Fattah (1986, p. 5) also makes note of what he sees as missing in the victim rights movement: "...what about the victims of violations of health and safety codes, victims of social injustice and racial discrimination, victims of state terrorism, victims of abuse of political and/or economic power?" Quite the opposite of the conservative victim rights advocates as previously described; Fattah (1986) calls for humane treatment for both victim *and* offender.

In the examination of the congressional hearings pertaining to victim services and victim compensation, those voices that might be termed "radical" are few and far between; however, they do exist. With the exception of a few early references, most of the progressive testimony is found in a 1983 hearing regarding VOCA. The earliest possible reference to a progressive view was found in 1976 when Phillip Showell, Executive Director of the New Jersey Association on Correction, testified in support of victim compensation. Though not describing what his group stood for, he did take a broader view of crime and criminal justice:

I would like to ask the committee to conceivably back off and take a look at some broader pictures...[there] is the inability of both the State and Federal Governments really to deal with some of the seedbed sources of crime...in terms of lack of addressing health, housing and all that...We can back even further away we can see that the country has had a long tradition, a long historical tradition of violence as a means of resolving conflict. That is projected to us daily through our news and entertainment media, particularly television. All of these things are part of the context we are dealing with. (Showell, 1976, p. 375)

Following this, in 1977, was another lone progressive voice, the National

Moratorium on Prison Construction. Writing in support of victim compensation, Angell (1979, p. 370), argued "Compensation, as a positive expression of community support for victims, stands in sharp contrast to present U.S. reliance on the negative expedient of incarcerating offenders for both violent and unviolent (sic) crimes in destructive (sic) prison setting." Taking a holistic approach to the crime problem, the Moratorium argued,

Ultimately we would hope that Congress and the Administration would see fit to enact and implement comprehensive national programs, in order to attack the social injustices, which are at the root of the problems for both victims and offenders. One particularly important objective should be full employment for all adults seeking work. (Angell, 1979, p. 371)

However, other than this small section which I have interpreted to be progressive based on its broader focus, progressive voices were not heard until 1984. There were four groups that testified during two hearings: the Unitarian Universalist Service Committee, Americans for Democratic Action (ADA), the Mennonite Central Committee and Justice Fellowship.

Though VOCA was not the broad based answer to crime that many of these groups subscribed to philosophically, they were still supportive of the measure. For example, Bertram Gross (1985, p. 102) of the ADA, argued

I would like to think that we had a crime prevention program in this country. I do not see it. In the absence of a crime prevention program, which would, of course, include enforcement of the 1978 Balanced Growth and Full Employment bill, in the absence of that, I believe that measures of this type are long overdue.

The Unitarian Universalist Service Committee also expressed its support for VOCA. Barrett (1985, p. 93) explained that the group was "...a nonsectarian, nonprofit

membership organization dedicated to improving the economic, social, civil, and political rights of people throughout the world” and was concerned with “...human freedom and the struggle against repression in it many forms, hunger, poverty, imprisonment, illiteracy, and the deprivation of basic human rights.” They supported the passage of VOCA because “It takes into consideration the needs and the concerns of those people who have been victimized, and it does so without violating the rights of defendants” (Barrett, 1985, p. 93-4). Justice Fellowship supported VOCA for the same reason. Justice Fellowship, a group that lobbied for limiting the use of prison for property offenses, supported VOCA because, in their perspective, it served the victim without harming the offender. Van Ness (1985, p. 385), the spokesperson, argued:

Unfortunately, some of the effort to redress this problem under the aegis of “victim’s rights” have had little to do with victims. They should be called “prosecutors’ rights” measure, because they only increase the ability of the state to obtain convictions (e.g., abolition of the exclusionary rule, increasing prison sentences, limiting the scope of guilty pleas, etc.).

Directly following the Justice Fellowship was testimony from Howard Zehr, director of the Office of Criminal Justice, Mennonite Central Committee. Again, testifying in support of VOCA, Zehr (1985, p. 387) noted,

I am glad that this legislation, unlike much legislation, is clearly pro victim and yet is not antioffender. I think that is a mistake many of us have made for too long, we assumed it had to be one or the other, and yet both offender and victim are equally part of the crime equation.

Although these groups called for larger structural changes, such as full employment, they seemed willing to support victim compensation legislation as a step in the right direction. These groups seemed particularly willing to support

VOCA because they saw it as meeting needs of victims without jeopardizing the already existing rights of offenders. This inclusion of progressives, though small in number, was surprising considering the earlier discussed claim that the victim rights movement is dominated by conservative rhetoric. One explanation for these voices may be Representative John Conyers, a Democrat from Michigan, who was the chairperson of the Subcommittee on Criminal Justice, which held the particular hearings discussed. His previously quoted testimony in support of VOCA showed his concern for ensuring that offender's rights were not diminished. As a supporter on the Left, he was probably comfortable soliciting progressive viewpoints. In turn, these progressives seemed willing to support the notion of federal compensation though it may not have met their agenda in total.

### Academicians

Though academics are often perceived as the “disinterested scholar,” they have also played a role in the development of the victim rights movement. Growing interest in victims sparked a new subdiscipline within criminology which, according to Best (1997), in time, spurred political activists writing and working on the behalf of victims. Though some have called for a separation between activists (Fattah, 1989), there were a number of academics that played a role in the victim rights movement. From this perspective, those who called themselves “scientists” or “academics” also play a part in the construction of a problem though they are often perceived as value-neutral. “Far from pretending that social scientists are ‘value-

neutral,' then, social constructionism actually includes them as elements in the theory" (Mauss, 1989, p. 36). Scholars hold the power of expert knowledge, which they use to contribute to the movement mobilization.

Keeping this in mind, there were numerous scholars who were involved in the hearings discussing federal legislation and their influence has occurred in numerous ways. Scholars were particularly prominent during the early history of the victim compensation movement. In the first hearing held concerning Senator Yarborough's compensation bill, there were a number of academics who testified: Gilbert Geis of the State University of New York at Albany; Norval Morris, professor of law and criminology at the University of Chicago; and Stephen Schafer, sociology and criminology professor at Northeastern University (Compensation of victims of crime, 1970). Each of these scholars testified in support of the legislation, offering their varying suggestions for improvement. However, much of their testimony centered on an explanation of the justifications or rationales (as discussed in Chapter IV) for a federal compensation program.

In addition to discussion of the justifications, those who were trained in law offered legal commentary about the various bills discussed. For example, Professor of law, Paul F. Rothstein (1972, p. 424) noted, "I strongly endorse the crime victim compensation plan set forth...[and] I take this opportunity to present some constructive legal commentary...." Professor Rothstein continued to serve as a legal expert in other hearings. Also involved was Leroy Lamborn, professor of law at Wayne State University, who made suggestions for early victim compensation legislation in 1975

and again, in 1984, for the bill that would become VOCA. In 1984, Professor Lamborn also served on NOVA's Board of Directors and on the Executive Committee of the World Society of Victimology.

These scholars lent their specialized knowledge to the issues. For example, Gilbert Geis (1976), a professor in the social ecology program at the University of California, defined as "one of the leading academic experts in this area" (Hungate, 1976, p. 430), testified in support of victim compensation. Pointing to the emerging field of victimology and the existence of 13 state victim compensation programs, he (Geis, 1976) argued that attention to crime victims was increasing. This growing attention was evidenced by the publication of the new scholarly publication entitled "Victimology," and the convening of an international conference (Geis, 1976).

As the field of victimology was growing, so was the amount of research being done on victims. Scholars also served in the capacity to lend weight to the movement by presenting research and statistical results to the claims, which as alluded to earlier, is powerful in a culture that values scholarly research as this one does. For example, results from a research project at Marquette University were presented at a 1976 hearing which discussed the losses that victims incurred as a result of crime (Knudten, 1976). Dr. Deborah Kelly (1982), University of Maryland, presented her research in which she interviewed over 100 women rape victims regarding their treatment by prosecutors and police. She (Kelly, 1982, p. 187-8, her emphasis) noted she was

delighted to submit testimony in support of this legislation which finally recognizes the real people behind the crime statistics – the victims...The

Omnibus Victim Protection Bill of 1982 would redress this inequity and provide a place for victims in the judicial process *without* taking away from the defendant's rights.

A final example is the testimony of Daniel McGillis, Assistant Director of the Center for Criminal Justice at Harvard Law School. McGillis (1984) was working on a comprehensive analysis of compensation programs across the United States that was undertaken on the suggestion of the Attorney General's Task Force on Violent Crime. McGillis (1984, p. 54) testified in support of the findings of the President's Task Force on the Victims of Crime final report, regarding them as "...right on point..." and suggested that "we need to insure [the] fiscal stability" of the existing victim compensation programs (p. 57).

In summary, these scholars brought the weight of research, philosophy, and history to the debate of victim compensation by providing scholarly papers and expert knowledge. In addition, scholars bring to the debate the credibility of the cultural respect that this society has for the "value-neutral" scientist. They brought with them statistics that reinforced the need for victim compensation and victim services: figures that refuted the notion that victims were few in numbers. These scholars were able to provide, or at least discuss, the philosophical justifications for compensations and those with legal training were able to give suggestions to strengthen the written bills.

### Organizations

As had been noted throughout the dissertation, various organizations have

played a role in the victim rights movement. Although this separation of organizations into a separate group is somewhat arbitrary, it is used to examine groups that fall outside the previously discussed claims-maker categories. The major organizations to be discussed are the National Rifle Association (NRA), the Victim Assistance Legal Organization (VALOR), the National Organization of Victim Assistance (NOVA), the American Bar Association (ABA) and various other smaller or lesser-involved organizations.

The National Rifle Association has involved itself in the movement at the state level creating a sub-organization called CrimeStrike (Faulkner, 1992). Supporting a five part, Conservative, “get tough” approach to crime, it focused on: (1) tough and honest sentencing, (2) further prison construction and staffing, (3) seriously punishing youthful offenders, (4) establishment of laws for victims rights and (5) promotion of direct citizen involvement in the criminal justice system (Faulkner, 1992, p. 30-31). Program director Steve Twist explains the political motivation for the group being involved: “Our 3.4 million members are affected by crime, and frankly, if policies controlling crime are more effective, there will be less calls for attacks on rights to bear arms” (quoted in Clark, 1994, p. 639).

However, as discussed in the last chapter, the NRA played a quite different role in the movement for victim compensation at the federal level. While taking no formal position on victim compensation, the NRA made a strong show in opposition to the bill that called for diversion of the Pittman-Robertson fund. The NRA considered the bill a “direct slap in the face to millions of law-abiding sportsmen” and

claimed it would “cripple a wildlife conservation program which has been the financial backbone for state and wildlife agency activity since 1939...” (Cassidy, 1983, p. 50).

In the end, as discussed in Chapter IV, the NRA proved to be a powerful lobby against the bill, as the diversion of the tax on handguns did not occur. In the final legislation, the crime victim's fund was supported by the collection of federal fines rather than the tax diversion. It is also significant that the only staunch opposition that surfaced to victim compensation in the 1980s was this debate over the Pittman-Robertson fund. As a result of opposition of the NRA and other wildlife groups and the availability of alternate funding, the Pittman-Robertson funding diversion was not enacted.

There were other groups involved in claims-making, but they testified in support of victim services and compensation. For example, as discussed earlier, Frank Carrington testified in support of victim rights representing his group, VALOR. Carrington (1982) testified in the Protection Act hearing in support of a provision dealing with 3<sup>rd</sup> party negligence in parole hearings. However, as discussed in Chapter IV, the provision was later dropped from the bill because the Department of Justice wanted more time to examine the issue. To pass the bill, compromise dictated that this section be dropped. He (Carrington, 1984) again spoke in support of third party negligence in 1983; however, no such provision was made a part of VOCA. This provision was one of the more controversial elements in the legislation of the 1980s and as a result was not included in the final legislation.

Another highly involved group, also discussed previously but in a different context, is the National Organization of Victim Assistance (NOVA). This organization was extensively involved in the hearings considering federal legislation. The two people who most often represented the organization were Executive Director, Marlene Young, and Deputy Director, John Stein. In fact, in an interview, Marlene Young (personal communication, February 9, 2000) argued that John Stein developed a reputation as an expert in victim issues with staffers "on the Hill." Representative Conyers (1985, p. 393) noted Stein's hard work when he commented during a hearing that Deputy Director John Stein had been at every hearing in the series of 6 hearings and "has been talking with us in-between."

NOVA testified in support of both pieces of federal legislation examined: the Protection Act and VOCA. In fact, the first reference to NOVA participation was during the Protection Act hearing. Young (1982, p. 76) noted, "we have been to Capital Hill before...but never on so gratifying a mission as to voice NOVA's support for an omnibus victims' bill." During this hearing, Young (1982) accompanied two victims while they told their own stories of personal victimization. She (Young, 1982, p. 81) testified that NOVA supported the Protection Act and that "particularly noteworthy" were the victim impact statements, the victim witness intimidation protections, the use of restitution and the development of the victim and witness guidelines. Young (1982) also showed early support for victim compensation by suggesting another bill as a model to amend the Protection Act to compensate victims of violence in federal jurisdiction however this was not done. In June of the following

year, 1983, John Stein continued this support when he testified during the Impact of crime on the elderly hearing concerning the merits of victim compensation.

As expected, NOVA was extremely active during the various hearings for VOCA. Young represented NOVA during the Crime victims' assistance programs hearings in 1983 giving various suggestions for improving legislation such as eligibility criteria for funding, equal division of funding between compensation and victim services, and non-supplantation of state funds with federal funds. The next year, 1984, John Stein accompanied Constance Noblet, President of NOVA's Board of Directors, in another victim compensation hearing. During this testimony Noblet (1985, p. 395) expressed support for further funding through the gun tax; however, she correctly noted that she realized this was a significant "fight" that could end up "killing" the legislation. In this testimony, NOVA opposed a cap on the funding and the sunset clause. However, both of these provisions were included in the final legislation in an effort to curtail concerns about cost. She (Noblet, 1985) also questioned the amount of money spent on federal victim programs and suggested it could be lessened and still be effective. As discussed in Chapter IV in the description of the legislation, this suggestion was incorporated into the final bill and less money was reserved at the federal level.

Others appreciated the work of these individuals. During one VOCA hearing, Representative Conyers (1985, p. 398), chair of the Subcommittee on Criminal Justice, noted,

...I want to commend your organization. I have now had the pleasure of running into a number of your leaders. I think they are all working toward this

common end, and I think we have come a long way in spreading out the possibilities of compromise in this legislation. So we are going to markup from here and you can feel that the National Organization for Victim Assistance has played a major and crucial role in helping us shape this legislation....

Marlene Young and John Stein lent the weight of this national organization to the movement. Marlene Young was particularly eloquent in her testimony and along with the testimony directly from victims that accompanied her, made a strong case for funding victim services. Young (personal communication, February 9, 2000) traveled extensively and wrote numerous articles during the fight for federal legislation. NOVA's credibility as "honest brokers" and "reasonable people" was helpful (Stein, personal communication, February 9, 2000.) The group was also influential as a result of their effort to keep their board of directors bi-partisan in nature (Young, personal communication, February 9, 2000). Though not every suggestion proposed by NOVA was accepted, this organization was influential in shaping the legislation.

Another group extremely active in the federal legislation passed in the 1980s was the American Bar Association (ABA). It should be noted, however, that the ABA had been concerned with victim rights prior to the 1980s. For example, the ABA created the Victim's Committee in 1975, which was quite active in the fight for victim rights (Carrington & Nicholson, 1984). The group also published materials about victim intimidation, bar leadership and guidelines for the treatment of crime victims and testified at numerous congressional hearings (Carrington & Nicholson, 1984). Their history in support of victims is a long one.

Their first support for victim compensation came in 1967 when the group supported S. 646, the "Criminal Injuries Compensation Act of 1967." The group

supported it because of its “serious concern for increasing problems of crime the country, the gravity of crimes of violence, the high cost of crime to victims, and other issues raised by the President’s Crime Commission in 1967” (Santarelli, 1976, p. 92). After this first support for federal compensation in 1967, the ABA continued to support further victim compensation legislation, in addition to other victim services programs in which they involved themselves. Frank Carrington (1985, p. 86-7), Chair of the ABA’s Committee on Victims, explained “The ABA’s record in protecting legitimate rights of defendants is well known. The Association is proud of that record. We are just as proud, however, of our lesser-known efforts advocating the kinds of programs addressed by the legislation before you.” For example, the ABA endorsed the Uniform Crime Victims Reparations Act in 1974, approved a policy calling for treatment center for rape victims in 1975, and urged congressional action to support funds for domestic violence victims in 1979 and 1980. Representatives of the group appeared before the President’s Task Force on the Victims of Crime, the Attorney General’s Task Force on Family Violence and the Attorney General’s Task Force on Violent Crime (Carrington, 1985).

