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Interim Hearing on Victim & Witness Rights in Criminal Proceedings

Assembly Subcommittee on Criminal Justice Resources

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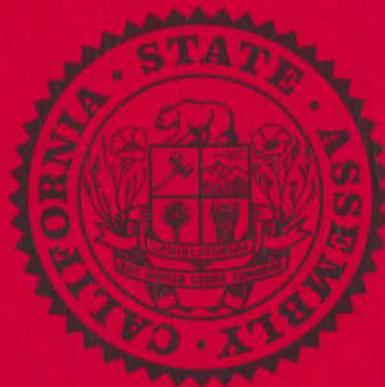
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ASSEMBLY SUBCOMMITTEE ON CRIMINAL JUSTICE RESOURCES

Mel Levine, Chairman

Interim Hearing on

VICTIM & WITNESS RIGHTS IN CRIMINAL PROCEEDINGS



December 1, 1981

Santa Monica City Council Chambers

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ASSEMBLY SUBCOMMITTEE ON CRIMINAL
JUSTICE RESOURCES

MEL LEVINE, CHAIRMAN

INTERIM HEARING ON
VICTIM & WITNESS RIGHTS IN CRIMINAL PROCEEDINGS

DECEMBER 1, 1981

SANTA MONICA CITY COUNCIL CHAMBERS

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*DUE TO ELECTRICAL PROBLEMS, THE END OF MR. BRADBURY'S TESTIMONY, ALL OF MR. ROWLAND'S TESTIMONY, AND THE BEGINNING OF MS. LIGHTNER'S TESTIMONY WERE NOT RECORDED.

Assembly Subcommittee on Criminal
Justice Resources

Interim Hearing on Victim & Witness Rights In
Criminal Proceedings
Santa Monica, California
December 1, 1981

CHAIRMAN MEL LEVINE: We will come to order. This is a hearing of the Criminal Justice Resources Subcommittee of the Criminal Justice Committee of the State Assembly. I welcome those of you who are here. This is the hearing on Victims Legislation. I have a brief opening statement that I will make and we will commence the hearing by calling our witnesses.

Each year, crime claims more than forty million victims in the United States. This is a really staggering statistic. One in five Americans, almost, are victims of some sort of crime every year in this country. For these Americans, crime is more than just a statistic; it is a sobering and often devastating personal experience, inflicting physical and mental disability, property loss or damage, financial hardship, and severe and sometimes permanent disruption to personal lives. Adding to this trauma of being a crime victim is a criminal justice system which pays astonishingly little attention to the needs and the concerns of victims of crime. Ironically, despite these statistics and facts, less than one percent of the billions of dollars which California spends on criminal justice goes towards direct assistance to crime victims.

Recently, our Legislature has become more aware of the devastating impact of crime upon the individual, as well as the relative neglect with which the criminal justice system treats both

victims and witnesses of crimes. It has further come to realize, as have the courts and law enforcement, that without the active assistance of victims and witnesses, efforts to identify, prosecute, and punish criminals would have little chance of success. As a result, recent years have seen the Legislature begin to enact reforms to provide financial assistance, grant basic rights and protections, and make comprehensive services available to victims and witnesses of crime. To a large extent, California has been a leader in victim oriented reform, having been the first state in the nation to adopt a program for compensating victims for the losses they suffer as a result of violent crime. In addition, California has made considerable progress in the area of funding and institutionalizing local programs which provide a wide range of services, both to victims and to witnesses.

Despite this progress, however, there is still much room for improvement in the way the criminal justice system treats and provides for victims and witnesses. There is a need for developing realistic approaches to providing for increased victim notification and input in the justice process. Ways of improving delivery of financial assistance and other services to victims and witnesses are also needed. Increasing awareness and understanding of victim witness needs in the courts, police departments, and prosecutor offices are other areas of concern. Finally, we still need to identify and address the limitations of the victim reforms which have already been enacted. Through this hearing this morning, the Subcommittee hopes to gain a better understanding and direction on these issues and to develop a foundation for possible future legislation dealing

with victim and witness reform.

We have scheduled on our Agenda this morning nine witnesses, and I am pleased to introduce and call to the stand as our first witness Sterling O'Ran, the Program Manager for California Victim Witness Programs.

STERLING O'RAN: Good morning, and thank you for the opportunity to appear before this Subcommittee and speak to the issue of crime victims. I have worked as a Crime Victim Service Practitioner.

CHAIRMAN LEVINE: Let me just make a procedural comment. Even though everybody in this room can hear you easily, I am told that there are times when there are people in other offices who like to listen to the microphones to see what's going on, so if you could speak into the mike, it would be helpful.

MR. O'RAN: Thanks. I've been a Victims Service Practitioner since 1976 and previously worked in the County of San Bernardino. I am now employed by the State Office of Criminal Justice Planning and am the State Program Manager of California Victim Witness Service Programs. During the past several years, there -- the issue of crime is going to be of primary concern, to not only the public, the Legislature, and the Government, but this has resulted in a primary preoccupation in what to do about, for, and to defendants. We see prevention efforts, increased penalties, enhanced treatment programs which have resulted from these concerns. Each year, hundreds and millions of dollars in increased allocations are made, with all these modifications in mind, in order to support these activities, yet they are all offender-oriented. Increasingly, the public is asking the question, what about the victim? And we hear much about what is

referred to as the forgotten victim.

In spite of all the concern about crime and the methods to prevent it, the fact remains that victims and their needs increase. From 1975 to 1980, there was a 37% increase in crimes against persons, a 40% increase in homicides, a 41% increase in rapes, 37% increase in aggravated assaults, and 20% increase in property crime. And these are reported crimes only.

California has led the nation in attempting to act as a model for other states in providing assistance to victims. As you mentioned, in 1965, California was the first to enact a state compensation program for victims of violent crime who suffered out-of-pocket losses as a result of the crime. In 1977, the Legislature enacted pilot programs, using funds from the Law Enforcement Assistance Administration, to provide services to victims and witnesses. In 1979, the Legislature enacted and the Governor signed a bill into law which provided for the permanent funding of victim/witness centers, utilizing fines and penalty assessments collected from convicted offenders. In 1979, I believe it was, a surcharge on marriage licenses was applied to the funding of domestic violence centers. Finally, in 1980, the Legislature initiated a statute which allowed for general appropriations of funds to support rape crisis programs. In addition to this, hundreds of thousands of dollars have been invested through the state from the Law Enforcement Assistance Administration to implement victim assistance programs throughout the state. Of course, these funds are no longer in existence. At present, thirty-four victim/witness assistance centers in thirty-four counties are in existence. Fifty-six rape crisis centers are in existence. And, of

course, California has the largest victims of violent crime program in the nation.

All of these programs are supported by fines and penalty assessments collected from convicted offenders which are deposited in the state indemnity fund. While this method of collection of money from convicted offenders is attractive and makes a great deal of sense, it is not without its problems. Many difficulties have been experienced regarding the implementation of and the adherence to the statute requiring that these funds be collected and reported to the state for distribution to the victims programs and victims of violent crimes. From this mechanism of collection, approximately \$10 million is spent on victims of violent crime or will be spent on payments to victims of violent crimes this year. At present, \$3 million is used to fund victim/witness centers, \$600,000 for rape crisis centers and approximately \$500,000 for domestic violence. An analysis of these funding levels readily indicates that they are fairly adequate. One hundred fifty individuals are employed by the state's victim/witness assistance centers, which means that the ratio of service to victims throughout the state and victims service personnel is very large.

These programs are required by the Legislature to provide comprehensive services, which include crisis intervention, emergency assistance, resource counseling, property return, funeral assistance, orientation of criminal justice system, translation, court escort witness management, call-on-call-off services, case status and case disposition services, the management of law enforcement witnesses appearances and assistance in filing for victim of violent crime benefits. Rape crisis programs are expected to maintain 24-hour

telephone crisis intervention hotlines, provide direct counseling services, resource and referral counseling, accompaniment and advocacy services within the criminal justice system and in cooperation with law enforcement and hospitals. And all this is to be accomplished with an average budget of a state grant of \$10,000 for a rape crisis program.

These facts raise additional concerns about the criminal justice system and the administration of justice. These concerns are increasingly expressed by the public, the victim service community, victim support groups such as MADD, Parents of Murdered Children, and the California Victim/Witness Assistance Council. These current concerns are demanding that crime victims be remembered. California has done much to improve the treatment of victims. We do lead the nation. While it can be said that the victims are no longer forgotten, it might also be accurate to say that they are now only remembered from time to time. Most obvious are the facts concerning the need for increased support of the victims within the criminal justice system are the results of a simple analysis of criminal justice agency expenditures. During fiscal year 1979-1980, \$3.8 billion was expended in California toward the apprehension, prosecution, incarceration, and treatment of offenders, and less than \$20 million, or less than 1%, was directed to the provision of direct victim services. You can compare this to probation. It has \$321 million a year to provide services to offenders. By this, I am not saying that those things are not needed, but just the comparison shows somewhat of an inequity.

CHAIRMAN LEVINE: Can I stop here at that point and just ask a couple of questions? When one talks about improving the resources

and the system in dealing with the victim, one inevitably and almost immediately starts talking about resource allocation and dollars. There's no secret that we're each year facing more difficult fiscal choices and this year, as highlighted, by coincidence, in this morning's Los Angeles Times lead editorial about the budget, I think it's real clear that we're going to be dealing with even more severe resource allocation problems throughout the state, not just in the criminal justice area, than we have in the past. I guess one of the things I'd like to at least try and focus some attention on, and I'm not sure that there is a necessary answer to this, but I'd like to focus some attention on ways that we can improve victim services without necessarily significantly increasing actual expenditures. Is there a direct line correlation? Is that correlation necessary, inevitable? Or are there some non-... um, manners of improving the system without necessarily throwing more dollars at it?

MR. O'RAN: I think for years victim services groups have attempted to do this without placing too many demands on the budget, and of course, using volunteers and community support has been the mode for the last ten years. I suppose that this could continue, but I am afraid that the adequacy of the services has always suffered and of course, then, the victims have. I suppose the implementation of statutory requirements of criminal justice agencies to provide more adequate services to victims could be established, but then it appears, that that again would impose a monetary demand on the operation of the system, which is already overburdened. I think perhaps the funds are in existence. Not enough monies are being collected through the fines and penalty assessments mechanism as it now exists. I think also that

uh, for \$3.8 billion, there may be an opportunity to analyze some of the priorities that exist in the criminal justice system now, to re-prioritize...

CHAIRMAN LEVINE: Has OCJP tried to do any of that?

MR. O'RAN: Well, we are now. We're responsible for the funding of rape crisis programs, victim/witness programs, involved in crime prevention efforts. And, of course, have always, you know, sought alternate funding for victim/witness programs. As a matter of fact, I think California is the one state who's not faced with the problem of losing funding for their victim service centers, because of the efforts made by the office in cooperation with the Legislature.

CHAIRMAN LEVINE: Because of much more state funded than federal funded, proportionately?

MR. O'RAN: Well, throughout the United States, most of them are not receiving state funding, they're copying California's method of fines and penalty assessment collection.

CHAIRMAN LEVINE: I guess I have the distinction of being the senior member of the Criminal Justice Committee, in terms of service. Tells you how popular the committee is. And in the years that I've been on that committee, every year, people come to us before going to Ways and Means, talking about the necessity of funding, you name the program. And they make very, very good cases, ranging from prosecutor's training to defense lawyer's training, to improved methods of apprehension, to some programs that I happen to have a great fondness for, such as local organizing in order to improve law enforcement community crime resistance programs, and increasingly, we are finding it more and more difficult to fund each of these

programs, that together provide the components that lead to the \$3.8 billion. What I fear is that we won't see the \$3.8 billion being spent on the whole criminal justice system, we'll see less, but not necessarily more going to the areas that you're talking about, unless we can devise some very creative mechanisms. Are you suggesting that the fines process is a process that could yield a lot more money than it is currently yielding by being implemented more aggressively?

MR. O'RAN: Yes, the results of our personal analysis in cooperation with the Controller's Office, leads me to believe that exactly. In other words, it is not being collected or reported as accurately as it should be, in many jurisdictions.

CHAIRMAN LEVINE: Is that because of a less than complete commitment to the collection in various places?

MR. O'RAN: In some cases, it's very blatant, but in others, it's a matter of the fact that the Legislature would pass an increase in the assessments, and it makes no one assume responsibility for notifying local jurisdictions of the new statutory requirements. Of course, the Controller's Office is overburdened already and has to notify local Controllers of the reporting changes. So it's a system breakdown in the distribution of information and implementation problems. In other instances, it's simply a matter of reporting. Funds are kept locally.

CHAIRMAN LEVINE: Is this an area where new legislation is necessary, or where perhaps better auditing or oversight might be helpful? What could the Legislature do to be helpful in this area?

MR. O'RAN: I think it's a very delicate area, and of course the state working with local jurisdictions, but perhaps some attention

to assure that statutes such as this, when they're passed or implemented, the distribution of information and dissemination of information is carried out. And I think perhaps some auditing could yield a great deal of funds, which could be used to support the victim of violent crime program which previously was supported by General Funds.

CHAIRMAN LEVINE: Is there an implication that some of the funds that are being collected are being used for other purposes than they are supposed to be used?

MR. O'RAN: I can't really state that one way or the other. I don't know what's happening to them.

CHAIRMAN LEVINE: Is there tension between the local jurisdiction and the state with regard to the use of the fund?

MR. O'RAN: I think whatever local funds, local jurisdiction collect funds and report them to the state. They feel that some funds should be returned, or in some cases, that they should be kept locally. So I think that there is a bit of tension, but you must recall all of these funds, except for administrative costs, are returned to local jurisdictions and we have victim service programs, witness management, police officer training, driver training, etc.

ASSEMBLYWOMAN LA FOLLETTE: Can I ask a question. Are you telling us that when a statute is enacted that has to do with increasing fees or monies of any kind, that the Controller or someone in his office does not automatically notify those interests that are affected?

MR. O'RAN: I think that they do to the best of their ability, but apparently there's some difficulty either at the local

level or in the time limits of the Controller's notification as to the dissemination of information. I really can't say accurately what it is; all I can say is that an analysis of the findings of reporting to the local jurisdictions show that in many cases, they claim lack of knowledge of the passing of the statute.

ASSEMBLYWOMAN LA FOLLETTE: I would think that that's a matter that we could look into directly without any new bill or legislation.

CHAIRMAN LEVINE: Yeah, I would think so too. I'm not sure that he's making an accusation that the Controller isn't doing...

ASSEMBLYWOMAN LA FOLLETTE: But it sounds like there's a breakdown someplace.

MR. O'RAN: I'm not making an accusation at all. I think that in an analysis, there are perhaps eight to ten reasons why the collection of these fines and penalty assessments are not occurring as they should. One of them could be the timely notification and the other is lack of adherence, lack of reporting in a timely manner, and so forth.

CHAIRMAN LEVINE: We should get a report from the Controller as to the mechanics of all this.

