

## **THE WHITE HOUSE**

Office of the Press Secretary

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### **PRESS BRIEFING BY JOHN SCHMIDT, ASSOCIATE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE,**

AILEEN ADAMS, DIRECTOR OF THE OFFICE FOR VICTIMS OF CRIMES,  
DEPARTMENT OF JUSTICE  
BONNIE CAMPBELL, DIRECTOR OF THE OFFICE OF VIOLENCE AGAINST WOMEN,  
DEPARTMENT OF JUSTICE, AND

### **DAVID FEIN, ASSOCIATE COUNSEL TO THE PRESIDENT, THE WHITE HOUSE**

The Briefing Room

**1:10 P.M. EDT**

MR. MCCURRY: Good afternoon, everybody. I know that many of you have just attended the President's announcement concerning the victims' rights constitutional amendment, and I'm pleased to have some briefers here talk to you a little more about that and then take some of your questions on that subject.

We're delighted to have here the Associate Attorney General of the United States of America, John Schmidt; Aileen Adams, who is Director of the Office for Victims of Crimes at the Department of Justice; Bonnie Campbell, who is Director of the Office of Violence Against Women at the Department of Justice; and David Fein, who is Associate Counsel to the President in the White House Legal Counsel's Office.

John, why don't you take it away, and all of you come up here, and thanks for being here.

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Thank you. I'll be brief so we can answer questions. The Victims' Rights Amendment to the federal Constitution is about trying to put into the federal Constitution certain basic rights of victims of crime in both federal and state proceedings, and the rights we're talking about are the ones that the President identified in his remarks. They're very basic rights: It's the right to be notified of proceedings, the right to attend, the right to be heard prior to sentencing or the acceptance of a plea bargain or a decision to release a defendant on bail, similar rights to be notified and to attend and to be heard prior to a decision to release a convicted offender on parole, the right of restitution, the right to a reasonable degree of protection against the accused offender prior to trial, the right to be notified in the event the convicted offender is released from jail or escapes, and then the right to be notified of the existence of these other basic rights.

As I say, these are very basic rights. I think there is a very high degree of consensus in this country that victims of crime ought to have these rights. In fact, a lot of people are surprised to find that they aren't already guaranteed the advocates of victims' rights, victims' movement representatives I think it's fair to call them, have been trying for many years to achieve the recognition of these rights through a variety of means, particularly through state statutes, through state constitutional amendments that have now been passed in 20 states. But they have come to the recognition and the realization and I think it is simply a fact, given the nature of our system, that only by putting these rights into the federal Constitution will we ever achieve consistency, nationwide recognition of these basic rights. It's only the federal Constitution that can speak authoritatively over the whole range of state and federal criminal proceedings.

So, that's what this is about. It's intended to provide a degree of assurance that, just as today, anyone who is accused of a crime and gets arrested has assurance that he will have certain basic rights protected, if this amendment is passed by Congress and ratified by the states and anyone who is a victim of a crime anywhere in this country will know that certain basic rights of that victim will be assured.

Just to add one element to the process aspects of this whole thing, the victims' rights groups who are pushing this, who we have worked with, who the bipartisan supporters in Congress have worked with have absolutely no partisan or ideological character. There's a broad cross-section -- the National Organization of Victims' Advocates, Mothers Against Drunk Driving, the various groups who advocate on behalf of victims of domestic violence, the mothers of gang victims -- a whole range of groups who cut completely across any ideological or partisan lines and have always been determined that the victims' rights movement will not be in any way used by anybody for any partisan or political end. So our intention at this are point is to work, as the President directed, on a bipartisan basis with them, with the leaders in Congress, and to see if we can get this done.