As alluded to earlier, the ABA was also heavily involved in drafting Senate bill 2420, the Protection Act (Carrington, 1985; Laxalt, 1982). Testifying in the Omnibus Protection Act hearing, Michael McCann (1982) noted the ABA supported all the provisions, with the exception of the third party liability provision. The organization did not take a formal position on third party liability as it was still under study. Senator Heinz (1982c, p. 160), a key congressperson involved in the

Protection Act expressed his appreciation to the ABA: "...thanks for the help of the ABA and [the Criminal Justice section] particularly. They have made a material contribution. You might indicate our obligation and we will be in touch."

In addition to this support for the Protection Act, the ABA also has a long history of supporting victim compensation. William H. Erickson, (1972, p. 489) chairperson of the ABA's Section of Criminal Law in 1972, explains the ABA's philosophy of support:

The American Bar Association believes in the philosophy espoused by its section of Criminal Law that it is entirely appropriate that we confront the problem of the victim of crime directly. Our Government has often and properly extended consideration and services to persons accused of crimes; hence it is only logical that we ask what about the victim? While the burden of the victim is not alleviated by denying necessary services to the accused, it is reasonable that the Government make an effort to reduce the impact of resulting injuries and losses to victims.

A few years later, in 1976, Donald Santarelli (1976, p. 90), testified of the ABA's support for compensation of good samaritans and in addition to wage losses, "...losses associate with medical expenses, vocational rehabilitation, psychological rehabilitation and legal fees." The ABA did oppose compensation for property crimes and pain and suffering, presumably because these would be too costly. In 1977, Eric Younger (1979, p. 112), Chairman of the Committee on Victims of the ABA's Section on Criminal Justice, testified, "The American Bar Association's posture has not been altered since Donald Santerelli testified a year and a half ago and is, indeed, similar to that of several of your other witnesses." He (Younger, 1979, p. 114) concluded his testimony by predicting the victim issue "...is an idea whose time has come, but I must warn you that those of us who take this issue seriously do not

intend that it be this year's fad. You will continue to hear from us...." And hear from him they did, the following year, when he reiterated testimony from the following year.

In 1984, the ABA again testified in support of victim compensation in the House hearings, this time represented by Frank Carrington. "Today, we appear once again to repeat our strong belief that victims whom the criminal justice system has been unable successfully to protect deserve the assistance of the federal government in dealing with the financial and service needs occasioned by the crime against them" (Carrington, 1985, p. 87). William Greenhalgh (1985), former chairperson of the Criminal Justice section, represented the ABA in the Senate hearing in 1984. Though the ABA supported the bill, S.2423, they remained neutral on the "Son of Sam" provision (Greenhalgh, 1985).

This examination has shown that the ABA was highly involved in victim rights at a governmental level. Though lawyers and the ABA are often associated with the defendant and his or her rights, the group was actively involved in drafting and supporting legislation, publishing materials and serving as legal consultants. As McCann (1982) noted,

Despite the fact that [the Criminal Justice Section] membership consists predominantly of defense attorneys, the section has consistently been in the forefront of speaking to the issue of victims' rights. Without apologizing for its involvement in protecting defendant's rights, it has stressed and willingly supported the Victim Committee's effort to articulate the rights and needs of the victim in the criminal justice system.

Though shying away from some issues, such as the 3<sup>rd</sup> party and "Son of Sam" provisions, the ABA was highly involved in the victim rights movement.

There were other groups that did not testify to the extent that the above organizations did; however, they were involved in support of the victim compensation and victim services. For example, the American Association for Retired Persons testified in support for victim compensation for the elderly (Sutherland, 1984) and well as for victims in general (Mench, 1979). Also focusing on elderly issues, the National Council for Senior Citizens (Marlin, 1980) was involved in the Compensating crime victims hearings in 1979. There were also religious organizations that supported victim compensation: the Christian Science Church, who wanted to be sure that their healers would be included under medical expenses for compensation (Rathburn, 1976); the Mennonite Central Committee (Zehr, 1985); and the United State Catholic Conference (Lally, 1980). Governmental employees were also involved. The United States Conference of Mayors (Moscone, 1979) testified in support as well as the National Organization of Black Law Enforcement Executives (Williams, 1985); the National Counsel on Crime and Delinquency (Rector, 1979); the National Conference on State Legislatures (Leudkte, 1979); and the National District Attorneys Association (Lynch, 1979).

As can be seen there were numerous organizations, large and small, that testified in support of victim services and compensation. The only major opposition was expressed by the NRA and other wildlife protection groups who were opposed to the proposed diversion of monies from the Pittman-Robertson fund. However once this provision was dropped and alternate funding sources were used, that opposition was neutralized. The rest of the organizations, working together, created quite a

powerful force of momentum in support of this legislation.

### Opposition

As can be seen from the following discussion, most of these claimsmakers were in support of victims' rights. Those expressing opposition to victims' rights are few and far between since, as noted by more than one person examining the subject, no one really wants to be interpreted as being anti-victim. As observed by a participant (Schaffner, 1984, p. 110) in the victim compensation hearings: "Victim compensation is an unusual program in terms of its ability to generate political support. In a sense, it is difficult to find opponents of victim compensation." For example, as discussed earlier, there was little opposition to the passage of the Victim and Witness Protection Act. As noted by Stein (personal communication, February 9, 2000), there was no organized opposition from federal judges and prosecutors who were affected by the legislation. This was because the legislation was not seen as a threat. Young (personal communication, February 9, 2000) added that the lack of spending attached to the legislation was another factor speeding its progression.

However, as examined in Chapter IV, opposition did surface during the victim compensation movement during the late 1960s and throughout the 1970s. McGillis and Smith (1983) categorize 4 major critiques of the legislative effort to pass victim compensation bills: (1) cost, (2) no governmental role for compensation, (3) no Federal Government role for victim compensation, and (4) victim compensation will reduce crime prevention efforts. Beginning with the last argument, that

victim compensation would reduce crime prevention efforts, it can be observed that this was the weakest argument purported by those in opposition simply in terms of numbers. For every person that made this argument, there was another that made a similar counter-argument serving to balance out the debate.

The most important issue that surfaced regarding victim compensation was cost. As noted in the last chapter, victim compensation bills were repeatedly defeated in the 1970s because of fear of high costs associated with those programs. In the early 1980s, victim advocates found a new way to fund victim compensation programs: criminal fines. As noted in the previous chapter, this notion that it was “criminals” rather than “innocent taxpayers” that were funding the programs was a major selling point of the legislation. Stein (personal communication, February 9, 2000) noted that this was the “magic” of the President's Task Force report: it suggested the federal fines idea. Once the Pittman-Robertson fund diversion was dropped from the bills, they were relatively easy to pass, considering the long history of the victim compensation movement. And, of course, the Protection Act had no major cost factors associated with and, therefore, there was no argument in terms of cost. There was also the fact that more and more states were enacting their own state compensation programs which drew more interest in federal funding (Young, personal communication, February 9, 2000).

The second and third arguments discussed by McGillis and Smith (1983), no governmental role or no Federal government role can be justified for compensation, was simply not heard in the 1980s. John Stein (personal communication, February

18, 2000), of NOVA, wrote that he did not run into this type of opposition during the times he testified. As a result of this neutralization of the major oppositional arguments, regarding cost and the federal-state nexus, and the growing support for victims and their issues, the 1980s were a time of fruition for federal legislation. Other than these few voices, it is difficult to find people that oppose the claims found in the victim rights movement which is probably why it was so successful once counter-measures were taken to address the voices of concern that did exist.

### Summary

This chapter began the theoretical analysis of the victim rights movement in the passage of the Protection Act and VOCA. As discussed in the chapter, there were a number of claims-makers, from diverse ideological beliefs, involved in the movement. The claimsmakers examined were the women's movement, criminal justice administrative concerns, conservatives, liberals, moral entrepreneurs, progressives, academicians, and various organizations such as the NRA, VALOR, NOVA, and the ABA. As noted, these groups were quite diverse in their beliefs pertaining to criminal justice and victims rights, however, the Protection Act and VOCA remained neutral enough that all groups felt comfortable supporting the legislation. For example, although the Progressive's call for restructuring economics in the country was not met, they did support VOCA because it was seen as addressing victims without harming offenders. And because the Progressive's call for restructuring did not occur, Conservatives were still comfortable with the legislation. Amazingly, the

claims-makers seemed to be able to attract diverse groups to the movement without alienating those already involved. The result was a powerful mixture of claims-makers that ranged from conservatives to feminists, who found themselves cooperating in the name of victims. The next chapter focuses on the actual devices used by claims-makers to air their claims. With the guidance of New Social Movements theory and Resource Mobilization theory, the chapter examines how claims-makers built support for their claims.

## CHAPTER VI

### SOCIAL CONSTRUCTION IN THE VICTIM RIGHTS MOVEMENT

This chapter attempts to more systematically examine the social construction devices used in the victim rights movement. Hartjen (1977, pp. 45-48) has noted various "rules for creating, perpetuating and solving social problems." The first of these is the selection of a condition as problematic, and the second is defining the social condition as a problem. Spector and Kitsuse (1977) describe a similar process in their four-stage model of the history of social movements. Stage 1 of a movement is the process of making claims. The authors (Spector & Kitsuse, 1977, p. 143) note that not all movements will make it through this beginning stage: "A group's problem-defining activities may elicit no response - the group may lose its constituency, be ignored by the mass media, be torn by internal dissension, fail to mobilize economic resources to sustain its activity, or give up hope." However, if enough people mobilize to create a movement, the next "rule" that Hartjen (1977, p. 46) discusses is the importance of bringing the message to "the people" and generating large-scale concern. In this case, groups in the movement need access to the media and/or governmental agencies and "...the successful production of a social problem hinges on the creator's ability to 'get people worked up over it.'"

As discussed in Chapter V, claims that the victim is ignored in the criminal justice system have been put forth by many different groups. The history discussed

in the beginning of Chapter IV was often recounted in the literature as an indication that victims have lost their power in terms of playing their part in the administration of justice. Based on the number of claims-makers and the legislation passed at the federal level, it is asserted that certain segments of the victim rights movement have been very successful at airing their claims. This chapter discusses in detail the ways in which the victim rights movement has successfully appealed to a large (or at least, a powerful) audience and generated concern.

For the first part of this discussion New Social Movements theory is used as a guide. New Social Movement theory focuses on the use of ideology and culture in the attempt to explain the success of claims heard. It examines how issues are framed and meaning is assigned. In the victim rights movement these are accomplished through the fear of crime, the importance of victim images, the use of horror stories, use of the media and the importance of framing claims for victims as rights. The second part of the analysis uses Resource Mobilization theory in examining the support of public officials and private interest groups and the importance of networking in the victim rights movement. Both perspectives, New Social Movements and Resource Mobilization, are helpful in explaining the success of claims-makers in the passing of federal legislation in the 1980s.

### Fear of Crime

The first social construction device discussed is fear of crime. In all three interviews conducted for this research, the rise in the crime rate and the resulting fear

were cited as factors that explained the success of the victim rights movement (Herrington, personal communication, February 10, 2000; Young & Stein, personal communication, February 9, 2000). Susan Brownmiller (1975) has argued that rapes are a way to control women by keeping them in fear. Though this statement was controversial, it cogently taps into the power of fear of crime that is discussed here. There is no doubt that many people today, men and women, are fearful of crime. For example, Fattah (1989) notes that Canadians overestimated the proportion of crime that is violent. He (1989, p. 54) argues,

...[F]or obvious reasons, spokesmen (sic) for victims movements and other victim advocates are interested in painting a grim picture of the crime situation, in amplifying the volume extent and nature of criminality, in magnifying the psychological and financial impact of criminal victimization, and in capitalizing on the concern and fear generated or heightened by crime news. Inadvertently, they help reinforce the distorted picture of crime transmitted by the news media and are leading people to perceive the state of crime as being much worse than it really is.

Representative Martin Russo (1976, p. 99, emphasis mine) is a perfect example of the fear of crime type of claim:

I think we ought to come with a bill right away to encourage participation, because, frankly, I have meetings all the time in my district and invariably, the things that always upset the people are the economy and energy, *but nothing upsets them like crime.*

Or as argued by Senator Strom Thurmond (1984b, p. 29670) "...the crime problem is a high priority for the American people and, thus, should receive prompt and effective attention on the part of their elected representatives." The President's Task Force on the Victims of Crime also made this claim,

The specter of violent crime and the knowledge that, without warning, any person can be attacked or crippled, robbed, or killed, lurks in the fringes of

consciousness. Every citizen of this country is more impoverished, less free, more fearful, and less safe, because of the ever-present threat of the criminal. (President's Task Force, 1982, statement)

This same sentiment was expressed in the first victim compensation hearings in 1969. Representative Mikva (1970, p. 68) argued, in justification for victim compensation,

Without such a compensation plan, the loss from criminal injuries falls unevenly, almost capriciously, upon those unfortunate few among us who are at the wrong place at the wrong time -- the time when the criminal strikes. The very arbitrariness by which the victim of crime is selected should alert all of us to the need, which every citizen has for some compensation. It is through sheer mischance that he is injured as a result of a criminal act. The next time it could be any one of us.

Closely related to the fear of crime, are claims about the rise in crime. Recalling the discussion in Chapter II, Best (1997, p. 106) noted that the more people affected by the problem, the more likely there would be the solutions: "Perhaps the most straightforward way to establish a social problem's dimensions is to estimate the number of cases, incidents, or people affected." A number of claimsmakers point to the "fact" that rising crime spurred the rise of the crime victims and logically, if the crime rate is rising, the number of victims is rising. Young (1988) and Carrington and Nicholson (1984) cite the rising crime rate as stimulation for the victims rights movement. In particular, Carrington and Nicholson (1984, p. 4, their emphasis) argue,

Discontent with the plight of victims and witnesses heightened during the same period that crime and violence in this country were rising at exponential rates. This fact alone gives some explanation for rapid advances in activity and credibility by the victims' rights movement through the 1970's and into the early 1980's. As more crimes, particularly crimes of violence, were committed, there were more *actual* victims. People increasingly began to see

themselves as *potential* victims and *unwilling participants* in a criminal justice system....

Judge Lois Haight Herrington expressed this same sentiment in the interview done for this dissertation. She agreed that the rise in the crime rate spurred attention to the victims of crime, particularly since there were more likely to be crime victims (Herrington, personal communication, February 10, 2000). These claims were used throughout the years for various pieces of legislation and are put forward by numerous groups. For example, the Attorney General's Task Force on Violent Crime (1981, p. 87) noted,

Violent crime has increased tremendously over the past two decades in this country. In spite of the fact that federal, state and local police and prosecutors have made tremendous efforts to stem the flow of violent crime, it remains at extremely high levels. As an example, statistics from the National Crime Survey show that from 1973 to 1979 there were an estimated 40,035,000 rape, robbery, and assault victimizations in this country. During that same period, the Uniform Crime Reports show that there were 118,096 victims of homicide. Although these figures are staggering, it should be remembered that these "statistics" represent human beings.

Similar claims were made in the fight for passage of the Protection Act, which passed in the year following the Attorney General's Task Force Report. For example, in her testimony at the hearing for the Protection Act, Marlene Young, Executive Director of NOVA, argued that services were needed because of the large number of people effected: "...I feel outraged because these victims are representative of thousands and even millions of other victims across the country who run into the same kinds of problems that you have heard about today" (Young, 1982, p. 72). In the Senate debate of the Protection Act, Senator Mathias (1982, p. 23397) also pointed to rise in crime rates as justification for passing the legislation.

In the preamble of the U.S. Constitution, the framers wrote that one of the principle tasks of the new government would be to “insure domestic tranquility.” However we need only to look at the steady increase in violent crime in this Nation to recognize that this is one areas in which, if we have not failed outright, we are sadly far from success.

Similar claims were heard in the debate considering VOCA. An example is this claim heard in the Senate in 1984 during the discussion of the legislation.