MR. O'RAN: Our office is attempting to work with Judicial Council and all parties concerned to disseminate this information and make sure that it's implemented as was intended. While there's much reference made to victim's rights, there's very few statutory rights for victims in California, and only two that I can recall. Now victims are notified of their right to attend parole hearings in cases where a person is going to be paroled. The rape victims are

not required to pay for their rape evidentiary kit examination, but beyond that, I don't know of any statutory rights that exist for victims. And I think that as there are many for the offender, the Legislature may well begin taking a look at what sort of rights can be implemented for victims.

ASSEMBLYWOMAN LA FOLLETTE: I'm sorry, I was distracted for a minute. What did you say about the rape kits.

MR. O'RAN: The Government Code section under "Victims of Violent Crimes", states that a rape victim is not required to pay for the rape kit examination, and that must be paid by the local jurisdiction. And so I see that as a victim's right. A rape victim does not have to pay for...

ASSEMBLYWOMAN LA FOLLETTE: Yes, I agree with you. I thought for a minute you were saying that they were going to have to pay.

MR. O'RAN: Prior to that legislation, they were. I think that some victim's rights could be implemented. Right to information about the criminal justice system; often times victims participating in the system know nothing about it. They don't know exactly what a preliminary hearing is or a 995 motion or anything. Even if they're fortunate to hear those words, case status and case disposition, what happened to their case? Maybe a right to notify some victims of the disposition, in which they were a victim. Witness management perhaps could be a right. A system developed to manage the appearance of witnesses so citizens don't have to repeatedly come back to court. I think generally, it's difficult to legislate rights which have their basis in extending courtesy to individuals that the system is

asking to come forth and testify and participate in the criminal justice system. But I think that perhaps that should be the basis for some of the statutory requirements. It's unfortunate that we have to legislate the courteous assistance-type treatment for victims.

CHAIRMAN LEVINE: I'm just going to interrupt you at this point. I think it would definitely bear some, it would definitely be worthwhile to have OCJP, perhaps in cooperation with several other entities that deal with these issues, draft a proposal for a list of rights -essential guaranteed rights- that ought to be insured for victims in the State of California. And if, in fact, a consensus could be established among the victims and witness groups that have been working in this area, as to rights that victims have not necessarily been accorded, but which they ought to be accorded, I think that you would find a very willing response, particularly if those rights did not necessarily involve significant expenditures, and it sounds like to me that they do not. It sounds like you're talking about some very fundamental guidelines that ought to be established and followed, and that aren't necessarily... I would ask you to come back to the Subcommittee before we get back into Session in January with perhaps some specific thoughts as to what rights ought to be for the victims, and I'd like to ask the other witnesses who are here today perhaps to work together in seeing whether a consensus can be established among those of you who are active in this area.

MR. O'RAN: I appreciate the opportunity to do that, and we look forward to working with as many people as we could to do that.

ASSEMBLYWOMAN LA FOLLETTE: Have you studied the Victim's Bill of Rights that's (inaudible)?

MR. O'RAN: I have not exactly studied it, but I've seen it. I've studied several other states' Victims Bill of Rights, yes.

CHAIRMAN LEVINE: You're talking about the Gann Initiative?

MR. O'RAN: Yes.

ASSEMBLYWOMAN LA FOLLETTE: Yes. (simultaneously)

CHAIRMAN LEVINE: This goes well beyond the Gan Initiative. Although it calls itself the Victim's Bill of Rights, it obviously deals with a range of subjects that go well beyond at least what the focus of this hearing is in dealing specifically with victims. He gets into whole systemic issues that go beyond that.

ASSEMBLYWOMAN LA FOLLETTE: Yes, he does. It will be interesting to see it out in the public (inaudible). The public is very supportive of finally recognizing that victims do have rights, and the fact that (inaudible) the criminal justice system has titled (inaudible) too far for too long, toward the rights of the criminals, and unfortunately, (inaudible) the referendum (inaudible) for reapportionment came up, I think, took away some of the attention from the Victim's Bill of Rights, but...

CHAIRMAN LEVINE: Did you have an interest in that referendum on reapportionment?

ASSEMBLYWOMAN LA FOLLETTE: Oh, just a slight interest (laughing). I'm trying to keep this very friendly (laughter in the audience). It is obvious that the public is deeply concerned and that the discussion has begun and you know you're senior member on the Criminal Justice Committee...

CHAIRMAN LEVINE: Keep it friendly. (laughter)

ASSEMBLYWOMAN LA FOLLETTE: Why have so many Victim's Rights Bills failed?

MR. O'RAN: Well, I think that one of the problems has been the fiscal constraints that have been placed upon the system, and one of the issues is also what is a victim's right and what isn't a victim's right?

CHAIRMAN LEVINE: I think we've seen a -- because I'm the senior member of the Criminal Justice Committee, I'm not sure you want to get into a detailed analysis of every bill that has passed out of this committee in the past year, but I think the Committee has been extremely responsive to victim-oriented legislation, particularly in the past two sessions. And the reason we're having this hearing, obviously, is to see what can be done in addition in the whole area of victim and witness assistance.

ASSEMBLYWOMAN LA FOLLETTE: So you're hoping we'll be able to get better bills for victims through the committee this coming...

CHAIRMAN LEVINE: Well, I think we've gotten some quite good bills through the committee, and I hope that to the extent that we might be able to improve upon California's leading role in this area, that this committee can continue to take the lead that it has taken in the past in providing that type of relief.

ASSEMBLYWOMAN LA FOLLETTE: I'm encouraged.

MR. O'RAN: I think that although much needs to be done, I'm pleased to be associated with the State of California in its victim services efforts, since so many other states follow in our footsteps, and the activities of our Legislature, and Governor. It seems to be an issue on which everyone can agree.

CHAIRMAN LEVINE: We appreciate your help very much, and I would hope that you and the others that are here today could get

together in the next couple weeks and think about those issues that you began to discuss, where a consensus might be established on the whole issue of victims rights. I didn't intend to trigger an analysis of the Gann Initiative by mentioning victims' rights, because I think that it goes beyond what we are talking about here today. But on the subject of specific victims and witnesses assistance that can be guaranteed, victims and witnesses in the State of California, I think you would find a great willingness in the Legislature to be responsive, if that type of consensus can be developed.

MR. O'RAN: Thank you very much.

CHAIRMAN LEVINE: Thank you very much. Do you agree with that?

ASSEMBLYWOMAN LA FOLLETTE: Yes (laughing)

CHAIRMAN LEVINE: I'm delighted that our next witness is Gail Abarbanel. Gail is the Director of the Santa Monica Rape Treatment Center at Santa Monica Hospital. I had the opportunity to work very closely with Gail on several legislative issues and to watch the work and the leadership that she has provided to her center and to the hospital and to the community. I believe that Gail Abarbanel is one of the most talented and able, effective people in this entire area, not just in Santa Monica, but I believe, probably any place in the country. And we are delighted to have you with us today, Gail.

MS. GAIL ABARBANEL: Thank you.

CHAIRMAN LEVINE: Before asking you to begin your testimony, let me just mention that for those of you that may not be aware of

this, agendas are available at the back of the auditorium, so if anybody is curious about what the agenda is, and hasn't seen one, they are available at the back of the auditorium, and with that, we will welcome Gail Abarbanel.

MS. ABARBANEL: Thank you. I am going to make some comments kind of using the approach of following the victim through the system, from the time of victimization, and I want to preface this by saying that there -- some of my comments are critical about how the system works -- and there are people here from the Victim Witness Assistance Program who's work I deeply respect and value, and my comments do not reflect on the quality of their program, rather on their limited resources that they can't do more, so...

CHAIRMAN LEVINE: Are your comments directed towards rape victims exclusively or towards victims in general that go beyond the subject of rape?

MS. ABARBANEL: Victims in general, I think. I'll make some specific comments about rape victims, but really victims and witnesses, in different kinds of crimes.

CHAIRMAN LEVINE: Good.

MS. ABARBANEL: I think that also, I am kind of focusing on not the dramatic cases, because we could all bring war stories, which, I think we've all heard enough of those, and we know that there are problems, but sort of on the hum-drum operations, how the system works day to day. We've treated about 3,500 rape victims. We have also done alot of work with victims of other violent crimes, particularly people who have physical injuries, and come to the hospital to be treated. I think if I had to make one general comment on or criticism,

it would be that the system sort of chugs along in an insulated fashion, and victims/witnesses are very often outside of the system, and the biggest problem that they report is not being informed, not knowing what to expect, not knowing why things happen, not having explanations or reasons. I think that in the area of legislative remedies, some of the problems have been corrected by Assemblyman Levine's bills, particularly for rape victims, who probably were the only victims who were singled out under statutes and treated differently, discriminated against by the law, and I think removal of the resistance standard is, was a very important bill and has made a big difference to those victims.

Looking at the victim from the time of the crime, the first agency or system, obviously, that has contact with the victim is the police department and that interaction is particularly critical because it, in large part, determines whether the victim will be willing to participate in subsequent systems, whether she will be willing to continue with prosecution and testify and so forth. And although there has been a lot of reform in those agencies, in the last six to eight years, I kind of feel we are on the brink of regression because of withdrawal of resources. The first contact victims have...

CHAIRMAN LEVINE: Let me stop and ask you what is the relevance of resources at that point in interacting in the system? Why is the amount of dollars then, when a victim interacts with the police, relevant?

MS. ABARBANEL: Because if that's a bad interaction, it's very likely the victim will not be willing to be a witness.

CHAIRMAN LEVINE: But why is good or bad related to dollars? Isn't it more a question of just competence or courtesy, professionalism?

MS. ABARBANEL: You know, you were talking with the last person that was testifying about there's limited resources, where should we put them? And I think that we should invest them in the systems that the victim has to interact with; many of the instances of bad treatment or neglect result in lack of adequately trained personnel. One of the programs I wanted to mention is one that we just started at the police academy, in which we are training all new recruits in an intensive course of victimology. This is a new approach to training police officers, rather than giving them separate one-hour little lectures on battered women, rape victims, burglary, robbery, death notification, etc. The problem in the past has been that they did not generalize from one situation to another very well, and to do this is a much bigger commitment of training time and it's only being done in LAPD's Academy. I feel that it's very effective. We've just begun to do it, but it should be spread throughout the state.

CHAIRMAN LEVINE: So that, on this issue, at least on the first point with regard to interaction, dollars expended on training police personnel in dealing with victims, you have a significant relationship between how victims are going to respond throughout in dealing with the system.

MS. ABARBANEL: Yes.

CHAIRMAN LEVINE: And this is -- there is a dollar relation.

MS. ABARBANEL: Yes, and how I think the public perceives the system as being responsive to -- if the police are not responsive, you feel like the system isn't taking care of this crime.

CHAIRMAN LEVINE: Is this something that all police officers

should be trained with, or do you have some people that you want to have as your interface with victims that have this special training?

MS. ABARBANEL: All police officers have to be trained because you cannot control who's (interrupted by Levine) response at the scene of any crime. And, an analysis was done of these calls and there was like an inverse relationship between the time spent on training on how to deliver service and the time spent on calls. They spent about 80% of their time on service calls, not catching bank robbers. And most of the time in training was spent on, you know, the other kinds of tactics for controlling other kinds of situations and handling volatile situations, and so forth, so I think this, this is a very important change that's being made in the LAPD's Police Academy, and ought to be made elsewhere.

CHAIRMAN LEVINE: Let me ask one other thing.

MS. ABARBANEL: Yes.

CHAIRMAN LEVINE: When this is done in LAPD training, do they, do the officers in the academy take this course instead of another course, or in addition to all of the other courses that they take?

MS. ABARBANEL: In addition to all the other courses they take, but I will say that part of the way this is being done is that the private sector, i.e., the rape treatment center, is donating professional time to the police academy -- quite a number of hours, so in a way, it's a subsidized program, you know. I'm part of the faculty teaching the classes, so they are getting some outside help, but I think there are also some advantages to that because it kind of bridges the gap between the police and the community. And there are

people who have expertise in the community who can contribute to the training of police officers. You'd think that they haven't been exposed to this information. It's kind of a wonder that they do as well as they do in interviewing victims.

ASSEMBLYWOMAN LA FOLLETTE: Do you find any difference in reaction from your rape victims towards male or female officers who are involved in counseling services.

MS. ABARBANEL: Generally, no. The biggest, the most important variable is the attitude of the officer, rather than the sex of the officer, so a male officer who knows how to interview a rape victim can be as effective with a rape victim as a female officer, and it's not that often that the victim really wants to have a female, even when given a choice, which they are given.

ASSEMBLYWOMAN LA FOLLETTE: Thank you.

MS. ABARBANEL: O.k. Alright. There's one other issue which is, I think, an important one. I think that generally, we need a lot better method for protecting the safety of victim-witnesses. They often times feel very vulnerable to retaliation, intimidation, and so forth. There is a, something in the Penal Code that allows the exclusion of victim's phone numbers and addresses from criminal proceedings, and the District Attorney can request that when a case comes to court. That is not effective, because by the time it gets to court, it's been through so many hands and so many places that the victim's phone number and address is widely known, so I would like to sort of back up and make it possible to exclude victim phone and address from the, at the stage of the police report. I think that's the only way you can make sure that that works as a protective...

CHAIRMAN LEVINE: Does the current Penal Code section only exclude the number and address at the time of trial? It does not exclude it at any prior...

MS. ABARBANEL: I brought it with me. I believe it says -- in criminal proceedings, I think, the court, I don't know if it's that specific. It applies to any crime in which the defendant has compelled the participation of the victim. It's not just a rape victim by force, violence, duress, menace...

CHAIRMAN LEVINE: But is it only at trial?

MS. ABARBANEL: It says, "The District Attorney, upon written motion with notice to the Defendant, within a reasonable time, move to exclude from evidence..." It doesn't really say.

CHAIRMAN LEVINE: So at whatever stage the District Attorney decides to make the motion, the District Attorney can make it, but until the District Attorney makes the motion, then that protection doesn't apply.

MS. ABARBANEL: O.K. In terms of the prosecutor's role, in victim-witness assistance, obviously, next to the police, they have more day-to-day contact with crime victims and there was a study which I thought should be mentioned in these hearings, an Inslow Study, a big social science research institute, which looked at the large numbers of cases that were dropped by prosecutors, either rejected at the initial screening or later dismissed, and found that a significant percentage, the majority of cases, the reason given was a "non-cooperative witness." When these victim-witnesses were interviewed in the same study, it was discovered that they really weren't "non-cooperative," they were uninformed, they weren't told

when they were supposed to appear, and so forth. It was really a communication problem, a lack of information problem. So, when you know that a lot of cynicism about the criminal justice system has, is related to this, I think that if we address this big need for information in some low-cost ways, we would do a lot to encourage people in getting more crimes prosecuted.

CHAIRMAN LEVINE: Is there an implementable way to do that?

MS. ABARBANEL: I think there are some ways that we might do it. One way would be to have some form letter notification system. In other states, in other programs, they have implemented these kinds of systems in which victim-witnesses are notified of major case developments, like continuances, guilty pleas, sentences, and so forth by form letters. It means setting up a system, and it could probably even be a computer-based system for large jurisdictions, but I think it would go a long way.