Q Are you saying that for 200 years we have had no justice in our courtrooms?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: No, I'm not saying that, but I am saying that we have not had any explicit recognition in the federal Constitution of victims' rights. And I think we --

Q You are also saying that the victims should have a judgmental role in the courtroom, aren't you?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: No, the phrase that the victims' advocates is, they're after a voice, not a veto. They're after the right to participate in the process. As I say, I think most people, if they are ever victims of crime, are surprised to find that they don't have those rights. The cases that have become particularly visible that were talked about in the President's remarks I think are startling to people, to find that you can be victim of a crime and not be notified of the proceedings, not have any right to participate or to present your views prior to the sentencing of the convicted offender. Those are the rights we're talking about.

Q Mr. Schmidt, just for the sake of argument -- and I apologize to the Press Office staff for the question, which is getting repetitive for me here, anyway -- for the sake of argument, let's say that we need to amend the Constitution to ensure these rights; that this can't possibly be done statutorily, and this follows Helen's question -- wasn't this true a year ago, two years ago, three years ago? What happened in the middle of 1996 to inspire the Clinton administration and the Clinton Justice Department to stand out there today to endorse this measure? Why not last -- why not three years ago, if this is so important?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Well, I think what has happened is that the victims advocacy groups that I described came together really last year and early this year, and decided that it was time to pursue in an aggressive and serious way a federal Constitutional amendment. They are the ones who driving this, not anybody here, not anybody in Congress really.

Q It never occurred to the Justice Department, then, or the White House before this year, before these groups came to you, that the Constitution is sorely lacking in this provision?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Well, I don't think that's true. The original proposal for a constitutional victims' rights amendment came from a presidential task force that was reported back in 1982, that was in fact staffed by Justice Department officials. The office that Aileen Adams heads, the Office for Victims' Assistance, was set up as a result of that task force. Since that time, the victims' advocacy groups have been working to try to achieve the recognition of these rights.

Florida, for example, passed a victims' rights Constitutional amendment. Attorney General Reno was one of the leading public advocates of that. What has happened, however, is that over time people have come to the realization that is never going to get the job done. We are not going to be successful through a combination of state statutes and state constitutional amendments in achieving nationwide protection of these rights and the ability to have those rights override contrary state statutes.

The New Jersey case that the President talked about this morning is a case where a New Jersey court came to a conclusion that a victim could not have the right to present evidence at sentencing in a capital case because that was a violation, in their view, of New Jersey constitutional rights.

The Supreme Court of the United States has already ruled just to the contrary; that as a matter of a federal constitutional law, there is no violation of a defendant's Constitutional right when a victim presents evidence at the sentencing stage of a case. The only way, therefore, in New Jersey to achieve the recognition of that basic victims' right is to pass a constitutional amendment.

Why now? I think because it's now that the victims' advocacy movement in this country -- and I really think it's correct to describe that as a movement of people who represent victims of crime -- have come to the conclusion, and they have convinced, by now, a lot of people, including the President of the United States, that it's time to do this and put these basic rights into the federal Constitution.

Q Why were these things not --

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Let Bonnie answer that, if you would like. Bonnie has been an advocate of a federal Constitutional amendment for victims' rights back to her days as Attorney General of Iowa. So she is by no means a Johnny-come-lately to this effort.

DIRECTOR CAMPBELL: I guess I would make the point about my own journey on this issue because I made it as forcefully as I could within the Justice Department and to the White House. When I served as Attorney General, I didn't, for the first three years, support a Constitutional amendment. I thought surely we could do it other ways. I became convinced that we could not, because no matter what, defendants' rights would always trump victims' rights, and I'm a very strong supporter of defendants' rights; they distinguish our democracy from all others.

But if you sat where Aileen and I sit every day, you wouldn't care when this President came to the leadership on this issue. That's interesting to you in this room. But to the victims and the leaders of the victims' movement, it's just critical mass. We have reached it. It's very important. His leadership will make the difference.

But let me tell you how I view this. We live in a democracy that relies upon the rule of law as its fundamental underpinning. That means people have to respect the rule of law and the processes that give us those rules and those decisions. It pains me when I hear crime victims say, as you all just did, we have a criminal justice system that is more criminal than just, that pains me. I'm in that system.