Statistics paint a chilling picture of the extent to which our people are victimized by violent crime. We live in a society in which a murder is committed every 23 minutes, a robbery every 55 seconds, an aggravated assault every 49 seconds. A woman is raped every 6 minutes. The Bureau of Justice Statistics estimates that in 1981...35 of every 1,000 adult Americans became the victim of a violent crime, while property crimes created victims at a much higher rate. (Senator Mathias, 1984, p. 23800)

This claim was also used to create pressure for the passage of bills. As argued by Senator Heinz (1985b, p. 21) in his support for the passage of VOCA,

I believe, Mr. Chairman, that further delay by the Congress for yet another year on victim compensation and assistance legislation can not be justified. Every year almost five million people are violently assaulted and 25,000 people are murdered. Each year 171,000 are raped. How can we possibly fail to act on this legislation given such a staggering rate of violent crime in this country which each day shatters thousands of lives?

After discussing the testimony of one victim, Mrs. Cunningham, who will be discussed further later, Senator Heinz (1985a, p. 45) argued, “I wish I could say that Mrs. Cunningham’s story was an isolated instance. There are thousands of Americans who are running up huge medical bills and whose lives are being ruined by virtue of their status as victims.”

This claim of the rise in the crime rate and the fear of crime seemed to be a particularly popular way to frame claims for the movement. It made logical sense to the claims-makers, and the listeners, that the higher the crime rate, the more likely

one was to become a victim. As a result, there was a push for greater support since one never knew when he or she might be the next victim. The weight of statistics also added to the claims-making. There were references to the popularly known crime clock as well as the Uniform Crime Report and the National Crime Victimization Survey statistics, which were used to legitimize these claims. As a result, claims of rising crime and the resulting fear were important to claims-makers.

### Importance of the Use of Imagery or the Victim as a Powerful Symbol

Another important device was the victim image. As pointed out earlier, those within New Social Movements theory have discussed the importance of ideology and framing, or the assigning of meaning, in a movement. With regard to the victim rights movement, Geis (1990) argues that the movement relies on the image of the “good victim” and the “bad offender.” He writes (1990, p. 259) “...the fundamental basis of power of the victim’s movement lies in public and political acceptance of the view that its clients are good people, done in by those that are bad.” Weed (1995, p. 39) argues:

The rhetorical style of crime stories as presented in testimonials by victims in the media often emphasizes criminals as protagonists and focuses on their evil motives, the gory details of their acts, and the hopelessness of the victim’s situation. Both the criminal and victim are reduced to simple caricatures in these accounts, with the criminal’s motive and actions being the important elements for defining evil.

Part of the success of the victims rights movement then, arguably, stems from its ability to portray victims as deserving of legislative, social, psychological, and emotional help. This image of the “victim” is socially constructed. Nils Christie

(1986, p. 18), argues that "...being a victim is not a thing, an objective phenomena" but is instead created. This definition fits nicely in the subjectivist, social constructionist paradigm. But what does it mean? Christie (1986, p. 19) explains, "By 'ideal victim' I have...in mind a person or a category of individuals who – when hit by crime – most readily are given the complete and legitimate status of being a victim." The ideal victim has 6 characteristics: (1) weak; (2) respectable; (3) cannot be blamed for her actions; (4) attacked by an offender that was big and bad; (5) the offender was a stranger; and (6) the victim is "...powerful enough to make [his/her] case known and successfully claim the status of an ideal victim. Or alternatively, that [he/she] [is] not opposed by so strong counter-powers that [he/she] is not heard" (Christie, 1986, p. 19, 21).

A particularly important image in the passage of this legislation is that of "innocence." The President's Task Force for the Victims of Crime Final Report is filled with examples of this "ideal" victim. In a letter to the President at the beginning of the report, the committee members write, "Never before has any President recognized the plight of those forgotten by the criminal justice system – the innocent victims of crime" (President's Task Force, 1982, p. ii). Throughout this letter "innocent" is used no fewer than four times. Scholars and others writing about the services that are established for victims point out that the word "innocent" is also used in reference to those programs. It is noted that those who apply to receive money from the Crime Victim's Reparation Fund must be "innocent, " meaning that they should not have "precipitated" the crime (Simonson, 1994).

The use of the term “innocent” and what that meant was debated throughout the various hearings that were held on victim compensation legislation throughout the 1970s and early 1980s. In fact, one of the arguments over victim compensation was concern that “undeserving” victims would receive monies. For example, Representative Hyde (1976, p. 8) expressed this concern when he asked in a victim compensation hearing, “Mr. Chairman, would you compensate the injured participants in a Saturday night brawl at the tavern?” His belief was that this person was not deserving of any type of compensation because the victim was not “innocent.” Later Mr. Hyde (1976, p. 21) pointed out that he thought this would affect whether people would support such programming: “...I have raised a problem that I think would have a chilling effect on people’s desire to fund restitution for those who hang around in saloons later at night and become involved in brawls.” Again, because this person was not “innocent” enough.

At another hearing, there was a discussion of who should receive compensation. Representative Smietanka asked if prisoners should be compensated. In answering the question, Professor Rothstein (1976, p. 72), of Georgetown University, noted that though prisoners could be compensated, he “...would personally not be opposed to cutting them out by a specific exclusion because they don’t exert the kind of morally compelling claim that we are talking about.”

Another example is testimony given by a member of New York’s Crime Compensation Board.

Innocent means just that...For example, we had a case just very recently where two young ladies were walking in New York City in the Times Square

area and they were picked up by a man who promised if they would come up to his room he would give them some drugs. They did so. They went to his room but instead of giving them drugs the man raped them both and both gals applied to our board for compensation. It was the decision of the board that they were not innocent victims because they had, in fact, been party to a process which would have led to a conclusion that they were not innocent in that sense. (Morrison, 1976, p. 373)

Or, as expressed by Senator McClellan (1972, p. 131) of the Senate Committee on the Judiciary:

I noticed here, it struck me, the innocent victims. I would be unwilling to pay compensation to a gangster who is killed or caused to be killed by his own leader, possibly, some of his own people, who thought maybe he had betrayed them. I would not regard them as innocent victims. And there are other circumstances where I would not want to see the taxpayers burdened.

It was very important, then, when garnering support for this legislation that it was written so only the “innocent” victim received services and monies.

Closely related to this notion of innocent victims is the fear of fraudulent claims. Representative James H. Scheur’s, Chairperson of the House Subcommittee on Domestic and International Planning, Analysis and Cooperation of the committee on Science and Technology, claimed that the elderly may be the more deserving victim.

To follow up the Congressman’s question about collusion, indeed that would be a problem. I think it would be less of a problem if a program were designed primarily to serve the elderly poor. But if you’re getting to compensate the youthful poor, who are predominantly aggressors, the possibilities of collusion, that at times has been suggested are transparently self-evident. (Scheuer, 1978, p. 26)

Or as cautioned by Representative Seiberling (1973, p. 87):

The other thing that bothers me is the possibility for fraud and abuse under this kind of legislation. I can see all kinds of lazy characters cooking up schemes to have phoney (sic) crimes committed, or maybe not committed

against them, but just enough to get them some sort of compensation. I can even see some lawyers perhaps coming up with genius schemes. I will not say unethical, but ingenious schemes to take advantage of this kind of legislation.

Once controlling for these problematic people, those that “participated” in their victimization or who falsified claims, there was support for the program. This same process is discussed by Rock (1990) in his analysis of victim compensation in Britain. There was concern over fraud and the undeserving victims in the legislative debates over victim compensation in that country. Rock explained (1990, p. 84), “Once the appropriate descriptive work had been done, and the fraudulent and undeserving victim had been shooed away, what public figure could ever stand in the public and deny redress to the suffering and innocent victim of violence?”

Weed (1995) responds to Christie’s work describing the ideal victim by developing the ideal villain/criminal. The villain, who is usually a man, (a) seeks out the weak because he is immoral and cowardly; (b) seeks out those who live “respectable lives” to exploit them; (c) has his own lifestyle and community, but comes out of that place to attack citizens “in broad daylight”; (d) is not linked to the victim in any way, but attacks without provocation; and (e) is evil by nature (Weed 1995, p. 40).

This construct of the “bad” offender can also be found throughout the hearings. For example, as claimed by Representative Hyde (1979, p. 240), “Is it not factual that most criminals are bums – many of them are bums...” Or, there was the criminal characterization by Iowa Department of Public Safety legislative liaison, John Schaffner (1984, p. 107) who argued, “Criminals also, as we know, attack the weak. The reduced physical capabilities of older persons often act as incentives for

victimization.” Place this image against the “innocent” victim and there is quite a dichotomy between victims and offenders.

This dichotomy is plainly seen in Reagan’s 1982 and 1983 Crime Victim’s Week proclamations. In 1982, Reagan (1982, p. 16313, emphasis mine) claims, “The rule of law is fundamental to the preservation of the democratic principles and ideals that *law-abiding* Americans cherish.” In 1983,

For too many years, the scales of justice...have been out of balance. Too often innocent victims of crime turn to their government for protection and support only to find that the criminal justice system seems unable to achieve two of its fundamental purposes – *protecting those who obey* and *punishing those who break it*. (Reagan, 1983, p. 15439, emphasis mine)

Simonson (1994) notes that this “social imagery” serves, as discussed by Durkheim, as a boundary maintenance function: it is the innocent victim (us) against the evil offender (them). An example of this social imagery was heard during the hearings pertaining to VOCA. A major selling point was that the monies for the Crime Victim Fund would “come exclusively from convicted criminals” (Cong. Rec., 1984a, p. 5353) and not from the “law-abiding” taxpayers (Cong. Rec., 1984b, p. 23801). M. Caldwell Butler, a Virginia Representative had originally opposed victim compensation in the 1970s because of the expense. However, in 1984, he testified before the Senate (he was no longer in Congress) in support of VOCA:

I am no longer in a position to judge whether we are now to a point where the federal government can afford any new program...The budget problem is yours. If, however, you choose to provide federal funding for programs compensating and assisting victims of crime, this, in my judgement, is the best approach I have seen. *I do think it particularly appropriate and just to tie expenditures to criminal fines*. (Butler, 1985, p. 26, my emphasis)

There were very few exceptions to this ideal victim/offender dichotomy

image; however, they did surface. During the hearings held for the reauthorization of VOCA, one of the witnesses was Ms. Clementine Barfield of Save Our Sons and Daughters (S.O.S.A.D.). Her testimony is an example of the difficulty of seeing victims and offenders as diametrically opposed. She has quoted her at length so that her claim is made in her own words:

...I thank you for the opportunity to give testimony today, and I do so in the memory of all the many children that have been victims of homicide and other violent crimes. I come before you on behalf of children, too, that were perpetrators of these crimes, and on behalf of other children that have been maimed, paralyzed, and otherwise victimized. On behalf of the many parents...on behalf of all children, family members, and friends who grieve the death of children, and on behalf of the city who loves its youth... S.O.S.A.D. represents all the aforementioned. We are parents of victims and parents of perpetrators, and community leaders, and supporters...We realize and recognized that all of these children are victims...There is an invisible line between victim and perpetrator in all of these cases. My two sons, ages 15 and 16 were shot in July of 1986 while sitting in a parked car at a gas station. One was killed, the other critically injured. Now surely, if my sons had a gun that day, they would not have been victims but instead they would have been perpetrators. That is the invisible line that I am trying to draw...In any case, on October 4, 1986 I would still have been in court. I would have been in court as the mother of a victim or the mother of a perpetrator. In this case it was as the mother of two victims. Two families lost children. I lost my son, and the perpetrator's family lost also. (Barfield, 1987, p. 257)

The previously discussed professor of law, Leroy Lamborn, also questioned the dichotomy of good and bad persons. Discussing self-report studies that report that "...99 percent of the adults in this country have committed crimes for which they could be incarcerated," he argues, "Perhaps we are being a bit holier than thou when we look at it from this point of view – here is an entirely innocent person and here is an entirely bad person" (Lamborn, 1976, p. 139).

There is also the following quote, which gives a very different perspective of

the “evil” offender.

I would like to think that we could have Federal aid not merely for a categorical program of this type, but for citizen action in tremendous talents of people now engaged in lawbreaking for creative work. These are often extremely intelligent, able people who have seen no other outlet for their energies. If we had the more positive kind of Federal aid for job expansion, job creation, then I think we would be really both preventing crime and doing much more to help crime victims. (Gross, 1985, p. 105)

Though these voices of dissent did exist, it was more common for the claims-makers to dichotomize the victim and offender. This dichotomization allowed for a simple, yet powerful, characterization that motivated people to support victim rights.

An interesting question, therefore, follows: if there are “ideal” victims and “bad” offenders, then who are the “real” victims and criminals? Those writing in the field of victimology explore this question. In examining the “facts and the rhetoric” of victimization, Fattah (1989) argues that victims and offenders often share many social characteristics. Studying victimization surveys in Europe, the US, Canada and Australia, Fattah (1989), argues that offenders are disproportionately male, young, urban, low socio-economic status, unemployed, unmarried and (in the US) Black. “Victimization surveys reveal the victims disproportionately share these characteristics and that the demographic profiles of crime victims and of convicted criminals are strikingly similar” (Fattah, 1989, p. 47).

One of the goals of this research was to examine how the ideal victim was presented. Was the victim presented as middle class in status? Were the poor represented as victims? This question was asked in this research based on arguments that the victim rights movement is a middle class movement. John Stein (cited in Clark,

1994) argued that the greatest failing of the victim rights movement is that it is dominated by white females. Left out of the picture, in disproportionate amounts are poor people and people of color who are, as noted above, more likely to be the victims of crime. In a research study undertaken to examine the hypothesis that the victim rights movement has been co-opted by a conservative approach, Smith and Huff (1992) suggest that the movement is white and female. They note that African Americans seemed to be “systematically excluded from potential membership” since the “retributive approach” used by this group is less likely to be supported by African Americans. It appeared that, at least in this sample, African Americans were not invited or informed of meetings and only about half of African Americans who knew of the organization were contacted by the group. Smith and Huff (1992, p. 213-4) conclude:

Special efforts may have to be made to ensure that the views of Black victims are considered before decisions regarding crime and justice are made. Otherwise, retribution-oriented, white-dominated victim's groups will wield disproportionate influence in shaping policies that will *apply* disproportionately to racial minorities, who are over-represented among offenders.

McShane and Williams (1992, p. 261) would most likely agree, as they note that the victim is often presented with “middle class symbolism:”

Removed from the reality of crime as an endemic feature of American life, most middle-class citizens can only understand crime, and their own victimization, as irrational, senseless phenomena. From such a perspective, victims are merely innocent bystanders who are swept into this maelstrom of irrationality. They cannot appreciate crime as a major contributor to an underground economy, a relief from the frustrations of living without means in a property-oriented society, or even as a form of excitement. For the middle class, the victim and offender are part of a strict dichotomy, a mutually exclusive set of categories. The offender cannot be viewed as victim, nor can the victim be viewed as offender.

Keeping these claims in mind, this research examined whether the “real” victims were found in the social construction of the hearings pertaining to federal legislation. Contrary to what was expected, throughout the hearings pertaining to the Protection Act and VOCA there were references to victims as poor, residents of the inner city, elderly and/or of racial minority status. For example, in the first hearing regarding victim compensation, Chairman Tydings (1970, p. 1-2) of the Committee on the District of Columbia, draws a focus to this population:

In the first 6 months of 1969, in the National Capital, 125 persons were murdered or victims of manslaughter; 150 were the victims of rape; and nearly 7,000 were the victims of robbery or aggravated assault. I might say the great majority of these citizens lived in the inner city and the great majority of them were black. The innocent men and women had the misfortune of being in the wrong place and the wrong time.

The police chief (Wilson, 1970, p. 70) of the Washington D.C. agreed with this notion:

Property crimes, of course, hit the affluent and sometimes hit them quite hard, but the person who is really hard hit by the crime is the poor person in the ghetto who is the frequent victim of crime and who loses money and personal possessions to criminals.

This claim was also supported by University of Texas Law Professor, Page Keeton (1970, p. 75):

...while all are potential victims, the greater statistical risk of becoming a victim of violent crime increases as socio-economic status decreases...The President's Crime Commission conducted a study which revealed that “the risk of victimization is highest among the lower income groups for all offenses except homicide, larceny and vehicle theft; it weighs most heavily on the non-white, for all Index offenses except larceny.