ASSEMBLYWOMAN LA FOLLETTE: What is the system we use at present? A manual system?

MS. ABARBANEL: No consistent system. No. There are some places where there are victim-witness assistance programs in the prosecutor's office, and the percentage of victims they can be involved with are probably informed, but there are many victim-witnesses that aren't.

ASSEMBLYWOMAN LA FOLLETTE: I just find that awfully hard to believe.

MS. ABARBANEL: It's a constant, constant problem. It is not unusual for a victim to walk into the building down the road, on the day of the trial, whether it be rape or armed robbery, and

not know who her D.A. is, not know what courtroom she's supposed to go to, not know that the person who stops her in the hall is the defense attorney, or the public defender, not her own, the prosecutor. These things happen constantly.

CHAIRMAN LEVINE: Haven't programs been systemitized in larger offices to try and establish this type of an information process?

MS. ABARBANEL: In some of the larger offices, they have been, but they don't work consistently.

CHAIRMAN LEVINE: Is this the type of a thing that is susceptible to a statewide solution, or should the solution remain local?

MS. ABARBANEL: I think a form letter notification system is susceptible to a statewide solution because you could decide at the state level which types of things would lend themselves to that kind of notification of victim-witnesses. One of the ways that, one of the biggest problems for victims are continuances and postponements of cases for lots of reasons. It wears the victim out; it's psychologically devastating. It's also an inconvenience and they lose days of work, and so forth. One suggestion is that we place the responsibility for notification of victim-witnesses that there are going to be continuances, on the defendant. In other words, if the defendant continues the case - they are almost always the ones who continue the case - ask for continuances, that we require the defendant to notify the victim-witness and the court in advance, in keeping...

CHAIRMAN LEVINE: The problem that I see with that is what

sanction do you have if the defendant doesn't do it? You can't constitutionally convict the defendant for failure to notify, his lawyer's failure to notify a victim that there will be a continuance. I'm not quite sure how you impose that requirement on a defendant. And if you have a good idea, I'd be interested hearing it, because...

MS. ABARBANEL: It won't work without a penalty?

CHAIRMAN LEVINE: The experience that I have heard, I've heard more complaints about continuances than any single inconvenience and frustration factor from victims, and would love to come up with an enforceable way of resolving or at least mitigating those problems. The ideas that have been kicked around that I'm aware of thus far have not been acceptable either to prosecutors or to defendants, but the enforcement problem I see in shifting the burden to the defendant is I don't know how you impose a sanction. I don't know what lever you have to force a defendant to comply with that requirement, or what lever the system has, although it's worth kicking around, but I'm not sure what you'd do to force it.

MS. ABARBANEL: Some, it could save everybody alot of time. You notify the court in advance, also, instead of showing up that morning and everybody comes, everybody leaves.

CHAIRMAN LEVINE: It's a terrible problem, it's a terrible problem, and well...

MS. ABARBANEL: I'd have to think about that one. What penalty could be imposed with it?

CHAIRMAN LEVINE: I'd be interested in whether or not there is a sanction that could be applied that would make such a provision, put some teeth in such a provision.

MS. ABARBANEL: O.K. That's something we could think about some more. I think that one other thing, one other comment I forgot to make about the form letter notification system, is that when you're sending information like that out to people it could contain other things that they need to know like phone numbers for victim-witness assistance, information about compensation programs, etc. It's been our experience that even though the law that established the state benefits for victims of violent crimes specifically requires certain agencies to inform victims, like police and hospitals and so forth, nevertheless, most victims are never informed that those benefits are available and that they have the right to apply for them. Again, that can be brought back into training programs. It's possible that when police are trained, they are never told that that's a responsibility. But that's a big problem. A lot of people that are eligible for those benefits don't know if they happen to be lucky enough to be in a jurisdiction where there's a victim-witness assistance program like those run by the people here -- they're helped to get the benefits, but a lot of people aren't.

CHAIRMAN LEVINE: Is there (inaudible)

MS. ABARBANEL: I believe I'd like to look at the possibility of those being raised or possibly adding mileage costs to reimburse witnesses for those expenses. The other problem with witness fees is that a lot of victim-witnesses don't know to ask for them and don't get them unless they initiate some kind of action. O.K. One of the things that's needed in many courthouses...

CHAIRMAN LEVINE: Can I just get back to asking you one quick thing that I wanted to ask you towards the end of our..., when we were so rudely interrupted? The various points of interaction

and processes that you had mentioned thus far in your testimony appear to me to all relate directly to the police department or primarily to the police department or is that an incorrect conclusion for me to have drawn?

MS. ABARBANEL: Uh...

CHAIRMAN LEVINE: I guess the police department and the prosecutors.

MS. ABARBANEL: Right, yes.

CHAIRMAN LEVINE: So those are the two primary points of interaction that the victims are concerned about in going through the system until they get to the court itself?

MS. ABARBANEL: Yes. And their interaction with the prosecutor is really tied to the court.

CHAIRMAN LEVINE: Interaction with the police.

MS. ABARBANEL: Yes, well once they, their interaction with the police usually pretty much ends once the case gets filed at the District Attorney's office.

CHAIRMAN LEVINE: O.K. Once the case gets filed with the District Attorney's office (inaudible). So until it's actually in the course of being prosecuted, the victim's interaction is basically with the police. Subsequent to that time, the victim changes jurisdiction so to speak, from the police to the prosecutor.

MS. ABARBANEL: Yes, although in some cases the police continue to provide support and prepare the victim for testifying.

CHAIRMAN LEVINE: Have task forces been established between victim and witness assistance programs on the one hand, police and prosecutors on the other hand, to try to bring these various points

of contact together to see whether some specific program or set of proposals might arise from putting those components together with the victims who are victim representatives that you're aware of?

MS. ABARBANEL: Maybe they could answer that better than I can. You know, we also -- Los Angeles, I don't think is representative of the entire state and there are two shining programs in the City Attorney's Office and the D.A.'s office, but I don't think that's true everywhere. (Inaudible comments in background)

CHAIRMAN LEVINE: Go ahead.

MS. ABARBANEL: Also, in the prosecutor's office, I believe that we need to have more stringent and requirements for ongoing training and education. Again, just as in the police department, when we have instances of bad treatment, it's usually lack of training and education and knowing how to treat victims.

O.K., once we're in court, one of the things that we need in a lot of places, a lot of courthouses, is special waiting areas for victim-witnesses, so they feel that they're in a secure place and so that we can separate the defense and prosecution witnesses. I don't think that has to involve constructing new facilities. It could mean reallocating space or areas where people could wait. I think that would make a big contribution to people feeling safe and secure. In some of the other programs, some of the ideas I'm suggesting come from the LEAA Model Projects in different states where they tried other ways to support victim-witnesses. One was centralizing the information giving function in the courthouse, so that there was one person who was there to provide victim-witnesses with explanations and procedures and so forth, or a variation of that was to have like

a reception center in the courthouse, which in some places was staffed by volunteers who were trained to answer routine kinds of questions about procedures. It's another way to give out information that makes people feel more in control and so forth.

O.K. That's all I wanted to say. I just wanted to add one comment based on the prior testimony -- the issue that came up about rape victims not having to pay for the costs involved in collecting evidence, and it is true that there is a law in California that prohibits hospitals from charging victims for the cost involved in evidence collection. The costs are supposed to be borne by the local law enforcement agency. The law enforcement agencies pay approximately \$17 per victim to the hospitals for these exams. The real cost of the exam is \$150 average so the hospitals are faced with absorbing these costs. Often times they bill the victim anyway, and legally, they can bill the victim for some parts of the exam that aren't technically evidence collection, so that is something that I had hoped could be remedied by legislation, even though that passes the cost on to the police. They don't have the money to pay for it. But what happens is that the victim is being victimized again because she does get a hospital bill.

CHAIRMAN LEVINE: What I would appreciate...

MS. ABARBANEL: I have an analysis of that bill and a suggested change that was Sieroty's legislation initially, a long time ago, and it was intended to be implemented in a different way than it has been.

CHAIRMAN LEVINE: Well, I would appreciate two things, if they'd be convenient. One would be that analysis as well as the

other legislation that you talked about earlier in terms of the addresses and phone numbers and any suggestions you would have with regard to changing that law. And secondly, if you would be willing to participate with Sterling O'Ran and the other people who are here and who are, or people who aren't necessarily here, but who had been involved in victim and witness assistance programs in trying to establish the type of proposal that Mr. O'Ran and I were discussing, in terms of just a consensus concept of a Bill of Rights, or a list of rights that should be guaranteed to victims and witnesses in the State of California.

MS. ABARBANEL: O.K.

CHAIRMAN LEVINE: Thank you very much.

MS. ARABANEL: Thank you.

CHAIRMAN LEVINE: I'm very pleased to welcome our next witness, Los Angeles Police Chief, Daryl Gates. Chief Gates has been the leader in trying to develop innovative programs through his department in being of assistance to victims and witnesses, and he is, as everybody in this room knows, one of the most widely respected law enforcement officials in the country, and we're delighted to have him with the Subcommittee. Chief Gates?

CHIEF DARYL GATES: Mr. Chairman, I'm delighted to be here. I always manage to be in Santa Monica on a nice day like this. I appreciate your being here, and also appreciate your interest in this particular subject. Naturally, as a police officer, for many, many years, it's been my sad duty to respond to people who have dearly (inaudible) become the victims of crime. I've done that far too often, and it's, I think, important that the Legislature is showing

this kind of interest in the problem, because they indeed do have serious problems. Probably the, and I'm not going to take very long, because I don't have as many good ideas as Gail had. She's filled with ideas.

CHAIRMAN LEVINE: And also hopefully the power won't go out in the middle of your testimony.

CHIEF GATES: Right. First of all, probably the best thing we all could do is reduce the number of victims. We talk a lot about it, and uh, the Legislature talked a lot about it in this last session. Not a great deal came out of the last session of the Legislature, as you know, except rhetoric, and it would be nice if in the next session you would go back and do some of the things that a lot of people said they were going to do and I think that would be doing more for victims than anything you could do in your recommendations here. We need fewer victims. The State of California has become certainly a disgrace throughout the nation and this state is part of that disgrace, so much more has to be done, and I think it is within your power to strengthen the laws and I think that may aid the victims more than anything else.

CHAIRMAN LEVINE: Excuse me. Chief Gates, you've struck a responsive chord in Assemblywoman La Follette, who would like to ask you a question. I'm sure it's non-rhetorical.

ASSEMBLYWOMAN LA FOLLETTE: It's a very direct question. I hear so often that there are the laws already on the books that if they were used, that there are plenty of them we don't need anymore, and law enforcement could do its job. You're asking for more laws?

CHIEF GATES: I'm asking for some of the problems that

that we've found in the justice system to be corrected.

ASSEMBLYWOMAN LA FOLLETTE: Do you think that laws can do it?

CHIEF GATES: I think that there are many things, let me make myself perfectly clear. I don't think that the system of justice that we have is responsible for crime in the State of California or the nation. I don't believe it is at all. I do believe that the system of justice is there to do justice. I don't think it does justice today. And I think the reason for it is a whole variety of reasons, and I think some of the recommendations have been made for changing the system so that it does justice, not only to defendants, but justice to the people and to the victims. I think that's really all you can seek from that system. And if you can acquire justice for all of those who participate, I think you have accomplished your purpose and your objective.

ASSEMBLYWOMAN LA FOLLETTE: You're talking in generalities.

CHIEF GATES: No, I'm talking about the system that doesn't work. And there are many things that can be done to change that system, I think, to make it work, to make it more effective. Those proposals -- I made something like thirty-one proposals, not generalities at all -- very specific proposals. Many of those got into bill form. I think only three of the thirty-one proposals were passed in the last session of the Legislature. I can go down the list. I can bring Mr. Gann's Victim's Bill of Rights. I supported Mr. Gann's Victim's Bill of Rights only because I'm frustrated by the Legislature.

CHAIRMAN LEVINE: Can I interrupt just to ask you -- would you mind submitting a copy of those thirty-one proposals to me, so

that I'd have an opportunity to review them. I don't think I've...

CHIEF GATES: I'd be delighted. I've sent them to the Attorney General and to many state legislators; I'd be delighted to send them to you.

CHAIRMAN LEVINE: Thank you.

ASSEMBLYWOMAN LA FOLLETTE: I'd be happy to have a copy also.

CHIEF GATES: Sure.

CHAIRMAN LEVINE: We'll consult on do we spend some copies -- I would like to see -- we'd both like to get copies. If you can afford two copies, then send a couple more.

ASSEMBLYWOMAN LA FOLLETTE: You see, maybe with both of us, each of us representing different major political parties, if the two of us can agree on some bills, it might have a chance of getting through. Maybe we could accomplish more this coming year than has been done.

CHIEF GATES: We have, did you not have some gun legislation?

CHAIRMAN LEVINE: We do have some gun legislation. I don't want to get partisan in my discussion of why that bill didn't pass on the final night of the session. But that is on the Assembly Floor for concurrence.

CHEIF GATES: But that did have...

CHAIRMAN LEVINE: You were a central figure in developing and pushing that legislation and I'm very grateful to you for that, and I think that will become law as soon as the Republicans agree to vote for two-thirds bills.

ASSEMBLYWOMAN LA FOLLETTE: And of course, I have 1942, which is school access, which I feel that you were quite in accord with.

CHAIRMAN LEVINE: Yes.

ASSEMBLYWOMAN LA FOLLETTE: Although you didn't suggest it yourself. And that also bit the dust the last night (laughter).

CHIEF GATES: I think that's the unfortunate part of it. We did have a lot of discussions and a lot of speechmaking in the Legislature this year. It appeared that we had for once, both sides agreeing that this kind of legislation was necessary and somehow, along the way...

ASSEMBLYWOMAN LA FOLLETTE: Reapportionment got in the way.

CHIEF GATES: Something got in the way. It did not happen. And so I sum up again and simply say that the real solution to the problem with victims is to reduce the number of victims. The system has become so clogged and so difficult that victims are victims not only in crime but of the system that they (cut off)

CHAIRMAN LEVINE: Let's see what we can do from here. How's that?

CHIEF GATES: Fine. O.K., fine. O.K., where were we, reapportionment?

ASSEMBLYWOMAN LA FOLLETTE: Let's skip that.(laughing)

CHIEF GATES: We're not passed that?

ASSEMBLYWOMAN LA FOLLETTE: No, we're not.

CHAIRMAN LEVINE: I'd just like to inject at this point -- I do think that for some of these bills -- the gun bill, in particular, which I felt was the most significant crime bill in this session in this past term -- that these bills will be enacted. I think we did achieve a partisan impasse, which derailed some very good legislation in the criminal justice area and in others, and I think that both

parties will want to see this type of legislation enacted when we reconvene. I hope that turns out to be the case. I think it will.