If people view our justice system like that, and they do, that is a threat to us. It's time to be honest and look at competing interest. There's no real reason victims don't have constitutionally protected rights except that it hasn't happened. Now, there is this critical mass. Generally, people don't fail to support the concept. I think it is time to just go do it. And that is why I pushed very hard for this day to happen.

Q Isn't the government supposed to protect the rights of the victim in the courtroom?

DIRECTOR CAMPBELL: Absolutely not.

Q Is there a revenge motive in having them there and confronting the jury and so forth? Would that be possible?

DIRECTOR CAMPBELL: When you are a prosecutor, as I have been, you represent the state, period. You may not even need the victim. You can go forward. But how is a victim supposed to heal if they're not even permitted to be in the courtroom at the trial of someone who murdered their daughter? Where does the healing begin? We have 43 million victims of violent crime. That matters to them. Unless you've been there, in their place, looking at this system as an outsider, when theoretically what's happening in that courtroom should be a part of giving you justice, it is very difficult to understand. And that's why I said I feel compelled to tell about my own journey, because I didn't start out supporting this concept of amending the Constitution. But I did a lot of hard work and I came to the conclusion that there is simply, as President Clinton said, no other way to do it.

And we owe it to the people we cannot protect: the people who become innocent victims of crime. We owe it to them to move forward and give them protections, protected by the Constitution in our criminal justice system.

Q Could I ask Mr. Schmidt a question? One, are there any constitutional amendments now out there among the states

for ratification that have gone through Congress and are going through this seven-year process that you know of? Any others?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: I could stand corrected, but I'm not aware of any. There certainly is no other that the Justice Department or that the President of the United States is supporting. I said to somebody that the only other constitutional amendment I've ever supported is the Equal Rights Amendment, so I'm sort of a believer in serial monogamy when it comes to constitutional amendments. You take one at a time; I think that one failed for good or bad reasons. I think this is the only one --

Q Bad. Bad reason.

ASSOCIATE ATTORNEY GENERAL SCHMIDT: -- certainly that the President of the United States -- yes, I'll accept that.

Q Did President Clinton support the ERA?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Yes, he did. He did. But my understanding is that's the last time he supported a constitutional amendment. He obviously, as he indicated in his speech today, believes as we all believe that the threshold for amending the Constitution is a very, very high threshold; but I think we've come to the conclusion, and Bonnie's remarks indicate that is the only way to go about achieving these basic victims' rights.

MR. MCCURRY: John, did Aileen and David want to --

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Yes, Aileen -- you want to add something? Another longtime advocate of victims' rights.

DIRECTOR ADAMS: I'll be very brief because I know you have a lot of questions. But I just can't get the image out of my mind of Roberta Roper, who you heard from this morning. Think about her case, because it symbolizes what happens to so many crime victims across this country. Roberta literally had to put her ear to the courtroom door to try to listen to what was going on inside. She was not a major witness; the only thing she was called to testify to was to identify the clothing on her daughter who had been murdered and kidnapped. That was it. She had made the dress that she wore, and she was frozen out of the system.

There are so many crime victims across the country who feel like Roberta do, and it's time that we give them fundamental rights. Your rights today depend on the state in which you live, because rights vary from state to state, they're different in the federal system, they're different in the military system. What crime victims want are fundamental rights, a floor of rights that apply across the country so that it doesn't depend on the age of your offender or the place where you are sexually assaulted or murdered, those rights will be consistent everywhere.

Q Can I ask you a question? What if someone is, in fact, a fundamental witness and they're a victim? Will they be allowed in?

DIRECTOR ADAMS: I'm sorry, I missed the first part of your question.

Q You said that in this case, that what she was testifying to was simply the clothing that her daughter was wearing. What if, in fact, they are very central to the case? Would they, under this amendment, be able to listen to the whole trial?