References such as these continue throughout the 1970s until the passage of VOCA in 1984. For example in 1976, Santarelli (1976, p. 94) of the American Bar

Association, testified that “The President [Ford] ... noted that the burden of crime often falls most heavily on the poor, as it is generally the poor and the underprivileged who are the victims of crime and can least afford it.” A similar claim was advanced by Representative Rodino (1979, p. 130), “This year, thousands of Americans will fall prey to violent criminal attacks. Statistically, the majority of these victims will be poor, many of them will be elderly or ill.” Or, as frankly stated by Judge Younger (1980, p. 38) of the ABA:

If an individual – and let’s be candid – notwithstanding the well-publicized events TV incidents of recent years, the average victim of crime is not a Member of Congress, the average victim of crime is a dweller of the inner city, ghettos, and barrios, people that are turned off.

Marlene Young (1985a, p. 51), Director of NOVA and quite active in the movement, also expressed this view of the victim:

A Federal leadership role is called for, because crime is a cancer that afflicts us all. And the fact that its impact is most severe on people of color and on the inhabitants of our inner cities makes it all the more worthwhile to engage our national conscience in responding to the victimized among us.

This finding (the image of the poor minority victim) was surprising considering the often made claims that the victim rights movement has been co-opted by the Right. However, when examining the movement at a federal level, this is an image that appealed to the liberal and progressive claims-makers. Therefore, it seems that the image of the victim took different forms (though he or she would presumably still need to be “innocent”) for different claims-making groups. These different images, whether middle class or poor, allowed different groups to support the legislation.

However, there was concern expressed relating to these class issues that

surfaced throughout the hearings. In a 1980 hearing, David Marlin (1980, p. 60), of the National Council of Senior Citizens noted,

Unfortunately, despite the troubled circumstances of the victimized, most victim compensation programs are designed as if their eligible claimants are all well-educated, middle-class citizens. Some of these state policies are merely insensitive to the social circumstances of victims. This is particularly true of their elaborate, forbidding claims procedures. But other policies, such as the minimum-loss rule, are overtly discriminatory against crime victims who happen to be poor.

This worry surfaced again during hearings on VOCA in 1984. Representative Conyers (1985, p. 96) noted,

I am concerned with the fact that minorities are often not made aware of programs and then, for other reasons, do not frequently participate in them. I think it is widely known, but we would not want those statistics to continue in this kind of program.

This concern was also expressed later in the hearings by Howard Zehr (1985, p. 387) of the Victim Offender Reconciliation Program:

It is my impression from the literature on victim compensation that while the concept is good and many programs are good, programs have often been underutilized and selectively utilized; they are not used as extensively as they should be and they are often applied more to well-to-do people than to minority and to lower income people. This happens for a variety of reasons: part of it is the redtape involved, partly this is a result of the classes of cases that are excluded (some exclude nonresidents, many exclude relatives – a variety of exclusions) and partly it is because programs have not been publicized.

The same concern was also expressed by William Matthews (1985, p. 177), Executive Director of the National Organization of Black Law Enforcement Executives, who argued: “In the inner city areas, where we have a great deal of violent crime, black-on-black crime, to be particular, these kinds of services [victim assistance and compensation] do not usually get down that far.” Or as expressed by Anne Barrett

(1985, p. 95-6) of the Unitarian Universalist Service Committee,

...I think communities, particularly minority communities, poor communities, have some real fears about cooperation with police and the courts and what that means to them, how that would impact on their lives in a variety of ways...The other overall concern that I had when I looked at the bill in general was to question myself, would this be essentially a program set up mostly for white middle and upper middle-class people, and I say that basically because those are people that know how to access services that are available. We have all agreed in the variety of testimony that these would not, because of the amount of money and resource that we have, be broad services, so we would be talking about the ability to access those services.

So though the poor were recognized as victims in the legislative hearings, as pointed out by these claims-makers, that did not necessarily mean that legislation at the state level met their needs. Part of the early debate over victim compensation was a debate over whether rules such as the minimum-loss rule, where the victim had to lose a certain amount before compensation would occur, would be enforced at the federal level. As discussed in Chapter IV, the final victim compensation legislation left states to their own discretion in decisions such as these. In other words, with regard to the issues raised during the hearings--the complicated forms, the minimum loss-requirements, under-utilization, etc.--the states were to deal with these problems on their own. As a result, those individual state programs could still be biased in the favor of the middle class.

To summarize, one of the devices used to motivate support for the movement was the creation of a victim image. This was the image that would come to mind when we heard about crime victims. The first characteristic of the image was "innocence." The more "innocent" the victim, the more likely that others would support victim services or compensation for him or her. Based on claims that the victim

rights movement had been co-opted by conservatives, it was expected that the ideal victim image would also be that of the middle class even though crime statistics show that it is poor people that are more at risk for victimization. During the actual data collection however, it was discovered that there were a number of references to the “poor victim” (though he or she was still referred to as innocent). This can be explained by the fact that liberals and progressives were involved to a greater extent than expected at the outset of the research. So it seems that there were these different images of victims that allowed different groups to be comfortable in their support for this federal legislation.

A related issue, the participation of the poor and minorities in the movement, was also researched to a limited extent. In an interview, Young (personal communication, February 9, 2000) noted that in the 1980s, the movement was dominated by white females. However, she also notes that NOVA recognized this as a problem and was (and still is) active in trying to reach out to people of color and men. When the question of whether the victim rights movement was dominated by white women was posed to Lois Herrington (personal communication, February 20, 2000), she answered that the outreach of the President's Task Force resulted in high participation by people of color because those in the minority community were more likely to be victimized. However, those hearings were not examined in this analysis. An examination of those hearings might shed further light on the analysis.

To summarize, issues of class and race were more complex than expected. Based on critiques of the victim rights movement as biased in favor of the middle

class, the researcher did not expect to see the issues people of color and/or working class people addressed. However, as discussed, these populations were referred to in the fight for victim rights. This can be likely be explained by the fact that liberals and progressives had more voice at the federal level than the researcher expected to find and this victim image of the person of color or working class individual as a victim fit nicely within liberal and progressive ideology.

### The Use of Horror Stories

In addition to the fear of crime and the symbol of the victim, the use of horror stories shaped support for the movement. Johnson (1995) notes the importance of the use of horror stories in establishing a movement. In his research, Johnson (1995) examined the use of horror stories in the creation of child abuse. This same analysis is more than applicable to the victims rights movement. As Walker (1989, p. 167) argues, "The victims' rights movement draws much of its energy from the horror-story syndrome." More than once while doing this research, the researcher was moved by the individual victims whose stories appeared. In the words of the President's Task Force (1982, p. vii), "We who have served on this task force have been forever changed by the victims we have met, by the experiences they have shared, by the wisdom sprung from the suffering that they imparted." Or as noted by Marlene Young (1982, p. 72), of NOVA, "Whenever I hear statements such as you have heard today from victims of crime, I have a sense of outrage. It cannot help but be engaged by their reports...." These horror stories are the stories that stay in our minds. These

are also the stories that drive legislation. These are the stories to which we have gut reactions. In Gamson's (1995) terms, as discussed in Chapter II, they tap into the injustice framework that puts "fire in the belly" and serves as motivation for the movement. These are the stories that construct what we view as crime and who we accept as crime victims. And, it should be noted, crime is presented in a certain way. The crime that we are exposed to in these stories is one-on-one (and for the most part, extremely) violent harm. The images found in the Task Force Report (1982) fit the one-on-one violence description that is so aptly described by Reiman (1995):

- a young woman is murdered while walking across a campus
  - a child is molested by his bus driver
  - a man answering his front door is shot in the chest
  - an elderly woman is shoved down and her purse is snatched (after which she can no longer walk)
  - a woman is raped in a restaurant bathroom
  - a pharmacist is confronted by a robber in a ski mask
  - an elderly man is assaulted in the street from behind and left blind
  - a woman survives 5 hours of rape and torture after being jumped in her car
  - a cabdriver is shot when he turns to collect his fare
- (Task Force Report, 1982, pp. 2-3)

In an extremely vivid image, the President's Task Force on the Victims of Crime led the reader through the criminal justice process from the perspective of a 50 year old female victim who was left beaten, battered, bruised, and raped after a man broke into her house in the middle of the night. Throughout this 10 ½ page walk through the criminal justice system, the reader-as-the-victim, experiences re-victimization by the police, the prosecutor, the judge, the defense attorney, the offender, employer and friends, and, (lastly) the correctional system. While commission members noted that "...not every victim will face every one of these

problems,...” after reading the 10½ pages, one is left feeling afraid of the prospect of becoming a victim. One feels that something *should* be done about the system. Still, one may question how this creates the notion that we need to “do something?” If the reader does not pick it up based on reading the report, the Task Force answers, “Based on the testimony of...victims, we have drawn a composite of a victim of crime in America today. *This victim is every victim; she could be you or related to you.*” (Task Force, 1982, p. 3, emphasis mine).

These stories leave the reader angry and, possibly, motivated. This, however, brilliantly illustrates a point. This process *is* the social construction as it occurs in the victim rights movement. As expressed by a law professor during hearings on victim compensation,

Congressman, I do agree that emotional appeals by showing the victims, while important, do tend to cloud judgment, because there is none of us here who could sit and watch the film showing these victims who would not feel sympathy, and feel impelled toward this legislation. (Rothstein, 1980, p. 36)

These images of crime, found in the earlier discussed President’s Task Force report, are found throughout the hearings held. As discussed earlier, they are generally particularly violent one-on-one harm and the victim more than likely fits the “ideal” victim image. Rarely was white-collar crime discussed (for exception, see Rodino, 1982a, p. 11051). Instead, there were stories of cold-blooded murders of daughters, sons and mothers and rapes and mutilations of children and wives among the horrors. Over and over, one reads stories of:

The rape victim who is now suffering nightmares and feels afraid to be alone; the elderly woman who was brutally assaulted because she tried to hold on to her purse; the handicapped man who was beaten within an inch of his life

because he ventured out for a walk in the park; the couple who have worked long and hard to create a small neighborhood business, who were robbed and beaten at gunpoint. (Hartigan, 1983, p. 9)

Introducing S. 2423, the bill that became VOCA, Senator Heinz told the particularly powerful story of Mrs. Cunningham who had been the victim of a purse snatching. Mrs. Cunningham, 77, was pushed down during this attack and as a result, her upper arm and shoulder blade were “shattered” (Heinz, 1985a, p. 45).

Mrs. Cunningham never knew a day free from pain after her assault. She had extensive surgery on her shoulder. She was hospitalized for 49 days and had outpatient therapy twice a week for more than 11 months. She was treated by several doctors but never regained the use of her hand. Because of the cost of these medical procedures, she had to give up her house and relocate. (Heinz, 1985a, p. 45)

Senator Heinz continued the story noting that Mrs. Cunningham’s attacker received a sentence of 2 to 4 years and was required to pay \$126.00 in restitution. However, Mrs. Cunningham’s medical bills were over \$12,000. He then concluded the story with the news that Mrs. Cunningham died in December of 1982 and “...the robbery and its repercussions were substantial contributing factors in Mrs. Cunningham’s death” (Heinz, 1985a, p. 45).

Horror stories were used to challenge those that opposed victim legislation. For example, is Carl Jahnke’s (1973, p. 98), member of New York’s Crime Victim Compensation Board, testimony:

There has been considerable comment on opposition to this whole concept for a number of reasons, cost and otherwise. I would suggest this to the persons who oppose it...The father of two small children, blind in one eye, was having Christmas dinner with his family, and took a walk, as I suppose we all do, particularly on Christmas. He walked three blocks and was mugged. His money was stolen, he was beaten up pretty bad, and as a parting shot, the perpetrator of this offense put an ice pick through his good eye, and rendered him

totally blind. When I find cases like that, I cannot in any way, shape or form develop opposition to this kind of legislation.

Or this horror story from Senator Griffin (1972, p. 396-7) who excerpts a victim's letter as part of his statement.

On October 1, 1970 I was brutally attacked in my own home. I was beaten, raped, strangled into unconsciousness, set on fire and left to die. My assailant...is currently serving a life sentence in [sic] Southern Michigan Prison for the vicious crime of trying to murder me...My burns were 85% full thickness...The agony and pain were so utterly unbearable I was completely out of my mind for 13 weeks...I have only half fingers. My breasts were burned away completely, and after trying for five months to save my left arm...they had to amputate it...I am scarred for life from my chin to my toes. I am unable to take care of my family or run my household. I will never be able to get a wage-living job nor will I ever be eligible for medical or life insurance...Am I not entitled to some sort of compensation for this cruel fate I must live the rest of my life? As a member of Congress in this great and fair country, please help me.

In addition to these horror stories that focus on violent crime, John Stein (1984, p. 134) tells a story used to illustrate the difficulties experience by the poor or, in this particular case, the elderly.

And for the elderly, the cases are too frequent to show that the loss of \$50 can mean the difference between decent meals over the next week or two and surviving on ketchup and crackers, as we have found with some elderly people who are the victims of "small" larceny.

The stories presented here are just a small sample of the powerful stories told within the hearings.

These horror stories did have an effect on those individuals that heard them. The stories of victims Douglas Payton, Geraldine X, and Virginia Montgomery, each of whom had testified at the Victim and Witness Protection Act hearing were cited in Sen. Rep. 97-532, the report of the Senate Committee on the Judiciary as

justifications for the reported bill. They were also cited in the Congressional Record on September 14, 1982 by Senator Heinz. He (Heinz, 1982a, p. 23396) noted,

I especially appreciate the assistance of the citizens who came forward to testify at the hearings on this bill...I will never forget the testimony of Virginia Montgomery, who after being mugged just a few blocks from the Capitol, had to pay \$11,000 in doctor's bill, only to be treated shabbily by the criminal justice system. Nor will I forget the testimony of Geraldine, who was kidnapped, raped, and robbed at gunpoint and said that her treatment by the courts and prosecutors were so bad that she would never recommend to any rape victims that she go through a trial. Nor will I forget Douglas Payton, who brought with him photographs of his deceased wife and testified to the pointlessness and brutality of her murder – which could have been prevented had the Federal Government not been grossly negligent.

These horror stories were used as a motivational tool within the victim rights movement. When listening to the horrors that people experienced, particularly when combined with the notion that these people were innocent, it was difficult to argue against acting on behalf of victims. These stories served to rouse the sympathies of the listener. They served, as discussed earlier, to put “fire in the belly.” They served to motivate action on the part of the listener. Horror stories pointed out injustice and legislators held the key to balancing that scale.

### Use of the Media

Moving to an area that would probably fit under both New Social Movements theory (disseminating ideology) and Resource Mobilization theory (access to more people), the media also plays an important part in the dissemination of claims by the movement. Closely related to horror stories and fear of crime, “The news media play upon people's ideas about good and evil and casts crime into an understandable

image” (Weed, 1995, p. 36). Those images reinforce the claim predatory crime is increasing against children, women, and the elderly and action must be taken to curb it. “Media exposure is part of the life-blood of a modern social reform movement, and activists always complain that they are not getting the amount and kind of coverage they would like to have” (Weed, 1995, p. 92). For example, those working at the National Crime Victim Center found that the media could be a powerful way to reach audiences. After their public service announcement or when the organization’s phone number was aired during the “Sally Jesse Raphael” show, the number of calls they received in the following days increased tremendously (Weed, 1995). This section of the dissertation actually consists of two types of analysis. The first part examines the media within the hearings. In the second part of the analysis, major news-magazines and newspapers were examined for their coverage of the Protection Act and VOCA.

When examining the hearings and federal legislation, there were not many references to the media. Rather, there were scattered references to the media such as “tormented gun victim asks why” in Crime victim compensation (Gonzalez, 1976, p. 916) and the inclusion of the US News & World Report article, “Public pay for crime victims: An idea that is spreading” in the 1972 hearings (Victims of Crime, 1973, p. 304). In 1977, there was a presentation of a 60 Minutes broadcast called “victims” (Victims of crime compensation, 1979, p. 17) which seemed to make an impact on the persons at the hearing since there was discussion about the film.

The importance of the media was directly discussed in one hearing. In

response to a question asking if attention in the media had grown, the witness responded,

[It] certainly has. I think one thing that has happened has been the media awareness with the crime of rape, sensational crimes, and they received extensive coverage by the media, which pointed out, particular plight of rape victims which has kind of accelerated a look at victims as a whole. (Haas, 1979, p. 228)

A similar claim was made with regard to elderly victims who received increasing attention throughout the 1980s.