CHIEF GATES: As I said, I don't see a very bright future for the victims, because I think things are going to get even worse in this very confused state that you're in. We found, I've found over many, many years of being in this business that where we used to have time to spend with the victim and used to be able to, for example, when a car was stolen, we used to go out, send our officers out and they had time to take a report and to study the potential for locating the car and the criminal who was responsible for stealing the car, to spend time commiserating with the victim. Now, when someone wants to report a car stolen, they call us on the telephone and we give them to someone else on the telephone and they take a report over the phone. It's a very, very, very impersonal way of dealing with crime victims and we are doing more and more of that, taking more and more reports on the phone. We used to have, not too long ago, we used to have a requirement that everytime we had a crime victim, that at least, the victim was called by a follow-up investigator. If not a follow-up investigator, someone in the office that could at least tell them, hey, looking at your case, you're important to us. We want to do something for you. You can't do that any longer. We don't have the personnel. We have a preliminary investigation. We give the victim a victim's memo (?) which states basically that they are not going to be contacted by a detective, that we will indeed follow-up on their case but they won't be contacted by any detectives. If they have any additional information, give them the form that they can fill out and send that in. Again, all very impersonal and not much tender loving care for the victims.

CHAIRMAN LEVINE: Now, are those cases due to inadequate resources? Is that just a dollars and cents issue?

CHIEF GATES: Just a way of dealing with an overload and not the kind of resources we need to deal with the problem.

CHAIRMAN LEVINE: If the 8500 plan had succeeded, would that have changed these types of things or not?

CHIEF GATES: That would change things significantly, because first of all, we would reduce crime in the City of Los Angeles. That would have an impact. Secondly, it would have given officers more time to spend with the victims. Officers are now even more impersonal even with additional training that we are giving the officers, explaining how important it is to spend just a moment or two showing their concern to the victims. They find themselves with two or three calls backed up and they want to get in and do their preliminary investigation and get out. We're trying to find ways to deal with that. We have instituted report cars now and officers simply go out and take reports and preliminary investigations. They do often have a little bit more time to sit with a victim, to explain things to them, but even there, we are limited to what we can do, and again, that's probably resources.

Many things that as I said, we do, have been doing and we do spend a lot of time with our officers attempting to compensate for the fact that we have become more impersonal, but still, it is not enough. Now major cases, where we, the detectives do respond, there is a little more contact with the victims and the officers do have time to at least counsel them, tell them what they are going to expect and to direct them to some of the fine programs. The prosecutors

in Los Angeles have in victim assistance, and they do have very fine programs, but there again, they are funded programs, grant programs. You could expect them to fade, unless someone takes the initiative to fund them, and I think, quite frankly, that initiative has to be taken so that they're no longer grant funded, and so they're a regularized kind of program within the prosecutor's office.

I think it was stated that one of the most traumatizing effects on the victims is to go to court and suddenly find that the case is dismissed, after having a day off, and found their way down to that confusing area, which is the courtroom, and totally finding that the case is dismissed. I know a friend of mine whose daughter was raped, and an individual who, quite frankly, had some influence in the justice system, and his daughter, a teenager, has been to court four times, has yet to testify, is going through tremendous emotional upset simply because she can't get on the stand to tell her story, which she'd like to do, and get out of there. You mentioned that you can't find any constitutional way to require defendant attorneys to indicate when there's going to be a continuance. It seems to me, and this is a problem with court management, it seems to me that when a judge sits down and says, are the People ready, is the defendant ready, then be ready. And, if they're not ready, there ought to be some serious reasons why they are not ready. I don't think those reasons are very serious. Attorneys have conflicts; attorneys have other reasons, but really what it is is a war of attrition against the victims and the witnesses. If we can get the victims and the witnesses upset, if we can get them not to show up, if we can get them so that they won't testify, which many of them -- the cases are going to be dismissed.

The war of attrition (?) -- attorneys are pretty good at it. I'm not saying that it's, I'm saying it... I think maybe we ought to look at the defense bar and maybe they ought to recognize that this is an evil -- that it is not, I think they teach ethics, they used to teach ethics in law school -- that's something that perhaps they ought to be taught. They ought not to be using these kind of tactics. They ought to bring their case in and try it. Very quickly, some of the things that we think ought to be done, and maybe proposals for legislation, although they're not full proposals at all. We, of course, are always looking for additional training for police officers. We are getting some outside help. I think this was reported to you. But we do need additional sources in that area.

CHAIRMAN LEVINE: Can I interrupt you for one moment on that point? I think you missed Gail Abarbanel's initial testimony when she talked about the new course at the policy academy on victimology. She felt that this was a very significant beneficial tool that will enable your new police officers to be better trained and able to deal at the stage of interaction with the victim themselves. Had you had an opportunity to analyze the effect of that yet? Or is it too new yet?

CHIEF GATES: No, it's too new for us to analyze that, but it's the kind of thing that's very important to us. I might make a statement here that the police departments are often looked upon as being cold and insensitive, and perhaps we notice that because a police officer doesn't develop very quickly a suit of armor to protect himself internally from the kinds of things he or she sees in the day to day situations. He doesn't develop that real, real

blank look (?) all the tension systems on our psychological stress tensions. We do a pretty good job with that now. But, so officers do develop that coat of armor to protect themselves, that they can learn to deal with a great deal of sensitivity, with victims and others involved in some of the tragic things we have to deal with. A lot of the things are not brought to our attention. Fortunately, we had Gail Abarbanel come to us and say "look, you're not being sensitive." And I said, "Tell us how to be sensitive." And she took it upon herself. What I am saying is that if you want that kind of help from the police department, don't expect that we know all the answers, many times we do not, and we look for outside help and when that help is given to us, we have great desires of taking it.

CHAIRMAN LEVINE: Let me just ask you a resource management problem on that issue. Gail emphasized that a lot of the assistance, a lot of the course in victimology is provided through outside assistance, such as the people of the Santa Monica Rape Treatment Center. And therefore, in addition to being able to call in outside resources, you also don't need to burden your own budget to the same extent that you otherwise would. The cost of the course is considerably reduced. Is this, even with this outside assistance, a significant new expenditure to the Academy?

CHIEF GATES: Yes, sure. Anytime you engage in training, you get ready to train all of your people in our case about 67 hundred now, we keep going down. All the time they spend in training is time that they are not spending doing other things. So it is very costly, it is costly to us, it's costly to the people who look to them for help.

CHAIRMAN LEVINE: So again, all that this boils down to is dollars.

CHIEF GATES: To dollars. That's right and then also, a recognition by people that we are indeed looking for answers. We haven't closed our eyes to those who may have those answers.

Now, other kinds of things, restitution, I think, is very important to victims. Some judges take upon themselves to do that. Many do not. The vast majority do not. My belief is that I am not very strong on probation, but I believe that anytime that probation is granted that restitution ought to be an absolute essential part of probation.

Witness fees, that was mentioned earlier; witness fees ought to be reasonable. I don't think they are. Transportation and meals certainly should be included. Also, a lot of people do not know that those fees are available. We would be very happy to provide that service and also make those funds available to people if we were reimbursed for those funds. So, that's a possibility. Often our detectives, quite frankly, buy victims' lunch when they go to court and that comes out of the officer's own pocket. One of the bills that I talked about, which I thought the legislature, and still believe, the legislature should act upon, is to take a look at the dangerousness of the defendant as opposed to whether or not he or she will show up in court and...

CHAIRMAN LEVINE: In terms of setting bail?

CHIEF GATES: Pardon me?

CHAIRMAN LEVINE: In terms of setting bail?

CHIEF ATES: In terms of setting bail and I think that's

important for the well-being, the safety of victims and witnesses. In many of our gang cases, as you well know, the attempt to intimidate is very great, and the victim or witnesses have to have some assurance that there is a clear understanding on the part of the court that this is a dangerous situation to them. The district attorney is, in our city, is doing very well in terms of our hardcore, hardcore prosecution. He has had to take resources from other places to do that. The Fed (?) is working very, very well, and we do have an opportunity, when they do get into the Superior Court to relocate witnesses and provide protection for victims. Couple of things that we think are outstanding and did not require any funds from the state or the city are these storefront programs we have up in (inaudible) orders and on the eastside we have just opened up a Korean storefront...

CHAIRMAN LEVINE: Storefront victims assistance program?

CHIEF GATES: No, it's a, it's an opportunity for the victims of crime, who never would report the crimes or who did not know anything about our system, who cannot speak English and come and speak with the police officer with an interpreter and learn about the system. So, it is indeed a, among other things, it is an assistance to victims. Now this takes resources from our department. We have to have an officer there, staffing the program but the storefront was donated by the people of the community and it is staffed by volunteers who come in and provide interpreter services.

One item, one last item that I think might be helpful and it may have been suggested before, but we are going to have difficulty getting property back to witnesses. We have done and the media, I might add, have done a great service in making known the fact that

we are going to destroy a lot of stolen property that we know is stolen. We want to get the property back to the victims. We tell the media, the media advertises that, and people do come in and take a look at their property. The problem is that too many people cannot identify their property. We need some system, a better system that will insure that serial numbers and other kinds of identifying marks are done on all valuable property. One way would be to require manufacturers and/or the distributors of very expensive electronic equipment or office equipment sound systems to record those serial numbers. People who buy the property just don't record the serial numbers and that property is stolen. If the manufacturers would just take a little time or the distributors just take a little time and record those, put them into a system that would allow us to retrieve that information very quickly, it would be very helpful in getting that property back.

CHAIRMAN LEVINE: I think that idea has a lot of problems. I think the distributors will just love the idea.

CHIEF GATES: That basically is so, but I think it could be turned into a real public relations campaign for distributors, it really could. And I think if some of those kinds of things are on a volunteer basis perhaps. Maybe not state legislation but maybe the legislature could stimulate that kind of thing. I always say that we right now are up in our crime just a little bit and most of that increase in crime comes about through the stealing of the radios, the new kinds of radios that are in automobiles. I don't know whether you're familiar with those, but there is a great market in those. So, they're stealing them and that actually has increased our

overall crime. The City of Los Angeles actually has little reduction in crime if it were not for the stealing of those darn radios. So, if you're talking about public relations, if Lee Iacocca would come out and say something besides the, talking about the sticker shock, come out and say, buy a Chrysler because no one wants them and no one will steal them, you'd be surprised at the sale of the chryslers. Thank you for having me here today, and I am very hopeful that something will come out of this, and that when we get reapportionment straightened out, that's very important. And I have signed my petition. Thank you very much.

CHAIRMAN LEVINE: Thank you very much. Please don't sign the congressional petitions. Let me ask, if I might, on a non-reapportionment issue, prior to your arrival we had testimony from the office of criminal justice planning. Sterling O'Ran was our opening witness and he started to outline a variety of areas that appeared to be likely consensus areas for some clear victim's rights that either could or should be enumerated by the state. And I have asked the other witnesses if they would be willing either themselves or representatives of their offices to work with the office of criminal justice planning to see whether that type of consensus could be established and if some representative of the LAPD could join in that brainstorming session, that could be quite useful, and perhaps we could develop a consensus. Would you be able to send a representative?

CHIEF GATES: We would be delighted to participate in this. Let me know, or contact my office. We'll have an arrangement made.

CHAIRMAN LEVINE: Thank you very much for your help.

CHIEF GATES: Thank you.

CHAIRMAN LEVINE: Our next witness is Michael Bradbury, the District Attorney from Ventura County. I appreciate your coming down here to these hearings, and we welcome you to the subcommittee and to Santa Monica.

MR. MICHAEL BRADBURY: Chairman Levine, Assemblywoman La Follette. My name is Michael Bradbury. I am the District Attorney of Ventura County, and first of all, thank you for the opportunity to discuss the needs of crime victims and witnesses. Before going into that, however, I think that it's important the state has often taken for granted or overlooked, that is that during the last ten years, the California legislature has enacted laws of enormous assistance to crime victims and witnesses. You created an indemnification for violent crime victims, you provided funds for victim-witness units, funds for District Attorney sexual assault case training, rape victim counseling centers and recently increased the punishment for serious crimes, just to mention a few. As a prosecutor, I would like to thank you for that help. Still more can and should be done due to time constraints. I will mention only a few.

First, allow local victim-witness units to provide emergency indemnification funds to needy violent crime victims. This incident illustrates the problem. About six weeks ago, a Mr. Mudd and his family moved to Ventura County from Illinois where he was unemployed and where he had lost his home. Two days after he had found a job in Ventura as a machine operator, he and his wife decided to go out and celebrate and have dinner. They didn't make it. They were assaulted and Mr. Mudd was stabbed several times. He was taken to a hospital and treated but he has been unable to return to work. Shortly after the stabbing, the Mudds sought assistance from my victim-witness

assistance unit. They had fifty dollars, owed thirty-five for a hotel bill, and were without food and lodging. We told Mr. Mudd that he fully qualified for indemnification as a victim of a violent crime, that he would receive reimbursement for hospital expenses and lost wages in eight months. All we could do was to prepare the indemnification forms for him, forward them to Sacramento and refer Mr. Mudd to some local agencies that might be of some help, but increasingly are not.

CHAIRMAN LEVINE: Could I interrupt you on that? That story has some special significance to me because I have carried successful legislation to create an emergency loan program for victims of crime as well as to extend the sunset, to eliminate the sunset date on that. That was supposed to have been sunsetted December 31 of this year, and I carried a bill that either extended or eliminated that sunset. My understanding and my intent that that bill would provide as emergency loan assistance immediately for cases exactly like this. Why he doesn't...

MR. BRADBURY: We need, and we don't have a checkbook in the office of the District Attorney or in the office of whatever victim assistance agency is operating in the particular community. It doesn't help again, to tell a person, well we can get you some emergency funds but we have some red tape to go through. We need to be able to sit down and write out a check after we have evaluated their claim and realized that they need the funds.

CHAIRMAN LEVINE: Why wouldn't it be just as effective for you to pick up the phone if you could and ask a state agency to write out a check?

MR. BRADBURY: Have you ever tried to do that?

CHAIRMAN LEVINE: No.

MR. BRADBURY: It takes a long time.

CHAIRMAN LEVINE: Has your office tried to do that?

Subsequent to the enactment of the emergency loan program.

MR. BRADBURY: Yes, we have one of the three models in the U.S. as a victim-witness unit. We make use of every resource available. What we need is the ability to number one, spot write-out a check. There would be little or no state costs, and such emergency funds would be deducted from the later full reparation payments.

Number two, require trial judges to receive training concerning child victims and witnesses. Existing legislation provides adequate safeguards for witnesses, including child witnesses, but too often insensitive or untrained judges deny those safeguards to child witnesses. Under the guise of establishing competency, judges too often engage in philosophical colloquies about truth with six and seven year olds, colloquies that would vanquish an Aristotle. Too often they prevent harmless introductory questions designed to relax a child witness. Too often they require a child witness to testify for hours without interruption or recess. A modest trial judge training fund, I think will help remedy those problems.

CHAIRMAN LEVINE: Do you think the law is adequate to put more emphasis on the problem?

MR. BRADBURY: That's correct. I think we've talked about sensitivity training for police and prosecutors. I think it's time that perhaps it be extended to the bench, and certainly, there are many caring and concerned judges, but there are some that require

this additional training.