DIRECTOR ADAMS: I think that it's very important for victims to be able to participate in the proceeding and to be present, and that that's part of the --

ASSOCIATE ATTORNEY GENERAL: Let's be clear. To the extent that victims' rights that are guaranteed by this amendment come into conflict with defendants' rights that are also federally guaranteed, then what would be required would be a balancing of those rights, just as today courts have to balance if First Amendment rights of access to a court come into conflict with defendants' rights. In general, it would certainly be unconstitutional under this

amendment for a court to apply any general exclusion of victims from the courtroom, which could apply even when they're not witnesses. In states that have constitutional amendments of this kind, they work very hard to figure out ways to avoid having to exclude the witness from the entire trial. One simple solution is let the victim be the first witness. Another possibility is to exclude the victim only in circumstances where a particular other witness is testifying which might have some bearing on that victim's future testimony.

So, there are ways for courts to try to balance those rights. And what the constitutional amendment would require would be that balancing. Today, in a circumstance where a court decides to do so, it can as a matter of really preemptory discretion exclude victims from the courtroom even without regard to they're being witnesses and it can exclude them automatically in any case where they're going to be a witness regardless of whether it has considered those sorts of alternatives. So, what we're requiring is that the courts engage in that kind of a balancing effort which is not required under current law.

ASSOCIATE COUNSEL FEIN: If I could just -- in response to your question -- I'm David Fein from the White House Counsel's Office. In Utah a state court reversed a rapist conviction because the rape victim who was a witness sat in the courtroom during the proceeding. And they reversed the conviction citing the defendant's right to due process. This amendment would require, as Mr. Schmidt said, a balancing. A defendant is always present in his trial -- let me back up one second -- the reason that the conviction was reversed was because that they found that the victim-witness had a chance to tailor her testimony by observing all of the other testimony.

Well, a defendant always has that ability, too. A defendant is not excluded from the courtroom and, yet, a defendant could be testifying, it could tailor his testimony. That is left for a jury to decide. It's brought in front of the jury and the jury can decide if the defendant tailored his testimony.

In federal cases, the case agent is allowed to stay in the courtroom. Even if the case agent is going to be testifying, we make exceptions. Unfortunately for victims, there is no exception, and victims are routinely excluded from the courtroom if they happen to appear on a witness list. And we think that's wrong. And at the very least there should be a balancing, and this would allow for that.

Likewise, in the New Jersey case you heard about, there is just a wholesale rejection of a victim providing information to the sentencing court. In that case, a state law, carefully crafted, said that if a defendant provided his character evidence to the sentencing jury, talked about his background, his past, the victim-witness could also testify about their past, their background. State court said no, that's unconstitutional because the defendant's rights -- it's constitutionally based, the victims is not. And they struck down that state statute. If there was a federal Constitutional amendment, that couldn't happen. There would have to be a balancing and a linking of these two rights.

Q Today in the list of proposed constitutional rights for victims, the President listed and you have listed, you have left out one that is in the Kyl-Feinstein bill, and that is the right of a victim to demand a speedy trial. Can you explain that?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Well, that's correct. And we're open to try to work out language if it can be done, that would give that right to victims. The concern we have had about it is twofold: First, it's hard to know exactly what it means, because to the extent you have a defendant and a prosecutor both of who have decided that a case should not go forward at a particular point in time, to suggest that the victim then has a right to a speedy trial at most would suggest a sort of hortatory notion that the court would take into account the views of the victim at that point.

But the other concern we have had is that conceivably, depending upon how that is written, it could end up in circumstances having an adverse impact on the ability of a prosecutor to go forward with a case, because if a prosecutor is saying he is not ready to go forward and if the defendant under those circumstances is prepared to waive the defendant's right to a speedy trial, then it seems to us, to put it mildly, a very delicate matter to suggest that under those circumstances the case should nevertheless go forward.