For the elderly, crime or fear of crime has become a deadly serious matter. Newspapers are increasingly reporting the senseless brutalization of older Americans, generally by teenagers, for the sake of a couple of dollars. A recent article in Time magazine even reported the death of a 72-year-old woman who injured her head as she was knocked to the ground by a 16-year-old boy who made away with her purse containing all of 16 cents. Even more horrifying was the story in the Washington Post of the elderly couple in New York who had apparently committed suicide after living in terror of crime in their neighborhood. (Mench, 1979, p. 218)

Turning to the attention that this legislation and victim rights received in the media, the President's Task Force noted in a follow-up report issued 4 years after the original report:

When the Task Force began looking for published stories on crime victims, it turned up very little reported material. The issue had been largely ignored. Now, every major broadcast network, every national newspaper and magazine, and hundreds of local media sources have covered the plight of victims of crime. (President's Task Force, 1986, p. 8)

Young (personal communication, February 9, 2000) also expressed some disappointment at the level of media coverage regarding victims' rights. She argues that rather than the media covering the movement, the victim rights movement has served to educate the media in their coverage of crime victims in terms of sensitivity.

Stein (personal communication, February 9, 2000) argued that there were some positive media images in made-for-television movies such as the "Burning Bed." However, he also noted that much of the coverage that attracts media attention is "bleed and lead," which is problematic since it dehumanizes the victim.

To examine media coverage related to the Protection Act and VOCA, the Washington Post, the New York Times, Time, U.S. World and News Report and other popular national publications such as Good Housekeeping, Aging, People Weekly, Psychology Today, Jet, McCall's, Glamour, Reader's Digest, Ms., the Saturday Evening Post, USA Today, Life, Vogue, and Better Homes and Gardens, were searched for articles on victim rights from the years 1963 to 1989. While searching the Reader's Guide to Periodicals for victim articles an interesting pattern developed. Throughout these years, the number of articles addressing victims increased in number. Also interesting was the increase in the number of victim categories or sub-classification of victims: women, elderly, blacks, children, college students, among others (for graphs, see Appendix A).

The first reference to victims was found in the early 1970s and, in fact, it was an article in Time magazine that focused on victim participation in crime; an article that would now be considered controversial for its victim blaming connotations ("Is the Victim Guilty?" 1971). Overall, the reporting in media articles examined for this dissertation can be divided into three areas of focus: elderly victimization, victim services, and victim compensation. The elderly were focused on as crime victims, particularly in the 1970s and 1980s. As with the discussion in Chapter IV, the elderly

were considered as more likely to be affected by crime and more fearful of crime in the media articles. Examples included that the elderly were “prisoners of fear” (“The Elderly,” 1976, p. 21), were most vulnerable to “swindlers” (Cohen, 1980, p. 76) and were in a “crisis situation” (“Flemming Urges,” 1975, p. 5) whose “special vulnerability serves as a green light to criminals” (Goldsmith & Thomas, 1974, p. 10). Horror stories were often used as a part of these stories. Articles about victims also focused on the provision of victim services. Most of these articles described victim services in a positive manner: for example, asserting they were remedying the problems of “the forgotten victim” (Horn, 1975, p.15) and “...mak[ing] the judicial process as understandable and painless for those who are innocently ensnared in it” (O’Shea, 1976, p. 37). Victim advocates were described as “a new style of crime-fighter” (“Victim Advocate,” 1982, p. 78) of whom one officer was quoted as saying, “...I’d rather go to work without my revolver than without those volunteers” (Fincher, 1985, p. 19). Again, these articles used horror stories as illustration.

The final focus found within these articles was on victim compensation. There were references to victim compensation programs throughout the time span studied. The first reference to crime victim compensation found was in U.S. News & World Report in 1971 where the title claims, “Public pay for crime victims: An idea that is spreading.” The article reported on an early VOCA bill sponsored by Senator Mike Mansfield (“Public Pay”, 1971). In the late 1970s, when there was opposition to the bill based on costs and federal intrusion into state power during hearings, there were media reports of the debate (“Aid to Crime Victims,” 1978; “Aiding Victims,”

1977; Flaherty, 1979; "House Approves", 1977). Two articles even encouraged readers to write to Congress in support of victim compensation/services (O'Shea, 1976; Rule, 1977). Articles reported on state compensation programs as well. For example, there were reports on New York (King, 1972), Washington State ("Easing Crime's Pain," 1974; Melton, 1982), the District of Columbia (Moskowitz, 1978), as well as reporting a listing of all states who compensated victims ("Aid to Crime Victims," 1978; Pivowitz, 1983; Rule, 1977).

There were only a few references to the Protection Act in articles. Senator Heinz, (1982d, 1984a) who had sponsored the legislation, wrote two articles in support of the legislation he sponsored in Congress. There was an editorial in the New York Times ("Remember Crime Victims," 1982), during the process of passing the legislation, which was fairly positive. Though it argued that the bill was symbolic, it did note that the bill did not infringe on defendant rights and was advantageous for the fact that it did not cost much while working to restore public confidence in the justice system. VOCA received a bit more attention in the media, particularly after it was passed and the news was disseminated that victims could be compensated for becoming the victims of violent crimes.

As noted in Chapter II, these articles were also used as a method of triangulation to ensure that all the major claims-makers were found. The major claims-makers cited in these articles remained the same as those discussed throughout the dissertation as participating in the hearings. The majority of quotes from those who served as experts were Lois Herrington, John Stein, Marlene Young, Frank Carrington, the

President's Task Force on the Victims of Crime, and, of course, President Reagan.

Closely related to media use is the use of celebrities. Using celebrities (as supporters or as victims) can bring attention to the movement. For example, within the victim rights movement, John Walsh has taken on a celebrity status and has testified in front of congressional hearings. Marla Hanson, described as "an up-and-coming" New York model before her face was slashed by a razor blade, has also participated in a variety of activities: talk shows, congressional hearings, and speaking engagements (McAdoo & Buchsbaum, 1992). Celebrity stalking spurred interest in stalking laws, though non-celebrity women had been the victims of stalking long before their involvement. An example of this was the killing of Rebecca Schaeffer by an obsessed fan, which spurred a spike in attention to stalking (Lowney & Best, 1995). However, Weed (1995) cautions that there is a point of diminishing returns as it is also possible that the celebrity can come to outweigh the issue raised.

With regard to the victim legislation hearings, there were so few "celebrity victims," that they did not represent a threat of overpowering the issues. There were two persons that testified that could be considered of celebrity status. Connie Francis (1979, p. 260-1), victim of a rape at Howard Johnson's, testified at the Law enforcement assistance reform hearings in support of victim services: "I was lucky. I came away with my life. I had a friend who is a brilliant attorney. My name is Connie Francis, but what happens to a little guy? What happens to him or her?" Mark Mosely, of the Washington Redskins, also testified in support of VOCA in response to the rape and murder of his sister. He also pointed out the significance of the fact

his family had money and were able to afford counseling and other support.

I feel very sincere about this bill; it should be enacted into law. There are so many people out there...I was fortunate to be a member of a family who could afford professional help when needed – but there are so many people out there (sic) do not have the means to get help. I feel that this bill is necessary and appropriate. (Mosely, 1985, p. 212)

When examining the media coverage, there was coverage of victims or their families that took on celebrity status even if they were not celebrities before the victimization. Many of these cases were persons who started a grassroots movement after being victimized themselves or were suffering from the victimization of a loved one. Many of the individuals cited in these articles were not present during the hearings examined for this dissertation. For example, there was an interview with Janet Barkas: a women who studied criminology after her brother was killed (Burstein, 1979). There were also articles on Society's League Against Molestation (SLAM) which agitated for reform of child molester laws in California (Bacon, 1982); Sharon Tate who worked on denying parole to her daughter's (actress Sharon Tate) killer (Adelson, 1982); and the Stephanie Roper committee, which worked to change what were considered to be lenient sentencing laws after their daughter was murdered (Barlas, 1985; Ralston, 1985; Thimmesch, 1984) as well as the ordeal of Betty Spencer, who founded Protect the Innocent after the murder of her sons during a break-in (Miller & Miller, 1986; Ralston, 1985). Another example to this is P.O.M.C. (Leerhsen, 1982) who was represented in these media stories and, as discussed earlier, minimally involved in the victim compensation legislation as a supporting witness.

There were other stories, which focused on victimization experiences, rather than grassroots organizations. They were written in a manner to show the devastation to the victim and/or his or her family (Gilbert, 1984; Tofani, 1983). In other words, they were horror stories. As in the hearings, these articles focused heavily on the use of horror stories in their explanations of the victimizations. They emphasized or implied the need for change. As one titled noted, "Complaint of crime victims: Where are *our* rights?" These articles that focused on victims and/or grassroots groups also focused exclusively on the violent crimes, particularly murder. Stein's earlier "lead and bleed" comment is a correct description of the coverage of these victims.

To summarize the influence of the media on this legislation, it can probably be explained as indirect. Though victim activists may not have been particularly pleased with the attention given to crime victims because it is seen as inappropriate, this attention did serve to bring attention to their claimed plights. The focus on these victims tended to be on the horrors that they had experienced and the mistreatment they suffered at the hands of the justice system, which is fairly effective in neutralizing opposition. As discussed, in the media there was attention paid to various grassroots groups that agitated for change, particularly on the state level. This, then, promoted the larger victim rights movement. The victim compensation movement did receive some media attention, particularly in the late 1970s when there was a debate over the merits and cost of these types of programs. The Protection Act received limited attention while VOCA, as a result of its victim compensation history,

received a bit more attention, particularly when it could be reported that federal funds were on the way to state programs.

### The "Rights" of the Victim

As Swidler (1995) argued, it is important to examine culture when analyzing the success of claims. The United States has a culture that values "certain inalienable rights." Best (1987, p. 16) discusses the use of "rights and freedoms" in his research on missing children. This is also quite applicable to the victim rights movement. "To claim rights is to claim new status or, more precisely, to elevate the status of the crime victim in the criminal justice system" (Weed, 1995, p. 115). This notion of the "rights" of citizens was put forward as justification for victim compensation programs:

Mr. Chairman, I believe that society has an obligation to meet the needs of victims of criminal violence...Heretofore modern American law has only recognized and provided for the rights of those accused of crime. This legislation before us today provides for the rights of the victim, and it would help fulfill what I consider to be a social contract between the State and its citizens. (Maraziti, 1973, p. 107)

Likening victim rights to the fight for civil rights, Frank Carrington (1976, p. 512), representing Americans for Effective Law Enforcement and noted by some as the "father" of the victim rights movement, argued,

My point is that none of the advancements that we have made on racial grounds would have happened if a consciousness had not developed that minorities *had* rights and were entitled to those to have those rights enforced... We need to recognize the fact that *victims have rights* too.

Weed (1995) argues that one of the most typical images is that of "balancing

the scales of justice” because victims are seen as having far fewer rights than the accused (Weed, 1995). Introducing a victim compensation bill of which he was cosponsor, Senator Mansfield (1972, p. 347) argued, “We are always talking about the constitutional rights of the criminal but we seem to be, almost always, forgetting about the constitutional rights of the victim.” Or as noted, by Senator Hansen (1972, p. 352), in the same hearing, “I think at times the court has been misguided in their determination to see that every constitutional right of the accused is protected and to give little or no attention to the victims of crime.”

Senator Paul Laxalt (1979, p. 195) made a comment which was very typical for those fighting for the balancing of rights.

After a crime has been committed, the system uses the victim as a witness to help prove its case, but usually treats the suspect or defendant with greater respect, and gives him better services than it does the victim. Although criminal defendants are housed, fed, clothed, provided with attorneys paid by the taxpayer, given social counseling and a broad range of other services, in general, the victim is provided with nothing. He or she must use their own resources to replace their property, to get medical assistance, to restructure their life, or whatever else, is needed, and nobody in the public sector, for the most part, pays any attention to him at all.

Senator Laxalt (1982, p. 1) also used this argument in his support for Protection Act.

Too often, victims and witnesses have been the forgotten persons in our criminal justice system. This same system of justice, on the other hand, goes to extraordinary lengths to care for the convicted criminal. The very same criminal who does his utmost to make an otherwise peaceful society one filled with dread, fear, and violence.

In one of the more colorful claims to illustrate this importance of balance, a representative of Cook County State’s Attorney’s Office argues,

It is very much of an outrageous situation when we coddle the criminal at the expense of the victim... We provide the criminal with free counsel at the trial

stage, free transcripts, free appellate service, and free post-conviction aid. We service the criminal with elaborate rehabilitative programs and customized work release programs. To attempt to explain and to justify these efforts to the ignored victims of the crime, particularly of a violent crime, is like trying to pack 2 pounds of manure into a 1 pound bag. Indeed it cannot be done and results only in a mess with a rather distinctive order. (Delfino, 1976, p. 265)

Likewise, the Attorney General's Task Force on the Violent Crime (1981, p. 87) argued that "we" have a "duty" to protect the victims of crime, which is closely related to the notion of a "right." To further back up their point, they note,

Our society is based on the rule of law rather than individual anarchy and personal vengeance. Members of society have given up their right to personally enforce the law and to collect their own retribution in favor of our federal, state, and local governments performing those roles. As a result, government owes a duty to protect law-abiding members of society. (Attorney General's Task Force of Violent Crime, 1981, p. 88)

The claim argues that there is an obligation for the state to do something for the victim. It taps into the cultural beliefs that each of us, as individuals, have certain inalienable rights. Victim activists sought to add to the list of rights in terms of victimization.

Weed (1995, p. 132) claims that there has been backlash against the Warren court decisions:

These have become seen by segments of the middle-class public as the criminal's rights; not the rights that protect all citizens under the Bill of Rights, but rather the rights that protect criminals from receiving their "just deserts." Therefore, much of the anticrime legislation can be seen as counterbalancing criminal rights with victim rights.

However, an examination of the hearings held at the federal level shows there were numerous individuals who were interested in retaining the rights of the offender also.

For example, Young (1982, p. 80) noted during the hearing for the Protection Act:

NOVA has never argued that the accused should be denied the rights guaranteed under the Constitution. What we have argued is that, in a system that seeks justice through adversarial proceedings, the victim deserves to be a part of those proceedings, and to be assured that his just claims to information, notification, protection, and restitution are honored. All we seek, in essence, is a system of justice, which takes into account the rights of the accused – including the innocent – and the rights of the victim – including the innocent.

Concern with offender's rights has been expressed throughout the history of the movement. It was hinted by Senator Yarborough (1965, p. 265), in an article he wrote about his bill that appeared in a law journal, when he argued that the attention paid to offenders was legitimate though the victim did deserve more attention. This claim was also seen in the first hearing on victim compensation. Professor Page Keeton (1970, p. 80) argued,

I do not decry the emphasis on being just and decent to those who commit crime, because, if we are concerned with the protection of our citizens, we want to rehabilitate the man who has been an offender, but I do think we lose some interest in the victim.

In 1972, the same sentiment was expressed by the Executive Directive of the International Association of the Chief of Police, Quinn Tamm (1972, p. 491):

Neither the distinguished members of this Subcommittee nor the law enforcement community would want to see the constitutional rights of the defendant restricted; but federal assistance, of equal regard to innocent citizens who lives are torn apart by vicious acts of violence, is a concept deserving of our efforts as a nation of free men.

Even those who were considered to be conservative in other respects noted that offenders' rights need to be retained. For example, Frank Carrington (1979, p. 218) argued "...you can increase the rights of victims substantively, procedurally and compassionately without doing injustice or damage to the fundamental rights of the criminally accused." Republican Representative Charles Wiggins (1979, p. 59)

argued, “I don’t think we should respond to that public perception of ‘pampering criminals’ by eroding what may clearly be their constitutional rights, even though that right may not be broadly perceived by the public sector.”

There was also testimony in the early 1980s, concerning the protection of rights of offenders. In the following testimony, law professor Paul Rothstein, actually combines concern for the victim and offender.

The other convincing rationale to me for why the Government should get involved is that we spend an awful lot of time, money and effort on the criminal – and I think that’s all to the good – guaranteeing his rights, with an elaborate network of constitutional rights, including a free lawyer, free room and board. It runs into tremendous costs in prison. And that’s all to the good, it seems to me. The answer is not to diminish the criminal’s rights, the accused’s rights. The answer is to look at the victim and see that he get parity of treatment, equal rights. (Rothstein, 1980, p. 52)

Representative Hamilton Fish (1985, p. 7) argues similarly when he claimed, “I do not urge less justice for the accused, but only that simple justice requires as much compassion for the victim as the victimizer.”

As seen in Chapter V, there were claimsmakers who supported the federal legislation because it attempted to meet victim needs without curtailing the rights of offenders. Again, this attention to offenders and the retention of offender rights is more than likely a function of the liberal and progressive element of the movement. These groups were not alienated from the legislation because it was seen as giving help to crime victims without substantially harming the offender. As discussed before, this contributed to the success of the movement.