Number Three: Juror Qualification. Someone convicted of a registrable, misdemeanor sexual offense should not be qualified to sit as a juror, and they are now.

Number Four: Sexual assault victims need a trained, available, sympathetic aide to help them through the ordeal of the criminal justice system. The Ventura County District Attorney's Office has one such aide, a former nurse. Most counties have none, and there is a need for many.

CHAIRMAN LEVINE: Should that be mandated statewide, or should that be left to local discretion?

MR. BRADBURY: If it's left to local discretion it's not going to happen because of the fiscal crunch.

ASSEMBLYWOMAN LA FOLLETTE: Let's see. You're asking for the funds to go along with the mandate.

MR. BRADBURY: No, any time that, I think one of the things that is most amusing to prosecutors to see bills here enacted indicating no fiscal impact. You know, that's like saying, the check's in the mail and I still respect you tomorrow morning. It's just not true.

CHAIRMAN LEVINE: Which, the check's in the mail or that...

MR. BRADBURY: All three. Vertical prosecution of sexual offenses, state federally funded criminal prosecution programs have proved the value of having a single prosecutor handle a case from the beginning to the end. There is even a greater need for such vertical prosecution of sex crimes where the victim suffers with each re-telling of her story and where witness rapport is absolutely essential...

(Due to electrical difficulties, the end of Mr. Bradbury's testimony, all of Mr. Rowland's testimony, and the beginning of Ms. Lightner's testimony were not recorded.)

ASSEMBLYWOMAN LA FOLLETTE: ...and how can they do that?

I mean, these are horror tales, as far as I am concerned. I can't imagine one human being treating other human beings with the lack of courtesy and feeling and sympathy that they should be treated.

MRS. LIGHTNER: They tell me that's because they deal with this so much, they become callous. We have asked, in fact, in Sacramento County that they bring in a psychologist to talk to the district attorneys along with myself on death and dying and what it's like to go through an experience like this. And we normally ask these district attorneys that we deal with to put themselves in our shoes for just a few minutes and try and identify with that with us to bring back some of the feelings that we feel that they should have. You know, I also deal a lot with death and dying, probably 30 to 100 times a day and have for the past year and a half. Yet, I still think any human being if it has any compassion at all, cannot help but be affected, at least somewhat, during this time period. I think, what happens is they're kept away from it so much and the D.A. has no time so he does not spend a lot of time with you. His attitude is more, at least we have found, on the quickest way to get this case over with and off the dockets because he has 500 other cases to handle which he considers, and I've had them say "more important" than the death caused by drunk driving.

The judges usually are not confronted with that. We cannot, it's in violation of the penal code for us to talk to the judge prior to sentencing, so we cannot do that. The only way they are going to know anything about us is through probation or through the

District Attorney explaining to the judge exactly what we have gone through.

We must remember something. The D.A. does not represent the victim, he represents the State. You know, and there is a world of difference, in fact, you know, our feeling is that everyone represents the defendant. The public defender does by representing him, the District Attorney does by plea bargaining the cases down, and the judge does by slapping them on the hand. There is no one to speak for the victim, absolutely no one in court. In Washington State they have what's called the victim liaison and I have been very impressed with what I have seen of it so far. And this one particular woman that I have dealt with on several of our cases in Seattle, does exactly what we do and she is paid by the County, I believe, and she is assigned to these cases, to the drunk driver cases. I do not know if she handles other cases, I have only worked with her on drunk driving cases. She actually deals with these people immediately, as soon as it happened. She explained to them the court process. She communicates that she goes with them to see the District Attorney. She sits with them in court, lets them know what is going on. Lets them know when the hearings are coming up -- all the things that we now do, but there, it's provided by the county. MADD does not mind doing this, but we certainly like somebody else to take off the load a little bit. And this is something that I would hope could be provided, some kind of a victim liaison. The victim-witness program, by the way, does provide you or did me as an individual to help fill out the forms and everything, which ended up being a waste of time. But, she was transferred and nobody else took over and I never heard

again what happened. So, I know they have people there that do that. I just think again, it's a problem of not following up and not getting it done.

CHAIRMAN LEVINE: Is MADD completely volunteers?

MRS. LIGHTNER: With the exception of a paid staff which is myself and secretary and a few other staff people, but all our liaison work is done on a volunteer basis.

CHAIRMAN LEVINE: What is your budget?

MRS. LIGHTNER: We don't have one. We don't have money. How can you have a budget without money.

CHAIRMAN LEVINE: Well, what do you pay the staff? How much does your paid staff get paid in a course of a year.

MRS. LIGHTNER: Let's see, we've been funded one hundred thousand for one year to pay us staff, which we did.

CHAIRMAN LEVINE: By whom?

MRS. LIGHTNER: I can't tell you, she wants to remain anonymous.

CHAIRMAN LEVINE: It's private, not public?

MRS. LIGHTNER: A private foundation, right. She lost a daughter to a drunk driver two years ago, and with that we have hired myself. I finally went on salary after a year, two other full-time people and a full-time secretary. So, what we are on a year is, I don't know, about sixty, \$60,000 a year, \$65,000 a year.

CHAIRMAN LEVINE: The reason I ask, the only reason I asked is, I am trying to assess, just based on your experience, and your costs will inevitably be less because you have real devoted people in each of your positions. But I am trying to assess what the comparative

public costs might be to provide the types of services in different places that MADD is able to provide privately.

MRS. LIGHTNER: I think, we think you could provide those services if the legislature this year would pass nickel-a-drink. I think the money could be taken out of there.

CHAIRMAN LEVINE: I don't want to, I mean, I happen to support that very strongly, I think I am a co-author of it. But I don't see it passing.

MRS. LIGHTNER: I think that would solve a lot of the problems that you have heard today about not enough enforcement and not enough time, not enough of this, not enough of that.

UNKNOWN VOICE: I think it's got a better chance now?

MRS. LIGHTNER: Well, especially since he was so pro I am told. Your bill on plea bargaining, by the way, which I did check into the other day to find out where it is, I think it's vital that even though the victim maybe cannot participate in the process, can at least be informed that this is what's happening and we have been supporting that legislation.

I would like to bring up the delays. You know the speedy trial act, where the defendant has a right to a speedy trial within sixty days of arraignment? We have a case here, which we are going to bring the victim in and didn't have a chance in which her case has been delayed and delayed for over a year. It seems to me, to solve a lot of these other problems if you would actually go through with the speedy trial and get them in there sixty days within arraignment. I have sat in court and listened to defense attorneys -- Sam Sawyer and I have five divorces coming up, I have this, I have that. There

is no way we can handle this a month from now. And the judges seem to go along with us on that. And that only hurts our case because if it drags us out and puts us through this for a long period of time...

CHAIRMAN LEVINE: Let me ask one other thing on that. In the instances you have observed, and have heard about when lawyers have conflicting court obligations, are those obligations generally civil or are a number of the conflicting obligations frequently conflicting criminal obligations?

MRS. LIGHTNER: Actually, the ones I have listened to have been civil. There is one other thing you may not know and that is called, Rule Number One, in which they don't actually say that in court but it's when the defendant has not paid his defense attorney, they can get a delay, after delay, after delay. It's a little known rule but it's used quite often, I understand. Little loopholes like that should be done away with. Mothers Against Drunk Driving has what we call victim forms, and I didn't think to bring one, but we send them out to all of the victims, and they itemize exactly, you know, what they have been through, the financial costs, what the background is of the driver, and whether it's death or injury, and of the long-term effects that they have suffered as a result of this. Someday when we have a staff and finances we would like to do a research project. But just to tell you something -- from the first twenty forms we received in this State, the average cost to the family per death was \$22,000. So, you know, that might help you in figuring out compensation and what have you.

The other thing is restitution that the judge orders. I wish you would make sure that they pay it. I sat in court and

watched these people come in in Jordache jeans who have to pay a fine of \$150 to \$300 and the judge will allow them to pay five dollars a month while they stand there in their expensive clothes. And, this money, by the way, goes into the county funds which help pay for some of these programs. And so it seems to me, if they would just mandate that they do pay the fines...

And I would like to talk to you about the Quick Bail Act. In case you were interested in doing something about this, it has come to our attention that these people are being released while they are still intoxicated and driving. And also, it has come to our attention that many of these people are being picked up again for drunk driving immediately upon their release. And, I call this victim's rights because, we are the ones that are suffering as a result, and I wish you'd take a second look at that, and see if there is not something you could do about that.

You mentioned earlier something about a task force. I think that's an excellent idea. We have been doing it, our chapters have been working with it -- our own particular county district attorney's office is trying to work out changes in policy because of many of these mean administrative changes. And I think, if you do something like that on a statewide basis in which these policies would change all at once over the state, besides making our job a lot easier, I think, you would see a great deal of improvement and rapport between the victims of violent crimes and prosecution. I cannot complain to you about the police because we don't have any problems with them. They have been great. But I will complain to you about probation, and the district attorneys, and I think that's it.

CHAIRMAN LEVINE: Well, thank you again, very, very much, and we will remain in touch. I am looking forward to working with you on trying to develop some legislation in this area.

MRS. LIGHTNER: O.K., thank you.

CHAIRMAN LEVINE: O.K. The next witness is someone we've heard, those programs we have heard about from the current witness. Veronica Zecchini, I appreciate your sitting here in the front row through all these other witnesses and I welcome you. Veronica Zecchini is the coordinator of the Sacramento County Victim-Witness Program, and she is our next witness.

MS. VERONICA ZECCHINI: Good morning. I am here today not only as the program coordinator of Sacramento County but I also represent the California Victim-Witness Coordinating Council. And, first I would like to give you a brief background of the Council and then some specific suggestions for legislation that our group has, would like to propose.

On October of 1978 the Northern California Victim-Witness Coordinating Council was formed. The group is a coalition of all those victim-witness program coordinators and staff in the northern portion of the state. We are interested in sharing ideas and problems relative to providing services to victims and witnesses. The first activities of the council centered around supporting legislative items pertaining to victims and witnesses and working with the State Board of Control which administers California's Victims of Violent Crimes Compensation Program.

During the Summer of 1979 the Council developed by-laws and held its first election of officers. Communication and sharing

of ideas with program coordinators in the southern and central portions of the state brought about the formation of the Southern-Central California Victim-Witness Coordinating Council in Fall, 1979. The coalition patterned after the Northern Council --- the chairpersons of the Northern and Southern Councils also serve as the co-chairpersons of the statewide coordinating council. Both councils serve to form exchange of ideas and problems relative to which providing services to victims and witnesses of crime in California. While not formalized, there is a buddy system whereby new programs are helped by more established programs and avoiding the same pitfalls, and the more established programs receive the benefit of fresh ideas from the newer programs. In addition, several members of the council have been active in the national organization of victim assistance of which Mr. Roland is the new president, helping to establish victim-witness assistance programs throughout the United States and Canada.

One of the original reasons for the formation of the council was to establish a better working relationship between the victim-witness assistant programs and the state victim compensation program. The local programs assist victims in filing for compensation. By working closer with the Board of Control, the councils are instrumental in developing standardized formats for submission of compensation funds. The councils are also the moving force behind the passage of legislation which revised the forms utilized in applying for victim compensation and which detailed more equitable guidelines to be used by the Board of Control in determining the victims qualification for reimbursement.

Currently, the counties of Los Angeles, Alameda, and

Sacramento are participating in a pilot project sponsored by the Board of Control in an attempt to further speed the processing of victim compensation claims by hiring the local victim advocates to verify victim claims prior to submitting them to the Board of Control. Rather than sending the claims to the claims specialist, the claims are sent directly to the staff analysts. It is hoped that by eliminating the verification process, victim claims will be processed in a substantially shorter period of time. Indeed, the emergency loan procedures that have been set up in all, ideally, they shouldn't need to be existing at all. Victim compensation claims should only take a few weeks and that is a goal toward which we are working.

When the Northern Council was first formed, programs participating in the council were funded from various resources, some were locally funded, some funded through LEAA and some through the OCJP, some were also privately funded. There were 24 counties represented on the council.

Through the efforts of the council and other groups interested in the continuation of services to victims and witnesses, Senate Bill 383 was passed in 1979. That bill provided an alternative means of funding local comprehensive service centers through fines and penalty assessments from convicted offenders. And while the funding structure has been changed over the past few years, the amount of money allocated from the State's budget each year has not changed. It has remained at \$3 million.

When this money was first set aside for funding of the local programs, many of the programs were still partially funded through their original means. Most of those resources have now been

eliminated, such as LEAA money, and the number of programs receiving a portion of that \$3 million just now increase to thirty-four. Despite utilization of volunteers, if victims and witnesses are to continue to be provided with services appropriate to their special needs, a larger portion of the money being spent for the California criminal justice system will have to be spent in support of those programs providing those services. And, again to emphasize what Stirling said at the very beginning this morning, we are not necessarily talking about more money, we're talking about the reallocation of a small portion of that money.

And, as I stated earlier, one of the factors which prompted the founding of the council was the need to support legislation pertaining to the needs of victims and witnesses. During the past year the council was the need to support legislation pertaining to the needs of victims and witnesses. During the past year the council has formed a legislation committee in order that our members could take a more pro-active role in the development of legislation pertaining to those needs. To that end, I will now outline what the council thinks are some of the further needed changes to insure more even balance of the criminal justice system between the rights of the accused and the rights of victims and witnesses.

Number One: Penal Code Section 1048, which is what Mr. Bradbury referred to this morning. Current law provides that a priority be given to the trying of criminal matters when a minor is detained as a material witness or when the minor is the victim of the alleged offense or wherein any person is the victim of certain sexual assault cases. We would propose that priority would also be

given to criminal matters wherein the victim of an alleged felony offense is a person sixty-five years of age or older. Many of us have had experience with cases where the victim has actually died before it could be heard in court, and then obviously, the case is dismissed.

Number Two: Penal Code Section 868 and 868.5. Current law provides that the prosecuting witnesses in certain sexual assault cases is entitled for support to the attendance of one person of his or her own choosing during both the preliminary hearing and trial phases of the case. Such a choice is at the discretion of the court in all cases but only during the preliminary hearing.

CHAIRMAN LEVINE: Could I interrupt you for a second? On your first suggestion that priority being given to cases where the victim is over sixty-five, let me just ask you two questions on that. One is, in those instances now where priority is given, in your experience, how much does that expedite the trial of the case?

MS. ZECCHINI: In counties where it's used it depends upon the politics of the given county. I know there are some counties where there are, it is enforced and it's utilized daily, and there are other counties where it is not. Unfortunately, the prosecuting attorney very early gets to have a continuance or for any reason usually the defense will. And, I somehow feel that's the key.

CHAIRMAN LEVINE: But where it is used, does it tell how much, does it end up expediting the prioritized cases?

MS. ZECCHINI: I know, in Sacramento County, I don't know if they have any statistics on it, but they began using that Penal Code Section back in 1978. I don't have any statistics.