So one of the things the President said in his remarks was that as we work forward with Senator Kyl, Senator Feinstein, the advocates of victims' rights to come up with appropriate language, we want to make sure we don't do anything that

would interfere with our ability to prosecute effectively. And we were concerned, and are concerned, that that particular element of some of the proposals can have that difficulty.

Q Were there prosecutorial organizations and prosecutors from the Justice Department who raised these concerns with you?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Yes. On that particular point, some of the prosecutors within the Justice Department expressed concern that if we found ourselves in the situation where we were forcing a prosecutor to go to trial over the prosecutor's objection, that could have an adverse effect on the ability of the prosecution to go forward. There may be ways to draft around that, but by the time you have drafted around them you may not have much left in the way of anything that is real in terms of a victim's right. And the other thing we have thought, and I think the President said this, is we wanted to have real rights that are self-enforcing, not just sort of hortatory language that has no real bite to it in terms of impact on court proceedings. And I think our concern was, in that particular one, we were unable, at least at this point, to come up with a formulation that we thought was workable.

Q How about state prosecutor organizations? Did they, in the states, without such amendments, did they weigh in along with Justice prosecutors?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: I haven't heard from state prosecutors organizations. I think in general they have been supportive of victims' rights amendments. The Attorney General noted the fact that the major police organizations were all represented at the press conference this morning, and I think the police organizations generally support victims' rights amendments. I think prosecutors at both the federal and the state level naturally have a concern that we do it in a way that does not interfere with the ability to prosecute crime; after all, victims also have the fundamental right to have an effective prosecution of the crime and the public has that right, so there is a need to take that into account.

Q Is the ACLU or a similar civil liberties group, on record either in the states or on the federal level so far as opposing such an amendment?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: I saw a newspaper account the other day that said the ACLU had not yet taken any position with respect to victims' rights. I'm not aware of them having done so. I don't think in general this issue has gotten postured as an issue of individual rights versus victim rights, if I can put it in those terms -- I mean, victims' rights are obviously fundamental rights that belong to a large class of citizens who find themselves victims of crime and to that extent, one might think organizations like the ACLU would be supportive, but I don't -- as far as I know, they have not particularly weighed into this debate.

Q Mrs. Campbell mentioned that she had gone on a journey on this issue from presumably thinking this was unnecessary or a bad idea, a constitutional amendment, to a conversion at this point -- June, I believe here -- to thinking that now is the time that it is necessary and required. Did the three of you also go through a similar journey of not supporting an amendment and then today coming to the conclusion that it was, in fact --

ASSOCIATE ATTORNEY GENERAL SCHMIDT: I think Mrs. Campbell's journey ended way back when she was in Iowa. She was a public, public supporter of a victims' rights amendment back when she was Attorney General of Iowa, so it isn't as though she went through some sort of an election-year conversion.

In my own case, I would say I started with some skepticism not about victims' rights, but about whether we needed to amend the Constitution in order to achieve this. I have personally been enormously affected by meeting with and listening to the victims' advocacy groups. I deal with them, to some extent, in other aspects of my job -- not to go too far afield, but there is in my mind a relationship between community policing, which is something I spend a lot of time dealing with, and victims' rights. Because if you are going to have police out working actively with the community trying to engage the community in the criminal justice system, you cannot then turn around and say to the victims of crime in that community that they are going to be excluded.

So in that connection, I've heard a lot from the victims' advocates, and I've heard them argue, and I would say totally convincingly, that this is the only way we are ever going to achieve general, nationwide recognition of victims' rights;

the other ways just do not work.

Q When did you become convinced?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: I became convinced probably three or four months ago when we - the victims' rights movement really made a concerted effort starting earlier this year at the time when the Kyl-Feinstein bill was introduced, and we had various meetings with them at that time, and I think it's fair to say that the three of us -- Bonnie Campbell and Aileen Adams and I -- was in the Justice Department since that time had been strongly committed to this point of view and had been urging it within the Justice Department and had been urging it upon the President and the White House.