While examining this use of “rights” and “duties” with respect to victims, there was another claim that surfaced numerous times throughout the hearings related

to victim services and compensation. To explain this idea, the Code of Hammarabi claim, once again the work of Best (1987) is drawn upon. Along with the earlier discussed justification of claims based on “rights,” he argues that another justification was historical continuity. When using this justification, the claimsmakers appeal to history, and in the case of victim activists, they recall and emphasize it. The Code of Hammarabi claim recalls a time when victims were compensated for the losses they experienced as a result of criminal activity. Professor Leroy Lamborn (1976, p. 118) quoted the touted Code:

...if the robber is not caught, the man who had been robbed shall formally declare whatever he has lost before a god, and the city and the mayor in whose territory or district the robbery has been committed shall replace whatever he has lost for him. If [it is] the life [of the owner that is lost], the city or the mayor shall pay one maneh of silver to his kinfolk.

One of the purposes of this claim was to highlight that victim compensation was not a new idea. Rather than being a new and untried program, which had risks attached to it, claimsmakers were arguing that these types of programs had been enacted and tried elsewhere. For example, when Senator Yarborough (1970, p. 21) introduced his first victim compensation bill he argued, “This is not a new act, it goes back many hundreds of years.” Others in the same hearing supported this claim. Each of the scholars in the hearing commented on the Code of Hammarabi as a forerunner to the modern crime victim compensation movement (Geis, 1970; Keeton, 1970; Morris, 1970; Shafer, 1970).

This same argument was repeated throughout the 1970s. In 1976, Donald Santarelli (1976, p. 91) who represented the American Bar Association, introduced

his support for victim compensation, by arguing that “Compensating victims of crime is an ancient practice going back to the penal code of Babylon, the law of Moses, and the Code of Hammurabi.” The following year, 1977, in hearings addressing elderly crime victim compensation, Representative Biaggi (1977, p. 30) argued,

This concept of dealing with victims is not a new one. It goes back 2,000 year B.C., to the Babylonian Code of Hammurabi. But somewhere in the development of civilization we have forgotten as a Nation, as a people, the responsibility to those victims.

He (Biaggi, 1979, p. 4) also testified in a 1978 compensation hearing, comparing modern society and previous societies: “Surely after 4000 years, our progressive society should be able to adopt such a system.”

Interestingly, this claim was not heard during the early 1980s. It seems that this justification was not needed as there were not as many questions concerning justifications for federal involvement in compensation programs. As discussed earlier in this chapter, John Stein (personal communication, February 18, 2000) noted that he did not face opposition to victim compensation regarding the role of the federal government. As a result of this, claims-makers probably found it less pressing to recall the history of victim compensation since the concept was more acceptable.

In summary, we can see how the use of the fear of crime, the “innocent” victim image, horror stories, the media, and the characterization of victims as having rights have contributed to the dissemination of the claims made by various groups working within the victim rights movement. Each of these claims-making devices are more thoroughly explained by New Social Movements theory since it focuses on ideology and culture as motivating support for the movement. However, there are

other aspects of the movement that have also contributed to its success.

The victim rights movement was successful at getting people motivated to “do something” about their claims. Hartjen (1977) discusses two other groups, besides the media, who are important in deciding whose interests will be promoted in social movements. These are the government or public officials, and private interest groups. Examining these groups also tap into the concepts put forth by those writing within the Resource Mobilization perspective which, as discussed earlier, focuses on the importance of economics and social networking. These governmental officials and private interest groups and the networking they participated in are more thoroughly explained by Resource Mobilization theory.

#### Public Officials

Hartjen (1977, p. 56) notes that in modern society, government agencies are the “...organizations that can legitimately claim to speak for the entire society...as a result, government officials are in a key position to determine and shape the number of and kinds of social problems a society exhibits.” Governments are the largest “special interest bloc” available and with ready access to the media can be helpful in promoting the interests of a social movement (Hartjen, 1997). In this case, government officials were quite influential in promoting victim rights. McGillis and Smith (1983, p. 31), who did an analysis of victim compensation programs in the United States argued,

The list of sponsors of these [federal] bills over the years reads like a Who's Who of American politics and includes such diverse and influential legislators

as Hubert Humphrey, Strom Thurmond, Mike Mansfield, John Eastland, Edward Kennedy, and Peter Rodino.

They continued, "The odyssey of victim compensation legislation through the federal legislative process has been intriguing. The inherently appealing nature of the proposal and the political power of its sponsors make its repeated failure particularly striking" (McGillis & Smith, 1983, p. 32).

However, an explanation for this belated success with the passage of VOCA, may be found with presidential support. As discussed earlier, Elias (1993) argued that the movement gained great strength when President Reagan threw the weight of his political office behind it. In an interview, when Judge Haight Herrington was asked if there was an explanation for the fact that VOCA passed in 1984 rather than earlier, she replied, "Sure. We got the President's backing. You know a lot of things change when you get the president's backing. No matter who your president is" (personal communication, February 10, 2000). Later, in the same interview, she expressed the importance of President Reagan holding Rose Garden Ceremonies for victims which was "...something for the world to see." She argued, "...that kind of public acknowledgment of their plight, and their courage, I think all of that made other people sit up and take notice" (personal communication, February 10, 2000).

As noted in the last chapter, the Reagan administration even proposed one of the bills that became the VOCA. Introducing the bill in the Senate, Senator Thurmond (1984a, p. 5349) explained, "...the act which I am introducing today is the latest in a series of administrative initiatives aimed at correcting the imbalance in our system in favor of the heinous offender, at the expense of the innocent victim." It

was President Reagan who proclaimed a week in April of 1982, 1982, 1983, and 1984 as National Victim Rights Week. It was the Reagan administration that created the President's Task Force on Violent Crime, the President's Task Force on Victims of Crime and the President's Task Force on Family Violence. As claimed by Senator Heinz (1984b, p. 3),

...if it had not been for the President's commitment, we would not have been able, here in Congress, to present to the President in October of last year, 1982, not just a bill on victim and witness protection, but the only significant legislation to ever pass the Congress and be signed in to law to protect victims and witnesses for as long as I have served in the Congress, which is now in excess of 11 years.

Marlene Young (1984, p. 82), of NOVA, also credited the leadership of Reagan: "I would like to ...acknowledge the leadership of the Reagan administration, which has served as a catalyst for seeing that some of these issues have come to the forefront in the last year."

These Presidential actions entered into the claims-making placing more pressure on legislators to pass various bills. For example, Representative Russo (1983, p. 6) argued, "This is National Victims Rights Week. It deserves more than rhetoric, bemoaning the plight of forgotten participants in our criminal justice system, and it calls for more than sympathetic words of support for those most abused by the system." The President's Task Force recommendations were also cited in various hearings by several people as incentive to "do something" and was considered quite influential.

Marlene Young (1985b, p. 76) of NOVA noted the congressional members that had been "old hands" in the victim movement: Senator Paul Lexalt and Senator

Edward Kennedy. She also mentioned Senator John Heinz, Representative Peter Rodino, Senator Strom Thurmond and Charles Mathias in the forward of the Indexed legislative history (1985). Lois Haight Herrington's (1985b) credited Senator Strom Thurmond, Peter Rodino, Senator Joseph Biden, and Representative Hamilton Fish, Jr. in the forward of the Indexed legislative history of the victims of crime act. Senator Heinz and Representative Russo also wrote editorials in support of the legislation. There were a core group of Senators and Representatives that repeatedly introduced and supported victim legislation at the federal level and, therefore, kept the movement in motion. Lois Herrington is also credited as a major claims-maker in the movement as well as Frank Carrington (Young & Stein, personal communication, February 9, 2000). Herrington was cited numerous times in the media in her capacity as chairperson of the President's Task Force on the Victims of Crime and she was extremely active during the hearings. She and Frank Carrington were also instrumental in persuading President Reagan to become involved in the victim rights movement (Young & Stein, personal communication, February 9, 2000).

Public officials were particularly influential in this fight for the Protection Act and VOCA. As noted earlier, the passage of this federal legislation was mostly the result of professional politicians as opposed to grassroots groups. Combining this support and that of President Reagan, the role of public officials in this part of the movement, at the federal level, was particularly effective.

### Private Interest Groups

Private interest groups were also extremely important in the continuation of the victim rights movement. As Spector and Kitsuse (1977, p. 143) posit, "Other things being equal, groups that have a larger membership, greater constituency, more money, and greater discipline and organization will be more effective in pressing their claims than groups that lack these attributes." NOVA is one of these large organizations. NOVA developed a professional staff who worked full-time to address these issues and serve as an information center and as expert witnesses. In other words, it created a relatively permanent place and from there fought quite successfully for further rights for crime victims. It has become "established" and was known to be credible to serve as expert witness. As shown in this research, NOVA played a significant part in the passage of victim rights legislation in the 1980s, based on the fact that it had professionalized and had an extremely articulate Executive Director in Marlene Young. John Stein, Deputy Director, was also deeply involved in the hearings as discussed within this chapter and also served as an expert witness.

Also discussed earlier, was the influence of the American Bar Association. Unlike NOVA, which was not established until the mid 1970s and as a result was involved in the hearings beginning only in the early 1980s, the ABA was involved from the start of the victim compensation movement. The group had a strong presence and often gave suggestions for how legislation could be improved based on their point of view. There were numerous other smaller public interest groups that also became involved in the movement in various stages along the way, which further

contributed to its strength. Those included the earlier discussed MADD, POMC, AARP, NOBLE, the U.S. Conference of Mayors, and various other groups. Each of these groups lent further support and, therefore, energy to the movement. A group of organizations not previously discussed but which had a strong presence in the victim compensation movement were those dealing with victim compensation boards.

Representatives from various state compensation boards came to testify in support of victim compensation throughout the years. Representatives came from New Jersey, New York and Maryland (Victims of crime, 1972); Illinois, Hawaii, Minnesota, and California (Crime victim compensation, 1976; Victims of crime compensation, 1979); Virginia (Crime victims' assistance programs, 1984); Delaware, Michigan, and the National Association of Crime Victim Compensation Boards (Legislation to help crime victims, 1985). Some states had even passed victim compensation legislation that would go into effect at the time that federal legislation passed (Flaherty, 1979). As would be expected, these representatives often discussed the financial difficulties that their programs were experiencing and encouraged legislators to enact the bills so that victims could continue to be compensated. As more and more of these compensation boards developed, more and more representation and support was created for compensation funding from the federal government.

Taken in whole, the private interest groups combined with the public officials created a powerful source of change. This was particularly true when networking developed.

## Networking

Organizational networking was cited by Resource Mobilization theorists, McCarthy and Zald (1973, 1977) as important to social movement success. In terms of the victim rights movement, there was much networking among claimsmakers. John Stein is credited with networking skills on Capital Hill (Young, personal communication, February 9, 2000). He was diligent in his contacts, striking up friendly relationships with various staffers on the Hill. He became known as an expert, which furthered initial contacts.

As alluded to in the previous chapter, there was cooperation within and between those addressing elderly victimization and those addressing victim compensation in general. For example, Representative Biaggi (1979), who was on the Aging Committee in the House, testified in victim compensation hearings in support of a bill that served a larger population of victims. There was also crossover with House members Roybal and Pepper of the Aging Committee when they testified at victim compensation hearings as well as the National Council of Senior of Citizens (Compensating crime victims, 1980). Another example of support from those who served on the Aging Committee was found in the fight for the Victim and Witness Protection Act. Senator Heinz, who served on the Senate's Aging Committee, was one of the sponsors of the Omnibus Victim Protection Act. Senator Pryor (1982, p. 23398), who also served on the Aging Committee, spoke in support for S. 2420, the Victim and Witness Protection Act:

While enactment of this legislation would make a considerable difference in

some of the long-term effects of victimization on all victims, one of the most positive aspects is the hope it will give to our Nation's older Americans who are so often devastated by crime. It has been found that the odds are better than 10 to 1 that an older person will become the victim of crime. The elderly are also more inclined to suffer broken bones and greater financial setbacks as a result of crime. And several public opinion polls have shown that elderly persons often rank fear of crime as the most serious problem they face.

This type of coalition occurred among other groups as well. A key example is the bipartisan nature of the passing of legislation. As discussed earlier in this chapter, there was support from both Republicans and Democrats for victim legislation. There was very little testimony that was blatantly partisan. Even more interesting are the coalitions between groups that are otherwise seen as ideologically opposed, such as the women's movement and conservatives, or progressive and conservatives. While each of these groups may have had differing ideas about how to deal with crime and criminals, each seem to find a point of agreement when discussing crime victims. The discussed legislation seemed to stay neutral enough, not straying too far into the ideological territory of one group or another, that it did not alienate opposing groups. For example, although the progressives heard had a very different idea for counteracting the crime problem than did the conservatives, they still supported victim compensation because, as Zehr (1985) argued, the legislation served victims without harming offenders. Each had a common focus on the victims of crime.

There were also the crossovers found within the individuals in the movement. For example, Professor Leroy Lamborn testified early in the movement as an expert academic. He was later on the Board of Directors of NOVA (Legislation to help crime victims, 1985). Another example is Frank Carrington who as served as a

spokesperson for VALOR, Americans for Effective Law Enforcement, and the ABA in the compensation hearings and later served on the President's Task Force on the Victims of Crime. Judge Lois Haight also discussed the networking that occurred between the President's Task Force on the Victims of Crime and the staffs of the various leading Senators and Representatives: "But, I just think our working together helped a lot. We gave them so much access. They came to our hearings and they listened, took notes, and talked with us about it afterward" (personal communication, February 10, 2000).

The creation of NOVA as a national, umbrella organization also served to facilitate networking between different groups of activists. As noted earlier, the organization began to sponsor national conferences during which synergy can be created and drawn upon to reinforce those agitating for reform. As discussed in this chapter, NOVA staff were heavily involved in congressional hearings, making suggestions for change and agitating for support. As can be seen, networking served an important function in this movement because it brought diverse groups of people together and thereby strengthened the movement.

Though not as heavily discussed in this dissertation, Resource mobilization cannot be ignored in this movement. Without the support of the numerous public officials and private interest groups and the networking that occurred among them, it is difficult to believe that the movement would have been as successful. However, Resource Mobilization cannot account for all of the success. The ideological and cultural tools tapping into the fear of crime, victim image and the others concepts

earlier discussed were extremely important to the success of the movement. As noted by observers, it was difficult to be anti-victim because it was difficult to justify counterarguments.

### The Missing Link

Considering the diversity of the movement, it is interesting to ask the question, “who is not seen (or at the least, is less visible) in the current victim rights movement?” as it is currently represented. Though this may seem an odd question, it actually has the potential to be one of the most important because the answer taps into the social construction of the movement and the victim. Given the many different realities of victimization that exist, which one is the “official version” of the Movement? One of the common observations of the movement is noted by Elias (1993) when he argues that those who do not have a conservative agenda are not seen (or are less likely to be seen). He (Elias, 1993, p. 55) argues “Victim advocates holding feminist, antiracist, human rights, or anticorporate perspectives have been largely blocked from access to government programs.” As discussed earlier, though these types of voices were not expected, they were heard in a series of hearings held in 1984 on VOCA. However, the power of these voices should not be overestimated. Progressives, as discussed in the Chapter V, called for full employment and alternatives to the criminal justice system among other significant social changes. The Protection Act and VOCA did not meet these larger political agendas. In fact, it seems that progressives supporting VOCA did so because they saw it as addressing

victims without further harming offenders.

It can also be argued that the definition of “victim” is fairly limited. Again, though progressives’ voices may have been heard in the hearings, there were not great changes in the how victims were defined or in how crime was confronted. For example in Senate Report 532 (1982, p. 13), the Senators argued that the definition of crime victim was quite broad: “The committee also notes that the definition of victims is purposely broad to include other ‘indirect’ victims such as family members of homicide victims.” Though this may seem a broad definition from their perspective, it is not broad when considering the calls from scholars such as Gaucher (1998) for recognition of prisoners as victims of state oppression. Or as argued by Professor Gross (1985, p. 102), representing Americans for Democratic Action,

We could, if we wanted to, be very philosophical and somewhat overly profound. We could talk about people victimized by the ‘crimes’ of involuntary employment, poverty, prejudice and hunger, and that would be relevant. On the other hand, the particular measures before this committee are more narrow.