CHAIRMAN LEVINE: So, you don't know how much it will help in those areas? There are two things I'd be interested in at some point. I don't know who could find this information for me, but if, and I think your suggestion has merit, if in fact, A) it can be demonstrated that in those instances where priority is already provided, it does do some good; and B) that it does not materially disadvantage those other areas where priority is not given. I wouldn't think that it would because that would be the great bulk of the cases, but it would be useful information as supporting your suggestion to demonstrate that priority helps those persons who are prioritized in those areas where there is already priority, and doesn't significantly negatively impact those other cases where priority is not allowed. So, it's something that you might look into if you want to pursue that suggestion which it does have some prima facia appeal.

MS. ZECCHINI: O.K. Back to sexual assault cases. As I said, we would propose that the prosecuting witness at all cases be entitled to have someone near for moral support. Many of our victim advocates currently act in the capacity and the defense bar has been known to actually subpoena that person just to keep them out of the courtroom because witnesses are excluded, another defense tactic.

Number Three: The area of victim input. With the recent passage of the Senate Bill 1190 which was authored by Katz, beginning this next January, juvenile probation officers will be required to obtain a statement from the victim in all cases in which minors alleged to have committed an act which would have been a felony if committed by an adult and to include that statement in the social study to be presented to the court. Assemblyman Leonard's Assembly

Bill 398 where you were a co-chair, Mr. Levine, co-authored, would require such a statement in all cases in which the defendant is convicted of a felony. It would additionally require that the probation officer notify the victim or the next of kin of their right to make such a statement and to notify the court of the attempts made to contact the victim should the probation officer be unable to do so. This bill is supported by the council, but, as you know, it has not been passed at this point. That would cover the instances where, if the next of kin, and most often in homicide cases, the next of kin is not normally a subpoenaed witness and it is unusual for the victim's next of kin to be allowed to speak in court and I think, the reason being is that the judges are afraid of being turned over on appeal. They don't, if they do something out of the ordinary that's not mandated by statute, they won't do it because they don't want to see the case dismissed on a guy that got free.

ASSEMBLYWOMAN LA FOLLETTE: May I ask a question? What is the argument against that bill?

CHAIRMAN LEVINE: The biggest is money.

ASSEMBLYWOMAN LA FOLLETTE: Money? How much?

CHAIRMAN LEVINE: Ways and Means wants to spend...

MS. ZECCHINI: It is curious to me why that would be. Only because 1203 of the Penal Code requires the probation officers to contact victims, but there is not teeth in it. This would give the teeth and therefore, someone feels that it would cost money.

CHAIRMAN LEVINE: Procedurally all of the criminal justice bills from our house and the judiciary bills from the, dealing with the criminal justice area from the Senate, have, been held up until

January at which time the fiscal committees will look at all those bills together, depending upon how much money is going to be available to spend. And it's a terribly difficult problem because most of those bills that some constituency has some problem with. And in this bill there are some administrative requirements that some people I think would just as soon incur, are then bills that have a price tag affixed to them. You can argue the price tag until you're blue in the face but if the analyst or Finance agrees with an alleged price tag, then Ways and Means and Finance feel that to be responsible, they need to find a way that these dollars can be expended. And what we're going to find when we get back to Sacramento in January is no surprise, but we are going to find that instead of having any money at all that we're being faced with a \$74 million projected deficit, and I expect that the chairman of at least Ways and Means is going to urge that none of these bills be passed. And I don't quite know how to deal with it. I mean, it's a serious political and fiscal problem. I don't think there is a major policy of disagreement on some of these. They all got by the policy committees, but there will be some serious fiscal considerations that need to be resolved.

ASSEMBLYWOMAN LA FOLLETTE: But, of course, the dilemma is that the Ways and Means Committee actually is establishing policy because they are the ones who are making a determination as to which programs should in their opinion, receive first funding.

CHAIRMAN LEVINE: That is true. You may not resist that dilemma when you are in the legislature a little longer and become a member of the Ways and Means Committee, which I am sure you will.

ASSEMBLYWOMAN LA FOLLETTE: I have enough right now, worrying about...

CHAIRMAN LEVINE: But, no, you're right. It's obvious, when dollars get expended these become policy determinations. You can have all kinds of empty promises until you start spending dollars.

ASSEMBLYWOMAN LA FOLLETTE: So, actually, what I should do is become a chairman of the Ways and Means Committee, right?

CHAIRMAN LEVINE: The chairman and control the membership.

MS. ZECCHINI: Sort of like, I guess... O.K.

Number Four: In the area of restitution. Current law requires the court to consider whether a defendant, considers whether a defendant shall make restitution to the victim of crime or the indemnity fund if the state assistance has been granted the victim as a condition of probations. Assemblyman Floyd's Assembly Bill 731 would require where the defendant has been convicted of an offense involving monetary loss to the known victim, that the court conduct a hearing on the question of restitution. The court would be required to order restitution to be paid by the defendant to the victim or to the indemnity fund, except in unusual cases where the interests of justice otherwise require. The council supports this concept for two reasons: A) We are aware that the defendant is entitled to a hearing when ordered to make restitution unless he or she stipulates to such a condition. However, such a hearing could be held in conjunction with the sentencing hearing which the victim is currently entitled to attend, but usually does not; and B) The usual argument for not ordering restitution in cases where a defendant is sentenced to county jail or state prison, that is, the defendant will have no means to make payment while in custody, has been at least partially eliminated with the passage of Assemblyman Goggin's Assembly Bill 496

which provides for an increase of the wages earned by prisoners while in any state prison or institution under the jurisdiction of the Department of Corrections. In addition to passing Assembly Bill 731 the Council would propose to amend the Penal Code Section 6257, which will be added in January as a result of Assembly Bill 496, to include restitution as one of the categories for payment from the prisoner's wages.

Number Five: Regarding victim's bill of rights. Stirling early this morning referred to other states' victims' bill of rights. I would like to quote you now from the Wisconsin State Legislature that was passed in 1979. "Victims and witnesses of crime have the following rights:

1) to be informed by the local law enforcement agencies and the District Attorney of the final disposition of the case;

2) to be notified if the court proceeding to which they have been subpoenaed will not go on as scheduled in order to save the person an unnecessary trip to court;

3) to receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts and to be provided with information as to the level of protection available;

4) to be informed of financial assistance and other social services available as a result of being a witness or the victim of a crime, including information on how to apply for the assistance and services;

5) to be informed of the procedures to follow in order to apply for and receive any witness fee to which they are entitled;

6) to be provided whenever possible in a secure waiting area during court proceedings that does not require them to be in close proximity to the defendants and families and friends of defendants;

7) to have any stolen or other personal property be expeditiously returned by law enforcement agencies when no longer needed as evidence;

8) to be provided with the appropriate employer intercession services to insure that employers of victims and witnesses will cooperate with the criminal justice system process in order to minimize the loss of pay and other benefits resulting from court appearances;

9) to be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter; and

10) to have family members of all homicide victims afforded all of these rights and analogous services whether or not they're witnesses in any criminal proceedings.

Counties are encouraged to provide victims and witnesses the following services: court appearance notification services, including cancellation of the appearances; victim's compensation and social service referrals, including witness fee collection, case by case referrals and public information; escort and other transportation services related to the investigation or prosecution of the case; case progress notification services; employer intercession services; expediting of return of property; protection services; family support services and waiting facilities." This is the type of victim's bill of rights that should be codified in California.

CHAIRMAN LEVINE: Let me ask you a couple of questions about it. It sounds marvelous, but it also sounds like a litany of all of those subjects that we've heard testimony on earlier this morning, where people said there isn't the money, there aren't the resources. How do those things get implemented? How does Wisconsin assure that these rights will, in fact, be provided?

MS. ZECCHINI: The budget of Sacramento County Victim-Witness Assistance Program, salaries and benefits, period, is approximately \$175,000 and we do all of the above.

CHAIRMAN LEVINE: You do all of the above in the manner that is adequate in the Sacramento County?

MS. ZECCHINI: Yes.

UNKNOWN VOICE: (inaudible)

MS. ZECCHINI: I realize that.

CHAIRMAN LEVINE: O.K., I guess my concern is, I would, you know, listening to those rights sounds to me like the type of a system that we all want to see occur. I would hate to have a victim's bill of rights that proves to be a dead letter. I mean, I think it probably does more harm than good to establish criteria that turns out to be hollow phrases.

MS. ZECCHINI: I agree.

CHAIRMAN LEVINE: Somehow, somehow I would be interested in knowing that the experiences of Wisconsin subsequent to the enactment of this bill of rights in some type of analysis of how effectively these rights are provided to people. Do you have information on this?

MS. ZECCHINI: Well, the rest of the law goes on to say that the funding comes from the local government, etc., etc. These

very same services are outlined in our own California Penal Code Section. The services which we are to be providing them whether to receive funding from OCJP. So, we may have a dead letter law of our own.

CHAIRMAN LEVINE: Well, I don't disagree with any of **the** goals that are set forth there. I mean, I, and I doubt any member of the legislature would, but I'd be -- I would be interested in knowing what victims and witnesses in the State of Wisconsin feel is being provided in terms of complying with those general standards. And we'll look into that. I think it's definitely worth serious exploration and I think it's the type of, those are the types of standards that we would like to move toward. But, go ahead.

MS. ZECCHINI: In answer to that, I would, I think your time would be better spent probably investigating the responses of victims and witnesses here in California. Because, as I have said, these are the types of services that the counties are providing, and granted, not all of them provide it at the same level. If Los Angeles were doing what we are doing, it would then, the million dollars that they are getting wouldn't be nearly enough money.

CHAIRMAN LEVINE: What is your budget?

MS. ZECCHINI: Our salaries and benefits at the moment is \$175,000.

CHAIRMAN LEVINE: And that's the County.

MS. ZECCHINI: That is partially OCJP and we still have the LEAA funding until the end of March.

CHAIRMAN LEVINE: How does it break down between OCJP and LEAA and others.

MS. ZECCHINI: LEAA is \$153,000 and the rest is OCJP.

CHAIRMAN LEVINE: Then your LEAA money is gone pretty soon.

MS. ZECCHINI: That LEAA money will be gone in March.

CHAIRMAN LEVINE: Then where will you get the \$153,000.

MS. ZECCHINI: We are rolling over money from OCJP. We have not spent all of the money we received a year and a half ago.

CHAIRMAN LEVINE: What is your life expectancy?

MS. ZECCHINI: Life expectancy? Forever. We have become indispensable. One of the, I don't know, selling points I suppose to victim-witness programs is the services to witnesses, the cancellations and the costs, by working with court liaison officers and by our own telephone calls and letters we saved the County and the City of Sacramento about \$100,000 a month in officer overtime and witness fees. You're never going to show that; you're never going to save money serving victims, period. You're going to spend money, so, if you can show you have saved some money somewhere doing something, perhaps you'd be able to sell it to the locals.

CHAIRMAN LEVINE: If there were no institutionalized victim-witness program in the county such as yours, what would the difficulty be, how difficult would it be for the D.A. to notify victims of things like continuances, plea bargains and other element information to a victim?

MS. ZECCHINI: Without the staff to do it? They couldn't. The realities are the heavy case loads, before the victim-witness issue was there, people did wander around the courtrooms, you know, where do I go, and they find out three hours later that the case was cancelled two weeks ago.

CHAIRMAN LEVINE: But, what about official business being done by the D.A. itself rather than by a separate program.

MS. ZECCHINI: You mean the D.A. actually himself, or the D.A.'s office. We are part of his office.

CHAIRMAN LEVINE: Oh, you're part of the office? Sorry, I did not realize that. I thought you were an independent office in Sacramento County, I mean independent from the D.A.'s office.

MS. ZECCHINI: No.

CHAIRMAN LEVINE: You are part of the D.A.'s office. You are the victim-witness program of the D.A.'s office in Sacramento.

MS. ZECCHINI: Right, we provide the victim-witness counseling services that have been referred to.

CHAIRMAN LEVINE: I see, O.K. I didn't realize this.

MS. ZECCHINI: As a step in that direction, well, as I have been stating that the local comprehensive victim-witness assistance programs are already providing these services, and for our intent here is to, if our intent here is to show how the system can be improved and to increase the input of victims and witnesses without increasing the money, I would contend that perhaps the local program should be mandated to do these things. Obviously, we are talking about more money. As a first step in that direction, local law enforcement officers are currently required to notify victims that they may be eligible for victim compensations.

CHAIRMAN LEVINE: (inaudible)

MS. ZECCHINI: Ha, we would like to see, and that is pursuant to Government Code Section 13968, we would like to see local law enforcement agencies not only in carrying out that mandate of

notifying victims about victim compensation to also notify victims about the local victim/witness assistance program, to provide the kinds of services the police departments no longer have the ability to handle. And as I said, ideally local victim-witness assistance programs should be mandated to carry out the services but as we have been discussing that, it would require more money. However, considering the fact that the amount of money, as we've, as again we've been discussing all morning, now being spent to provide services to victims and witnesses could be doubled, i.e., \$6 million, and that would still be miniscule compared to the amount of money that we're spending to provide services to the accused in the criminal justice system, I would suggest that perhaps it's time to rob Peter to pay back Paul.

CHAIRMAN LEVINE: Thank you very, very much. Your testimony is very helpful and the subcommittee would like to follow up with you in trying to analyze how this, how we can move in the direction that you are setting forth. Thank you. Our final scheduled witness, whose timing is marvelous, is Superior Court Judge, Arthur Gilbert, one of the distinguished members of the Superior Court here in Los Angeles, someone for whom I have a great deal of respect, and I am delighted that you are here to testify. Welcome Judge Gilbert.

JUDGE ARTHUR GILBERT: It is my pleasure to be here. Luckily I am in Inglewood, so I am close by, so it is easy to get here.

CHAIRMAN LEVINE: Can you not get assigned to Santa Monica?

JUDGE GILBERT: Unfortunately, but I think I'll have a Medicare Card by the time I get here. (inaudible) since I live about 3 miles away it's really an opportunity. This is an area; I am only

glad that your committee is looking into this area because there are many problems in it, and I think we have to take definitive steps to correct some of the problems that are occurring.

Victims and witnesses are really the unsung heroes of the justice system. It's their thankless task to have come to court and speak out. It's the prime ingredient to make justice a reality. And yet, often witnesses are the most abused and ignored of all the parties in the justice system. Victims, for example, suffer the trauma of a crime when it was committed on a woman, who might have her purse snatched, for an example, or someone may have their home burglarized, or their car stolen, or be the victim of a hold-up. And in this traumatized state they have to relate their stories as best as they can to the police. And they have to go to a line-up perhaps and make an identification. Then sometime later, they receive a subpoena, an impersonal document like a draft notice, telling them they have to appear in court at a certain day, at a certain time, usually early in the morning. And if it's a felony case, they may have to go to a preliminary hearing and then often come back to court again for trial. They may make all the arrangements they have to in order to get to court, take the day off, hire a special baby-sitter to look after the kids, inconvenience to friends and other family members, and then they finally get to court, they find themselves hanging around a good portion of the day.