Q Mr. Schmidt, what do you say to the concerns of defense attorneys that by allowing families and victims to play such a visible and vocal role at many points during a trial that juries might end up being swayed to base their verdict on emotion versus the facts of the case versus the evidence?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Well, I don't think that is an acceptable rationale for excluding victims and their families from the courtroom. I think that they have a right to be there, I think as Bonnie indicated, it is part of the process of dealing with serious, violent crime for many people to be there. I don't think there's any more reason to believe that they will react to that than that they will react to the fact that there are police officers in the courtroom who are often there for extended periods. You could argue that that somehow conveys to juries that there is some generalized law enforcement interest in a particular conviction.

I think the answer is, juries make their decisions and are directed to make their decisions based on the evidence, and I don't think that's a reason for excluding victims. Nor do I think in states which have recognized victims' rights and allowed victims to be in courtrooms that there is any evidence that that's had that kind of impact on the criminal justice system.

Q So, the bottom line is that it's a healing process for the victim's family. Is that what you mean?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: That is an element -- that is one reason why the victim's family should be allowed to be in the courtroom. I think it goes beyond that. I think people who have been victims of serious crime have a right to be present when the offender is put on trial, and they have a right to see that process, see how it works, see that it does work.

Q And they have a right to intervene on a plea-bargaining or anything else in sentencing and --

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Only under this amendment and under any amendment that's ever been adopted, the right to be heard. They have no right to dictate, but they have the right to be heard before a convicted offender is released on parole or at earlier stage of the process before a plea-bargain is accepted or before a sentencing comes down. Those are the basic rights that are guaranteed under virtually all of the state constitutional amendments and that would be guaranteed under this federal constitutional amendment.

Q -- the restitution provision have do you think?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Say that again?

Q What practical impact do you think the provision for restitution would have?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Well, under federal law we now have restitution for all victims of violent crime under the antiterrorism bill that was passed earlier this year. I think the practical impact is at the state level. There are a lot of states that don't have general restitution statutes that are applicable to all violent crime, and by putting it in the federal Constitution we would, a, make it universally applicable, and, b, make sure that it in fact gets enforced around the country.

Q For those of us who are trying, as on a college essay paper, to compare and contrast the various proposed

amendments, what are the differences between the President's proposals of the Kyl-Feinstein proposal and the Hyde proposal which is, I understand, "weaker" than Kyl-Feinstein?

ASSOCIATE ATTORNEY GENERAL SCHMIDT: Well, the President didn't support specific language. We made a deliberate decision that having a kind of competing text out there was not the way to go. The president detailed the elements that he believes belong in a constitutional amendment with the one exception that you noted, the speedy trial right. Those are the basic rights that are embodied in the Kyl-Feinstein proposal. We have some concerns about other elements that we think need to be in that proposal, some of which I understand Senator Kyl and Senator Feinstein have already indicated they might support. For example, a provision to make explicit that the amendment would not give rise to civil damage remedies against either state or localities or public officials; a provision to make explicit that a violation of the rights would never result in the reversal of a criminal conviction. Both of those I think are things that Senator Kyl and Senator Feinstein would accept, but they are not in the current version.

The President also referred to a provision to make explicit that victims who are also themselves accused offenders such as a situation where you have multiple defendants in a gang violence case, should not be able to use the assertion of these rights in ways that would interfere with the criminal prosecution. So, we intend to work with Senator Kyl and Senator Feinstein, both of whom spoke to us on the way out and said they were eager to do this, to try to get to language that we think would be acceptable.

Not to belabor this, the Hyde proposal is slightly different with respect to certain of those rights. And I would say it is viewed by the victims' advocacy community generally as a weaker version. It would not include all of the rights that the President identified which are in the Kyl-Feinstein proposal. So, I would say at this point, the President is supporting virtually all of the specific rights that are identified in the Kyl-Feinstein proposal but with a need to work through language that will hopefully have a broad degree of bipartisan support.

THE PRESS: Thank you.

1:40 **P.M. EDT**