There was little or no discussion of victims of white-collar crime or racial or governmental oppression as would be examined by more progressive voices.

Another element, which was surprising, was the lack of victim participation in the hearings. Though this is a subjective measure, considering how this legislation would affect victims, it was expected that victims would testify in great number. Again, this is not to say there was no representation from victims, because there were some that testified in person; however, that number was relatively small. Though the number may have been relatively small, victims were heard in each of the legislative

movements discussed: in victim compensation hearings, in hearings held on elderly victimization, and in the hearing held for the Protection Act.

The first victim testimony read was in 1976 in support of victim compensation. At that time, Representative Hungate (1976, p. 466) made a telling remark, "...we have invited you here, and we do all the talking...." The testimony presented by these three victims was in the context of a presentation by the Maryland Criminal Injuries Board and was limited to a question/answer format in which they discussed their experiences with the board.

There were other victims that testified in a more free flowing format. Most of this victim testimony was in the form of horror stories and, as a result, was quite powerful when heard. For example, Carolyn Budde (1983), the founder of the Victims Family Committee, testified in support of the diversion of funds from Pittman-Robertson fund because her son was the victim of a handgun shooting. Direct testimony was also heard from three victims, as a panel, in the 1984 hearings on crime victims' assistance. One victim of a sniper shooting explained her losses and her treatment by the Maryland Criminal Injuries Compensation Board: "They have treated me very poorly. They have made me feel guilty. They have lied to me. The program is a joke. It really is. To me, it has been more psychologically damaging than anything else" (Melton, 1984, p. 23). Another shooting victim, Mr. Babb (1984) explained his financial losses and the psychological effects of being paralyzed. The last victim to speak in this hearing was Chiquita Bass. Explaining life in her inner city neighborhood, she said:

...family life for hard-working citizens is often made difficult by robbers, rapists, burglars and drug-dealers. Two years have passed now since the last time that I or a family member was either robbed, molested, raped, attacked or assaulted in my home. It has happened eight times. And that is about once every six months. (Bass, 1984, p. 30)

As a result, she (Bass, 1984, p. 31) asked for compensation for emotional counseling and property loss. Two more victims were heard from in the VOCA hearings held in the House: Joan M. O'Brien, who was raped, robbed and shot in the face by a stranger and Mark Mosely, member of the Washington Redskins, whose sister was raped and murdered (Legislation to help crime victims, 1985).

During the hearings held concerning elderly victims, four victims testified during the hearing on elderly victim compensation: Michael J. O'Brien, a 68 year old assault and robbery victim, discussed the impact of the victimization and his medical bills; Dominick Gennaro, a 23 year old stabbing victim who lost his job as a result of his injuries; John Steeps, a 45 year old assault victim who lost his home and has outstanding medical bills as a result of his victimization; and Charles Lomino, the father of an 18 year old shooting victim who was paralyzed as a result of the shooting (Elderly crime victim compensation, 1977). An additional victim, Barry Sudiker also testified but in his capacity as president of Crime Victim Rights Organization from New York (Elderly crime victim compensation, 1977).

With regard to the Protection Act, three more victims testified in a hearing held in the Senate for the Protection Act. Geraldine X, who changed her name to protect her anonymity, told of her ordeal with the criminal justice system after she was kidnapped, raped and robbed. Virginia Montgomery, 62 year old purse

snatching victim, which resulted in a broken hip, told a similar story of her treatment in the criminal justice system. She noted, “The experience of the crime was bad enough, but my experience afterward added insult upon injury” (Montgomery, 1982, p. 68). She (Montgomery, 1982, p. 69) continued,

I was terribly upset. There was not a single person in the system to help me. The probation officer seemed to care more about the “poor criminal” than me. I was even beginning to feel guilty about inquiring about the case. I felt like I was being treated like a criminal...I have not had a pleasant day for one year. I can’t walk without the aid of a cane, I have no money, and only after I had been contacted by Senator Heinz’ office did I get a call and letter from the U.S. attorney’s office apologizing for neglecting to let me know what had happened in my case. It seems as though the victim of the crime is the last to know anything. There is no one to represent me, the victim. Everyone in the system seems to only care about the assailant. I have felt like I am down in a hole with no way of getting out.

Lastly, Douglas Payton testified about the rape, mutilation, and murder of his wife by a man released on parole. He, with the help of Frank Carrington and VALOR, was suing the federal government for negligence:

I have sued the Federal Government because I know they were responsible for Cheryl’s terrible death and that the Federal Government isn’t any different than anyone else; if they are wrong, anyone ought to be able to sue them. The Parole Board that let him out did an awful, ignorant, foolish thing. They just turned their back on society, they just didn’t care about the public. They knew about him and what he might do and they let him out anyway. I know my boys and I will never get over what happened. I hope by coming here today, I have helped others because at least that might make me feel better (Payton, 1982, p. 103).

With the exception of these victims, there was no other victim testimony. A partial explanation for this finding is the fact that the President’s Task Force hearings were not included in the analysis. An interview with Lois Herrington provided the information that, as discussed earlier, there were numerous victims that testified

during the six hearings held for the Task Force report. The Task Force made a special effort to talk with victims from all over the country to get a more complete picture of victimization (Herrington, personal communication, February 10, 2000.)

Another explanation was forwarded by Marlene Young of NOVA. In addition to the earlier suggestion that the federal legislation was more the result of professional politicians than of grassroots groups, claims were made that some victims were mistreated when they testified. As noted by Janet Barkas, crime victim, when asked why victims were more vocal, she answered, "There is nothing to be gained by saying you are a victim. It is an experience you want to put behind you" (Burnstein, 1979, p. 62). As a result, Marlene Young was reticent to directly include victims in testimony, particularly if they would be mistreated. There is also the issue of travel since many of these hearings were held in Washington, D.C. If many of the victims of crime are in lower income areas, as suggested by the statistics, then certainly there would be no extra money for a plane ticket to Washington.

### Summary

This chapter has presented the analysis of the victim rights movement with respect to its claims-making activities in the passage of the first two major pieces of federal legislation concerning crime victims in the 1980s: the Protection Act of 1982 and the Victims of Crime Act of 1984. This chapter has examined the devices used in the social construction of the movement. As a part of this analysis, theoretical concepts were used from New Social Movements Theory and Resource Mobilization

theory. The themes that are best explained through use of New Social Movements theory, because of its emphasis on the importance of ideology and culture, were the fear of crime, the use of victim imagery, horror stories, victim services and compensation as “rights.” The use of the media is also examined which could fall in either New Social Movement theory or Resource Mobilization Theory. Those themes that are best explained by Resource Mobilization are: the use of public officials, private interest groups and networking. Lastly discussed was what was missing in the victim rights movement, which further contributed to the explanation of the construction in the victim rights movement. In summary, it appears that both New Social Movements theory and Resource Mobilization theory are needed to fully explain the success of the changes that occurred in the passage of federal legislation in the 1980s. The next and final chapter concludes this research by summarizing the results, discussing the limitations, and suggesting future avenues for additional research.

## CHAPTER VII

### CONCLUSION

#### Summary of the Research Findings

Overall, the victim rights movement, as defined within this research, was quite successful in airing claims about victim rights. The various claims-makers were able to successfully define the lack of attention to victims as a social problem. As pointed out by many of the victim advocates, victims were not recognized for years within the modern criminal justice system. By 1980, however, there was a fairly strong push for the recognition of victims and their needs. Victims came to the attention of the public and public officials because of the activities of those who defined the situation as problematic. As noted earlier, from the social constructionist perspective, it is not possible to ascertain whether this movement and its claims are “right” or “wrong.” Rather, the focus is on the process of claims-making.

As described throughout this dissertation, there were numerous groups involved in the fight for the Protection Act and VOCA; however, the opposition was relatively limited. For example, Young and Stein (personal communication, February 9, 2000) suggested that though there were provisions in the Protection Act that would affect prosecutors, such as the victim impact statement, there was no organized opposition to the legislation. For example, researcher Deborah Kelly (1982) testified in support of the Protection Act and its VIS provision. As part of that testimony she

made a counter-argument to those whom “have resisted such efforts to expand victims’ participation in the judicial process;” however, there was no direct testimony from those opposing it (Kelly, 1982, p. 190). In other words, the reader learned of the opposition only through the arguments of the supporters. There was no direct testimony from those who opposed the Protection Act.

The exception to this was the early history of the victim compensation movement. As discussed in Chapter IV, there was opposition to the idea of federal support for the victims of crime because of the estimated costs and the discomfort with the idea of federal responsibility for what was seen as a state problem. The debate was particularly vociferous in the late 1970s. However, with the creation of the provision in the 1980s that the criminal would be responsible, in part, for the funds used to pay crime victims, the opposition to the legislation based on costs subsided. The earlier claimed opposition to the lack of a federal-state nexus was simply not heard in the 1980s. At this point, there is no explanation for why this claim of opposition was not heard. However, the end result is that the major pockets of oppositions that existed in the 1970s were neutralized by the 1980s, which allowed VOCA to pass. The only other remaining opposition to VOCA in the 1980s was the Pittman-Robertson fund diversion. Victim advocates found themselves up against the powerful lobby of the NRA and soon compromised by striking the Pittman-Robertson diversion. As described in Chapter IV, alternative funding sources were found and the legislation was quickly passed as a part of a larger piece of criminal justice legislation.

Part of the success of this movement is explained by the difficulty one would have in opposing victim rights. As stated by James Lucy (quoted in "Aid to Victim," 1975, p. 44), a Police Foundation expert on crime victims, "It's like motherhood... who can be against it?" Even the opposition stated above was opposition to cost, or opposition to the diversion of funding, rather than opposition to compensating or serving victims. Numerous observers have noted the political advantages of appearing pro-victim in addition to the impossibility of being anti-victim. As argued by San Francisco mayor, George Moscone (1979, pp. 73-74),

I think it is very clear that there are many people in the State legislatures and many witnesses who run quickly to support this kind of legislation without a great deal of thought, simply because to do other-wise would be impolitic.

There were a number of other elements to the movement that contributed to success. These were discussed throughout the dissertation as the social construction devices that motivated support for addressing victims of crime. These particular ideas are explained well by New Social Movement theory, which focuses on the use of ideology and culture in social movements. There were certain ideas or notions that framed the movement and, therefore, the support for the movement. The first device that was discussed was claims that the crime rate was increasing, which tapped into fear of crime. In the logic of social movements, the more people that are affected by the problem, the more potential for support (Best, 1997). It follows that if the crime rate was rising and people were fearful that they could become the next crime victims, there would be more support for legislation that addresses crime victims. This was a claim that was often heard at the federal level during debate of the laws.

Another particularly important theme was the image of the victim. There was greater support for the legislation, or maybe it is more accurate to say less opposition, when the victim was presented as innocent. As noted in Chapter VI, once the undeserving victim was forbidden from participating in victim compensation programs, there was a high level of support for the legislation. Also discussed was the tendency to simplify the victim and offender into a dichotomy. Rather than seeing the two as interconnected, the victim and offender were seen as totally unrelated, with the victim as innocent and the offender as evil. Horror stories were also particularly influential in this movement. These stories had the effect of neutralizing opposition when it was expressed. They also tapped into emotions that spurred action. It would be extremely difficult to read or hear these stories and not have the reaction that something must be done to change the situation. This is particularly true when combined with the claim that crime is rising and, as a result, the next victim could be you. The media is also credited with indirectly shaping concern for victims. Though the kind of media attention that victims received may have not always been the kind of attention that victim advocates appreciated, it did serve to bring victims into the limelight. Again, as within the hearings held before Congress, the horror stories in the media struck an emotional chord with the reader. The last ideological device examined was the framing of victim's needs as rights. The notion of rights is a particularly powerful one in this culture and was an effective way for the claims-makers to present their claims. However, as noted earlier, New Social Movements theory can not function as the sole theoretical explanation for the success of this movement. Resource

Mobilization can also function as a guide for explaining the success of this movement.

As noted in Chapter II, Resource Mobilization theory focuses on resources. For example, financial concerns, or a lack thereof, were important in the passage of the Protection Act and VOCA. As noted in Chapter IV, the Protection Act did not cost taxpayers any extra money and this is posited as an explanation for its quick passage. Once again, though there were concerns about the cost of victim compensation in the 1970s once the cost of VOCA was hoisted on the backs of criminals, it passed. In selling VOCA, Senator Heinz (1984b, p. 4) argued, "Revenue is always an issue, and revenue for these purposes will be generated from sources related to the commission of the crime...It will not require a single penny of new revenue from the taxpayer." The fact that taxpayers did not have to fund these programs was a major point of advantage of this legislation.

Also contributing to the success of this movement is the support that was given by public officials. There were a number of key public officials that supported the movement, not the least of which was President Ronald Reagan. The weight of the presidential role in this movement was extremely important because of the power in this position. However, along with the president, were other factors of support. There were other politicians supporting the notion of victim rights and compensation. In fact, Young (personal communication, February 9, 2000) noted that the victim compensation movement was more inspired by professional politicians than grassroots victims organizations. In addition to this were the numerous private interest

groups that also participated. These groups included professional organizations such as NOVA and the ABA, but also numerous small groups that were interested in victim compensation and services for a variety of reasons. In addition to this were the various networking paths that developed which allowed the groups to support the work of others. This resulted in a loosely connected, but powerful, coalition all focused on passing this federal legislation.

This ties into another factor contributing to the success of this movement: the sheer number of organizations and/or people participating. "The victim movement, rather than being weakened by the disparate sources from which it originated, appears to have gained strength from the diversity of its beginnings" (Friedman, 1985, p. 794). There were groups that, though ideologically opposed to one another in another situations, found themselves in agreement when it came to the victim legislation discussed in this dissertation. There were people from all points on the political continuum from the Left to the Right who supported the Protection Act and VOCA. Each of the different groups discussed, activists from the women's movement, activists with criminal justice concerns, conservatives, liberals, moral entrepreneurs, progressives, academicians and various professional and grassroots organizations supported the legislation for their own reasons. As discussed in Chapter V, the Protection Act and VOCA seemed to be neutral enough that it did not alienate the many different groups supporting them.

However, that does not mean that the final legislation reflected the ideas of each of these groups equally. As discussed in Chapter VI, the larger agenda

promoted by progressives, such as economic equality, was not found in this legislation. Rather, this legislation worked within the status quo when addressing victim's rights. There were no fundamental changes to the criminal justice system. The definition of the victim was relatively narrow in character, focusing for the most part, on one-on-one violent crime. As noted in the last chapter, there was no discussion of victims of economic or racial oppression. White-collar offenders or brutal police officers were not discussed as the criminals. The image of crime was usually that of the innocent victim being attacked by the marauding stranger.

At the same time, contrary to what was expected, the findings of this research suggest that conservatives did not dominate the discussion of victim legislation at the federal level. A number of observers of the victim rights movement have argued that it has been co-opted by the conservatives. Based on congressional testimony and the individual interviews examined in this research, this does not seem to be the case. This is not to argue that conservative rhetoric does not dominate the movement in certain states or in other federal legislation passed since the 1980s. It is simply to point out that there were claims-makers other than conservatives that participated in the passage of the Protection Act and VOCA. As argued earlier, the legislation itself promoted ideas that all of the groups found themselves supporting. It is also significant, as discussed in Chapter VI, that each group found a victim image that they could support. The victim image meant something slightly different to conservatives, liberals, feminists, and progressives and each, in turn, supported that image. Overall, the victim rights movement as captured in the passage of this legislation was

particularly effective in airing its claims and in making changes to address the needs of victims.

Theoretically speaking, it seems that both Resource Mobilization and New Social Movements theory are instrumental in explaining the success of this movement. As discussed in Chapter II, in this research, the two theoretical strands were treated as complimentary rather than oppositional and the results of this research seem to support the use of the theories in that manner. Neither theory, by itself, could have as fully explained the success of this movement as the use of the theories in tandem. Future research regarding this and other social movements may be enhanced with the use of both theoretical perspectives.

### Limitations and Suggestions for Further Research

There are a number of limitations to this research that need to be discussed. The first, and foremost, is that just as the researchers and scholars in the congressional hearings were described as claims-makers, this research is itself another piece of claims-making. As suggested by Mauss (1989, p. 35), it is important to admit this status:

Feel free to identify whatever you regard as the most pressing social problems for our time and advocate whatever ameliorative policies you find the most promising, based on the best sociological knowledge at your disposal. But in doing all that, be honest with yourself and your public. Acknowledge that *you are doing so as one claims-maker among many; that you are therefore a participant in a movement* (albeit a particularly well informed participant), and not merely a detached scientific expert.