I suppose many of your witnesses prior to me have been telling you about this, and while other cases are being heard, then they finally learn that the case has to be continued. And if the case does, in fact, go to trial, they are then put on the witness

stand and forced to relive the trauma subject to cross-examination. Defense attorneys try to make them look foolish or mistaken, or even a liar, if you will. The witnesses may want to offer some further testimony by way of explanation, and often they are interrupted by the attorney or the judge, indicating that the question has been answered. Or, there might be an admonishment to the witness to please just answer the question. And this can be particularly infuriating when the witness has so much to say, is told to answer the question with a Yes or No.

Now, in a criminal case, if the defendant is found guilty, the sentencing is often heard at a later date when the witness and victims are not present. So the victim has little or no input, and usually does not even know what the sentence is. And if a case is dismissed, or the defendant found not guilty, the victim is usually the last one to know and usually finds out from an impersonal clerk what happened in the case. And, indeed, witnesses are often threatened, even in the very corridors of the courthouse, the citadel where justice is supposed to be administered. This happens. With such a seemingly deplorable situation, it is no wonder the witness does not even want to come to court.

I just want to give you one example of a case. It's somewhat amusing but tragic at the same time. We had a car theft case, and the witness was working in a building next door to the incident where the theft was taking place, where the process was taking place and observed everything. And the kids that were stealing the car didn't know he was there. The police came on the scene before they could get the car, and they dispersed. And he was the prime witness,

and he came to court. Various questions were asked about his location, how far he was from the witnesses and all, and then the big question was asked by the prosecutor, will you look around the court today and do you see anyone in court here today who you saw that day trying to take that car. And he looked around the court, he looked at the young man who was accused of the crime and then he looked at me, and then he says: Your Honor, I don't want to get involved. It never happened, it reminds me of New Yorker cartoon like that, a famous cartoon with the jury, and the jury standing up, and the jury foreman says to the judge, "Your Honor, we don't want to get involved." I thought of that same kind of situation. Now, to some extent these problems can...

CHAIRMAN LEVINE: Were you the judge in this case?

JUDGE GILBERT: Yeah, I was the judge in that case, and I intervened, and I talked about what his duty was, what he had to do and I realized how difficult it was, and so on. We finally got some testimony, but, and I had to be careful too, because I cannot be prosecuting the case either. So, it was really a touchy situation. It was the most... I was really floored by that. I am going to write a book some day about all those court experiences. Now, to some extent, many of these problems cannot be helped, but much can be done to ameliorate some of the more glaring problems.

Let's talk about inconvenience, for example. Witnesses certainly have to understand that all cases can't be tried at exactly the same time. Everyone says to come to court at 9:00 o'clock, and there is really no way to stagger cases. You just cannot tell when a case is going, particularly in the adult court where there is jury

trials and it takes a while to pick the jury and you are not sure what case is going to go, what witnesses are going to be there, who is going to plead, and so on. But there is no reason why many cases that witnesses cannot be placed on call. Often the witness' testimony is not a matter of dispute. For example, a victim of a burglary, who didn't see who committed the burglary, no one disputes that the house is broken into, and that certain things were stolen, and so on. And, so what I want done in my court, I think a number of judges are doing this, and I'll discuss a bill that I think is helping the situation somewhat. I have often persuaded defense attorneys to call the witness with the people on the other extension on the phone right from the courthouse. Have that witness at home, and they can talk to the witness and convince themselves that that witness does exist as a real life person, and did have their house burglarized. They can talk to them and be convinced that the person could be available to testify in court, and then stipulate to that testimony. I think a court can intervene, and use a little pressure to get the defense attorneys to do this. And I found that they are quite cooperative in that regard, not always. Sometimes, some defense attorneys to do this. And I found that they are quite cooperative in that regard, not always. Sometimes, some defense attorneys want to see the whites of their eyes. And so, in that case, when the witness is in court, I have them go out in the hall with the witness and the district attorney, or even in the courtroom when we are in session and talk about what the witness is going to say on the stand.

CHAIRMAN LEVINE: But, none of that is susceptible to legislation, I don't think, is it?

JUDGE GILBERT: This type of thing is not, but this is an area where the court can intervene and use it's power to help this case to get the parties to do that.

CHAIRMAN LEVINE: O.K. that makes sense.

JUDGE GILBERT: No there is a bill, in fact, I brought a copy of it. It's Assembly Bill 1016. It's a new bill, that's Leo McCarthy's bill. And this bill, in preliminary hearings provides for the use of affidavits on behalf of victims. So, I think, that is one step in the direction of at least ameliorating that problem of inconvenience.

CHAIRMAN LEVINE: But, that again, is with the consent on both sides?

JUDGE GILBERT: Yes, right. But I think a court can, I mean, without being strong-armed, without twisting too many arms, you can say to the defense attorney in a really nice way, like what's the big deal, I mean, why have the witnesses sitting around here all day. And I think, 90% of the defense attorneys want to cooperate in that regard, and they don't want to get the judge on their bad sides, or at least they may think that. So, I use that quite often. And the witness then... In fact, yesterday we had a case, we did not get to the case until 4 o'clock and it was someone whose car was stolen. And I said, folks just go on. I checked the cases ahead of time. I said, "Go in the hall and if you cannot stipulate, I want to know why you cannot." They went out in the hall, they came back, they said, "We sent the witness home." So then the police officers came back at 4. We tried the cases real quick, they had the stipulation, and then we went, it worked out real fine. So, and we explained to the

witness what's going on. So that's one way. Now, intimidation. This is a, incidentally, I want to back up a minute here. When I was talking about stipulations, there are all kinds of stipulations, you have heard cases and I think a judge should take an active role before the case starts, call the attorneys in or go out in open court because sometimes witnesses will think it's funny if you're standing in chambers talking about things. So, I do everything out in court. And I will say, what can we stipulate to and we talk about that, and you can nail the issues down, particularly in juvenile...

CHAIRMAN LEVINE: I think you're right on this, and it is an extremely valuable tool both for the expedition of justice in general and for the convenience of witnesses. I guess, I may be focused a little bit too narrowly here, but I am trying to **determine** whether or not any of this is susceptible to direction from Sacramento, and it doesn't sound to me whether the territory you're on now is.

JUDGE GILBERT: I don't think it is either, I think it's constitutional problems. Cross-examination comes under (inaudible) of witnesses.

CHAIRMAN LEVINE: Can we make a bill that would say that judges should make every effort? But I mean that's...

JUDGE GILBERT: That's, yeah. The judges have to be sensitive to that. And with the public looking more closely at judges, I think, maybe...

CHAIRMAN LEVINE: Yeah, I think, it's a marvelous innovation, and something that judges should do but I am not sure how we force it, but...

JUDGE GILBERT: ...but I think the word gets out. Judges talk to one another.

CHAIRMAN LEVINE: I think that's good.

JUDGE GILBERT: In the area of intimidation. That's really a major problem. Our juvenile court facilities, for example, in Inglewood are not exactly plush. We have the old Municipal Court Building that the Municipal Court used to have and they have their version of Hearst Castle across the street. So we have this really kind of dilapidated building, if you will. The witnesses are crowded together in a narrow ditchy hall where the victims often are staring eye-ball to eye-ball with their assailants. Where as if the assailant is in custody with their friends, well, it is unnerving to say the least. We need facilities where witnesses and victims can be separated, rather victims and witnesses be separated from the accused, and the Proposition 13 mentality that seems to have pervaded the entire nation stands in the way of perhaps of funding for the kind of structural changes we need at the buildings. But one way to handle this is, in our own court for example, the District Attorneys' office has opened it's doors for the witnesses and victims to wait in the District Attorney's office, and D.A.'s offices are doing this throughout the County, and they're being more and more sensitive to that problem. And not just for specialized victims but also to all victims and witnesses who are testifying for the people. So that to some extent helps. They can go right on in and they have to be made aware of that too, so it requires sensitivity too on the part of the D.A., to usher their witnesses in and tell them to go directly to that location. Of course, there is intimidation outside the court-house as well. But I think there has been a rather aggressive policy on the part of the D.A.'s to file cases of victim intimidation, and

I have had quite a few of those cases. Lately, a much more, greater number of those cases have been filed in recent past, and there has been convictions and time in custody, so if the word gets out, that might be one way of handling it. Of course, on those victim and witness intimidation cases you need willing victims to come forward. And there, there is real pressure on the victim. So, that's a very difficult situation. I don't know how, it's difficult for the court to get involved in that area, because it's the D.A. that's the prosecuting office, and so the court, if the court gets involved, you won't be able to hear the case because you'll know the facts and will be prejudiced. So that's the catch 22. But I think that alerting the D.A.'s to this problem, and they are aware of it, I think is one way of handling it.

I tell you one way the court can get involved in them. I have done this on a number of cases. I am sure many of the other judges do, I include as a condition of probation in every case practically that they not bother the witnesses, harrass, or annoy any witnesses or victims. Now, even if a person is in custody for example, in camp, after the camp program is over, they now can be monitored by the probation department and there are conditions of probation when they get out of camp. So, what I have been doing is including that condition in all cases whether they are in custody or not. And if they violate the condition of probation they are right back in court, and I have the hammer hanging over their heads. And you just don't read the condition to them, you talk to them about it. You mention the name of the person because you know who they are, you read the report of the case. You say, "You better leave that person alone,

you better, don't go near their house, you better not have your friends do it" that kind of thing. I am talking of juvenile court, where I am, but you can do it with others, obviously, as well. So that's one way to do it.

Another area to try to ameliorate some of the problems is just sensitivity. The court has to be sensitive to all witnesses, and demonstrate the concern. Particularly, the special kinds of witnesses, the elderly, children, rape victims, and wife-beating cases. Now, often, the D.A. is well aware and will assign special duties to handle sensitive cases. Women deputies, for example, are often understanding and more sympathetic to rape victims and can help to prepare them for the ordeal of the trial. And I think sensitivity training for judges and attorneys is really quite appropriate. We have a judges college and I am involved in the planning committee of the graduate judges school we have now. And it's really a very good, we have some very interesting courses. One of the courses we had last year dealt with women, minorities in the courts. And the, many of us who think we are enlightened, just by virtue of the way we have been brought up may say something that would really be offensive to someone, and we are not aware of it. And so, being involved in a situation where you can become more sensitive to people, to their needs, to their, to the needs of minorities, to women in the courts often the word "he" is often used, for example, and if it's repeated over and over again, it can be just very offensive. And I can see that. And I am sure I have been guilty of that. So those kinds of approaches I think are a help.

When I was in the municipal court I sat for quite a while in the Master Calendar Court. It's a zoo, really, it's, thousands of

cases come through, and they're farmed out to various trial courts, and on wife-beating cases I'd put in quotes, because it could just be a man-woman situation. Those cases were routinely dismissed because the wife would always say she didn't want to go ahead with the case. And it just occurred to me that something was amiss here. So, I instituted a policy of having a brief hearing in which I would talk to the wife and find out what she really felt, and let her know what her rights are. Now, I did this in the presence of the defendant, the defendant's attorney, and I did it in the sense that I hope is a sympathetic and sensitive way. I said, do you really want to do that, you filed an arrest report, well what happened here. I see that you have had injuries, your were bleeding, you were bruised. Why should you, I mean I realize you live with this person, maybe you forgot about it but it's going to keep happening on and over and over again. If you just kiss and make-up or you're afraid or whatever, what's the story. So, we talk a little bit and in many cases they decided they want to go ahead with it, or the defendant pleads guilty. Now, of course, I wouldn't hear the trial. We want to try to protect the rights of the defendant. So, once I determined that, in fact, there was more than meets the eye here, the case would be sent out to another judge, who did not even know about the hearing. And other judges started doing that as well. Judge Newman, Judge Rothman, people that you know, we all talked about this. We were all on the same panel together, and we would not routinely allow these cases to be dismissed, all to the credit of the city attorney. They've picked up on this and tutored a very good domestic violence program. Special deputies would be assigned to these cases and they would thoroughly investigate the case. So the cases weren't dismissed without really

having a discussion. And I am just amazed, some of these women would be told, threatened by their husbands not to testify, or their boy-friends. And some thought they weren't supposed to. One went home, and we didn't know where she was, or her husband told her to go home, and she went. So, I mean, it's that kind of thing, and you just can't believe that happens and it does. So, I think, being aware of that is a good way to handle it.

Well, I also want to point out to you, that, while courts have to be more sensitive to the needs of victims and witnesses, our whole system of justice, you have to understand, is give the -- safeguarding the rights of the accused. And I think that's one of the reasons why we're always concerned about a fair trial to the defendant and protecting the defendant's right, and some people are accused of committing the most horrendous offenses in the world. So the public says, look at what they are doing, they are worrying about this mass murderer, and so on, and what about the victims. But, I have to say this just as sort of a footnote, or parenthetically, we cannot topple this ingenious system we have, because some of this is perfection. And we have to look at some of those other countries that don't have the kinds of rights for the defendants. We look at Iran and countries like that, we see how terrible the alternative is. But we can still recognize the rights of the victims and witnesses without in anyway jeopardizing the system.

Now, when I was in private practice, practicing law, I had a letter prepared for all the clients before we were going to have a deposition taken, or if we were going to testify in court, and I outlined in detail what they could expect. And I also explained to them how the law of evidence worked, so as to prevent extraneous, irrelevant

or unduly prejudicial material from coming into the trial or fact. Now, I don't see any reason why the district attorney, for example, could not prepare an information sheet to be given all witnesses, so that they at least get the ideas of the logic behind the rules that sometimes may seem so frustrating. In cases where -- that I have again a sensitivity on the part of the court, I explained to witnesses the reasons for the rulings on evidence. Because I see a witness just dying to tell us all kinds of things, and they are telling us, this kind of person told me this and that, this person told me this and it's hearsay and you have to explain what the hearsay rule is. Those people are not here that the defense attorney cannot cross-examine them, so we are not trying to make life difficult for you, but that's the reason why he is objecting and I am sustaining the objection. Why not tell and explain that to them. And the jury likes to hear that too. It doesn't, and all it does is give those people greater understanding and appreciation of the justice.

And there is nothing wrong with letting the victims participate to some degree in the sentencing process. Now, when I took pleas, for example, in the Municipal Court if you take a plea in the victim's presence, in the defendant's presence, and there is not going to be a probation report, and in the Municipal Court that happened quite often, I tell the victim what my options were and what do they think about it.

CHAIRMAN LEVINE: You tell the victim before the sentence?

JUDGE GILBERT: Before the sentence. I say, this is what I have open to me. And I tell them the whole thing, and I say, what do you think about it. And there is nothing wrong with doing that.

CHAIRMAN LEVINE: Let me ask you a question. I have a

a bill which I've discussed before you got here, which has passed Criminal Justice, pending in Ways and Means, which would require prosecutors to notify victims prior to a plea bargain, and I am told by prosecutors that this would be extremely burdensome and expensive. Could you comment on that? In light of this practice of yours?

JUDGE GILBERT: They would, you see, well let's assume that they notified the victim of the plea bargain and...

CHAIRMAN LEVINE: ...three days in advance or something like that. Three days before it's entered.