Therefore, it is prudent to note that this dissertation is yet another perspective on the

victim rights movement. It is one perspective that can be compared to the others that have been or will be done. As noted in Chapter II, the results of the research are not generalizable to other social movements; however, the results do contribute to the knowledge concerning New Social Movement theory and Resource Mobilization theory. It seems that both are viable as explanations for a social movement.

There are limitations in the data collection that need to be addressed. Because of financial and geographical limitations, the President's Task Force on the Victims of Crime hearings could not be analyzed. This would, no doubt, be a rich source of data for future research in this area. As discussed in Chapter VI, the President's Task Force made a specific effort to reach the victims of crime. There are data sources within these hearings which are not found in the congressional hearings. For example, there were hundreds of victims and grassroots organizations that testified at these hearings. An analysis of this testimony may further illuminate the reasons for victims and grassroots groups were involved in the movement.

There are also limitations in the use of the congressional hearings. When asked why the victim participation in the hearings was relatively low, Young (personal communication, February 9, 2000) answered that these hearings are the "pretty hearings." Stein (personal communication, February 9, 2000) argued that congressional hearings are not held to change people's minds. Rather, these hearings are more likely to be held "for show" (Young, personal communication, February 9, 2000). So though these broader themes that have been discussed can be gleaned from the hearings, a more in-depth analysis could be done if more interviews were

scheduled. It would be interesting to examine the process by which people are invited to speak as that might have very well effected the claims that were aired. Again, the President's Task Force hearings may also serve to provide more data for analysis that would add to this exploration.

This study was also limited in the amount of data analyzed. Part of the difficulty in qualitative research is establishing boundaries and this was a problem in this research considering the breadth and depth of the movement. In other words, there are many more avenues that could be explored regarding the victim rights movement. Future research could examine legislation that has been passed at the state level for comparison to this research. Future research could also examine other aspects of the federal legislation explored here. For example, more detailed analysis could be done with a focus on elderly victims or on children as victims could. Another aspect that was not discussed in this research but is also related is the attention given to juveniles and the crimes committed by them. There was attention given to the victims of juvenile offenders in other hearings but these were not analyzed for this research because they fell outside its scope. Activism for women as victims is another area that could be explored in more detail, particularly in how it relates to this and other federal legislation.

Future research could also use this analysis as a historical foundation and perform an analysis of the 1990s. Though federal recognition of victims began in the 1980s, attention to victims has continued at a federal level (see Appendix B for a timeline). There are numerous avenues of research that are still available as a result

of the complexity and diversity of the victim rights movement. This research has taken a holistic approach in studying the movement. Further research could compartmentalize and analyze in further detail any of the specific claims-makers listed here.

To conclude, it remains to be seen what the future holds for the victim rights movement. Elias (1993) suggests that by too narrowly defining itself, the victim rights movement could potentially experience backlash. Best (1997) argues this backlash can already be seen in the work of Dersowitz's *The abuse excuse* (1994), Hughes' *Culture of complaint* (1993), Kaminer's *I'm dysfunctional, you're dysfunctional* (1992), and Sykes's *Nation of victims* (1992). In a few words, "Victimization has become fashionable..." (Best, 1997, p. 9). It seems there could be a whole new group of claims-makers emerging in the 1990s and beyond that are airing claims that victimization has been overstated. An example of this is provided by writer Cathy Young (1992) who, in her article entitled "Victimhood is powerful," berates both the feminists and anti-feminists for placing women in a victimized position. She (Young, 1992, p. 23) laments our future and argues, tongue in cheek,

But there's always hope. The men's movement, its bibles riding the best-seller lists right next to Susan Faludi's opus seems to be mostly about one great truth: Men are victims too. They are victimized by an industrial civilization, by their fathers, by their mothers, by feminists. They are victimized by the stripper they hire for a bachelor party because she makes them horny while remaining sexually unavailable. (Really.) It seems we're just a few stops away from a brave new world in which everyone is everyone's victim and no one is to blame.

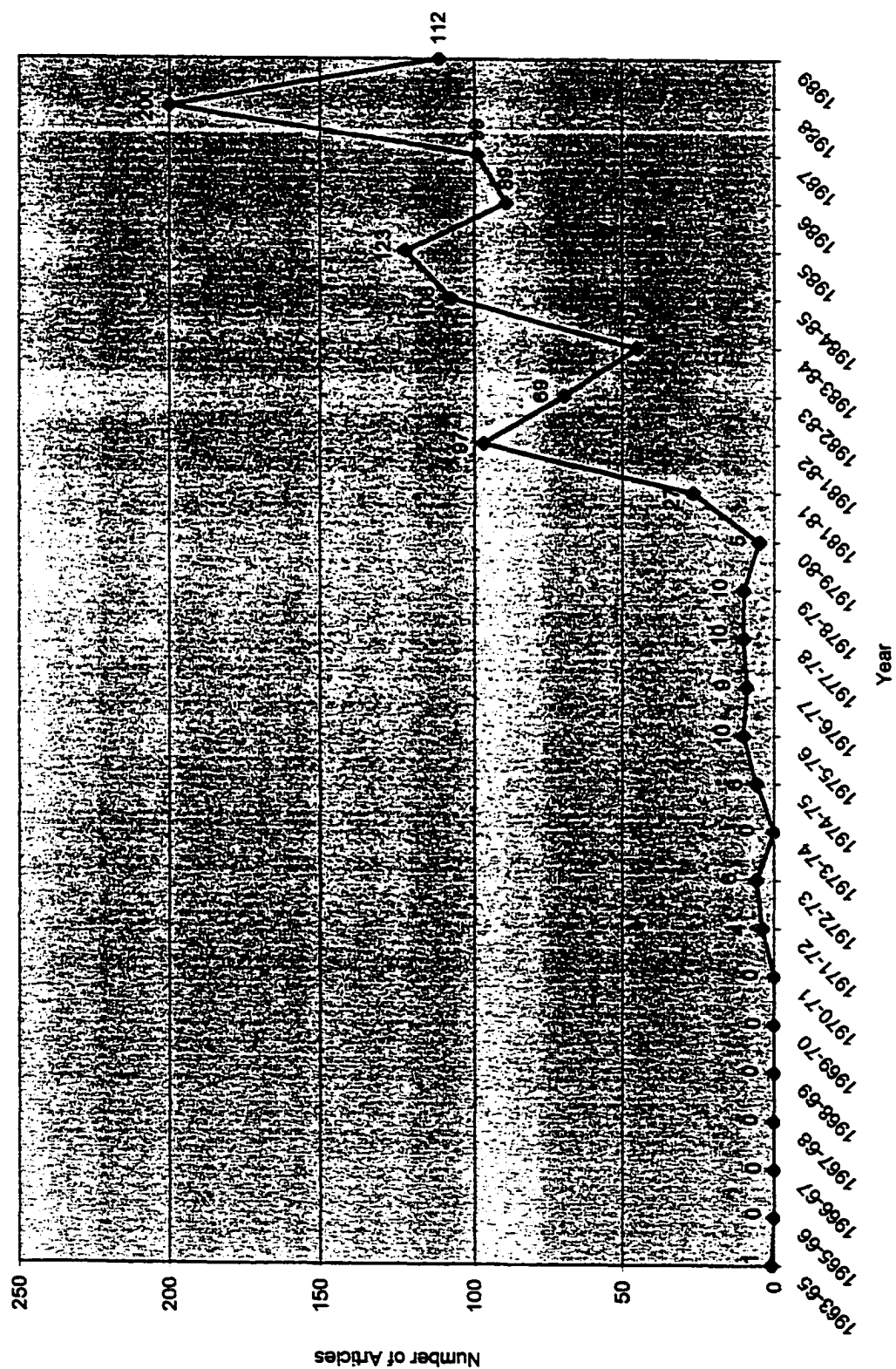
As for the future, we can only wait to see if Elias is correct in his prediction that the movement will suffer by focusing too narrowly. As with Mauss' (1975) example of

the solar system that was discussed in Chapter II, we never know when a new theory might arise to change how we view the world – or, in this case, how we view victim rights. All it takes is the shifting of lenses (and, of course, resources, government sponsorship, money, a Presidential Task Force, celebrity supporters, legislative changes, media attention, national organizations, and sensational stories.)

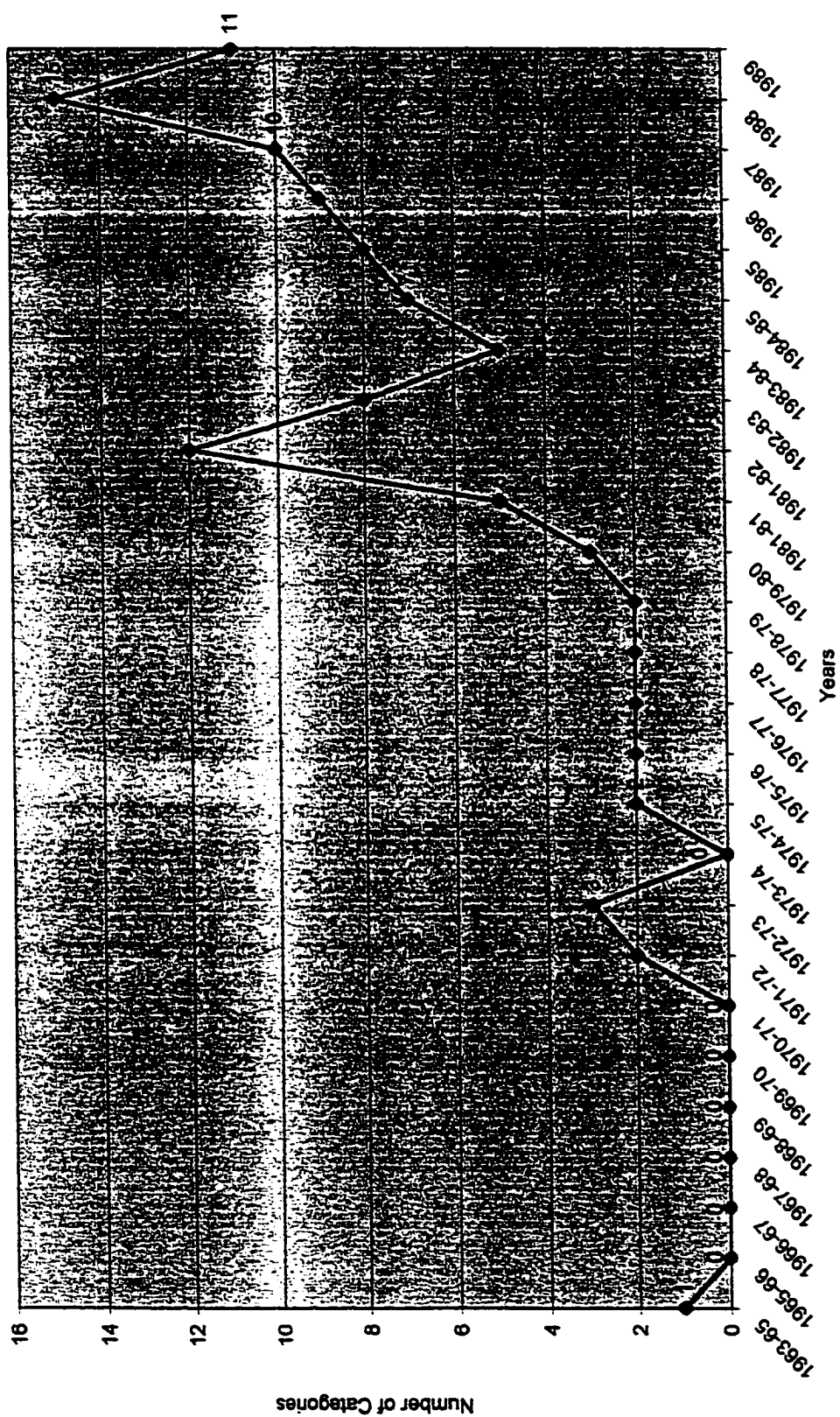
## Appendix A

### Graphs

Number of Articles on Victims and Victimization from 1963-1989



Number of Victim Categories from 1963-1989



## **Appendix B**

### **Time Line**

**TIMELINE for Federal Legislation and National Organizations**

(Based on Davis and Henley, 1990; Fattah, 1997; Office for Victims of Crime, 1998a,b, 1999; NOVA, 1998; Rose, 1977; Sebba, 1996; Tierney, 1985; Wallace, 1998, Young, 1997)

- 1965: California introduces first Victim Compensation program
- 1967: Reports of President's Commission on Law Enforcement and Administrative of Justice
- 1972: 1<sup>st</sup> Rape Crisis Center, Berkeley, CA
- 1974: 1<sup>st</sup> Battered Women Shelter, St. Paul, Minnesota
- 1974: Child Abuse Prevention and Treatment Act
- 1974: LEAA begins Citizen Initiative program
- 1975: Organization of NOVA
- 1975: First Victim Rights Week organized in Philadelphia
- 1978: National Victim Resource Center
- 1978: National Coalition Against Sexual Assault formed
- 1978: National Coalition Against Domestic Violence formed
- 1978: Parents of Murdered Children formed
- 1979: Frank Carrington forms Victim's Assistance Legal Organization
- 1980: Mothers Against Drunk Driving formed
- 1981: National Victim Rights Week
- 1981: Attorney General's Task Force on Violent Crime
- 1982: Nation Victim Rights Week
- 1982: President's Taskforce on Victims of Crime
- 1982: Omnibus Victim and Witness Protection Act
- 1982: Missing Children's Act of 1982
- 1983: National Victim Rights Week
- 1983: National Conference on the Judiciary and Victim's Rights
- 1983: Attorney General's Task Force on Family Violence
- 1983: Office for Victims of Crime created
- 1984: National Victim Rights Week
- 1984: Victims of Crime Act of 1984 (Crime Victim Fund)
- 1984: Justice Assistance Act of 1984 (\$ for Victim Witness programs)
- 1984: Family Violence Prevention and Services Act
- 1984: Attorney General's Task Force on Family Violence
- 1985: United Nation's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
- 1985: National Victim Center (Sunny Von Bulow National Victim Advocacy Center)
- 1987: Criminal Fines Improvement Act
- 1987: Security on Campus (formed after murder at university)
- 1988: Reauthorize VOCA (Victims of Crime Act)
- 1988: New Justice Assistance Act (child, elderly and spouse abuse)
- 1989: OVC legislatively established in VOCA amendments

## **Appendix C**

### **Protocol Clearance From the Human Subjects Institutional Review Board**

Human Subjects Institutional Review Board



Kalamazoo, Michigan 49008-3899

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## WESTERN MICHIGAN UNIVERSITY

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Date: 20 January 2000

To: Ronald Kramer, Principal Investigator  
Angela Evans, Student Investigator for dissertation.

From: Sylvia Culp, Chair *Sylvia Culp*

Re: HSIRB Project Number 99-12-06

This letter will serve as confirmation that your research project entitled "The Victim Rights Movement: A Social Constructionist Examination" has been **approved** under the **exempt** category of review by the Human Subjects Institutional Review Board. The conditions and duration of this approval are specified in the Policies of Western Michigan University. You may now begin to implement the research as described in the application.

Please note that you may **only** conduct this research exactly in the form it was approved. You must seek specific board approval for any changes in this project. You must also seek reapproval if the project extends beyond the termination date noted below. In addition if there are any unanticipated adverse reactions or unanticipated events associated with the conduct of this research, you should immediately suspend the project and contact the Chair of the HSIRB for consultation.

The Board wishes you success in the pursuit of your research goals.

Approval Termination: 20 January 2001

**Appendix D**  
**List of Commonly Used Acronyms**

## List of Commonly Used Acronyms

AARP	American Association of Retired Persons
ABA	American Bar Association
ADA	Americans for Democratic Action
CAAR	Community Action Against Rape
LEAA	Law Enforcement Assistance Administration
MADD	Mothers Against Drunk Driving
NCADV	National Coalition Against Domestic Violence
NCASA	National Coalition Against Sexual Assault
NOBLE	National Organization of Black Law Enforcement Executives
NOVA	National Organization of Victim Assistance
NRA	National Rifle Association
POMC	Parents of Murdered Children
SLAM	Society's League Against Molestation
SOSAD	Save Our Sons and Daughters
VALOR	Victim Assistance Legal Organization
VOCA	Victims of Crime Act
VOCAL	Victims of Crime and Leniency
VIS	victim impact statement

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