JUDGE GILBERT: O.K., often it happens at the last minute, the last date.

CHAIRMAN LEVINE: Well, I understand that, that's I think a procedural problem, but that's -- say they do it immediately before, say that they give the victim the right to be there and then they're about to plea bargain and then say to the victim, o.k. we're about to plea bargain, at least notify them.

JUDGE GILBERT: Yeah, I see, I think so, I don't think I have a problem with that at all. I mean, I don't think the victim is the person who has suffered the offense -- I don't see why they cannot tell him.

CHAIRMAN LEVINE: Do you see that as being realistically burdensome? Am I imposing by doing that some severe burden on the prosecutor? I am told that I am, and I don't understand it.

JUDGE GILBERT: Well, I don't know, I suppose that if you have a heavy misdemeanor calendar, where you're taking about fifteen cases, pleas at one time.

CHAIRMAN LEVINE: Say it's only limited to felony cases,

which I probably would be willing to compromise it to...I probably already have.

JUDGE GILBERT: Well, I don't know, I get into -- I guess it depends on the court and the volume that the particular court has. But I don't think that's such a burden that it cannot be done. I just, I mean, we take all the time to protect the defendant's rights, it's what we should do. I mean, certainly the victim who has suffered a trauma ought to know what is going on and what the rationale is.

CHAIRMAN LEVINE: Now, I was hoping you would say that.

JUDGE GILBERT: Yeah, I have not read the bill and I have not looked at it, because I just...

CHAIRMAN LEVINE: That's all it says.

JUDGE GILBERT: Yeah, but I wish that's -- I think it's a good idea and I don't see...

CHAIRMAN LEVINE: Let me ask you to come testify.

JUDGE GILBERT: O.K. If you pay my train fare.

CHAIRMAN LEVINE: No, we'll negotiate.

JUDGE GILBERT: O.K. Well, anyway, what I do is, I thought the victim might talk about it. And when there is a trial and a finding of guilt, and say the -- again the witness is there -- that usually doesn't happen, it doesn't certainly happen in a felony case because the matter is put over for sentencing at a later date. But I, for example, if they're in court and there is a plea, then the matter is going to be put over for sentencing. Or there is a trial, and the trial is concluded in juvenile court, they are court trials not jury trials, so the witnesses are usually around at the time that I come up with my decision. I call them all into court, they are usually excluded -- witnesses -- they are excluded so they don't hear what

the other witnesses say, I call everybody into court and I tell them I did -- I'd say I sustain this court, I didn't sustain this court, I tell them why. And I tell them when the sentencing is going to occur. I am going to say I'd like to know what you think about it and your input is appreciated, and the probation officer is going to contact you, and they're going to let you know, they are going to talk to you about it and I have your input, if you want to write me you may, and if you want to come to court you may.

CHAIRMAN LEVINE: Now let me ask you this. When you get that input, how helpful to you is it?

JUDGE GILBERT: It's not helpful. I'll be quite honest with you. It has not affected any sentences I have ever had.

CHAIRMAN LEVINE: It has not? How helpful is it to the victims?

JUDGE GILBERT: I think it's helpful to the victims from a psychological point of view. Now, what I mean to say is not that I am, I am not saying that I am ignoring what they are saying. But to tell you in a great irony, I mean in the cases that I have done this, the victims always come up usually with a much lighter sentence than I have.

CHAIRMAN LEVINE: That's very surprising.

JUDGE GILBERT: They are so overwhelmed that they are even asked. I had a guy, I remember he says, gee I cannot believe that you're asking me. I said to him, why not? You are the guy that got hit. I said, this is what I am doing. I am just a human being. I have a job to do. These are my options and which one do you think and why. And, if you don't want to say anything, you don't have to. I said I don't want to put you on a spot. And so he says, well, you know, I don't

think he really meant it and I think he should be given another break, and all this kind of thing. I mean I have had that happen quite often. Now on the probation reports I get, some witnesses will say this person should be locked up. It's up to the judge to say how long that kind of thing might get, quite often, police officers offer, you know, they are witnesses too. And police officers offer their opinions, and I solicit their opinions as well.

CHAIRMAN LEVINE: They must be shocked when you...

JUDGE GILBERT: Well, in juvenile court I think there is more of an informality and we all try to get involved. So, I think they are used to that, at least to me. They know that I do that. They may not always agree with what I do, but they have some input. And, in fact, they are out on the streets where they not only know the gangs, so I really in a sense rely on them. The defense attorney's can present any evidence that they want as well, I mean, I encourage defense witnesses to do the same thing. So, it's an even handed kind of thing.

So, at any rate, there is also a victim's assistance bill to reimburse victims for their damages. And, of course, you are aware of that, but I think that there should be a brochure passed out to every victim so that they know that. Many victims aren't even aware of that. And I think we have to -- the duty and responsibility to make them aware of all the options that are open. So, you know, I think I want to just say in closing, while I am sympathetic to the plight of victims and witnesses, and I don't know whether I have offered too much, well, what I really offered is things that the judges can do. It's hard to come up with ideas for legislation. It requires money and, for example, changing all the buildings so that the witnesses are

separated is something that probably is just unrealistic. But, witnesses have to be made aware of the fact that they must come forward to testify. And we have to make it easier for them to do so because the crime problems are only becoming worse if the perception of the offenders out on the street are, "We can get away with that because no one will come forward."

CHAIRMAN LEVINE: Let me ask you one specific thing along those lines. A problem that recurringly occurs, and you've touched upon it, and other witnesses here have discussed in even greater detail than you have this morning, is the whole issue about witnesses coming into a trial and then finding that the trial is continued. I think if there is a single problem that I have heard the most frustration expressed about, in the course of the trial process itself, is this business of unannounced continuances. Can there, is there anything that can be done about that?

JUDGE GILBERT: Well, again, it's a very difficult area, because no one wants, well, somebody may want the case continued, but the majority of people don't. What happens is this: often the parties aren't aware that the cases are going to be continued until the last minute, and what will happen for example, an important prosecution witness who may not be the key witness but is important to the case, cannot be located or isn't there, and they don't realize that. The subpoenas have gone out and the DA's usually don't get return on their subpoenas before trial. It is just too big a county, there are just thousands of cases, just thousands of witnesses, and they simply cannot know. And judges can pull their hair out, and scream and yell and do everything, and many times the continuances are not just the defense, you know, you always read in the paper, the defense continues it.

CHAIRMAN LEVINE: It is at least alleged before the subcommittee, that it is virtually all the defense.

JUDGE GILBERT: Well, in my court, it's true it's the defense at times. I find that the defense, often the Public Defenders, that I deal with and in juvenile cases the system moves with much more rapidity, I want to get to trial. And, the prosecution often has to continue the case, not to the fault of the prosecutor, but they just don't have the witnesses. Now, the defense will make motions, and sometimes there will be some new evidence they discover, or they will need a line-up, that kind of thing. And some things come up the last minute and they may have a key witness that they need. Now, one way to cure that problem to some extent, and I have done this quite often, when the defense wants a continuance, and it's discretionary and I can see some grounds for it, I will give them a continuance, but I start the case. I get a stipulation that we can start the case and put the people's witnesses on, the civilian witnesses. So we try some of the cases and bifurcate it and then I just put a clip in my notes, and they'll come back next week or a few days later and put on the rest of the case.

CHAIRMAN LEVINE: It's a lot easier to do that when you don't have a jury trial.

JUDGE GILBERT: When you don't have a jury, it's great. In juvenile courts you can do that. But, I really, I mean, the judges have a firm policy and they say no continuance policy, and everybody laughs because the cases are continued, but you know, you have to consider whether the case will be appealed. If there's good grounds for the continuance and you don't grant it, you can go through the whole trial and have the whole thing thrown out and be back where

you were three or four years, where all the witnesses have disbursed and the person really gets away with it. So the judges have this fairly delicate balance.

CHAIRMAN LEVINE: A suggestion made by one of the witnesses this morning that the burden of notifying witnesses in the event that a continuance is going to occur be placed upon defense counsel, which strikes me as a suggestion without any ability to impose sanctions. I don't know what you do if they don't do it. But, how does that idea strike you? Is there any variant of that idea, or any...that might make sense?

JUDGE GILBERT: Well, I think there's a rule that either side, must, if they feel they need a continuance, as soon as they're aware of that fact, must inform the other side of that fact ahead of time, and maybe even inform the court. You don't have to hear the motion right away, but they could call the court and say, "we're going to be making a motion in this regard", and maybe give the tentative grounds, so the court has a feeling as to whether or not it's legitimate or not.

CHAIRMAN LEVINE: How often are continuances sought at the very last moment, versus with several days notice?

JUDGE GILBERT: My experience has been most of them are at the very last moment. Now that's true. They have been at the last moment.

CHAIRMAN LEVINE: Is there a way to accelerate that, if only so that the witnesses would be notified before "schlepping" all the way down to court?

JUDGE GILBERT: Well, what we try to do, is, there's -- in fact, there's a big rule and big signs all over the court that if you

have to make a motion, you must make it 48 hours ahead of time, so they can call up their witnesses, but they'll always come into court and say, "I didn't know about forty-eight hours." "This is what happened," or, there might be a really good affidavit, or the attorney may say this witness was present, they're in Missouri now, here's the address where they are, they left before we could subpoena them. We just found out -- our investigator was doing such and such, and so on. So that kind of thing happens. And on the big cases, for instance, when we have a big murder case, and we're having more and more of those in juvenile court, unfortunately, and there's a lot of gang members and so on. Both sides, often, will come in and say, "we need further continuances and the people need it, they need it." And they just have to do their best to inform all those witnesses. But it's true, there can be a whole courtroom of witnesses, and it's so frustrating, and I'm embarrassed, and I try to explain to the witnesses why we do it and I really can't give you a definitive answer on it, because every case is so different.

CHAIRMAN LEVINE: Right.

JUDGE GILBERT: You know.

CHAIRMAN LEVINE: Well, I really appreciate your help a lot, and the other members of the subcommittee who will have a chance to review this will also appreciate it.

JUDGE GILBERT: It was my pleasure to come down.

CHAIRMAN LEVINE: It's real nice to come spend your lunch hour with us today.

JUDGE GILBERT: Beautiful Santa Monica.

CHAIRMAN LEVINE: Thank you. Enjoy Inglewood this afternoon.

JUDGE GILBERT: I'll try to.

CHAIRMAN LEVINE: That concludes the list of scheduled witnesses that we have. Mia Baker is here from the Los Angeles City Attorney's Office and I notice that you wanted to at least respond to something that had been mentioned earlier. Do you want to mention some testimony briefly?

MS. MIA BAKER: Yes, I would like to.

CHAIRMAN LEVINE: Come up to the witness stand and do so please. Introduce yourself for the record and proceed.

MS. BAKER: My name is Mia Baker and I am the Administrative Coordinator of the Los Angeles City Attorney's Victim Witness Assistance Program. In light of some of the earlier testimony, I appreciate this opportunity to address the subcommittee.

About one and one-half years ago, the Los Angeles City Attorney reached basically the same conclusion of Candy Lightner and her colleagues from MADD, basically that victims of vehicular crimes are the most neglected victims in the criminal justice system. They receive few services within our jurisdiction, which is strictly misdemeanor, they compose about one-third of the victims with whom we deal and one-third of the crimes on which we file. In the City of Los Angeles, 70% of the felony arrests are ultimately prosecuted as misdemeanors. This means that we have the bulk of the drunk driving victims and the drunk driving prosecutions within the county. We offer a service to all victims and families of victims of all vehicular crimes involving injury at the time the case is filed. We pursue that contact through to the time of trial, if the case come to trial, or until that victim is essentially healed and requires no further services. We offer victims of violent crimes compensation filing assistance. We file on behalf of victims and we're participating in a pilot program

which is -- I have several claims here today going to result in claims being awarded in about an eight week period of time. Many of these claims are on behalf of victims driving under the influence case. We provide referral to local agencies, court escort, free appearance counseling, child care, transportation to court, liaison with the City Attorney and with the police department.

One of our major problems is that we only receive the cases when they are filed in our office, and we look forward to working more closely with Chief Gates to be certain that the cases, where appropriate, are referred to us. For instance, if the defendant were killed in the commission of the crime, we would not receive that case, even though the victim might have suffered very serious injury. We have a budget of \$249,000 for eleven staff people. That's to provide services to three million people, one-third of whom may become crime victims this year. And that's including the legislative mandate that we process 40% of the victim compensation claims in Los Angeles County, with the District Attorney program. We would like to see more resources made available. I think, in response to Marian LaFollette's comment, we're not asking you to legislate feelings, but to legislate victim's rights. In an era when limits are being imposed, certainly the constitutional rights of defendants are not going to be curtailed, and the only way to get guarantee that victims will, in fact, continue to receive services, is to legislate rights on their behalf. Thank you.

CHAIRMAN LEVINE: And I assume the corollary to that is to legislate the dollars that will provide the system with the resources to implement these rights.

MS. BAKER: I believe the services will not be free. That's correct.

CHAIRMAN LEVINE: Were you in the room during Veronica Zecchini's testimony when she outlined the Bill of Rights in Wisconsin?

MS. BAKER: Yes, I was.

CHAIRMAN LEVINE: If such a Bill of Rights were enacted in California, could it be implemented?

MS. BAKER: I believe it could.

CHAIRMAN LEVINE: How close does Los Angeles City Attorney's Office Victim Witness Program at this point, in your opinion, come to achieving those rights for victims in Los Angeles?

MS. BAKER: We come very close for all victims who come into our system. The problem is, (a) most crime is not reported, and (b) most crimes which are reported do not result in an arrest. So, in fact, while we offer service to every victim who comes through out prosecuting track, the bulk of victims are left out of that, and it's a massive effort on our part to try and reach that part of the population. For those victims where the crime is being prosecuted, by your office, how able are you to provide the victim with just the basic information that people have discussed as being essential to understanding how the system works -- where they're supposed to go and what's going on, and things like that. That we don't have too much problem with. Unfortunately, we have no computerized information system within the City Attorney's Office. We don't even have word processing machines, except some very new ones, which have just been installed, which are issuing subpoenas. Basically, everything is done by hand. The District Attorney's Office, which has the computerized prosecutorial management information system, can issue letters of continuances at any point in the proceeding automatically. For us, it's extremely costly to do that and its a major frustration on our part.

CHAIRMAN LEVINE: Do you think your office is going to become computerized in the near future?

MS. BAKER: The City is under such strict budgetary constraints, I don't see much hope for that.

CHAIRMAN LEVINE. That's encouraging. Well, I appreciate your willingness to spontaneously get up and give us this information and I'm very impressed by what you've told us, and its useful and will be useful in helping us to make judgments on what we can do on a statewide basis.

MS. BAKER: Thank you.

CHAIRMAN LEVINE: Does anyone else in the room who has not testified have anything that they wish to provide to the subcommittee before we gavel to a close? O.K., well, we appreciate the witnesses who were here. Thank you again, those of you who are still here for helping us out, and with that, the subcommittee will adjourn.

